

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
GENERAL ORDINANCE NO. 2024-12**

**AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF
WESTFIELD, CHAPTER 29A**

**Chapter 29A
Tree Preservation**

**Article I
In General**

§ 29A-1 Title.

This chapter shall amend and restate the "Tree Preservation Ordinance of the Town of Westfield.

§ 29A-2 Purpose; legislative intent.

A. Promote the general welfare.

The governing body of the Town of Westfield finds and concludes that trees have many important roles within our community. Because of this, trees on public and private property are to be protected and preserved to the greatest extent possible. Trees play an important role in contributing to the character and beauty of Westfield. Trees also provide significant environmental and personal health benefits. It is the intent of this chapter to promote the general welfare of the people of the Town by protecting, regulating, planting, and cutting trees in such a way as to preserve the environment and overall character of the Town of Westfield. Trees that should be protected include, but are not limited to, shade, ornamental and evergreen trees that provide an environmental benefit to the Town.

B. Coordination.

It shall further be the policy of the Town of Westfield to improve and coordinate the environmental plans of the Town with the federal and state statutes for the protection, regulation, and planting of trees within the Town.

§ 29A-3 Legislative findings; why trees are important to Westfield.

A. Air pollution prevention.

Trees reduce air pollution by absorbing carbon dioxide and releasing oxygen. It is essential to our citizens to remove pollution from our air. It takes approximately 20 mature trees to clean the air of gases produced from vehicular traffic consuming five gallons of gasoline. Healthy trees greatly assist in the battle against air pollution since moist tree foliage traps dust and soot particles until the rain washes them away. Trees also filter and absorb carbon dioxide, which is a by-product of the combustion of organic fuel materials.

B. Sound barriers.

Properly planted and nurtured trees are also needed since they create sound barriers that help in the reduction of the noise level made by vehicular traffic, trains, and air traffic.

C. Flooding.

Trees can assist in reducing runoff and flooding both during and after a rain event.

D. Aesthetics.

Trees provide character to neighborhoods, businesses, and public buildings.

E. Energy.

Trees save energy by providing shade cover for commercial and residential buildings, thereby reducing air conditioning usage; and providing windbreaks during colder seasons, thereby reducing heating usage.

§ 29A-4 Definitions and word usage.

A. Definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context, or unless a different meaning is stated in a definition applicable to only a portion of this chapter, the following terms shall have the meanings indicated:

AESTHETIC IMPROVEMENT CUT

The removal, to the extent possible, of the minimum number of the smallest and poorest specimens of trees so as to permit land development and the retention of the maximum number of the larger and better specimen of trees.

CALIPER

Caliper is a type of diameter measurement utilized in the arboricultural industry.

CLEAR CUTTING

The removal of all standing trees on a lot.

CODE ENFORCEMENT OFFICER

The official of the Town charged with the responsibility of administering this chapter. The Code Enforcement Officer shall be responsible for the enforcement of the provisions of this chapter. In this regard, the Code Enforcement Officer is authorized and shall perform any necessary inspections and is further authorized and shall issue violation notices and shall sign complaints and provide testimony in the Town of Westfield Municipal Court for violations of this chapter.

DIAMETER BREAST HEIGHT or DBH

The diameter of a tree measured at a point on the tree 4.5 feet from ground level.

DRIPLINE

The circular area surrounding a tree, the radius of which area shall be the distance from the trunk of the tree to the outermost branch of the tree.

PERSON

Any individual, firm, partnership, association, corporation, agency or other entity.

REPLACEMENT TREE

The tree, including a description of the species and the minimum diameter and height, which is required pursuant to § **29A-16**.

ROOT SYSTEM

Those tree roots within the dripline perimeter.

SELECTIVE CUTTING

The removal of larger trees on an individual basis while leaving trees of lesser size for future harvest.

SITE PLAN

A development plan as defined in the Land Use Ordinance of the Town of Westfield and Chapter **25** of the Town Code.

STOP-WORK ORDER or ORDER

An order issued by the Code Enforcement Officer to stop any tree work or other activity which he or she believes is occurring in violation of any provision of this chapter.

SUBDIVISION

The division of a lot, tract or parcel of land, including minor subdivisions and major subdivisions, as defined in the Land Use Ordinance of the Town of Westfield and Chapter **25** of the Town Code.

THINNING

The removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of the remaining trees on a lot.

TOWN

The Town of Westfield.

TOWN CODE

The Town Code of the Town of Westfield.

TOWN TREE

A tree located on land owned by the Town or a tree whose base is located in whole or in part within the public right-of-way or on public lands.

TREE (Shade)

A single- or multi-stem plant protruding from grade level reaching a mature height exceeding 25 feet with an average life span exceeding 50 years.

TREE (Ornamental)

A single- or multi-stemmed plant protruding from grade level reaching a mature height of 35 feet with an average life span of 30 years.

TREE (Evergreen)

A single or multi stemmed plant protruding from grade level that maintains its foliage throughout its lifespan.

TREE BOND

The bond which may be posted for two years to provide for the cost of a replacement tree if such replacement tree dies during such a two-year period.

TREE INVENTORY

The inventory prepared by the Tree Preservation Commission which lists the trees on vacant and subdividable lots in the Town.

TREE PRESERVATION CODE ENFORCEMENT PANEL or PANEL

The Panel created to review appeals of permit denials and other actions by the Planning Board or Board of Adjustment, or the Code Enforcement Officer, pursuant to the provisions of this chapter.

TREE PRESERVATION COMMISSION or COMMISSION

The Commission created to assist the Planning Board or Board of Adjustment and the Code Enforcement Officer in an advisory capacity on tree preservation and management matters pertaining to the Town.

TREE PRESERVATION PLAN or PLAN

The additional information required as part of the tree removal application where property is being developed and requires subdivision or site plan approval.

TREE REMOVAL APPLICATION or APPLICATION

The written form required to be completed in applying for a tree removal permit.

TREE REMOVAL PERMIT or PERMIT

The permit issued by the Code Enforcement Officer authorizing removal of trees as regulated by this chapter.

TREE TRUST FUND

The fund created to collect money, pursuant to this chapter, for the purchase and planting of replacement trees. The Tree Trust Fund shall be administered under the direction of the Code Enforcement Officer in conjunction with the Town Administrator, and it shall include funds provided by developers pursuant to this chapter as well as donations, grants or bequests made to the trust fund.

B. Interchangeability.

Words used in the present tense include the future; words in the masculine gender include the feminine and neutral, and the singular number includes the plural and the plural the singular.

C. Direction.

"May" or "should" indicates a permissive direction; "must" or "shall" indicates a mandatory direction.

D. Terms defined in other codes.

Where terms are not defined in this chapter and are defined in the Town Code, they shall have the same meanings as ascribed therein.

E. Removal.

References in this chapter to the "removal" of trees shall be deemed not to include the routine pruning of trees or the routine removal of tree branches and limbs.

**Article II
Regulation of Tree Removal**

§ 29A-5 Tree Preservation Commission; membership; terms; appointment.

A. Tree Preservation Commission. A Tree Preservation Commission is hereby created which shall assist the Planning Board or the Board of Adjustment, as the case may be, in an advisory capacity on tree preservation and management matters pertaining to the Town. The Tree Preservation Commission of the Town Council shall consist of seven members, all of whom shall be residents of the Town, and shall be appointed by the Mayor with the approval of the Town Council as follows:

- (1) One member shall be a Class IV member of the Planning Board and shall serve for a one-year term;
- (2) One member shall be a member of the Code Review and Town Property Committee of the Town Council and shall serve for a one-year term; and
- (3) Five members shall be from the general public ("general members") and shall each serve three-year terms.

B. Functions. The functions and duties of the Commission shall include, but not be limited to:

- (1) Working with the Code Enforcement Officer in reviewing tree removal applications;
- (2) Making recommendations regarding the issuance of tree removal permits to the Planning Board or Board of Adjustment;
- (3) Conducting on-site visits to the properties of applicants before the Planning Board or Board of Adjustment;
- (4) Creating an inventory of trees on vacant land and subdividable lots;
- (5) Identifying issues of special concern pertaining to tree preservation;
- (6) Developing tree preservation policies;
- (7) Creating and publishing, and/or generally communicating, a recommended species list of trees for the Town;
- (8) Promoting and encouraging the planting of suitable species within the Town; and
- (9) Participating in the development, coordination and implementation of tree planting plans for the Town.

§ 29A-6 Tree inventory.

The Tree Preservation Commission may, as a public courtesy, create an inventory listing the trees on vacant and subdividable lots in the Town. Upon completion of the tree inventory, the Town Clerk shall send notices to property owners (as listed in the most current tax records) of those vacant and subdividable lots which are listed on the tree inventory. Notwithstanding the foregoing, the absence of a tree inventory or lack of notice as described herein shall not be a valid defense to any violation of the provisions of this chapter.

§ 29A-7 Tree removal permit required.

Under the circumstances set forth in this section, no tree shall be cut or otherwise removed from any lands located in the Town unless a tree removal permit has been issued from the Code Enforcement Officer. Tree removal permits are required when an application (as described in this chapter) has been approved by the Planning Board, the Board of Adjustment, or the Code Enforcement Officer, whichever is applicable. A tree removal permit based thereon shall be issued by the Code Enforcement Officer under the following circumstances:

- A. Where property is being developed and requires subdivision or site plan approval;
- B. Where Town trees are to be removed (provided that applications for removal of such trees shall only be made by the adjacent property owner(s));
- C. Where properties that contain existing dwellings or structures that will be removed or demolished to facilitate the construction of a new or replacement building or buildings within the next one year;
- D. Where there is any construction that may affect trees of eight-inch DBH or greater on Town or private property that are not otherwise approved for removal. These trees shall be protected with a barrier equal to a one-foot radius for each inch of DBH, with a minimum protective barrier of a ten-foot radius. Nothing is to be allowed within the barrier to prevent equipment from damaging the tree roots and to prevent the piling of soil on the roots. The tree removal application shall define and specify the placement and location of the barrier devices to be used to protect the specified trees; or
- F. Where a tree is over eight inches DBH.

§ 29A-8 Exemptions.

The following shall be exempt from the requirements of this chapter:

- A. Commercial nurseries.
- B. The Town of Westfield.
- C. Golf courses.
- D. Cemeteries.
- E. Any tree on publicly owned land or public right-of-way and removed by the public agency or its representatives.

- F. Dead dying, diseased, or dangerous trees, upon certification by the Code Enforcement Officer or a qualified New Jersey licensed tree expert.
- G. Partially or completely fallen trees by acts of nature, or trees which, in the opinion of the Code Enforcement Officer, endanger or create a hazard to public safety.

§ 29A-9 Tree removal applications and tree preservation plan.

In all instances in which a tree removal permit is required pursuant to § **29A-7** above, the following requirements shall apply:

A. Tree removal application.

A tree removal application shall be filed, which shall indicate: i) the name and address of the owner of the premises; ii) the name and address of the applicant if other than the owner (accompanied by the owner's consent to the application); and iii) a description by the lot and block number(s) of the premises for which the permit is sought. The form of the application shall be determined by the Code Enforcement Officer and shall be available from the Department of Public Works. In the case of a subdivision where the final house footprint and related structures are not known at the time of the application, the Planning Board or Board of Adjustment, as the case may be, shall condition its approval upon submission of a tree preservation plan and proposed planting plan as part of the construction permit application.

B. Time and place for filing tree removal applications

- (1) When property is being developed, and requires subdivision or site plan approval, or which is subject to § **29A-7(c)**, a tree removal application shall be filed with the Planning Board or Board of Adjustment, as appropriate, at least 28 days prior to the next scheduled Planning Board or Board of Adjustment meeting.
- (2) All other tree removal applications shall be submitted to the Code Enforcement Officer.

C. Submission of tree preservation plan as required by the Planning Board and/or Zoning Board of Adjustment.

- (1) When property is being developed and requires subdivision or site plan approval. A person developing property which requires subdivision or site plan approval shall submit, at the same time as his application for subdivision or site plan approval, a tree preservation plan indicating proposed locations of roads, lot improvements and existing trees.
- (2) When a demolition permit is sought. When an applicant seeks to demolish more than 75% of a principal structure in anticipation of immediate or future redevelopment or reconstruction of that principal structure, a tree preservation plan shall also be submitted with the tree removal application, unless the applicant certifies that no trees shall be removed as part of the demolition and construction.

D. Contents of tree preservation plan. The tree preservation plan shall contain the following information:

- (1) A description of the premises upon which tree removal is to take place by street address and Town Tax Map lot and block number;

- (2) The size of the lot upon which tree removal is to take place;
- (3) A survey of the species and quantity of trees which are to be removed, setting forth the location and type of each tree having a DBH of eight inches or more;
- (4) Specific proposals for replanting or reforestation, if applicable;
- (5) A description of the type of tree removal project (i.e., thinning, selective cutting, clear cutting or aesthetic improvement cut and barrier devices to protect remaining trees);
- (6) Location of streams, watercourses and wetland property;
- (7) Location of slopes greater than 10% where any tree removal is proposed;
- (8) Identification of any grade changes around trees to be saved; and
- (9) Identification of all tree protection measures that the applicant will take, including the erection of silt fencing, construction fencing and tree preservation fencing.

E. Submission of the tree preservation plan.

- (1) The applicant shall submit 18 copies of the tree preservation plan to the Planning Board and 12 copies of the tree preservation plan to the Board of Adjustment, in accordance with this chapter. The applicant shall also submit a digital copy in pdf format of the tree preservation plan to the Planning Board or Board of Adjustment, as the case may be. (2) The applicant shall also submit one copy of the tree preservation plan to the Code Enforcement Officer at the time of submission to the Planning Board or Board of Adjustment, to enable the Code Enforcement Officer to make his or her recommendations to the Tree Preservation Commission. The Code Enforcement Officer may accompany the Tree Preservation Commission to the site and assist the Commission in formulating its recommendations to the Planning Board or Board of Adjustment.

- F. Conditions of issuance of building permit.** In circumstances in which a tree preservation plan is required, no building permit shall issue unless the applicant has erected, around protected trees, fencing or other protective barrier acceptable to the Code Enforcement Official. The protective barriers shall be placed at least 10 feet from the trunk of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor. In those circumstances where the Planning Board or Board of Adjustment requires that a tree preservation plan be submitted as a condition to its approval of an application, the approval of the tree preservation plan by the Code Enforcement Officer or Town Engineer, as the case may be, shall be a condition precedent to the issuance of a building permit for any construction to occur on the property that is the subject of the tree preservation plan. The Town Engineer or Code Enforcement Officer should consult with the Tree Preservation Commission in connection with the approval of the tree preservation plan.

§ 29A-10 Processing of tree removal applications.

- A. Reviewing applications when the property is being developed and requires subdivision or site plan approval.** The Planning Board or the Board of Adjustment, as the case may be, shall review all

applications for tree removal where the property is being developed and requires subdivision or site plan approval. The Planning Board or Board of Adjustment shall act on such application in connection with the related development application at the public meeting concerning the application or within such additional time as is consented to by the applicant. The Planning Board or the Board of Adjustment, as the case may be, shall refer the application to the Tree Preservation Commission for its report and recommendations. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Failure to refer the application as required shall not invalidate any hearing or proceeding. The Tree Preservation Commission may provide its advice, which shall be conveyed through its delegation or one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted by the Commission to the Planning Board or Board of Adjustment. The Planning Board or Board of Adjustment may rely on, but is not bound by, the report and recommendations of the Tree Preservation Commission in reaching its decision to approve or deny the tree removal application.

B. Reviewing all other applications. The Code Enforcement Officer shall review all other applications as required under § 29A-7. The Code Enforcement Officer shall act on the application within 20 days of its receipt or within such additional time as is consented to by the applicant. The Code Enforcement Officer may refer the application to the Tree Preservation Commission for its report and recommendations. The Code Enforcement Officer may rely on, but is not bound by, the report and recommendations of the Tree Preservation Commission in reaching its decision to approve the tree removal application.

C. Expedited review for removal of hazard trees. The Planning Board, the Board of Adjustment, or the Code Enforcement Officer, whichever is applicable, shall act on an application for the removal of a tree which the applicant believes is a hazard to persons or property within 10 days of its receipt, or as soon as is practicable. When the application is before the Planning Board or the Board of Adjustment, such Boards shall refer such applications to the Code Enforcement Officer for a report and recommendations. The Planning Board or Board of Adjustment may rely on the report and recommendations of the Code Enforcement Officer in reaching its decision to approve the tree removal application. Notwithstanding the foregoing, in the event that the applicant believes that the condition of a tree constitutes an imminent hazard to persons or property, the applicant shall contact the Code Enforcement Officer or other Town official to make arrangements for elimination of the hazard.

§ 29A-11 Criteria for approval of tree removal applications.

- A. General criteria for approval of a tree removal application.** The determination of the Planning Board, Board of Adjustment or the Code Enforcement Officer, as applicable, in granting or denying a tree removal application or a tree removal permit shall be based on reasonable standards, including, but not limited to, the following:
- (1) Any area to be occupied by a building, drainage field, septic tank, swimming pool or similar facility may have all trees removed within 15 feet around the perimeter of such facility;
 - (2) Any area to be occupied by a paved surface, including, but not limited to, driveways, sidewalks, and/or patios, may have a tree removed within five feet of such paved surface;
 - (3) Any deviation from the requirements of the above paragraphs contained in Subsection (a) hereof shall be subject to the review and approval of the Code Enforcement Officer and Tree Preservation Commission; and

- (4) Except as permitted in § 29A-11(A)(1), there shall be no clear cutting permitted on slopes of 10% or greater in grade; however, selective cutting or thinning is permitted.

B. Other factors to be considered in an application for removal of any tree:

- (1) Whether the proposed action would cause soil erosion, impair existing drainage, lessen property values in the neighborhood or impair the aesthetic values of the area;
- (2) The number, species, size and location of existing trees in the area and the effect of the requested action on shade areas, air pollution, historic values, scenic beauty, and the general welfare of the Town as a whole;
- (3) The tree's health, the desirability of that species as a Town tree, and/or the condition and number of other Town trees in the vicinity;
- (4) Whether the tree's condition and size provide a threat of damage to the property;
- (5) Whether there are other less onerous means of accomplishing the applicant's goals;
- (6) Preservation of tree clusters;
- (7) Other information the Planning Board, Board of Adjustment or Code Enforcement Officer, as applicable, finds pertinent to the decision including, if necessary, information obtained at a public hearing.

- C. **Intent.** The spirit of the provisions of this section shall be to grant permits in such a way that the Town can meet its goals, including, but not limited to, preserving the environment, controlling drainage, preserving privacy and maintaining aesthetic and economic values in the Town.

§ 29A-12 **Permit conditions.**

- A. **Specific conditions.** The Planning Board, Board of Adjustment or the Code Enforcement Officer, as applicable, shall have the discretion to impose specific conditions on the holder of a tree removal permit. Specific conditions may include, but are not to be limited to, requiring replacement trees, selecting the type of trees to be preserved and selecting the location of the trees to be preserved.

(Remove sec B as it contradicts the replacement tree schedule.)

- C. **Change orders.** In the case of an application where a tree preservation plan is required, the applicant shall submit a revised tree preservation plan to the Planning Board or Board of Adjustment for subsequent approval if the applicant changes the road pattern or lot layout site improvements, or makes any other material change in the site plan as determined by the Code Enforcement Officer after the application is approved.

- D. **When shade tree planting is required.** Any person developing a property which requires subdivision or site plan approval may have it recommended to them to plant at least one shade tree for every 50 feet of frontage on any proposed or existing right-of-way. Closer spacing may be necessary for certain species as determined by the Code Enforcement Officer and the Commission. All types and locations of shade trees to be planted shall be shown on the approved tree preservation plan approved by the Planning Board or the Board of Adjustment and shall be planted in accordance with the specifications for planting shade trees as provided by the Planning Board or Board of

Adjustment. If it is impossible because of weather, season, or other circumstances for the applicant to plant trees in accordance with this chapter, a person shall deposit in escrow \$5,000.00 with the Town Clerk. When applicable, no street shall be accepted by the Town Council until the Code Enforcement Officer notifies the Town Council that the applicant has complied with this chapter.

E. **Effective term of permit.** Any tree removal permit shall be valid for a period of no more than two years from the date of approval. The Planning Board, Board of Adjustment or Code Enforcement Officer, whichever is applicable, upon showing of good cause by the applicant, may recommend the extension of any permit for an additional period not to exceed one year, provided that the applicant submits an updated application.

§ 29A-13 Establishment of Tree Trust Fund.

- A. **Tree Trust Fund.** There is hereby created a Tree Trust Fund, which will be administered under the direction of the Code Enforcement Officer in conjunction with the Town Administrator. The fund shall consist of monies paid by property owners and developers pursuant to this chapter, as well as donations, grants or bequests made to the trust fund.
- B. **Deposits into the tree trust fund.** Deposits shall be made into the Tree Trust Fund as follows:
- (1) When any person removes or destroys any tree without authorization, and, pursuant to § **29A-16(A)(2)**, the Code Enforcement Officer, or the Planning Board or Board of Adjustment permits such person to contribute an amount as determined by the Code Enforcement Officer to purchase and plant a replacement tree(s), rather than such person planting a replacement tree(s).
 - (2) When the Code Enforcement Officer, or the Planning Board or Board of Adjustment requires the planting of a replacement tree(s) as a condition to the issuance of a tree removal permit, and further permits the person seeking the tree removal permit to contribute such amount as determined by the Code Enforcement Officer to purchase and plant a replacement tree(s), rather than such person planting a replacement tree(s).
 - (3) When any gift, grant, donation, or bequest is made to the Town to promote the purposes of this chapter.

§ 29A-14 Requirement of tree bond in certain circumstances.

- A. **Posting of a tree bond.** In the event that replacement tree(s) is/are required on property that has been developed and required subdivision or site plan approval, a tree bond may be posted for two years to provide for the cost of the replacement tree if such replacement tree(s) dies during the two-year period. A tree bond to guarantee performance as may be required by this Chapter shall be posted, with the intent of protecting against damage to right-of-way trees, in all instances in which construction is occurring or will occur on property having a lot frontage immediately adjacent to any tree or trees within the Town right-of-way, and the construction involves the demolition of 75% or more of the existing principal structure on the property, and the property is being developed and requires or required subdivision or site plan approval.
- B. **Amount of tree bond**
- (1) In each instance in which a tree or trees are to be replaced, the applicant shall post a cash bond in the amount of \$500 for each tree to be replaced, in a form acceptable to the Town to

guarantee compliance with the approved tree removal and replacement plan.

(2) In each instance in which construction will occur under the circumstances set forth in § 29A-14(a)(2) above, the applicant shall post a cash bond in the amount, determined at the discretion of the Code Enforcement Officer, of up to \$2,500 per tree located in whole or in part within the public right-of-way to cover any damage to, or destruction of, such trees.

C. Release of tree bond.

Whenever a tree bond is required to be posted as required by this section, such bond shall not be released to the applicant for a period of two years, and only after the Code Enforcement Officer has inspected the new tree, or the right-of-way tree, as the case may be, and approved the release.

§ 29A-15 Conditions to issuance of certificate of occupancy.

Prior to issuance of a certificate of occupancy, where applicable, the Code Enforcement Officer shall visit the subject site to determine whether there has been compliance with the provisions of this chapter and, where applicable, whether the trees designated for preservation in the tree preservation plan, are, in fact, standing. If the Code Enforcement Officer determines that a replacement tree is required, the Code Enforcement Officer will withhold sign off on the certificate of occupancy until all applicable requirements of this Chapter are satisfied.

§ 29A-16 Replacement trees.

A. When a replacement tree is required.

In the event of unauthorized removal or destruction of any tree or trees by any person, or where the Code Enforcement Officer, Planning Board or Board of Adjustment has required the planting of a replacement tree as a condition to the issuance of a tree removal permit, such person shall replace or provide compensation for each tree destroyed or removed in the following manner:

- (1) By providing a replacement tree which:
 - (a) Shall be of like or, in the opinion of the Code Enforcement Officer, a superior species; and
 - (b) Shall have a caliper of at least 1/2 of the DBH of the tree that has been removed or destroyed (the "caliper replacement requirement"), which caliper replacement requirement may be satisfied with multiple replacement trees in such number as set forth in the chart set forth in Subsection (c) below; and
 - (c) Shall be planted in such a manner as to be compatible with the spatial limitations and size of the species at maturity; or
- (2) By contributing to the Tree Trust Fund in an amount necessary to purchase and plant a replacement tree as set forth in § 29A-16(a)(1), provided that the right to choose this option is at the discretion of the Planning Board, Board of Adjustment, or Code Enforcement Officer, whichever is applicable.

B. Location of replacement trees.

The Code Enforcement Officer should make recommendations to the property owner as to the location and configuration for the planting of replacement trees, which determination will be based on, but not limited to, the following considerations: erosion, drainage, aesthetics, and tree clustering.

C. Chart of multiple replacement trees.

Diameter of existing tree (inches)	Number of Replacement Trees
From 8 to 12	1
From 13 to 16	2
From 17 to 20	3
From 21 to 24	4
From 25 to 30 and greater	5

§ 29A-17 Notice.

- A. Following approval of a tree removal permit, the owner of the property or an authorized agent of the owner shall provide notice in the manner set forth herein.
- B. The owner of the property for which a tree removal permit has been approved, at the discretion of the Code Enforcement Officer, may provide to each owner of lots adjoining the subject property and to the owners of wired or other facilities, the temporary removal of which may be necessitated by the proposed work, notice that a tree removal permit has been issued.
- C. The notice shall contain the following information:
 - (1) The date of issuance of the tree removal permit;
 - (2) Contact information for the owner of the property and the contractor to perform the tree removal, including name, address and telephone number if any; and
 - (3) The estimated date of the proposed tree removal.
- D. Notice to adjoining property owners shall be given at least three days prior to the proposed date of tree removal by serving a copy thereof on the adjoining property owner as reflected in the current records of the Tax Assessor of the Town, or mailing a copy thereof by certified mail to the adjoining property owner at his, her or their address as reflected in the current records of the Tax Assessor of the Town. The owner or his authorized agent shall file an affidavit of proof of service of the notice required by this section with the Code Enforcement Officer.

§ 29A-18 Fees.

There shall be a \$500 fee for applications which are subject to § 29A-7(a), (b) or (c). There shall be a \$50 fee for all other applications.

§ 29A-19 **Appeals.**

A. **The Tree Preservation Code Enforcement Panel.**

A Tree Preservation Code Enforcement Panel shall be created and shall be comprised of the Chair of the Tree Preservation Commission or his/her designee, the Chair of the Planning Board or his/her designee and the Town Administrator or his/her designee.

B. **Right to a hearing.**

Any applicant who is denied a tree removal permit or any other person who is affected by any other action by the Planning Board, the Board of Adjustment or the Code Enforcement Officer in connection with the enforcement of any provision of this chapter or of any rule or regulation adopted pursuant hereto, may request and shall be granted a hearing on the matter before the Tree Preservation Code Enforcement Panel. A written petition requesting such a hearing and containing a statement of the grounds therefor shall either be delivered personally to the Town Administrator or sent by certified or registered mail, return receipt requested, within 30 business days from the date of the action which is being appealed.

B. **Hearing.**

Upon receipt of such a petition, the Town Administrator shall set a time and place for such a hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why the decision or action should be affirmed, overruled, or modified. The hearing shall be commenced not later than 10 business days after the day on which the petition was filed (or as soon thereafter as is practicable), provided that upon application of the petitioner, the Town Administrator may postpone the date of the hearing for a reasonable time beyond such 10 business day period if, in his judgment, the petitioner has submitted a good and sufficient reason for such postponement. The Panel shall consider the findings of the Planning Board, Board of Adjustment, the Tree Preservation Commission, and the Code Enforcement Officer, and the testimony and submissions, if any, of the petitioner. After such hearing, the Tree Preservation Code Enforcement Panel shall affirm, overrule or modify the action of the Planning Board, Board of Adjustment or Code Enforcement Officer.

C. **Record of proceedings**

The findings and decision of the Tree Preservation Code Enforcement Panel shall be in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice or order issued in connection with the matter. The record of these proceedings shall be retained for 60 days after the final decision is made.

D. **Subsequent appeal.**

Any person aggrieved by a decision of the Tree Preservation Code Enforcement Panel or other final order may seek relief therefrom in any court of competent jurisdiction.

§ 29A-20 **Enforcement.**

A. **Code Enforcement Officer.**

Except as otherwise provided, the requirements of this chapter shall be enforced by the Code

Enforcement Officer, who shall seek such penalties as are provided herein.

B. Issuance of stop-work orders.

The Code Enforcement Officer may issue a stop-work order to immediately stop any tree work or other activity which he or she believes is being carried on in violation of any provision of this chapter. The stop-work order shall be issued in writing and a copy served upon any person engaged in such tree work or such other activity. If no such person is present upon the property, the stop-work order shall be served upon the owner of the property in question.

§ 29A-21 Violations and penalties.

Where the Code Enforcement Officer has a reasonable belief that any person has removed or otherwise destroyed any tree in violation of this chapter, or has otherwise violated any provision of this chapter, the Code Enforcement Officer shall notify such person of the violation and refer the matter for adjudication by the Tree Preservation Commission. Should the Commission, upon notice to the alleged violator and an opportunity to be heard, determine that the violation occurred, the Commission shall: 1) assess a fine upon the alleged violator up to the retail value of the tree, as determined by the International Society of Arboriculture, utilizing the trunk formula method (TFM); 2) direct that the violator replace each tree removed or destroyed by another tree of a species approved by the Code Enforcement Officer or his designee that is at least three inches caliper measured in accordance with the American Nurseryman's standard ; or 3) assess both remedies. Should the alleged violator fail or refuse to comply with the determination of the Tree Preservation Commission within 30 days of its determination, the Code Enforcement Officer shall serve a summons and complaint in the Municipal Court upon the alleged violator and, in addition to the remedies set forth above, the Code Enforcement Officer may seek, and the Municipal Court may assess, an additional fine not to exceed \$2,000. The illegal removal of each tree in violation of this chapter or the failure to adequately protect each tree during construction shall be deemed a separate violation carrying with it a separate penalty as set forth above. Each and every day such violation continues shall be deemed a separate and distinct offense. In addition to the foregoing, the Town may institute and maintain a civil action for injunctive relief restraining the continuance of any unlawful tree removal project. Ignorance of the existence of this chapter or the provisions of this chapter shall not constitute a valid defense in either a civil or criminal proceeding.

§ 29A-22 Permit revocation; false or misleading statements in tree removal application.

A. Revocation of tree removal permit.

The Code Enforcement Officer may revoke a tree removal permit where the tree removal application contains a false or misleading statement as to a material fact of or where there is noncompliance with the terms and conditions of the tree removal permit.

B. Submission of new application.

Where it is found that an applicant submitted an application containing a false or misleading statement as to a material fact, said applicant shall not be permitted to submit a new application for one year from the time of filing the application containing false or misleading statements.

Miscellaneous

§ 29A-23 Disclaimer of liability.

Nothing contained in this chapter shall be deemed to impose any liability for damages or a duty of care and maintenance upon the Town or upon any of its officers, employees or agents, including any members, employees or agents of the Tree Preservation Commission. The person in possession of public property or the owner of any private property shall have a duty to keep trees upon the property and under its control in a safe, healthy condition. Nothing in this chapter shall be deemed to relieve an owner from the duty to keep any Town trees from constituting a hazard or an impediment to travel or vision.

Notice is hereby given that the foregoing ordinance was approved for final adoption by the Town Council of the Town of Westfield at a Regular Meeting held on May 28, 2024.

Maureen Lawshe, RMC
Town Clerk