

O-12-44

ADOPTED ORDINANCE

AN ORDINANCE FOR THE PRESERVATION OF SHADE TREES

May 22, 2012

Finance
S. Wood
S. Schuchman
K. Olson

BE IT ORDAINED, by the Township Council of the Township of Montclair, as follows:

Section 1: Findings and Purpose

The Council of the Township of Montclair finds that:

1. Trees and the urban forest are a valuable natural resource worthy of protection and conservation on a sustainable basis;
2. Trees stabilize soil, help reduce storm water run-off and wind erosion of soils, improve water quality, reduce noise pollution, reduce air pollution, sequester carbon dioxide associated with global warming, create shade and help reduce energy consumption in the summertime, lower ambient air temperatures throughout the Township during the summer, and provide habitat for birds and other species;
3. Trees create scenic benefits that enhance local property values in the Township;
4. The development of a mature and sustainable urban forest resource throughout the Township requires a comprehensive program for the management of the planting and removal of Trees on public and private property.

Section 2: Definitions

1. "Diameter at Breast Height" or "DBH" is defined as the diameter of a tree measured at four and one-half feet (4 ½') above the ground on the downhill side of the tree;
2. "Montclair Tree Replanting Fund" or "Tree Fund" is defined as the separate account established by the Township's governing body for the replanting of Trees on public property, School Board property, and/or County property and funded by those Persons electing to pay into the Montclair Tree Replanting Fund instead of implementing an on-site Tree Restoration Plan.
3. "Property" is defined as all private lots within the Township, whether developed, undeveloped, subdivided, or otherwise without exception;
4. "Shade Tree" is defined as any deciduous or coniferous species which is eight inches (8") or more DBH or has obtained a height of at least twenty-five feet (25');
5. "Township Forester" is a person employed by the Township who is certified by the State of New Jersey as Certified Tree Expert; and has a minimum of three years of experience in the planting, care, and maintenance of trees;
6. "Tree" is defined as any Shade Tree;

7. "Tree Removal Contractor" is defined as a person in the regular business of removing trees for hire who is registered with the Township.
8. "Tree Removal Permit" is defined as a permit issued by the Township pursuant to the provisions of this ordinance authorizing a person to remove Tree(s)

Section 3: Applicability, General Powers and Prohibitions, and Exemptions

1. Applicability. The provisions of this ordinance shall apply to Trees on all Property within the Township.
2. Prohibitions. No Person, Applicant, or Tree Removal Contractor may remove, destroy, or substantially alter a Tree without having first being issued a Tree Removal Permit. Routine annual pruning to maintain the health of a Tree, or drastic pruning in response to damage from adverse weather conditions shall not be considered substantially altering the Tree.
3. Emergency Exemption. A Tree Removal Permit is not required when there is an immediate safety risk to person or property;

Section 4: Tree Removal Contractor Certification Tree Removal and Restoration

1. No Tree within the Township may be removed or substantially altered by any person other than a Tree Removal Contractor registered with the Township. The Tree Removal Contractor shall endorse each Tree Removal Permit Application on forms provided by the Township
2. A Tree Removal Permit shall be issued upon filing of a complete application and payment of the required fee.
3. A an application for a Tree Removal Permit shall include at minimum the following:
 - a. a "Tree Restoration Plan" defined as a plan prepared by the Tree Removal Contractor on behalf of the Applicant providing: (1) the specifications, contractors, costs, and timing for the replacement of Trees removed from the Applicant's Property; (2) payment of the equivalent value of the removed Trees into the Montclair Tree Replanting Fund; or (3) a combination thereof. Tree Restoration Plans shall be fully implemented within one year of the issuance of the Tree Removal Permit.
 - b. "Tree Restoration Plan Certification" is defined as the self-affidavit certification submitted by the Tree Removal Contractor for the implementation of the Tree Restoration Plan submitted as part of the Tree Removal Permit application. The Tree Removal Contractor shall certify that the Tree Restoration Plan has been fully will be fully implemented as submitted.
 - c. "Certification of Diseased Trees" is defined as the certification by the Tree Removal Contractor that a tree being remove meets the criteria for a diseased tree

based on the Section 5 Standards for Decision making on removal permit applications.

4. All Tree Removal Contractors operating within the Township shall be: (1) licensed in accordance with the New Jersey Tree Experts and Tree Care Operators Licensing Act; (2) maintain the required insurance; (3) hold a current valid registration with the Township of Montclair and (4) display proof of same on each of its vehicles operating in the Township.
5. A Tree Removal Contractor shall carry and provide proof of the following insurance coverage: \$2,000,000 property damage and bodily injury insurance per incident; \$300,000 automobile insurance per incident; and workmen's compensation insurance in such amounts as required by law. All Tree Removal Contractors shall require their insurers to provide the Township with a minimum of thirty (30) days advance notice of the cancellation of any required coverage. Upon the cancellation of any of the required insurance coverage, the Tree Removal Contractor's registration shall automatically be suspended and the Tree Removal Contractor shall thereafter be prohibited from performing. Upon the submission of proof of: (i) satisfactory proof of insurance coverage; (ii) licensure in accordance with the New Jersey Tree Experts and Tree Care Operators Licensing Act; and (iii) a certification that the Tree Removal Contractor has read, understands, and will comply with all requirements of this rule, then the Township Clerk shall register the Tree Removal Contractor as approved to do business in the Township.

Section 5: Tree Replacement

1. Persons removing any Tree shall replace said Tree with a new tree as provided below. Replacement trees shall be 2- 2 ½" caliper, and be limited to native species or species suited to urban environments. The Township Forester shall prepare, publish on the municipal website: www.montclairnjusa.org, and annually review, a suitable species list for replacement trees. Any applicant who make an application for a financial waiver and is granted one shall be exempt from the replacement provision provide that replacement tree are not available through the Township.

2. In lieu of proving a Replacement Tree, a contribution of \$250 shall be paid to the Tree Fund. Said fund shall be used to supplement public tree replacement in the Township.

Section 6: Standards for Decision-making on Tree Removal Permit Applications

1. The Tree Removal Contractor shall be responsible for a Tree Removal Permit Application's compliance with all applicable and relevant tree management guidelines including without limitation the American National Standard A300 (Part 5) Management practices: "Tree and Development: A Technical Guide to Preservation of Trees During Land Development" (Matheny and Clark); "Protection and Care of Urban Forest"

(NJDEP Division of Parks and Forestry); “Evaluation of Hazard Trees in Urban Areas” (Matheny and Clark); “Urban Tree Risk Management” (USDA Forest Service), all as may be changed or supplemented from time to time.

Section 7: Enforcement

1. The Township Forester shall have the authority to enter onto any Property in the Township and to issue a stop-work order to any person in violation of this ordinance.
2. Violations of this ordinance shall be punishable by a fine of no more \$1,000.
3. The Township shall revoke the registration of any Tree Removal Contractor who has submitted a fraudulent Tree Removal Permit application or a false certification.
4. Non compliance with the provisions of this ordinance may be grounds for denial of registration of a Tree Removal Contractor.

Section 8: Fees

- a. Application fee for a Tree Removal Permit shall be \$15 dollars per tree.
- b. A Tree Removal Contractor shall pay an annual registration fee of \$75
- c. Exemptions:
 - i. The Tree Removal permit application fee is waived for the removal of diseased trees, or trees deemed hazardous
 - ii. The Removal Permit fee is waived for the removal of shade trees listed as invasive exotic
 - iii. An Applicant with a financial hardship may request a waiver of permit fees by filing a personal financial hardship exemption request letter with their Tree Removal Permit.
 - iv. These fee exemptions do not constitute an exemption from any other provision of this ordinance.

Section 9: Notices

1. Within 30 days of the adoption of this ordinance, the Town Clerk shall mail a copy of the ordinance to persons and entities known to be in the business of maintaining, cutting, or removing Trees within the Township.

2. Within 60 days thereafter, any company desiring to conduct the business of maintaining, cutting, or removing Trees within the Township shall register with the Township.

Section 10: Severability

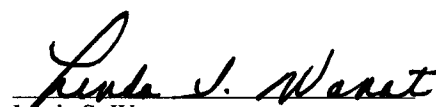
If any provision of this ordinance is declared invalid by a final, non-appealable decision of a court of competent jurisdiction, such decision shall not affect the validity of any other provision of this ordinance.

RECORD OF COUNCIL VOTE

	YES	NO	ABS	N.V.	AB		YES	NO	ABS	N.V.	AB
Councilor Africk	✓					Councilor Murnick		✓			
Councilor Baskerville	✓					Councilor Terry		✓			
Mayor Fried	✓					Deputy Mayor Weller-Demming	✓				
Councilor Lewis	✓										

X - Indicate Vote ABS - Abstain N.V. - Not Voting AB - Absent

I HEREBY CERTIFY the foregoing to be a true copy of an ordinance adopted by the Council of the Township of Montclair, in the County of Essex, at its meeting held on June 12, 2012.


Linda S. Wanat
Clerk of the Township of Montclair, N.J.