

**HARDING TOWNSHIP
ORDINANCE NO. 08-16**

**AN ORDINANCE OF THE TOWNSHIP OF HARDING AMENDING AND REVISING
CHAPTER 225 OF THE TOWNSHIP CODE ENTITLED “LAND USE” AND SPECIFICALLY
CHAPTER 225-111 ENTITLED “TREE CONSERVATION”**

WHEREAS, the Township’s Tree Conservation Officer, in conjunction with the Shade Tree Advisory Committee, requested that certain amendments be made to the Township’s Tree Conservation Ordinance to address certain situations that have arisen within the Township wherein the removal of trees on a particular property or for a particular situation was not clearly defined; and

WHEREAS, the Township’s Tree Conservation Officer has further recommended that the provisions of Chapter 225-111 should also be enforceable by the Township Zoning Officer, Tree Conservation Officer and Township Health Officer, as applicable; and

WHEREAS, the Township Committee of the Township of Harding finds that it is necessary and in the public interests to make these amendments to Chapter 225-111 of the Code of the Township of Harding based upon these recommendations.

NOW THEREFORE BE IT ORDAINED by the Township Committee of the Township of Harding, in the County of Morris, State of New Jersey, that the following section of Chapter 225 of the Township Code entitled “Land Use” be and is hereby amended as follows [added portions are **bolded** and underlined; deleted portions have strikethrough]:

SECTION 1. § 225-111 Tree Conservation

A. Findings and purposes.

(1) The Township Committee does hereby find that the indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon lots and tracts of land within the Township results in increased costs and difficulty in controlling stormwater runoff and flooding potential, increased soil erosion, decreased fertility of soil and increased dust, and a loss of privacy. It is the purpose of this article to mitigate the degradation of Harding Township's natural resources, to maintain the Township's rural landscape, to promote surface water retention, proper drainage and stormwater quality, and the protection of exposed soil surfaces, by regulating the removal of certain mature trees. The standards and procedures established herein are intended to furnish guidelines for the Tree Conservation Officer in connection with the issuance of permits for certain tree cutting and removal, subject to the exemptions listed below, and in evaluating tree removal and landscape plans as part of the subdivision and site plan approval process, in order to promote the safety, public health, convenience and general welfare of the Township.

(2) It is the intent of this article to protect the rural character and natural resources of the Township, consistent with the goals and objectives of the Master Plan. This article is not intended to restrict homeowners from removing dead or diseased trees or vegetation, conducting routine pruning of trees or other maintenance procedures in areas of overgrown vegetation. Landowners are encouraged to seek guidance from the Shade Tree Advisory Committee prior to removing large specimen trees or other historic vegetation.

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B. Applicability and exemptions.

(1) Applicability. Subject to the exemptions listed in Subsection B (2) below, the provisions of this article shall be applied as follows:

(a) Vacant undeveloped land. No tree shall be cut down or removed from vacant undeveloped land without first obtaining a permit from the Tree Conservation Officer. When tree cutting or removal is proposed on a lot or tract of land for which a subdivision or site plan application has been approved, the permit shall only be issued in conformance with the approved plan.

(b) Developed land; nonresidential. No tree shall be cut down or removed from land developed for nonresidential purposes without first obtaining a permit from the Tree Conservation Officer. When tree cutting or removal is proposed on a lot or tract of land for which a site plan application or amended site plan application has been approved, the permit shall only be issued in conformance with the approved plan.

(c) Previously developed land; residential or non-residential property - Any residential or non-residential land that has an existing structure and where an application for demolition for complete removal of any existing residential structure has been filed with the Township, such property shall be treated as vacant undeveloped land pursuant to subparagraph (a) herein and the provisions of subparagraph (a) shall apply to such properties.

~~(d)~~ **(d) Creation of a** Tree Conservation Area. In accordance with the zoning provisions governing the R-1, RR, R-2, R-3 and R-4 Zones (see Part 3, Zoning), there shall be a tree conservation area required along all perimeter property lines of any lot within the R-1, RR, R-2, R-3 and R-4 Zones, within which no tree measuring ~~eight~~ **six** inches or greater in diameter at a point 4 1/2 feet above the ground shall be cut down or removed without first obtaining a permit therefor in accordance with the standards and procedures of this article. The width of the tree conservation area in each zone shall be as follows:

[1] In the R-1 and RR Zones, the tree conservation area shall comprise the area along all perimeter property lines within:

[a] Fifty feet of any road, whether public or private.

[b] Twenty-five feet of all other property lines.

[2] In the R-2, R-3 and R-4 Zones, the tree conservation area shall comprise the area along all perimeter property lines for a distance equal to 1/2 of the minimum

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required building setback (front, side and rear yards), but not less than four feet. See Part 3, Zoning, for specified distances for each zone.

[3] The flag staff portion of a flag lot shall be subject to these restrictions [see Subsection B(2)(d), exemption for driveway access].

(2) Exemptions. The cutting and removal of trees shall be permitted without first obtaining a permit therefor in connection with:

(a) The clearing of woodlands on a commercial farm which meets the criteria of N.J.S.A. 4:1C-9.

(b) Trees located on land owned by the federal, state or county government or agencies/departments thereof; the provisions of this article shall apply to lands owned by the Township of Harding and the Harding Township Board of Education.

(c) Trees required to be cut down or removed in connection with the installation or maintenance of public utility lines or facilities, approved private waste disposal systems or private wells **provided that such installation has been approved by the Harding Township Board of Health and/ or the Township Engineer, as appropriate.**

(d) Trees required to be cut down or removed to provide access to property in accordance with an approved driveway permit, subdivision plat or site plan.

(e) Trees located in commercial orchards or nurseries.

(f) **The emergency removal of** trees that are diseased, severely damaged or that pose an immediate hazard to person or property **provided that a tree removal application is filed within five (5) business days of the actual tree removal.**

(g) The removal, by the owner or tenant of lands lying within the Township of Harding, of dead, dying or structurally unsound trees or tree conditions which are likely to endanger the lives and/or property of persons using public streets or property of the Township of Harding, within thirty (30) days after receipt of written notice from the Tree Conservation Officer and/or Zoning Officer, to remove same,

C. Permit procedures **and appeal process.** Whenever a permit is required in connection with tree removal pursuant to Subsection B(1) above, said permit shall be obtained from the Tree Conservation Officer in accordance with the procedures set forth below and the requirements and standards of this article. Any person aggrieved by a decision of the Tree Conservation Officer may appeal his decision to or may request a variance from the Board of Adjustment pursuant to

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CHAPTER 225-111 ENTITLED "TREE CONSERVATION"**

N.J.S.A. 40:55D-70a or 70c, respectively, except in the case of a variance request in conjunction with a subdivision or site plan under the jurisdiction of the Planning Board, whereupon the Planning Board shall hear and decide said variance request pursuant to N.J.S.A. 40:55D-60.

(1) Any person desiring to cut down or remove any tree or trees which are subject to the provisions of this article shall file application therefor with the Tree Conservation Officer on a form to be provided for said purpose and shall pay the application fee **and escrow** (if required) set forth in Chapter 171, Fees. Said application shall identify the lot or tract of land upon which the tree or trees are located, disclose the name and address of the owner, tenant or duly authorized agent of said owner or tenant and set forth with sufficient specificity for purposes of identification the location of the tree or trees sought to be cut down or removed and the reasons for the request.

(2) The filing of an application shall constitute the applicant's consent to the Tree Conservation Officer, the Township Engineer and the Shade Tree Advisory Committee for entry upon the land for purposes of inspection. The Tree Conservation Officer or, at his request, the Township Engineer and/or the Shade Tree Advisory Committee, shall inspect the site as to the tree or trees sought to be cut down or removed, the drainage and other physical conditions existing on the property and adjoining properties.

(3) Within three days after an application and the application fee (if required) have been received by the Tree Conservation Officer, he shall mail a copy of the application to the Shade Tree Advisory Committee for the review and advice of said Committee. If the Tree Conservation Officer has not received the written comments of said Committee within 15 days after the filing of the application, he shall proceed to make his decision on the application without the advice of said Committee.

(4) The Tree Conservation Officer may, in his discretion, forward the application to the Township Engineer for his review and recommendations in accordance with the standards of this article.

(5) Except as otherwise provided in Subsection C(6) below, within 15 days of the filing of an application, the Tree Conservation Officer shall endorse his decision upon the application and, in the case of partial or complete disapproval, shall set forth the basis for such decision. Any application approved, in whole or in part, shall automatically become a permit in accordance with the terms of said endorsement. Any permit not acted upon within one year from the date of such approval shall automatically expire.

(6) Upon the filing of any application for the cutting or removal of trees located on any lot or tract for which an application for subdivision or site plan review is required to be submitted to the Planning Board or Board of Adjustment, the applicant shall furnish the Tree Conservation Officer with a copy of the subdivision plat or site plan therefor, and the Tree Conservation Officer may withhold his endorsement pending receipt of written notice of the Board's action with respect to such subdivision or site plan application. Within five days of the receipt of notice of the Board's decision on said subdivision or site plan, the Tree Conservation Officer shall act upon the

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ORDINANCE NO. 08-16**

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CHAPTER 225-111 ENTITLED "TREE CONSERVATION"**

application as provided above. The permit shall only be issued in accordance with the approved subdivision or site plan.

- D. Standards for permit issuance. To the greatest extent practicable, large trees, tree rows and hedgerows should be preserved. In addition, the following factors shall be taken into consideration in determining whether to issue a permit for tree cutting or removal:
- (1) Whether the area where such tree or trees are located will be occupied by a building or structure, a driveway or recreation area, a roadway, an equestrian (bridle) trail, a drainage right-of-way, sewer line, septic system or well, or whether it is reasonably necessary to regrade the area in relation to any of the foregoing, and further provided that such regraded areas shall be restored and landscaped with suitable ground cover, shrubbery and/or trees after construction.
 - (2) Whether the area where such tree or trees are to be cut down or removed is consistent with the approval of any required subdivision or site plan by the Planning Board or Board of Adjustment and any conditions pertaining thereto.
 - (3) Whether the cutting or removal would change existing drainage patterns.
 - (4) Whether the cutting or removal would allow soil erosion or increase dust.
 - (5) Whether the cutting or removal would constitute a significant change in the screening between existing or proposed buildings on adjoining lots.
 - (6) Whether the cutting or removal would constitute a horticulturally advantageous thinning of an existing overgrown area, taking into consideration the tree species, size and health of the trees to be removed.
 - (7) Whether the cutting or removal would impair the growth and development of the remaining trees on the applicant's property or adjacent property.
 - (8) Whether the area where such tree or trees are located has a depression or fill of land which is deemed injurious to such tree or trees or other trees located nearby.
 - (9) Whether the presence of such tree or trees is likely to cause hardship or will endanger the public or the owner of the property on which the tree or trees are located or an adjoining property owner or for some other adequate reason within the intent of this article.

**HARDING TOWNSHIP
ORDINANCE NO. 08-16**

**AN ORDINANCE OF THE TOWNSHIP OF HARDING AMENDING AND REVISING
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(10) Any planned tree replacement or other landscape plan for revegetating cleared areas.

E. Display of permit; right of entry.

(1) The applicant shall prominently display on the site the tree removal permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit and for 10 days thereafter.

(2) As a condition for the issuance of the permit, the applicant shall agree in writing to the entry onto his/her premises by the Tree Conservation Officer, or at his request, the Township Engineer and/or the Shade Tree Advisory Committee Chair of the Township as necessary to effectuate the provisions of this chapter, and such entries shall be deemed lawful. Failure to allow such entry shall be unlawful and shall constitute a violation of this chapter and shall constitute failure to display the permit as required herein.

SECTION 2. At least three copies of said full Ordinance are on file in the Office of the Municipal Clerk for public examination and acquisition. Copies are available for inspection or acquisition during regular weekday working hours and arrangements have been made for the publication of said proposed Ordinance in pamphlet or other similar form which will be available for purchase from the Township Clerk.

SECTION 3. This ordinance shall take effect upon final passage and publication according to law.

SECTION 4. The Township Clerk is hereby directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the County Planning Board, and to all others entitled thereto pursuant to the provisions of N.J.S. 40:55D-15. Upon adoption of this Ordinance, after public hearing thereon, the Township Clerk is further directed to publish notice of passage thereof and file a copy of this Ordinance as finally adopted with the County Planning Board as required by N.J.S. 40:55D-16 and with the Township Tax Assessor.

SECTION 5. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

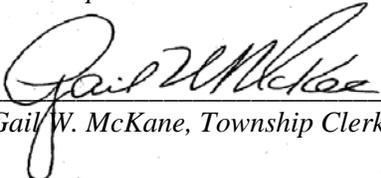
**HARDING TOWNSHIP
ORDINANCE NO. 08-16**

**AN ORDINANCE OF THE TOWNSHIP OF HARDING AMENDING AND REVISING
CHAPTER 225 OF THE TOWNSHIP CODE ENTITLED "LAND USE" AND SPECIFICALLY
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ADOPTION

Dated: December 12, 2016

I, Gail W. McKane, Township Clerk of the Township of Harding, County of Morris, State of New Jersey, do hereby certify the foregoing ordinance to be a true and correct copy of the ordinance adopted by the Township Committee at the meeting held on December 12, 2016.



Gail W. McKane, Township Clerk