

**ORDINANCE 3-2020**

**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 "TREE PROTECTION"**

**WHEREAS**, the Governing Body of the Borough of Madison has determined that one of the Borough's characteristics that has made it an attractive and welcoming community are its tree lined streets and tree canopy; and

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

**WHEREAS**, The New Jersey Shade Tree and Community Forestry Assistance Act, *N.J.S.A. 13:1L-17.1 et. seq.* provides that shade trees and forests are a necessary and important part of community and urban environments, and are critical to the environmental, social and economic welfare of the State; and

**WHEREAS**, the protection and preservation of trees has been found by the New Jersey Courts to unquestionably affect the public interest.

**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, Tree Protection"

**§ 178-1. Findings of Fact**

The Borough Council finds that indiscriminate, uncontrolled and excessive destruction and removal of trees upon lots and tracts of land within the Borough of

Madison will cause increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increased buildup of atmospheric carbon dioxide, the establishment of a heat island effect and increased dust and pollution. The singular or cumulative effect of any of the foregoing could adversely impact the character of the Borough, decrease property values, render the land unfit and unsuitable for its most appropriate use, and negatively affect the health, safety and general welfare of the Borough's residents.

**§178-2. Purpose**

The Governing Body desires to regulate and control indiscriminate and excessive removal of trees within the Borough and to require appropriate tree replacement.

**§178-3. Definitions**

The following words and expressions used in this Chapter shall have the following meanings:

**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.

**LIMIT OF DISTURBANCE LINE:** The line on a 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 the 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 of the Borough of Madison Chapter 45-1.

**NON-BOROUGH TREE:** Any tree other than a Borough tree as heretofore defined.

**MUNICIPAL ARBORIST:** The Administrative Officer of the Tree Protection ordinance, duly appointed by the Governing Body who 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 five (5) years' experience in the planting, care and maintenance of trees.

**REPLACEMENT TREE:** A nursery-grown certified tree 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 Nursery & Landscape Association and guaranteed for two years. The Municipal Arborist shall publish on the municipal website a suitable species list for Replacement Trees. Any tree used in a required planting must be at least 2 ½ inches caliper in diameter and must be nursery stock, balled and burlapped and guaranteed for two years from the date of installation.

**SHADE TREE MANAGEMENT BOARD:** The advisory committee established by Chapter 45 of Borough of Madison Code.

**SIGNIFICANT TREE:** Any tree, measured 4.5 feet above the grade with a diameter of 16 inches (circumference of 50 inches) or greater, or any tree designated by the Shade Tree Management Board as a Landmark Tree.

**TREE:** Any deciduous or evergreen species, measured 4.5 feet above the grade with a diameter of 6 inches (circumference of 19 inches) or greater, up to a diameter of 16 inches (circumference of 50 inches).

**TREE FUND:** A fund established by the Governing Body only to be expended for the planting of trees in any public street, public park or public right-of-way at locations on the Tree Planting Schedule defined herein.

**§178-4. Appointment of Municipal Arborist.**

A 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 commencing January 1 and ending December 31. The Municipal Arborist shall possess the qualifications defined in Section 178-3 and shall be paid for any services authorized on behalf of the Borough in accordance with an annual fee schedule established with the Borough. The Municipal Arborist shall be prohibited from taking any action on or representing any Madison private clients while under contract with the Borough. After the selection of the Municipal arborist, the Borough shall enter into a contract with the arborist, which shall set forth the fees charged by the arborist for providing services to the Borough. The Borough's contract with the arborist shall be published

with the publication of the tree inventory and tree planting schedule as provided herein.

**178-5. Duties of the Municipal Arborist.**

The Municipal Arborist shall be charged with performing site inspections, administration and enforcement of the tree removal and protection requirements of this Chapter, reviewing and providing written reports on development applications, attendance at the Shade Tree Management Board meetings, and the preparation, maintenance and updating of the tree inventory.

**§178-6. Removal Restrictions**

Subject to the exemptions set forth herein, no person shall remove or damage, or cause to be removed or damaged any tree located upon Borough-owned land, easements or right-of way without the express approval of the Municipal Arborist, unless such action is specifically exempted by the provisions of this Chapter.

**§178-7. Tree Removal Permits.**

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

- (1) Any tree 6 inches in diameter (circumference of 19 inches) or greater; or
- (2) Any removal or destruction of any Significant Tree; or
- (3) Any removal or destruction of more than 50% of standing non-Borough trees on a lot during any calendar year.

B. Exemptions.

- (1) A permit is not required for removal of any Borough tree directed to be removed by the Borough of Madison, County of Morris or State of New Jersey.

(2) Any property owner shall be permitted to remove two (2) non-significant trees on their property within any (24) month period without applying for a tree removal permit.

C. Permit Application. Applications for a permit shall be made to the Municipal Arborist on forms provided for this purpose in the Land Use Department 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 and phone number of the applicant. Where the applicant is not the property owner, written consent of the property owner is required.

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

(a) A description of the premises where removal is to take place, including lot and block numbers and street addresses as assigned.

(b). An indication of all trees to be removed, specifically by an assigned number, the species and diameter of each tree with a diameter of six (6) inches or more.

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

(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.

(4) Any removed tree that requires a permit must be replaced on a one to one basis. If, in the discretion of the Municipal Arborist, due to available space, species of trees and/or required space between plantings, a lesser number would be appropriate, the Municipal Arborist may grant a downward adjustment.

In lieu of providing a Replacement Tree, the owner of real property must contribute \$350.00 per removed tree to the Tree Fund, with such funds to be used for tree plantings in public spaces. Each December, the Borough shall publish an inventory of trees located on public streets, public parks and public rights-of-way (“tree inventory”). The Municipal Arborist shall be required to maintain and update the tree inventory. In conjunction with the publication of the tree inventory, the Borough shall publish a schedule of trees on the tree inventory to be replaced or new tree plantings to be made on public streets, public parks or public rights-of-way in the ensuing twelve months (“tree planting schedule”). Trees purchased with monies in the tree fund shall be planted at locations on the tree planting schedule nearest to the site(s) that generated the remittance of monies pursuant to Section 178-12

D. The Municipal Arborist shall deny the permit if the application does not comply with this Ordinance.

E. Additional Requirements for Construction Projects.

(1) Where the removal of a tree, and/or more than 50% of the standing non-Borough trees on a lot (as defined in Section 178-3 hereof), is proposed for the

construction of any building, 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) 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 Borough Engineer or his or her designee with the advice of the Municipal Arborist.
- b.** Tree protection barriers shall be installed by the Applicant and approved by the Municipal Arborist 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.** Unless the project site is constrained in such a manner that the tree protection area would encompass all usable area typically required for construction activities to proceed, in the tree protection areas, it shall be prohibited to:

- i.** Store any building material.
  - ii.** Store any fill of soil.
  - iii.** Store or park any equipment, including temporary toilet facilities.
  - iv.** Use as a work area.
  - v.** Attach any signs, wires, or other attachments to any tree.
  - vi.** 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.

#### F. Applications for Development

(1) All Land Development applications to the Planning Board or Zoning Board of Adjustment for development under the Borough of Madison Land Development Ordinance shall contain a demolition permit plan which, shall be prepared by an appropriately licensed professional (professional engineer, land surveyor, landscape architect, professional planner, architect, forester, certified arborist, certified tree expert, etcetera) showing all surface features, subsurface structures and trees proposed to be removed as part of the development.

(2) The demolition plan shall be a completeness item on the checklists for single and two-family residential applications, minor and major subdivisions and site plan applications.

(3) The Municipal Arborist shall review the development plans and provide a written report to the appropriate Land Use Board and the Applicant at least ten

(10) business days prior to the scheduled meeting date. The Municipal Arborist shall be paid from the Technical Review escrow for each application pursuant to Section 195-12(B) of the Borough of Madison Land Development Ordinance.

G. 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 written notice to the Shade Tree Management Board.

(2) If the Municipal Arborist or certified arborist submits in writing that a tree is dead, dying, hazardous, storm damaged and /or infested with insects, a replacement tree is not required.

H. Standards.

Upon receipt of a tree removal permit application the Municipal Arborist shall inspect the site on which are located the tree or trees sought to be removed. The Municipal Arborist shall issue such permit based on any of the following factors:

(1) Where the area where such tree or trees are located will be occupied by a building, deck, patio, pool or structure, a driveway, a roadway, a stormwater management facility, or a sewer line or other underground utility, or where the area where such tree or trees are located is within twelve (12) feet of a building or structure or within seven (7) feet of any of the other improvements set forth in this paragraph.

(2) Where a Certified Arborist recommends in writing that the proposed removal would constitute a horticulturally advantageous thinning of an existing overgrown area.

(3) Where proposed changes in the topography of the area where such tree or trees are located would require significant remediation, such as welling or construction of an aerification system, to allow the tree or trees to survive.

(4) Where the presence of the tree or trees is likely to cause hardship or will endanger the public or an adjoining property owner.

(5) Where the tree or trees are damaging a structure.

(6) Where the root system has become invasive to the extent that no other solution remains.

(7) Where the location of the tree interferes with the use of an existing outdoor pool.

#### I. 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.

#### J. Fees.

(1) The application fee shall be \$25.00 for each tree to be removed. Said fee may be changed by ordinance at the discretion of the Governing Body.

(2) The permit application fee shall be waived if the tree or trees to be removed are determined by the Municipal Arborist to be dead, dying, hazardous, storm damaged, infested and/or directed to be removed by the State of New Jersey.

#### K. Scheduling Requirements.

(1) The Municipal Arborist shall issue an approval or a denial of a tree removal application within ten (10) business days of a complete permit application being filed.

(2) The applicant must notify the Municipal Arborist when the following events have taken place:

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

(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) For projects that require demolition, after demolition, but prior to start of construction.

(iii) If excavation of building structures is required after excavation, prior to construction.

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

(v) Final grade is established.

#### L. 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.

#### **§ 178-8. Public Utilities and Public Transportation Corporations**

Any public utility or public transportation corporation that maintains overhead wires, underground pipes or conduits shall review plans for pruning and/or tree removal at least two (2) weeks prior to the commencement of work with the Municipal Arborist and a representative of the Shade Tree Management Board and obtain written permission from

the Municipal Arborist to proceed. Utilities and public transportation corporations may undertake emergency tree work to restore electrical, telephone, cable TV or other wire services without prior advance notice. In such event, the utility shall notify the Municipal Arborist of said work within three (3) business days of commencement. The utilities owned and operated by the Borough of Madison shall be exempt from the noticing requirements.

**§178-9. Enforcement.** The Municipal Arborist shall have the sole jurisdiction and responsibility to identify any violations hereunder. The Municipal Arborist shall oversee all applicable tree removal or destruction and soil removal incidental thereto. Upon ascertaining a violation of this chapter, the Municipal Arborist shall maintain all relevant documentation associated with any violation. The Municipal Arborist shall contact the owner of the property within three (3) business days to correct the violation. If such violation(s) are not resolved within 10 days, the Municipal Arborist shall issue a summons to be heard in the Municipal Court as provided in this Article. In addition to other remedies, the Borough Engineer or his/her designee or other proper municipal official may institute a stop work order to prevent a continuing violation of the terms of this chapter.

**§178-10. Violations and Penalties.** Any person violating or causing to be violated any of the provisions of this chapter shall be subject to a fine of not less than \$100 and not more than \$2,000 for each offense, together with court costs.

**§ 178-11. Appeals.**

If an applicant or permit holder disagrees with the decision of the Municipal Arborist, as the Administrative Officer of this ordinance, they may request a meeting with the Municipal Arborist and the Shade Tree Management Board for review of the matter and/or may appeal to

the Zoning Board of Adjustment regarding the decision of the Administrative Officer, as provided for in the Municipal Land Use Law.

**§178-12 Payment to Tree Fund.**

- A. A Tree Fund shall be established by the Governing Body to receive and disburse replacement tree contributions. Appropriations from the Tree Fund shall be authorized by the Governing Body. The primary purpose of the fund is to provide for the planting of replacement trees on public land. The Tree Fund will also cover administrative costs to implement plans, specifications, and bid documents for planting contracts on public lands only, in accordance with the Local Public Contracts Law.
- B. All tree replacements under the ordinance codified in this Section shall be made on the actual site from which the trees were removed and shall replace each tree destroyed or removed. However, if the site in question cannot physically accommodate the total replacement amount of trees, a fee of 350.00 per replacement tree may be paid to the Tree Fund in lieu of such replacement.

**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

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ROBERT H. CONLEY, MAYOR

Attest:

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KATHLEEN NOTINE, Deputy Borough Clerk