

**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

**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/Licensed Tree Expert" (CTE/LTE) 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.

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.

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

- 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

- (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.

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 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.

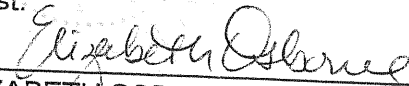
**SECTION 2: SEVERABILITY.** If any section, paragraph, subdivision, clause or provision of this ordinance shall be judged invalid, such adjudication shall apply only to that section, paragraph, subdivision, clause or provision, and the remainder of this ordinance shall be deemed valid and effective.

**SECTION 3: EFFECTIVE DATE.** This chapter shall take effect as provided by law.

ADOPTED AND APPROVED  
February 24, 2020


  
ROBERT H. CONLEY, MAYOR

Attest:

  
ELIZABETH OSBORNE, Borough Clerk

Introduced and passed: February 10, 2020  
Published, Madison Eagle: February 13, 2020  
Hearing and consideration for final adoption: February 24, 2020  
Published upon final adoption, Madison Eagle: February 27, 2020

I, Elizabeth Osborne, Clerk of the Borough of Madison in the County of Morris and State of New Jersey, hereby certify the foregoing to be a true and exact copy of an Ordinance finally adopted at a Regular Meeting of the Council held

on this 24<sup>th</sup> day of February, 2020  
  
Elizabeth Osborne, Borough Clerk