

ORDINANCE 19-2022

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING
CHAPTER 178, OF THE BOROUGH CODE 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 update 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, and loss of biodiversity, wildlife and pollinator services. The singular or cumulative effect of any of the foregoing could adversely impact the character of the Borough, increase flooding, 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 protect and minimize the removal of trees within the Borough by establishing a tree removal permit program and, when permits are granted, 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.

CLEAR CUTTING - Clear cutting is a logging/forestry method in which numerous adjacent trees are removed (regardless of tree size) on a site or a portion of a site. The purpose of clear cutting is to create open space for building or to replace existing trees with smaller trees that do not replicate the ecosystem services of the original trees.

DRIPLINE — A line connecting the tips of the outermost branches of a tree projected vertically onto the ground.

INVASIVE TREE – A tree that is both non-native and able to establish on many sites, grow quickly, and spread to the point of disrupting locally native plant communities or ecosystems. Links to invasive tree lists as supplied by the Rutgers University Cooperative Extension Service are identified on the Shade Tree Management Board’s municipal web site.

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 § 45-1.

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.

MUNICIPAL ARBORIST — The Administrative Officer of the Tree Protection Ordinance, duly appointed by the Governing Body who shall have the following qualifications:

A. Bachelor's degree in forestry, arboriculture, horticulture or ecology from an accredited college or university; or

B. Certification as a "certified/licensed tree expert" (CTE/LTE) by the State of New Jersey; or

C. International Society of Arboriculture (ISA) certified arborist; and

D. A minimum of five years' experience in the planting, care and maintenance of trees.

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

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 and Landscape Association and guaranteed for two years. One hundred percent of replacement trees must be native Northeastern U.S. deciduous hardwoods. Any tree used in a required planting must be at least 2 1/2 inches caliper in diameter and must be nursery stock, balled and burlapped or in a container guaranteed for two years from the date of installation. A suitable species list for replacement trees shall be published on the Shade Tree Management Board's municipal website.

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. Significant trees store the most carbon, filter the most water to the aquifer and provide the most ecosystem services.

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.

TREE — Any deciduous or evergreen species, measured 4.5 feet above the grade with a diameter of six 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 on any public street, in public park or public right-of-way at locations identified by the Shade Tree Management Board.

§ 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 § 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, replacement 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 on land within the Borough 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.

When a tree removal permit is required, it will be reviewed by the Municipal Arborist.

A. Permit required. A tree removal permit is required for any of the following actions on private property:

(1) Any removal or destruction of any tree six inches in diameter (circumference of 19 inches) or greater; or

(2) Any removal or destruction of any significant tree.

(3) Property owners shall be allowed to remove two non-significant trees on their property within any twenty-four-month period without having to pay a permit fee, after filing their tree removal permit application.

B. Exemptions.

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.

C. Permit application.

Applications for a permit shall be made to the Municipal Arborist and submitted to the Engineering & Land Use Department. Forms are located on the Shade Tree Board's municipal web site. It shall contain the following information:

(1) The name and address of the owner of the property from which the trees are proposed 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 proposed to be removed, specifically by an assigned number, the species and diameter of each tree with a diameter of six 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 replacement shall use the following table:

Tree Replacement Schedule	
Diameter at Breast Height ("DBH") Caliper of Existing Tree Removed (inches)	Number of Replacement Trees (2 1/2-inch DBH Caliper)
Between 6" and 12 "	2
Between >12" and 18"	4
Between >18" and 24"	5
Between >24" and 30"	7
Between >30" and 36"	10
36" or greater	The equivalent of 2 1/2-inch caliper trees or greater needed to equal the DBH of the removed tree

(5) If the Municipal Arborist determines that based on lot size and site conditions it is not feasible to plant replacement trees, the required contribution shall be made to the Tree Fund.

(6) Replacement trees must be native Northeastern U.S. deciduous hardwoods.

(7) Invasive Trees may be removed at the discretion of the Municipal Arborist. Though no replacement is required following the removal of an Invasive Tree it is strongly encouraged to have it replaced with a native Northeastern U.S. deciduous hardwood.

D. In lieu of providing a replacement tree, the owner of real property must contribute \$400.00 per replacement tree to the Tree Fund, with such funds to be used for tree plantings in public spaces. The Municipal Arborist shall maintain a list of available public tree planting sites and by January 31 shall publish a list of trees that were planted at those public sites in the prior calendar year. Trees purchased with monies in the Tree Fund shall be planted at locations on public sites nearest to the site(s) that generated the remittance of monies pursuant to § 178-12.

E. The Municipal Arborist shall deny the permit if the application does not comply with this chapter.

F. Additional requirements for construction projects.

(1) Where the removal of a tree on a lot (as defined in § 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) All trees to be preserved are to be protected during construction. Tree protection is critical to prevent root compaction and preserve tree health. Trees shall be protected using the following criteria:

(a) The limit of protection shall be the dripline unless otherwise approved by the Borough Engineer or their 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 feet high.

(d) Unless a Borough official determines 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:

1. Store any building material.
2. Store any fill of soil.
3. Store or park any equipment, including temporary toilet facilities.
4. Use as a work area.
5. Attach any signs, wires, or other attachments to any tree.
6. Exception: Tree removal equipment is permitted, but only during operations for tree removal.

(e) The provisions of § 195-44 et seq. of the Borough Code, Soil erosion and sediment control, shall be adhered to where applicable.

G. 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. If the demolition permit plan provides for the removal of trees, the applicant must obtain a tree removal permit prior to demolition.

(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 determine if any trees removed as a result of the demolition plan must be replaced. The number of replacement trees at the applicant's site, another site in the Borough owned by the applicant or at a nearby public property shall be determined by the Municipal Arborist in accordance with the Tree Replacement Schedule. If the Municipal Arborist determines that it is not feasible to plant replacement trees, the required contribution shall be made to the Tree Fund. Replacement trees must be planted no more than twelve (12) months following the issuance of the tree removal permit.

(4) The Municipal Arborist shall review the development plans and provide a written report to the appropriate Land Use Board and the applicant at least 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 § 195-12B of the Borough of Madison Land Development Ordinance.

H. 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) It shall be prohibited to remove trees from freshwater wetlands or freshwater wetland transition areas as defined by the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. 7

(3) Trees may not be removed from steep slopes as defined by Section 195-41 of the Borough Code.

(4) If the Municipal Arborist or another certified arborist submits in writing that a tree is dead, dying, hazardous, and/or infested with insects, a replacement tree is not required, but strongly encouraged

(5) All reasonable efforts should be made to preserve clusters of trees in a natural state as they provide a greater ecosystem service than the sum of their individual components

I. Standards.

Upon receipt of a tree removal permit application, the Municipal Arborist shall inspect the site on which the trees are located the tree or trees sought to be removed. The loss of lot yield, building area or profitability of a development layout shall not be factors considered by the Municipal Arborist in making a tree permit determination.

Land Use Boards processing applications involving tree removals or potentially impacting existing trees shall solicit tree assessment(s) from the Municipal Arborist. Upon approval of tree removals by the Land Use Board, a Tree Removal Permit will be issued.

In all other cases the Municipal Arborist shall have the discretion to prohibit clear cutting.

The following are conditions that allow the Municipal Arborist to approve a Tree Removal Permit:

(1) Where the area where such tree or trees are located will be occupied by a sewer line or other underground utility, or where the area where such tree or trees are located is within 12 feet of a building or structure or within seven feet of any of the other improvements set forth in this subsection.

(2) 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.

(3) Where the presence of the tree or trees will endanger the public or an adjoining property owner.

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

(5) Where the root system has become a hazard to the extent that no other solution remains. (6) Where the location of the tree interferes with the use of an existing outdoor, inground pool.

J. 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.

K. 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, infested and/or directed to be removed by the State of New Jersey.

L. Scheduling requirements.

(1) The Municipal Arborist shall issue an approval or a denial of a tree removal application within 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:

1. If existing trees are within the construction zone, after required tree protection measures have been installed.

2. For projects that require building demolition, after demolition, but prior to start of construction.

3. If excavation of building structures is required after excavation, prior to construction.

4. If trenching is required, after mark-out of all trenches.

5. Final grade is established.

M. Permit time limit. All tree removal permits shall be limited to one year from date of issuance. If the approved tree removal has not occurred within one 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 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 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 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 chapter. In addition to other remedies, the Borough Engineer or their 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. Tree Service Providers

No person shall engage in tree removal work in the Borough for hire without first verifying with the applicant or the Engineering & Land Use Office that a tree removal permit has been obtained.

§ 178-11. Violations and penalties.

(a). Any person and/or firm 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 and/or required Community Service.

(b). Each illegally removed tree shall be treated as a separate offense.

§ 178-12. Appeals.

If an applicant or permit holder disagrees with the decision of the Municipal Arborist, as the administrative officer of this chapter, they shall have the right to appeal such decision to the Shade Tree Management Board. Such appeal shall be by written notice stating the reason(s) upon which the appeal is based and filed with the Borough Clerk within fourteen (14) business days of the decision of the Municipal Arborist. The Shade Tree Management Board shall hear the matter, upon notice to the applicant, within forty-five

(45) days after filing of the notice of appeal. The Shade Tree Management Board may in its discretion and upon complete review of the application and after hearing the testimony of the Municipal Arborist, the applicant, and such other experts as may be appropriate, reverse, modify or affirm the aforesaid decision.

§ 178-13. Payment to Tree Fund.

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 purpose of the fund is to provide for the planting of replacement trees on public land.

B. All tree replacements under the ordinance codified in this chapter shall be made on the actual site from which the trees were removed or on a nearby public property and shall replace each tree destroyed or removed. (See Tree Replacement Schedule, § 178-7.C.4) However, if the site in question cannot physically accommodate the total replacement amount of trees, a fee of \$400.00 per replacement tree may be paid to the Tree Fund in lieu of such replacement.

§ 178-14. Replacement Tree Incentive.

A residential property owner may apply to the Borough for partial reimbursement of the cost of planting a replacement tree. The reimbursement shall be \$200.00 per tree. The reimbursement shall only apply to trees meeting the specifications and species identified on the Shade Tree Management Board's municipal web site. The property owner shall submit to the Municipal Arborist all bills associated with the purchasing and planting of trees. The Governing Body shall appropriate an amount annually for this program, and the reimbursements will be paid up to the annual limit to those who file first in time.

§ 178-15. Reporting

The Municipal Arborist shall provide an annual report by February 15 to the Borough Council including the following information:

- A. The number of tree removal permit applications
- B. The number of trees requested for permitted removal and species of each tree
- C. The number of permits approved and denied
- D. The number of trees planted as replacement trees
- E. Total fees collected by type, and total cost of planting replacement trees.

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.