

WEST ORANGE TOWNSHIP PLANNING BOARD

RESOLUTION NO. 20-05

RESOLUTION RECOMMENDING ADOPTION OF ORDINANCE 2616-20-AMENDING AND SUPPLEMENTING CHAPTER XXV, SUBSECTIONS 25-27.3 & 25-27.4, LAND USE REGULATIONS OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE (TREE PROTECTION AND REMOVAL)

WHEREAS, the West Orange Township Council (the "Council") has introduced an Ordinance (2616-20) Amending and Supplementing Chapter XXV, Subsections 25-27.3 & 25-27.4, of the Revised General Ordinances of the Township of West Orange (the "Township") entitled Land Use Regulations (hereinafter the "Ordinance"); and

WHEREAS, the Council has referred Ordinance 2616-20 to the Planning Board (the "Board") pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-26a; and

WHEREAS, the purpose of the Ordinance is to require any tree cutting and/or removal to be performed only by tree care professionals who are duly licensed under the Tree Experts and Tree Care Operators Licensing Act, N.J.S.A. 45:15C-11 to -32, and who are also registered with the Township of West Orange Department of Public Works; and

WHEREAS, the Ordinance would also narrow the exceptions to the licensing requirement to exclude trees close to property boundaries in an effort to prevent disputes between neighboring property owners; and

WHEREAS, the Ordinance was reviewed and considered by the Planning Board at a publicly noticed meeting held on October 7, 2020 wherein the Board voted to formally recommend that the Council adopt the Ordinance; and

WHEREAS, the Board, pursuant to law, has made the following findings of fact and conclusions:

1. The proposed amendments to Subsections 25-27.3 & 25-27.4 in the Ordinance are mostly administrative in nature, dealing with the certifications and/or qualifications of those reviewing tree removal plans and licensing of those removing trees.
2. None of the proposed amendments relate directly to the Township's Updated Master Plan Land Use Plan Element.
3. The changes are generally consistent with Master Plan objectives related to preservation of natural features.

NOW, THEREFORE, BE IT RESOLVED on this 4th day of November, 2020, by the Planning Board of the Township of West Orange, County of Essex, New Jersey, that the Planning Board has determined that proposed Ordinance 2616-20 is substantially consistent with the Township's Master Plan.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Board recommends that the Ordinance, a copy of which is attached hereto as Exhibit A, be adopted by the Township Council.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Board hereby directs the Secretary to forward this Resolution to the Township Clerk for Township Council consideration.

OCTOBER 7, 2020 ROLL CALL VOTE ON ACTION BY THE BOARD

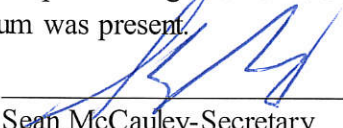
Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Bagoff (Vice-Chair)		X	X			
Johnson (1 st Alt.)			X			
Smeraldo			X			
Klein						X
McCartney			X			
Trenk			X			
Weston (Chair)	X		X			
Williams						X
Wilkes			X			

NOVEMBER 4, 2020 ROLL CALL VOTE ON THE RESOLUTION

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Bagoff (Vice-Chair)		X	X			
Johnson (1 st Alt.)						X
Smeraldo			X			
Klein						X
McCartney			X			
Trenk			X			
Weston (Chair)	X		X			
Williams					X	
Wilkes						X

CERTIFICATION

I hereby CERTIFY on this day November 9, 2020 that the foregoing is a true copy of a Resolution adopted by the West Orange Township Planning Board at a publicly noticed meeting held on November 4, 2020, at which a quorum was present.



Sean McCauley-Secretary

**AN ORDINANCE AMENDING CHAPTER 25, SECTIONS 27.3 and 27.4 OF THE
REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE
(TREE PROTECTION AND REMOVAL – Permit Required; Prohibitions and
Exemptions)**

**BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF
WEST ORANGE, NEW JERSEY** that Chapter 25 of the Revised General Ordinances of the
Township of West Orange be and are hereby amended as follows:

I. PURPOSE

The purpose of this ordinance is to require any tree cutting and/or removal to be performed only by tree care professionals duly licensed under the Tree Experts and Tree Care Operators Licensing Act and is also registered with the Township of West Orange Department of Public Works. This ordinance shall also narrow the exceptions to the licensing requirement to exclude trees close to property boundaries in an effort to prevent disputes between neighboring property owners.

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**II. CHAPTER 25, SECTION 27.3 SHALL BE AND HEREBY IS AMENDED AND
SUPPLEMENTED TO INCORPORATE THE FOLLOWING:**

25-27.3 Definitions.

The following definitions shall apply to this chapter:

CONSERVATION EASEMENT

Shall mean a legal covenant restricting the use of land or natural features of the land that is described in the property deed and shown on a filed plat.

DBH

Shall mean the measurement of the diameter of the trunk of a tree planted in the ground taken 4.5 feet from ground level on the uphill side of the tree.

DEVELOPMENT APPLICATION

Shall mean an application filed with the Township Planning Board or Board of Adjustment pursuant to the Municipal Land Use Law and the Township land development ordinances for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-3.

DRIP LINE

Shall mean a vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground beneath.

ENDANGERED OR THREATENED SPECIES

Shall mean any species of tree or animal which has been determined by the Federal Fish and Wildlife Service or the State of New Jersey to be endangered or threatened.

IMPROVED LOT

Shall mean a single parcel of land with a residential or commercial structure, that is occupied pursuant to and in compliance with all applicable laws and regulations.

LAND USE BOARD

Shall mean the Planning Board or Zoning Board of Adjustment of the Township of West Orange.

MAJOR TREE

Shall mean a tree species with a mature height of at least 50 feet, which shall be at least a 2.5 inch caliper at the time of planting.

MINOR TREE

Shall mean an evergreen tree, ornamental tree or other small tree at least six feet in height at the time of planting.

NONVIABLE TREE

Shall mean a tree that the officer or a Qualified Tree Expert certifies is dead, dying, diseased or too damaged to survive.

OFFICER

Shall mean the person primarily responsible for enforcing this chapter and who is qualified to do so by having the status of a New Jersey Approved Forester, New Jersey ~~Certified-Licensed~~ Tree Expert, or an International Society of Arboriculture Approved Arborist, employed by, or appointed by, the Township of West Orange to implement this chapter and to carry out other related responsibilities as the Township may provide, including, but not limited to, developing and recommending to the Council a Township Woodlands Retention and Protection Plan and a Township Tree Inventory and Planting Schedule.

PERSON

Shall mean the owner of a parcel of real estate or any other individual, group, company, firm, corporation, partnership, association, society or other legal entity.

QUALIFIED TREE EXPERT

Shall mean a New Jersey Licensed Landscape Architect, New Jersey Approved Forester, New Jersey ~~Certified-Licensed~~ Tree Expert, or International Society of Arboriculture Approved Arborist.

REPLACEMENT TREE

Shall mean a tree of a species approved by the officer and of nursery grade, properly balled and burlapped, meeting the minimum measurements of a major or minor tree, respectively.

SPECIES

Shall mean the common name of a tree.

SPECIMEN TREE

Shall mean a tree in good health of unusual or exceptional form, size, age or shape for its species as evidenced by its inclusion in New Jersey's Big Tree List, or data base, published and coordinated by the New Jersey Forest Service, or having a Champion Tree point total (girth in inches plus height in feet, plus one quarter of average crown spread in feet) within 10% of the point total of a tree of the same species listed in New Jersey's Big Tree List, published in "New Jersey's Big Trees", by the New Jersey Forest Service.

STRUCTURE

Shall mean a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land.

TREE

Shall mean a self-supporting ~~single-stem~~ perennial woody plant having a diameter of at least four inches measured at a point 4.5 feet (or 54 inches) from the ground at the base of the tree on its uphill side and taller than 15 feet.

III. CHAPTER 25, SECTION 27.4 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

25-27.4 Permit Required; Prohibitions and Exemptions.

- a. Permit. Any person desiring to cut down or remove a tree shall file an application for a tree removal permit issued pursuant to this chapter, and shall not commence the cutting down or removal of any tree without first having been issued a permit. Tree within two feet of any property boundary shall also require written notice of the filing of a permit application to the neighboring property owner who shares the property boundary.
- b. Prohibitions. Notwithstanding Subsection a above, no person shall be permitted to do any of the following:
 1. Cut down or remove any tree within wetlands, flood hazard areas, riparian zones, or other areas protected by State or Federal law or applicable EPA or NJDEP regulations;
 2. Cut down or remove any tree within a conservation easement;
 3. Engage in activities which could cause a tree to die, including but not limited to topping, grade cut or fill, soil compaction within the drip line, chemical contamination, excessive drainage alterations or mechanical damage.
 4. Cut down or remove any tree on a slope of 15% or greater in grade or on a slope where vegetation is presently stabilizing soils where a tree removal permit is

submitted in connection with a development application, or a parcel upon which a new development is contemplated.

4.5. Cut down or remove any tree unless the cutting or removal is performed by a tree care professional: (i) duly licensed under the Tree Expert and Tree Care Operator Licensing Act, N.J.S.A. 45:15C-11, et. seq.; and (ii) is registered with the Township of West Orange Department of Public Works.

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c. Exemptions. The following are exempt from the permit requirement of Subsection a above:

1. For purposes of administrative convenience, up to three living trees may be removed on an improved lot within any three-hundred-sixty-five-day period. This exemption shall only apply to trees with bases that are more than two feet (2') from any property boundary. For enforcement and record-keeping purposes, every person or business removing one or more trees pursuant to this exemption shall file a tree removal report with the officer on a form to be provided by ~~him or her~~ the officer, to document the tree(s) removed and date of removal. The tree removal report shall be filed no later than ~~within~~ five days ~~before~~ removal of the tree(s).
2. Cutting down or removal of a nonviable tree, or a tree that is an immediate hazard to structures or human life or property provided that the tree stumps must remain for subsequent inspection by the officer; and
3. Activities lawfully conducted on public lands or rights-of-way by or on behalf of a local, County, State, Federal or other governmental agency or entity, or a utility company.
4. Tree removal in conjunction with a Woodland Management Plan(s) approved by the N.J. Forest Service.
5. tree removal on a golf course which is greater than 75 feet from a property boundary.

d. Development Applications. With regard to every development application that involves proposed tree removal, the applicant shall:

1. Schedule a meeting with the officer in connection with the development application for the purpose of evaluating the impact of this chapter on the plans for development;
2. Submit a qualified tree expert's report setting forth a tree removal and tree replacement plan when applicable.

IV. REPEAL OF CONFLICTING ORDINANCES

Any Ordinances of the Township which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

V. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

VI. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the law.

ROBERT D. PARISI, MAYOR

**MICHELLE CASALINO,
COUNCIL PRESIDENT**

KAREN J. CARNEVALE, R.M.C., MUNICIPAL CLERK

INTRODUCED: September 8, 2020

ADOPTED: September 22, 2020

Legislative History

The purpose of this ordinance is to require any tree cutting and/or removal to be performed only by tree care professionals duly licensed under the Tree Experts and Tree Care Operators Licensing Act and is also registered with the Township of West Orange Department of Public Works. This ordinance shall also narrow the exceptions to the licensing requirement to exclude trees close to property boundaries in an effort to prevent disputes between neighboring property owners.