

AN ORDINANCE OF THE GOVERNING BODY OF THE BOROUGH OF MADISON AMENDING THE CODE OF THE BOROUGH OF MADISON TO ADD A NEW CHAPTER 178 ENTITLED "PRESERVATION, PROTECTION, MAINTENANCE AND REMOVAL OF NONBOROUGH TREES"

WHEREAS, the Governing Body of the Borough of Madison has determined that the preservation, maintenance and controlled removal of certain trees is essential to the health, safety, economy and general welfare of the Borough.

NOW, THEREFORE, be it ordained by the Governing Body of the Borough of Madison, County of Morris, State of New Jersey, as follows:

SECTION 1: The Code of the Borough of Madison is hereby amended to add a new Chapter 178, which shall read as follows:

"Chapter 178, Preservation, Protection, Maintenance and Removal of Nonborough Trees"

§178-1. Purpose.

It is recognized that there is a strong relationship among the integrity of the Borough's water resources, development on steep slopes, tree removal, soil disturbance, storm water management and the general use of the land resources; and a correlation between increased air pollution and high density residential, commercial or industrial uses. Therefore, the Borough finds that the appropriate management of these resources is an important health, safety and general welfare concern.

§178-2. Definitions.

The following words and expressions used in this Chapter shall have the following meanings, unless the context clearly indicates a different meaning:

BOROUGH TREE – A tree located on land owned by the Borough or which is located on a street, highway, public place, right-of-way, Borough easement, park or parkway or within the sidewalk lines.

CONSTRUCTION DISTURBANCE LINE - Construction Disturbance Line is that line on the property beyond which the natural grade and existing vegetation will not be disturbed by a construction project. It shall be indicated on a plan by a dashed line and shall include not only area around each structure's foundation but also clearing and grading required for driveway, power, water, sewer, communications, and other installations.

DRIPLINE- a line connecting the tips of the outermost branches of a tree projected vertically onto the ground.

LANDMARK TREE – Any tree designated and identified as such by the Shade Tree Management Board (STMB) of the Borough of Madison pursuant to the standards set forth in the General Code for the Borough of Madison Chapter 45-1.

NONBOROUGH TREE – Any tree other than a Borough tree as heretofore defined.

PROFESSIONAL ARBORIST – shall have the following qualifications:

1. Bachelor's degree in forestry, arboriculture or horticulture from an accredited college or university, or
2. Certification as a "Certified Tree Expert" (CTE) by the State of New Jersey, or
3. International Society of Arboriculture (ISA) Certified Arborist, and
4. A minimum of ten (10) years experience in the planting, care and maintenance of trees.

REPLACEMENT TREE - A nursery grown certified tree, properly balled, and marked with a durable label indicating genus, species and variety, and satisfying the standards for nursery stock and installation thereof, set forth by the American Association of Nurserymen and guaranteed for two growing seasons.

SIGNIFICANT TREE - Any tree, measured 4 ½ feet above the grade, with a circumference of 57 inches (a diameter of 18 inches) or greater, or any tree designated by the Shade Tree Management Board as a Landmark Tree and such other trees or species of tree as STMB may, from time to time designate as a Significant Tree.

TREE - Any deciduous or coniferous species which reaches a typical mature height of 12 feet or more and has a circumference, measured 4 ½ feet above the grade, of 19 inches (6 inches in diameter) or greater, up to a circumference of 57 inches (18 inches in diameter).

§178-3. Establishment of Consulting Municipal Arborist.

A "Consulting Municipal Arborist", shall be appointed by the Mayor and confirmed by the Council with the advice of the Shade Tree Management Board on an annual basis, with an agreed upon fee schedule. The Consulting Municipal Arborist shall be paid for any services authorized on behalf of the Borough in accordance with an annual fee schedule established with the Borough of Madison. The Consulting Municipal Arborist shall perform services for a property owner or developer in Madison upon request of the property owner or developer for the same rates set forth in the annual fee schedule, which shall be paid by the property owner or developer.

178-4. Responsibilities of the Consulting Municipal Arborist.

The Consulting Municipal Arborist or his designee shall be charged with site inspections, and providing advice to the Construction Official regarding administration and enforcement of the tree removal and protection requirements of this Chapter.

The Construction Official or his or her designee shall be charged with site inspections, administration and enforcement of the tree removal and protection requirements of this Chapter.

§178-5. Removal Restrictions

Subject to the exemptions set forth herein, no person shall remove, or cause to be removed, any tree which requires a permit pursuant to Section 178-6 hereof, upon any lands within the Borough, unless the cutting or removal is accomplished in accordance with the provisions of this Chapter.

§178-6. Tree Removal Permits.

A. Permit Required. A tree removal permit is required for any of the following:

(1) Any removal or destruction of more than 50% of standing nonborough trees on a lot; or

(2) Any removal or destruction of any significant tree; or

(3) When any individual lot grading plan is submitted to the Construction Department for review, the Construction Official with the advice of either a professional Arborist as defined herein, hired by the property owner or developer or the Consulting Municipal Arborist shall determine whether a tree removal permit is required.

B. The Construction Official shall deny the permit if the application does not comply with this ordinance.

C. Permit Application. Applications for a permit shall be made to the Construction Official on forms provided for this purpose and shall contain the following information:

(1) The name and address of the owner of the property from which the trees are to be removed.

(2) The name and address of the Applicant. Where the applicant is not the property owner, written consent of the property owner is required.

(3) A plan of the property that shall contain the following information:

(a) An indication of all trees to be removed, specifically by an assigned number, the species and circumference of each tree with a circumference of nineteen (19) inches or over.

(b) An indication of all trees to remain and proposed replacement trees, if any, including their size and species specifically by an assigned number.

(c) Tree or trees to be removed shall be indicated on site with an orange flagging tape.

(d) Any other information which may reasonably be required to enable the application to be properly evaluated including, but not limited to, a description of the purpose for which this application is to be made; e.g. scenic improvements, hardship, danger to adjacent properties, removal of diseased or damaged trees, transplanting or removal in a growing condition to other locations, installation of utilities, drainage of surface water, or other pertinent information.

D. Additional Requirements for Construction Projects.

(1) Where the removal of a significant tree, and/or more than 50% of the standing non-borough trees on a lot (as defined in Section 178-2 hereof) is proposed for the construction of any building, driveway, recreation area or any structure for which a building permit is required, no building permit shall be issued until the Applicant has obtained a tree permit required under this Chapter.

(2) The plan of the property submitted with the permit application shall indicate the construction disturbance line.

(3) The plan shall indicate any or all trenches for underground public utilities.

(4) During construction the tree protection measures set forth in Appendix A shall be complied with.

E. Applications for Development

(1) All applications to the Planning Board or Board of Adjustment for development under the Madison Land Development Ordinance, shall contain a tree removal permit plan which, at the option of the applicant, shall:

(a) be prepared by a professional Arborist; or

(b) be prepared by the Consulting Municipal Arborist (at the applicant's cost) upon filing of the Tree Removal Permit Application with the filing fee required pursuant to section 178-6(I);

(2) The Planning Board or Board of Adjustment at their discretion may obtain the advice of the Consulting Municipal Arborist on any application, even where the applicant had the plan prepared by a professional Arborist.]

(3) The tree removal permit plan shall be a completeness item on the checklists for variances, minor and major subdivisions and site plan applications.

(4) The professional Arborist or the Consulting Municipal Arborist shall review said plan and the development plans and provide a written report to the appropriate Board and the Construction Official as to whether a tree removal permit should be granted by the Construction Official in connection with the application. The Consulting Municipal Arborist shall be considered a professional whose charges shall be paid from the Technical Review escrow for each application pursuant to section 195 -12 (B) of the Madison Land Development Ordinance.

F. Other Permit Considerations.

(1) All reasonable efforts shall be made to preserve Landmark Trees and Significant Trees including, but not limited to, relocation of planned and/or proposed infrastructure, driveways, and buildings. Removal of Landmark Trees shall require the specific written recommendation of the Consulting Municipal Arborist and approval of the Shade Tree Management Board. Removal of Significant Trees shall require the specific written recommendation of the Consulting Municipal Arborist.

(2) The Construction Official, upon the advice of the Consulting Municipal Arborist, may require a tree to be removed if the safety or health of the tree is so compromised that its survival is unlikely.

(3) The Construction Official shall deny any permit inconsistent with this Ordinance.

F. Exemptions from Ordinance.

(1) A permit is not required for removal of any Borough tree directed to be removed by the Borough of Madison.

(2) A permit is not required for any tree or trees certified in writing by the Consulting Municipal Arborist to be dead, dying, hazardous, storm damaged and /or infested.

(3) A permit is not required for any tree or trees directed to be removed by the State of New Jersey.

G. Standards.

(1) Upon receipt of a permit application for removal of trees that require a permit pursuant to this Chapter, the Construction Official and/or his/her designee, shall inspect the site on which are located the tree or trees sought to be cut or removed. The Construction Official, with the written advice of the applicant's professional Arborist or the Consulting Municipal Arborist, as the case may be, shall consider the following factors, among others, in deciding whether to issue such permit:

- (a) Whether the proposed cutting or removal would impair the growth and development of the remaining trees on the applicant's property or adjacent property.
- (b) Whether the proposed cutting or removal would change existing drainage patterns, and/or allow soil erosion or increase dust.
- (c) Whether the proposed removal would constitute a horticulturally advantageous thinning of an existing overgrown area.
- (d) Whether the area where such tree or trees are located will be occupied by a building or structure, a driveway or recreation area, a roadway, a drainage right-of-way, or a sewer line, or whether such area is within twelve (12') feet of any of the foregoing.
- (e) Whether existing conditions or proposed changes in the topography of the area where such tree or trees are located have depressed land configuration or fill of land which shall be deemed injurious to the trees or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.
- (f) Whether the presence of the tree or trees is likely to cause hardship or will endanger the public or an adjoining property owner by reason of its being diseased or dead or for some other reason within the intent of this Chapter.
- (g) Whether the tree or trees are damaging a structure.
- (h) Whether the root system has become invasive to the extent that no other solution remains.
- (i) Whether it is a significant tree or a landmark tree as defined in Shade Tree Management Board Ordinance, Chapter 45 of the Madison Borough Code.
- (j) Where the location of the tree interferes with the enjoyment of an outdoor pool.

H. Conflicts with Other Laws. Notwithstanding anything in this chapter to the contrary, no tree removal shall be permitted where prohibited by any other municipal, state or federal statute, ordinance or regulation.

I. Fees.

- (1) With the application for a tree removal permit, the Applicant shall pay the Borough a fee as set annually by Resolution of the Governing Body. The initial application fee, to remain in effect until changed by the Governing Body resolution is \$25.00.
- (2) The Construction Official shall waive the permit application fee if the tree or trees to be removed are determined by the Consulting Municipal Arborist to be dead, dying, hazardous, storm damaged, infested and/or directed to be removed by the State of New Jersey.

J. Scheduling Requirements.

(1) The Construction Official or his or her designee shall respond to the Applicant within fifteen (15) business days of the permit application being filed.

(2) The Applicant must notify the Construction Official when the following events have taken place:

(a) Trees to be removed have been flagged.

(b) All tree removals are completed.

(c) For construction projects:

(i) If existing trees are within the construction zone, after required tree protection measures have been installed.

(ii) If demolition, after demolition, prior to start of construction.

a) If excavation of building structures, after excavation, prior to construction.

b) If trenching is required, after mark-out of all trenches.

c) Final grade is established.

K. Permit Time Limit. All tree removal permits shall be limited to one (1) year from date of issuance. If the approved tree removal has not occurred within one (1) year, a new permit must be applied for and is subject to the payment of new fees. If, however, the Applicant diligently pursues other governmental approval, or if approved development is ongoing, the permit may be renewed for up to one year.

§178-7. [Intentionally left blank]

§178-8. Tree Replacement Fund Established. A Tree Replacement Fund shall be established by the Borough to receive replacement tree contributions. The purpose of said fund is to pay the cost of replacement of trees by the Borough of Madison. Appropriations from the Tree Replacement Fund shall be authorized by the Governing Body.

§178-9. Replacement Trees.

A. For each tree removed, one (1) tree of 3-3 ½" diameter shall be replaced. All replacement trees shall be planted on site. However, if the site in question cannot physically accommodate the total amount of replacement trees, then the Applicant shall contribute an amount equal to the calculated monetary value of unreplaced trees to the Tree Replacement Fund.

Note: Tree Replacement dollar amounts will be proposed by the STMB and approved annually by resolution of the Borough Council of Madison. Until changed by Resolution of the Borough Council the tree replacement fee shall be \$500.00 per tree.

B. Replacement trees, or approved equivalent, shall be trees approved by the Construction Official with the advice of the Consulting Municipal Arborist:

C. Hardwood trees removed shall be replaced with new hardwood trees.

§178-10. Criteria for Tree Removal Without Replacement Trees. Tree removals, which meet the following criteria, are exempt from tree replacement restrictions or payment into the Tree Replacement Fund.

A. Any tree removed from an area of property to be dedicated as public improvement, e.g. drainage facilities and public roadways, shall be exempt from the replacement provisions of this chapter, except that where private roadways, parking areas or open space are proposed, all trees are subject to replacement in accordance with this chapter.

B. The Construction Official, with the advice the Consulting Municipal Arborist, shall approve the removal of a tree, except a Landmark Tree, without requiring replacement trees or payment into the Tree Replacement Fund, if the following criteria apply:

(1) The tree is located on a parcel for which preliminary or final subdivision or site plan approval was obtained prior to the adoption of the Ordinance and it cannot be relocated on the site because of its age, type or size; or

(2) The tree is dead, diseased, damaged, injured, in danger of falling, interferes with existing utility service, creates an unsafe condition, or its continued presence conflicts with any other Ordinances or regulations, or has been directed to be removed by the State of New Jersey.

C. No Landmark Tree shall be removed, unless the Municipal Arborist has obtained the approval of the Shade Tree Management Board.

§178-11. Enforcement. The requirements of this Chapter shall be enforced by the Construction Official, who shall inspect or require adequate inspection of all sites upon which there is an application for tree removal. The Construction Official shall oversee all applicable tree removal or destruction and soil removal incidental thereto. Upon ascertaining a violation of this chapter, the Construction Official shall issue a notice of violation to be heard in the Municipal Court as provided in this Article. In addition to other remedies, the zoning officer, construction official, or

other proper municipal official, may institute a stop work order or pursue any appropriate legal action to prevent a continuing violation of the terms of this chapter.

§178-12. Violations and Penalties. Any person, violating or causing to be violated any of the provision of this chapter, shall be subject to a fine of not less than \$100 and not more than \$2,000 and shall replace each tree destroyed or removed in violation of this Article in accordance with the tree replacement provision of this chapter. Each tree destroyed or removed in violation of this Chapter shall be considered a separate offense.

§178-13. Appeals. Any applicant or permit holder or any person otherwise aggrieved under this chapter, may appeal to the Governing Body any decision of the Construction Official under this Chapter by filing written notice with the Borough Clerk within ten (10) days of said decision. The Governing Body shall act upon the same no later than thirty (30) days after the notice has been filed, unless the applicant requests, and the Governing Body consents to extend the time for such action. If the Governing Body fails to act within thirty (30) days after the notice has been filed, the decision of the Construction Official shall be deemed affirmed.

SECTION 2: SEVERABILITY. If any section, paragraph, subdivision, clause or provision of this ordinance shall be judged invalid, such adjudication shall apply only to that section, paragraph, subdivision, clause or provision, and the remainder of this ordinance shall be deemed valid and effective.

SECTION 3: EFFECTIVE DATE. This chapter shall take effect as provided by law.

ADOPTED AND APPROVED

MARY-ANNA HOLDEN, Mayor

Attest:

MARILYN SCHAEFER, Borough Clerk

Appendix A

Tree Protection During Construction. All trees to be preserved are to be protected during construction using the following criteria:

A. The limit of protection shall be the dripline unless otherwise approved by the Construction Official with the advice of the Consulting Municipal Arborist.

B. Tree protection barriers shall be installed by the Applicant and approved by the Construction Official before a permit is issued and shall remain and be maintained until all construction and grading are completed and final inspection has taken place.

C. The protective barriers shall be independently supported fencing firmly secured and not supported by any trees and shall be a minimum of three (3) feet high.

D. In the tree protection areas, it shall be prohibited to:

(1) Store any building material.

(2) Store any fill of soil.

(3) Store or park any equipment.

(4) Use as a work area.

(5) Attach any signs, wires, or other attachments to any tree.

(6) Exception: Tree removal equipment is permitted, but only during operations for tree removal.

E. The provisions of section 195-44 et. seq. of the Borough Code, Soil Erosion and Sediment Control, shall be adhered to where applicable.