

BOROUGH OF MOUNTAIN LAKES MORRIS COUNTY, NEW JERSEY

ORDINANCE 10-24

**ORDINANCE AMENDING CHAPTER 102 OF THE REVISED GENERAL ORDINANCES OF THE
BOROUGH OF MOUNTAIN LAKES AND REGULATING THE REMOVAL, PROTECTION, AND
REPLACEMENT OF TREES**

WHEREAS, as part of MS4 Tier A permit stormwater requirements, the New Jersey Department of Environmental Protection (NJDEP) requires municipalities to adopt NJDEP- mandated regulations for the removal, protection, and replacement of trees on private property; and

WHEREAS, the Borough has been regulating the removal of trees pursuant to Article VII of Chapter 102 of the Borough Code and has reviewed its existing regulations in light of the NJDEP mandated regulations; and

WHEREAS, the Shade Tree Commission has made recommendations for changes to the Borough's existing ordinance after review of the NJDEP model and the Borough Council has reviewed these recommendations and finds that it is appropriate to amend the existing ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mountain Lakes, County of Morris, State of New Jersey, as follows:

Section 1. Chapter 102 of the Revised General Ordinances of the Borough of Mountain Lakes, Article VII "Preservation and Protection of Trees", shall be amended by the following amendment to Section 102-33 "Purpose" which shall read, in its entirety, as follows:

§ 102-33 Findings and Purpose.

The Borough Council of the Borough of Mountain Lakes finds that the preservation, maintenance, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces storm water runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; provides protection against severe weather; mitigates the urban heat island effect; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; protects and increases property values; preserves and enhances the Borough's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare.

Section 2. Chapter 102 of the Revised General Ordinances of the Borough of Mountain Lakes, Article VII "Preservation and Protection of Trees", shall be amended by the following amendment to Section 102-34 "Definitions" which shall read, in its entirety, as follows:

§ 102-34 Definitions.

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" mean the requirement is always mandatory and not merely directory.

- A. "Applicant" means any "person", as defined below, who applies for approval to remove trees regulated under this ordinance.
- B. "Diameter at Breast Height (DBH)" means the diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.
- C. "Hazard Tree" means a tree or limbs thereof that meet one or more of the criteria below. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.
 - 1. Has an infectious disease or insect infestation;
 - 2. Is dead or dying;
 - 3. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
 - 4. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.);
 - 5. Is determined to be a threat to public health, safety, and/or welfare by a licensed Landscape Architect, certified arborist, Licensed Tree Expert (LTE) or Licensed Tree Care Operator (LTCO).
- D. "Named Parks or Trails" means Lyman Wilson Memorial Park; Linear Park; Birchwood Beach area and loop trail; Island Beach area; Midvale boat launching area; Haswell and Taft Fields; Memorial Park; Briarcliff Park; Frank B. Kaufman Memorial Park; Wildwood Park; and The Esplanade. Trails are path between Briarcliff and High School, path over Crystal Lake Dam, Wilcox path to fields, Mountain Lake Dam access, Oakland Road to YMCA, Romaine Road Basketball Court, and easement between Pickwick and Craven Roads.
- E. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.
- F. "Planting strip" means the area within the public right-of-way between the abutting property line and the curb or edge of pavement, exclusive of any sidewalk.
- G. "Protected Tree" means any tree six or more inches in diameter measured at a point 4 1/2 feet above the ground whose trunk is wholly in the setback area of the affected property. If a tree has multiple trunks, then each trunk's diameter shall be measured and added together to determine the size of the tree.
- H. "Resident" means an individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.
- I. "Street Tree" means a tree planted within the public right-of-way. This also includes trees planted within shade tree easements and named public parks or trails. The removal of street trees is governed by the regulations of the Shade Tree Commission and the provisions set forth in 102-35.

- J. "Tree" means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.
- K. "Tree Caliper" means the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.
- L. "Tree removal" means to cut down or otherwise kill or to cause irreparable damage and/or death of a tree.

Section 3. Chapter 102 of the Revised General Ordinances of the Borough of Mountain Lakes, Article VII "Preservation and Protection of Trees", shall be amended by the following amendment to Section 102--36 "Protected Trees Within the Setback Area" " which shall be retitled "Permit Required". Subsection 102-36 E shall be deleted. Subsections 102-36 A(2) through 102-36 D shall remain unchanged and Subsection A(1) shall be amended to read as follows:

§ 102-36 Permit Required. Regulations.

A (1) Except as exempted in Section 102-38, no person, firm or corporation shall cut, remove, injure or damage any protected tree without obtaining a Tree Removal Permit in accordance with the regulations and provisions of this Chapter.

Section 4. Chapter 102 of the Revised General Ordinances of the Borough of Mountain Lakes, Article VII, Section 102-37 shall be retitled "Application Procedure" and shall read, in its entirety, as follows:

§ 102-37 Application Procedure.

- A. Application for a tree removal permit shall be made by submission of the following:
 - 1. An application form provided by the Borough containing the following information: the name and address of the applicant; their e-mail address and phone number, the street address of the property in question and the number of tree(s) to be removed.
 - 2. The reason(s) for removing the trees.
 - 3. Any tree removal application, with an approved Planning Board site plan or subdivision, shall post a guaranty equal to 120% of the estimate to plant or replace same. The guaranty is applicable where the project is for new development or construction.
 - 4. A tree removal application shall include a tree removal plan with a diagram showing the location of all trees to be removed, the species of such trees, their diameter, the drip line of the trees to be removed and location of all existing and proposed structures on the property, and property lines. A reproduction of the tax map or an existing survey modified to provide this information would be acceptable.
- B. The fee for processing a tree removal permit shall be charged. The fee schedule is set forth in Chapter 111

- C. The applicant shall place a one (1") inch wide yellow ribbon around the trunk of each tree to be removed at a height of four and one-half (4-1/2') feet above the ground so that the proposed tree removal may be inspected in the field.

D. Tree Replacement Requirements

1. Removal of street trees is allowed only with written permission from the Shade Tree Commission, as outlined in Section 102-35.A(1), and replacement shall be under the jurisdiction of the Shade Tree Commission.
2. Any person who removes one or more protected tree(s), unless exempt, with a DBH of 6", unless otherwise provided, shall be subject to the requirements of the Tree Replacement Requirements Table.
3. The species type and diversity of replacement trees shall be in accordance with a list of approved trees Attached hereto as Exhibit A and planting requirements kept on file in the Borough.
4. Replacement tree(s) shall:
 - a. Be replaced with a tree that meets the Tree Replacement Criteria in the table below;
 - b. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the municipality;
 - c. Be monitored for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12) months; and
 - d. Not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
 - e. Be of the species listed in the "Recommended List of Replacement Trees" maintained on the Borough website. Preference shall be given to native trees.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
1	DBH of 2.5" (for street trees) or 6" (for non-street trees) to 12.99"	Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed

5. Replacement Alternatives:

If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:

- (a) Plant replacement trees in a separate area(s) approved by the municipality.

(b) Pay a fee per tree removed as set forth in Chapter 111.

This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

Section 5. Chapter 102 of the Revised General Ordinances of the Borough of Mountain Lakes, Article VII "Preservation and Protection of Trees", shall be amended by the addition of new Section 102-38 "Exemptions" which shall read, in its entirety, as follows:

102-38. Exemptions.

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below. Proper justification in the form of photographs or certifications from the property owner or tree removal professional shall be provided, in writing, by all persons claiming an exemption:

- A. The removal of two or fewer trees per year.
- B. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
- C. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality;
- D. Any trees removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan.
- E. Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan;
- F. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- G. Hazard trees.
- H. Invasive species, as listed on the New Jersey Invasive Species Strike Team website.
- I. Trees removed for safety reasons by a public utility company.

Section 6. Chapter 102 of the Revised General Ordinances of the Borough of Mountain Lake, Article VII "Preservation and Protection of Trees", shall be amended by the addition of new Section 102-39 "Enforcement and Violations" which shall read, in its entirety, as follows:

102-39 Enforcement and Violations .

- A. Enforcement. No person shall prevent, delay or interfere with any lawful work undertaken by the Shade Tree Commission or the Borough's authorized agent. The Code Enforcement Official of the Borough of Mountain Lakes and, in his absence, the Borough Manager are designated as the enforcing agent for this article. The enforcing agent may order any tree work, or other activity that is carried on in violation of any decision or any provision of this article, to be stopped forthwith. The order shall be issued in writing and a copy served upon any person engaged in tree work or other activity, the applicant and the owner of the lot. Except for such work as is necessary to remedy the violation, any further work shall comply with the terms and conditions of the decision and of this article.

CERTIFICATION: I hereby certify the foregoing to be a true and correct copy of the ordinance duly adopted by the Borough Council of Mountain Lakes, New Jersey, at a meeting held on September 9, 2024.


Cara Fox, Borough Clerk

Introduced: 7/22/24

Adopted: 9/9/24

Name	Motion	Second	Aye	Nay	Absent	Abstain	Motion	Second	Aye	Nay	Absent	Abstain
Cannon			X					X	X			
Korman			X						X			
Menard					X				X			
Muilenburg		X	X						X			
Richter	X		X						X			
Barnett			X				X				X	
Sheikh			X						X			