

ARTICLE VII
Preservation and Protection of Trees

§ 102-33. 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.

§ 102-34. Definitions.

For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this chapter 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.

APPLICANT — Any "person," as defined below, who applies for approval to remove trees regulated under this chapter.

DIAMETER AT BREAST HEIGHT (DBH) — The diameter of the trunk of a mature tree generally measured at a point 4 1/2 feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 1/2-foot height, the DBH shall be measured at the highest point before any division.

HAZARD TREE — 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.

- A. Has an infectious disease or insect infestation;
- B. Is dead or dying;
- C. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
- D. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.);
- E. 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).

NAMED PARKS OR TRAILS — 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.

PERSON — Any individual, resident, corporation, utility, company, partnership, firm, or association.

PLANTING STRIP — The area within the public right-of-way between the abutting property line and the curb or edge of pavement, exclusive of any sidewalk.

PROTECTED TREE — Any tree whose diameter at breast height (DBH) is six or more inches and whose trunk center is in the setback area of the affected property.

RESIDENT — 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 chapter is removed or proposed to be removed.

STREET TREE — 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.

TREE — 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.

TREE CALIPER — The diameter of the trunk of a young tree, measured six inches from the soil line. For young trees whose caliper exceeds four inches, the measurement is taken 12 inches above the soil line.

TREE REMOVAL — To cut down or otherwise kill or to cause irreparable damage and/or death of a tree.

§ 102-35. Street trees and shrubs in rights-of-way.

A. Regulations.

- (1) Approval for planting or removing street trees or shrubs. No person shall plant, prune or remove any tree or shrub upon any Borough street, right-of-way, highway, public place or park without written permission from the Shade Tree Commission. Except as required by Subsection A(2) herein, this provision shall not be construed to require a street tree management plan to plant or remove a tree or shrub upon any Borough street, right-of-way, highway, public place or park.
- (2) Street tree management plan required. The Construction Official shall not issue a construction permit for erecting or constructing a building or addition or alteration thereof or improvements upon a property, a road opening permit, or a soil moving permit until a street tree management plan has been approved by the Shade Tree Commission and implemented in accordance with the regulations and provisions of § 102-35. Throughout a period of any construction, alteration or repair to any building or structure, or work on a site which is subject to an approved street tree management plan, the owner, tenant, person, firm or corporation causing said construction,

improvement or work shall in all respects comply with an approved street tree management plan. The Planning Board or Zoning Board of Adjustment shall require as part of an application for development a street tree management plan approved by the Shade Tree Commission.

(3) Other restrictions. No person shall:

- (a) Cut, break, injure or remove a tree or shrub upon any Borough street, right-of-way, highway, public place or park. This provision shall not apply to the actions of the Borough or a duly franchised public utility in the case of an emergency.
- (b) Place rope, wire, sign, poster or other fixture on a tree or shrub upon any Borough street, right-of-way, highway, public place or park or injure, misuse or remove any device placed to protect a tree or shrub upon any Borough street, right-of-way, highway, public place or park. This provision shall not apply to the actions of the Borough or a duly franchised public utility in the case of an emergency.
- (c) Fasten or attach an animal to or cause or allow an animal to injure a tree or shrub upon a Borough street, right-of-way, highway, public place or park.
- (d) Place or store, or cause to be placed or stored, any earth, stone, cement, sidewalk, or other substance, that impedes the free access of water and air to the roots of a tree or shrub upon any Borough street, right-of-way, highway, public place or park.
- (e) Pour salt water or other chemical, build fires or station any incinerator, tar kettle, road roller or other engine on or near a tree or shrub upon any Borough street, right-of-way, highway, public place or park in any such manner that the vapor or fumes therefrom may injure the same.

B. Street tree management plan.

- (1) Application. Any owner, person, firm or corporation who shall seek approval of an application for development by the Planning Board or Zoning Board of Adjustment; apply for a construction permit to erect or construct or cause to be erected or constructed a building or addition thereto or alteration thereof or install or cause to be installed improvements upon any property; seek a road opening permit; or seek a soil moving permit shall as a condition thereof apply for and receive approval for and comply with a street tree management plan on such forms and provide such information as may be reasonably required to satisfy the intent and purpose hereof by the Shade Tree Commission in accordance with the following:
 - (a) Identify, by street, block and lot number, the site and adjacent Borough streets, rights-of-way, highways, public places and parks.
 - (b) Provide the name, address and telephone number of the owner or duly authorized agent of said owner, where applicable.
 - (c) Identify and place on a site plan or survey the location of any existing and/or proposed tree or shrub on adjacent Borough streets, rights-of-way, highways, public places and parks.

- (d) Mark any existing tree or shrub and/or the location of a proposed street tree or shrub, by visible, weatherproof and reasonably tamperproof means such as colored plastic tape. Existing trees or shrubs shall not to be sprayed with paint or chemicals or otherwise permanently marked, damaged or defaced.
- (e) The diameter of the tree should be determined as follows: by measuring the circumference of the tree 4.5 feet above the ground, then dividing that number by 3.14 (pi), or by using a tree caliper.
- (f) Construct and maintain barricades made of snow fencing, or comparable fence material approved by the Shade Tree Commission, to a height of no less than four feet around the perimeter of the tree protection zone, as identified above, until all work is completed and the condition of trees and shrubs within the tree protection zone is approved by the Shade Tree Commission.
- (g) Place signs on barricade denoting a tree protection zone.
- (h) Place all equipment, supplies, stockpiled earth and stones, ditches, and underground utility lines outside the tree protection zone. If an underground line must go within a tree protection zone, it is to be installed by a method approved by the Shade Tree Commission that minimizes to the extent feasible cutting of or damage to roots.
- (i) At the discretion of the Shade Tree Commission, fertilize protected trees and shrubs which show evidence of stress from construction activity to increase vigor and aid in overcoming stress.
- (j) Designate specific corridors for site access, where the driveways or parking areas or walks will be located, and provide protection of root zones where necessary.
- (k) Where a change of slope may cause harm to any existing tree or shrub upon a Borough street, right-of-way, highway, public place or park, a well or other means of protective barrier shall be erected accordingly, said barrier not to encroach on the area required to sustain life of the same.
- (l) In the event it is proposed to replace an existing tree or shrub or in the event a tree or shrub is killed, destroyed or substantially damaged during construction, it must be replaced by one or more trees or shrubs of equivalent size and of a type approved by the Shade Tree Commission. If replacing a tree with a trunk diameter greater than 2.5 to three inches measured 4.5 feet above the ground, in lieu of planting one tree with equivalent trunk diameter, a larger number of smaller trees may be planted, according to a formula based on the diameter of the trunk of the destroyed or damaged tree: For every two inches of tree diameter damaged or destroyed, plant one replacement tree acceptable to the Borough with a two-and-one-half- to three-inch diameter measured one foot above planting level. To the extent such replacement tree or trees cannot reasonably be located upon the Borough street, right-of-way, highway, public place or park in place of the original existing tree, the Borough may designate an alternate location upon any Borough street, right-of-way, highway, public place or park.

- (2) Review. The Shade Tree Commission shall review a street tree management plan to determine its compliance with the requirements of this section. In reviewing the aforesaid items, the Shade Tree Commission may utilize the services of the Borough Manager, Borough Engineer, Arborist, or other Borough staff or consultants.
 - (3) Time for decision. The Shade Tree Commission shall, within 15 days after receipt of a complete application, render its decision.
- C. Maintenance guarantee. In the event the planting of trees or shrubs or the replacement of existing trees or shrubs is proposed, an applicant shall post a maintenance guarantee equal to 120% of the estimate of the Shade Tree Commission to plant or replace the same, which maintenance guarantee shall be subject to acceptance by the Borough Council. Upon completion of all construction or disturbance, an applicant may seek approval of planted or replaced trees and shrubs. All trees or shrubs which fail to survive for a period of three years following the approval thereof by the Shade Tree Commission shall be replaced at no cost or expense to the Borough. The replacement shall be made within 60 days following written demand for such replacement or within such additional time as the Shade Tree Commission may direct. In the event the applicant shall fail to comply with the written demand for such replacement by the Shade Tree Commission, the Council may default the guarantee upon notice to the applicant and the sum thereof shall be forfeited to the Borough of Mountain Lakes and applied to the budget of the Shade Tree Commission or Borough. A guarantee shall be released by the Council upon completion of all construction or disturbance, approval of planted or replaced trees and shrubs by the Shade Tree Commission and survival thereof for a period of three years following approval.

§ 102-36. Permit required.

A. Regulations.

- (1) Except as exempted in § 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.
- (2) Setback tree management plan required. The Construction Official shall not issue a construction permit for erecting or constructing a building or addition or alteration thereof or improvements upon a property, a road opening permit, or a soil moving permit until a setback tree management plan has been approved by the Borough Manager and implemented in accordance with the regulations and provisions of § 102-36. Throughout a period of any construction, alteration or repair to any building or structure, or work on a site which is subject to an approved setback tree management plan, the owner, tenant, person, firm or corporation causing said construction, improvement or work shall in all respects comply with an approved setback tree management plan. The Planning Board or Zoning Board of Adjustment shall require as part of an application for development a setback tree management plan approved by the Borough Manager.

- B. Setback tree management plan and tree removal permit. When required by Subsection A(1) herein, an application for a tree removal permit shall be submitted on forms provided by the Borough Manager. When required by Subsection A(2) herein, a setback tree management

plan for protected trees shall be submitted in like manner to § 102-35B. A setback tree management plan must show the location of each protected tree within the setback area of the affected property. The plan must also include any tree or shrub on any Borough right-of-way abutting the affected property. The setback tree management plan must identify each protected tree and whether and how it will be protected. The setback tree management plan or tree removal permit must be approved by the Borough Manager in accordance with the procedures and standards set forth in Subsections D and E below. The Borough Manager may seek the advice of the Shade Tree Commission, the Borough Engineer, the arborist or other Borough staff or consultants in making any of the decisions entrusted to the Borough Manager by § 102-36. The Borough Manager shall render his decision on a setback tree management plan or tree removal permit within 15 days after receipt of a complete application and the completion of the neighbor notification period in Subsection E.

- C. Appeal to Council. The applicant shall have the right to appeal the decision of the Borough Manager regarding the setback tree management plan or tree removal permit to the Council of the Borough within 10 days of receiving written notice of a decision. Said appeal shall be by written notice of appeal to the Borough Clerk. Upon receipt of said appeal, the Council shall proceed to hear said appeal upon notice to the applicant within 30 days after the filing of said notice of appeal. The Council may, in its discretion and upon complete review of the application and after hearing such testimony as may be warranted, reverse, modify or affirm the aforesaid decision.
- D. Standards. Upon receipt of a setback tree management plan or application for a tree removal permit, the Borough Manager shall review it and inspect the site on which the protected trees are located. The Borough Manager shall consider the following factors in deciding whether to approve the setback tree management plan or the application for a tree removal permit:
 - (1) Whether the preservation of the protected tree or trees is important to the benefits of § 102-33.
 - (2) The overall effect of removal of such protected tree or trees on the physical and aesthetic value of the applicant's property and adjacent property.
 - (3) Whether the proposed removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots.
 - (4) Whether more than 50% up to a maximum of two of the protected trees (which does not include dead trees) in the setback area have been or will be removed in a twelve-month period.
 - (5) Whether the tree management plan is adequate to insure the safety and health of any protected trees and all street trees.
 - (6) Whether the proposed cutting or removal would impair the growth and development of the remaining trees on the applicant's property or adjacent property.
 - (7) Whether the proposed cutting or removal would change existing drainage patterns.
 - (8) Whether the proposed removal would allow soil erosion or increase dust.

- (9) Whether the proposed removal would constitute a horticulturally advantageous thinning of an existing overgrown area.
- (10) Whether existing conditions or proposed changes in the topography of the area where such protected tree or trees are located have depressed land configuration or fill of land which shall be deemed injurious to the protected trees or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.
- (11) Whether the protected tree or trees are dying, diseased, or severely damaged, or the angle of growth makes them a hazard to structures, roads, or human life.
- (12) Whether the presence of the protected tree or trees is likely to cause hardship or will endanger the public or an adjoining property owner by reason of it being diseased or dead or for some other adequate reason with the intent of this article.

§ 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 guarantee equal to 120% of the estimate to plant or replace same. The guarantee 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-inch-wide yellow ribbon around the trunk of each tree to be removed at a height of 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 § 102-35A(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) Replacement tree(s) shall:

- (a) Be replaced with a tree that meets the tree replacement criteria in the table below;
- (b) Be planted within 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 years to ensure their survival and shall be replaced as needed within 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 and kept on file in the office of the Borough Clerk. Preference shall be given to native trees.

Tree Replacement Requirements Table		
Category	Tree Removed (DBH)	Tree Replacement Criteria
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

- (4) 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.

§ 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.

§ 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.
- B. Violations and penalties for § 102-35. Any person violating any provision of § 102-35 shall be subject to penalties up to the amount provided in Article II of Chapter 1 of this Code, as amended and supplemented. Each tree or shrub illegally removed or damaged shall be a separate violation. Notwithstanding, the Borough or court may reduce the penalties and suspend the imprisonment and community service in the event the violator shall agree as follows.
 - (1) To abate the violation by replacing at his sole expense the tree or trees damaged or destroyed in accordance with the provisions of § 102-37;
 - (2) To reimburse the Borough for all reasonable charges of the enforcing authority, Council, Shade Tree Commission and Borough Attorney;
 - (3) In exercising the authority established hereby, for any tree or shrub upon any Borough street, right-of-way, highway, named park or trail, the Shade Tree Commission shall:
 - (a) Require that, for each tree irreparably damaged or destroyed, the violator plant a

replacement tree or trees as specified by the Shade Tree Commission. The number of replacement trees required shall be based on the diameter of the damaged or destroyed tree(s) measured 4.5 feet from the ground. If the tree(s) has been cut to a height of less than 4.5 feet, or to ground level, then the diameter of the remaining stump(s) shall be used to determine the number of replacement trees required. If the tree and stump have been removed entirely, the last recorded diameter entered into the Street Tree Inventory Database shall be used to determine the number of replacement trees required. If there is a multiple trunk tree, then each trunk's diameter shall be measured and added together to determine the total diameter of the damaged or destroyed tree. In all cases, the number of replacement trees shall be determined by this formula: one replacement tree of no less than 2.5 to three inches in diameter measured one foot above planting level for every two inches of diameter of damaged or destroyed tree, unless otherwise approved by the Shade Tree Commission.

- (b) Direct that replacement trees be planted near the location of damaged or destroyed trees and otherwise throughout the Borough.
 - (c) Require that the violator provide a maintenance guarantee of the survival and normal healthy development of replacement trees for a period of three years in an amount equal to 120% of the cost of replacement trees in accordance with § 102-35C.
- C. Violations and penalties for § 102-36. Any person violating any provision of § 102-36 shall be subject to penalties up to the amount provided in Article II of Chapter 1 of this Code, as amended and supplemented. Each tree illegally removed or damaged shall be a separate violation. Notwithstanding, the Borough or court may reduce the penalties and suspend the imprisonment and community service in the event the violator shall agree to abate the violation by replacing at his sole expense the tree or trees damaged or destroyed in accordance with the provisions of § 102-37.