

2820-23

**AN ORDINANCE AMENDING CHAPTER 25, SECTIONS 27.3, 27.4, 27.5, 27.7, 27.8, 27.9 AND 27.10 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE  
(TREE PROTECTION AND REMOVAL)**

**BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY** that Chapter 25, Sections 27.3, 27.4, 27.5, 27.7, 27.8, 27.9, and 27.10 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 amend Chapter 25, Sections 27.3, 27.4, 27.5, 27.7, 27.8, 27.9, and 27.10 of the Revised General Ordinances of the Township of West Orange to protect trees which are among the Township's most valuable natural resource assets, which greatly enhance the appearance of the Township and contribute to its suburban and residential character, which must be kept and maintained in good order to enhance the Township's physical and aesthetic appearance, and generally protect the public health and safety as well as the general welfare. Importantly, trees contribute positively to climate change, protection of the environment, and maintenance of storm waters.

**II. CHAPTER 25, SECTIONS 27.3 27.4, 27.5, 27.7, 27.8, 27.9 AND 27.10 SHALL BE AND HEREBY IS AMENDED TO INCORPORATE THE FOLLOWING:**

**§25-27.3 BE AND HEREBY AMENDED AS FOLLOWS:**

The following definitions shall apply to this chapter:

**APPEAL**—The process by which an applicant may contest the denial of a tree removal permit. Appeals shall be considered by the Township of West Orange Planning Board.

**BUILDING**—Any structure built for the support, shelter, enclosure of persons, animals, and/or a combination of materials used to form a structure for either use, occupancy, and/or habitation.

**CONSERVATION EASEMENT** — 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.

**CROWN REDUCTION**—Pruning (as defined herein) of the tree reducing the height or scope of the tree.

**DBH** — 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** — 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** — A vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground beneath.

**EMERGENCY CONDITIONS**—Shall mean when trees are hazardous and the Township Forester and/or a New Jersey Licensed Tree Expert determines that they cause an unacceptable risk of damage to person or property as a result of extreme wind, stormwater or weather events.

**ENDANGERED OR THREATENED SPECIES** — 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** — A parcel of land with a building.

**INVASIVE VINE**—Non- native vine that will climb up the tree and cause damage to the tree.

**PLANNING BOARD** — The Planning Board of the Township of West Orange.

**LOT**—A designated parcel, tract of land established in the record as of local and county registers of deeds by plat, deed, subdivision, zoning lot of record, or as otherwise permitted by law.

**MAJOR TREE** — 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** — An evergreen tree, ornamental tree or other small tree at least six feet in height at the time of planting.

**NONVIABLE TREE** — A hazardous tree that a Qualified Tree Expert and/or the Township Forester determines is dead, dying, diseased or too damaged to survive.

**PERSON** — The owner of a parcel of real estate or any other individual, group, company, firm, corporation, partnership, association, society or other legal entity.

**PRUNING**—Pruning is the removal of branches from a tree to remove unwanted branches, improve the tree's structure, and promote new, healthy growth of the tree.

**QUALIFIED TREE EXPERT** — A New Jersey Licensed Tree Expert pursuant to N.J.S.A. 45:15C-11 et seq.

**REPLACEMENT TREE** — A native or non-native tree species approved by the Township Forester and of nursery grade, properly balled and burlapped and meeting the minimum measurements of a major or minor tree.

**SPECIES** — The common name of a tree.

**SPECIMEN TREE** — 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 database, 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** — 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.

**STREET TREES OR SHADE TREES**—A tree planted in a Township right-of-way within ten (10) feet of a curb.

**TOWNSHIP FORESTER**—The Township-designated person primarily responsible for enforcing this chapter and who is qualified to do so by having the status of a Qualified Tree Expert; 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 (i) Township Woodlands Retention and Protection Plan; (ii) Township Tree Inventory; and (iii) Planting Schedule.

**TREE** — A self-supporting 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.

**TREE CANOPY**—Tree canopy means the layer of leaves, branches, and stems of trees that cover the ground when viewed from above and that can be measured as a percentage of a land area shaded by trees.

**TREE REMOVAL NEIGHBOR NOTIFICATION FORM** – An Applicant seeking to remove any trees shall complete the prescribed form and certify that it has been delivered to all adjoining neighbors in accordance with this chapter.

**TREE REPLACEMENT FUND**—A fund established pursuant to this chapter wherein any applicant who removes a viable tree from any property must contribute in accordance with the provisions of this chapter; specifically §25-27.8(a)(5)(a).

**§25-27.4 BE AND HEREBY AMENDED AS FOLLOWS:**

a. Permit.

1. No person shall cut, remove, or cause any tree with a DBH over four (4”) inches without having been issued a permit from the Township. Any person desiring to cut down or remove a tree shall file an application for a tree removal permit issued pursuant to § 25-27.5 and shall not commence the cutting down or removal of any tree without first having been issued a permit.

2. Written notice of the filing of a permit application shall be delivered in accordance herewith to all adjacent neighboring property owners.

3. If any tree(s) are taken down that are delineated by the Township Forester as viable, the person seeking removal or who has removed viable tree(s) must make payment into the Tree Removal Fund pursuant to § 25-27.8 and the Chart at Table A to the extent the property owner or applicant fails to plant Replacement Trees on the own property in accordance with § 25-27.8.

4. The maximum amount of viable trees that may be removed from any Lot shall be two (2) viable trees within a twenty-four (24) month period.

5. All Tree Removal Permits which have been granted, including the property address, scope of permit, description of replacement trees, and applicable dates shall be accessible to the public subject to the confidentiality provisions of Daniel’s Law or any other similar law.

6. All Tree Removal Permits issued shall be posted on the tree(s) and in the property owner’s front window, so the tree removal permit is visible to any member of the public.

7. If the application for tree removal is not the subject of a development application, the Township Forester shall decide within 30 days of the submission of a completed Tree Removal Permit application whether or not to grant the Tree Removal Permit and shall promptly notify the applicant and any objectors. However, where the application is made in connection with a development application, the decision on the application for a Tree Removal Permit shall be made by the Planning Board and, if the application is granted, the permit shall be issued by the Township Forester.

8. No less than seven (7) days before any approved tree removal activities, the applicant shall clearly mark each tree that has been approved for removal. In the case of a new development, the applicant must give the Township Forester written notice of when the tree removal is proposed to take place not less than fourteen (14) days in advance of any tree removal activities. Adjacent neighboring property shall mean any property owner who shares a common property boundary. The Township Forester shall be present on the site to monitor all cutting and removal of trees, in order to ensure that only those trees which he

authorized to be cut down and removed are cut down and removed and that all trees which he requires to be preserved are preserved.

9. Permits granted under this section shall run with the land and shall remain in force and effect for 12 months from the date of issuance.

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 10% 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.

5. Cut down or remove any tree unless the cutting or removal is performed by a Qualified Tree Expert.

6. Street, curb and sidewalk construction or repairs shall only be performed utilizing methods that protect the roots and trunk of a tree, such as manual excavation, reducing the curb, curving sidewalks around a tree, and modifying driveway aprons to accommodate trees as directed by the Township Forester.

7. Cut or remove any tree older than 25 years with a DBH of 10" or more.

8. Removal of trees within one hundred (100) feet of a ridgeline.

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

1. Property owners may remove hazardous trees under Emergency Conditions prior to obtaining a Tree Removal Permit. Following the emergency removal of the tree or trees, the property owner or Agent shall complete the Tree Removal Exemption Form within seven (7) days of the removal and shall provide photographic and written proof of the Emergency Conditions by the Qualified Tree Expert and include a hazard tree evaluation form at that time.

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 Township Forester.

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, provided however, that to the extent possible, such entity shall provide a courtesy review of any tree removal and replacement to the Township Forester.

4. Tree removal in conjunction with a Woodland Management Plan(s) approved by the N.J. Forest Service.

5. Tree removal on a public golf course.

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

1. Preserve fifty (50%) percent of the trees on each developed Lot, and seventy (70%) percent on any undeveloped Lot.

2. Comply with all prohibitions and procedures listed in this ordinance.

3. Install stormwater runoff controls, protective fencing of remaining trees, and ensure soil erosion measures required by this ordinance and by all applicable statutes and regulations are followed.

4. Obtain a written report that the Township Engineer or his/her designee(s) has inspected the site and certified that all soil erosion and sediment controls and stormwater runoff controls required by this chapter and applicable laws have been installed and completed. Copies of the certification shall be delivered to both the applicant and the Township Forester by the Township Engineer immediately after it is made.;

5. Any Tree Removal Permit in connection with a development application shall specify that no trees may be removed until after installation of stormwater runoff controls and soil erosion measures that are required by this ordinance, by Title 7, Chapter 8, Section 7:8-5.4 and by Title 2, Chapter 90, Subchapter 1 of the New Jersey Administrative Code, respectively or any other applicable laws.

6. Provide written notice to the Township Forester and Planning Board not less than fourteen (14) days before any planned tree removal. The applicant shall schedule a meeting with the Township Forester and provide a letter written from a Qualified Tree Expert outlining the reasons as to why the trees are being removed and include a Tree Protection Plan, a Tree Replacement Plan, and certify in writing the factors set forth in § 25-27.7.

7. All parking lot owners shall maintain trees in compliance with Township Code § 25-12.1(o).

**§25-27.5 BE AND HEREBY AMENDED AS FOLLOWS:**

a. Every application for a tree removal permit shall be made by submission of the following:

1. An original and two copies of an application on forms provided by the Township containing the following information: the name and address of the applicant; the street address and tax lot and block of the property in question; and the number of trees proposed to be removed;

2. The submission of such additional information as the Township Forester may require to assist him in the processing of the tree removal permit;

3. Upon submission of the application to the Township, the Tree Removal Neighbor Notification Form must be submitted to the adjacent neighboring Lots of the applicant within seven (7) calendar days of submission. .

4. The applicant shall clearly mark, in a manner approved by the Township Forester, the trunk of each tree proposed to be removed at the height of four and one-half (4.5) feet above the ground so that such tree or trees may be inspected more easily by the Township Forester.

b. Upon request, the Township Forester shall assist any person who desires to apply for a tree removal permit with completing the application required by this section.

c. Every development application shall include a tree removal plan which shall include a map drawn to scale showing the location of all trees to be removed and a Qualified Tree Expert's report addressing factors and the standards set forth in Subsection 25-27.7.

d. The applicant shall clearly mark, in a manner approved by the Township Forester, the trunk of each tree proposed to be removed at a height of 4 1/2 feet above the ground so that such tree or trees may be inspected more easily by the Township Forester.

**§25-27.7 BE AND HEREBY AMENDED AS FOLLOWS:**

a. Site Inspection. Within 30 days after receipt of an application for a tree removal permit, the Township Forester shall communicate with the applicant and arrange for a site inspection. Submission of the application shall be deemed consent for the Township Forester to enter onto the property on which the tree(s) to be removed is located during normal and reasonable business hours, but reasonable efforts should be made for the applicant to be present to answer the Township Forester's questions and also to provide an opportunity for the Township Forester to provide advice about the condition, value and recommended care of all of the trees on the applicant's property to better meet the educational purpose of the chapter. The Township Forester's inspection should confirm the location of the tree(s) sought to be removed, the reason(s) for the removal request, should note any risk factors for other trees on the property, and the likelihood of potential problems, such as increased soil erosion, water runoff, drainage problems, the presence of bedrock or steep slopes, and safety concerns on the subject property and on adjoining property, and make other appropriate officials aware of those potential problems and concerns. Any permit not acted upon within a period of 12 months after issuance shall become null and void.

b. Factors to be Considered Where Tree Removal is Sought. In deciding whether to issue a tree removal permit in connection with a development application, the Planning Board shall consider the following factors and in deciding all other applications, the Township Forester shall consider the following factors:

1. Whether the proposed cutting down or removal would impair the growth and development of the remaining trees on the applicant's property or on adjacent properties;
2. Whether the proposed cutting down or removal would change existing drainage patterns;
3. Whether the proposed cutting down or removal would allow soil erosion or would increase dust;
4. Whether the proposed cutting down or removal would increase the amount of stormwater runoff on other properties in the area, whether contiguous or not;
5. Whether the proposed cutting down or removal would constitute a significant change in the screening between existing or proposed buildings or roads on the site and adjacent land or in the wooded aspect of the lot as viewed from any adjacent public road;
6. Whether the proposed cutting down or removal would constitute a horticulturally advantageous thinning of an existing overgrown area or the removal of dead or diseased trees;
7. Whether proposed changes in the topography of the area where such tree(s) are located will create conditions, which may be injurious to the trees or other trees located nearby so

as to require welling, construction of an aerification system, or tree removal or replacement; and

8. Whether the proposed cutting or removal would remedy a safety hazard to persons or structures.

c. Denial of any application for a Tree Removal Permit may be appealed directly to the Planning Board with written notice to the Secretary of the Planning Board within forty-five (45) days of the denial by the Township Forester. Notice of the appeal shall be delivered to all adjoining property owners.

d. Review Standards to be Applied Where Tree Removal is Sought. A tree removal permit may only be granted subject to the following terms and conditions:

1. Applicant shall demonstrate that:

(a) To the greatest extent possible, existing vegetation shall be preserved;

(b) To the greatest extent possible, specimen trees and other large trees eight-inch DBH and greater) shall be preserved;

(c) On all residential lots existing natural screening and woodlands between lots, along property lines and between buildings shall be preserved to the greatest extent possible;

(d) Suitable habitats shall be preserved for species of animals (including migratory animals) that are designated as endangered or threatened by Federal or State governmental authorities to the greatest extent possible;

2. The appropriate Planning Board must make an express finding that the tree removal proposed by the applicant will not result in or cause, increase or aggravate any or all of the following conditions:

(a) Impaired growth or development of remaining trees or shrubs on the property of the applicant or upon adjacent property;

(b) Soil erosion, sedimentation and dust;

(c) Stormwater or drainage problems;

(d) Significant diminution of the screening between existing or proposed buildings or roads on site and adjacent land or in the wooded aspect of the lot or site from any adjacent road;

(e) Sewerage problems; or

(f) Dangerous or hazardous conditions.

**§25-27.8 BE AND HEREBY AMENDED AS FOLLOWS:**

a. Tree replacement, as approved by the Township Forester, Planning Board, and/or Township Engineer, shall be required on the removal site as follows:

1. Tree replacement required by this chapter shall be completed within two years of tree removal unless the Township Forester or Planning Board grants an extension until the next appropriate planting season if necessary. The size of the Replacement Tree shall be in accordance with Table “A” upon the approval of the Township Forester.

2. In no instance is tree replacement to be considered a penalty, but rather it implements the purposes of this section. Tree replacement shall not be a substitute for, but shall be in addition to, any penalty imposed for violation of the provisions of this section.

3. The species type and diversity of Replacement Trees shall be made at the direction of the Township Forester.

. In consultation with the Planning Board, the Township Forester shall maintain an on-line registry of all tree replacements which shall be accessible to the public. The Township Forester and/or Planning Board, where applicable, shall determine where replacement trees are planted.

5. Tree Replacement Fund. Pursuant to this section, unless the Township Forester has approved replacement of the removed tree(s) on the permit holder’s property in accordance with Table “A,” the Township Forester shall condition tree removal upon payment to the Tree Replacement Fund, established hereunder. The Township Forester shall require payment to the Tree Replacement Fund if a person removes a viable tree as determined by the Township Forester which is not replaced on the same property or Lot.

(a). **Tree Preservation and Replacement Fund:** There is hereby established a Tree Replacement Trust Fund to receive and disburse replacement tree contributions. The Tree Replacement Fund shall be the repository of all monies paid to the Township pursuant to this chapter and may also accept contributions for its purposes from private or public sources.

(b) The primary purpose of said fund is to provide for the replacement, planting and maintenance of trees on public and private property within the Township (including groundcovers, grasses, ferns, vines, and forbs when they are part of an ecological project using native plants). Professional consultant fees for administrative and/or consultant costs to implement the provisions of this chapter, including but not limited to site inspections, processing of permits, supervision of tree replacement, and enforcement of this Chapter, shall not exceed 30% of the fund.

(c) The amount to be paid to the Tree Replacement Fund shall be in accordance with Table “A” upon the approval of the Township Forester.

**TABLE A**

| <b>DBH of Tree</b> | <b>Required Action</b>                                              | <b>Amount to Tree Replacement Fund</b> |
|--------------------|---------------------------------------------------------------------|----------------------------------------|
| 4"-8"              | Replace with one 2.5" inch tree                                     | To be prescribed by Resolution         |
| 9"-12"             | Replace with two 2.5" inch trees                                    | To be prescribed by Resolution         |
| 13"-17"            | Replace with three 2.5" inch trees                                  | To be prescribed by Resolution         |
| 17"-21"            | Replace with four 2.5" trees                                        | To be prescribed by Resolution         |
| Over 21"           | One additional 2.5" DBH tree for every 4" increase in DBH after 21" | To be prescribed by Resolution         |

**§25-27.9 BE AND HEREBY AMENDED AS FOLLOWS:**

a. In connection with any construction, prior to the issuance of a building permit or start of construction, snow fencing or other protective barriers acceptable to the official charged with the administration and enforcement of this section shall be placed around trees that are not to be removed. The protective barriers shall be placed beyond the drip line, but in no event less than 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.

b. No person shall:

1. Cut down or remove any tree, except as permitted by this chapter, or allow or cause such cutting or removal;

2. Cause or allow any willful damage, injury or disfigurement of any tree growing within the Township. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as the result of but not limited to the following: cutting, gashing or slitting of any tree; the pouring of any liquid or other material on any tree; or on the nearby ground; the construction or placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placement or removal of any soil from within the drip line, but in no event less than 10 feet from the trunk, of any tree;

3. Store or pile building material or debris or place construction equipment within the drip line, but in no event less than 10 feet from the trunk, of any tree;

4. Fail to remove any Invasive Vines;

5. Engage in activities that could cause harm to the health of the tree, including but not limited to pruning, crown reduction and/or allowing invasive vines; or

c. If any tree to be saved in connection with construction as set forth above or any replacement tree planted pursuant to this section shall die within two years it shall be replaced by the applicant or the property owner within six months.

**§25-27.10 BE AND HEREBY AMENDED AS FOLLOWS:**

In administering and enforcing this section, the Township Forester, the Township's Construction Official, Zoning Officer, Township Planner, Engineer, Chief of Police, or any other Township officer or designee, is hereby empowered to issue stop work orders whenever a claimed violation of this section is witnessed or reported.

**III. 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.

**IV. 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.

**V. EFFECTIVE DATE**

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

---

**Tammy Williams**  
**Council President**

---

**Karen J. Carnevale, R.M.C.**  
**Municipal Clerk**

---

**Susan McCartney**  
**Mayor**

**Introduced: September 19, 2023**

**Adopted: October 10, 2023**

**Approved as to form on the basis of the facts provided:**

**2820-23**

**Legislative History**

The purpose of this ordinance is to modify Chapter 25, Sections 27.3, 27.4, 27.5, 27.7, 27.8, 27.9, and 27.10 of the Revised General Ordinances of the Township of West Orange to protect trees which are among the Township's most valuable natural resource assets, which greatly enhance the appearance of the Township and contribute to its suburban and residential character, which must be kept and maintained in good order to enhance the Township's physical and aesthetic appearance, and generally protect the public health and safety as well as the general welfare. Importantly, trees contribute positively to climate change, protection of the environment, and maintenance of storm waters.