

TOWNSHIP OF HARDING
ORDINANCE #06-2022
AN ORDINANCE OF THE TOWNSHIP OF HARDING RESCINDING AND
REPLACING ARTICLE XXI, CHAPTER 225, §225-111 OF THE CODE OF THE
TOWNSHIP OF HARDING ENTITLED "TREE CONSERVATION"

WHEREAS, the implementation of the current version Chapter 225, §225-111 has resulted raised issues and resulted in unintended consequences that the Township Committee desires to eliminate; and

WHEREAS, the Township Committee has further determined that most appropriate way to address these concerns is by rescinding and replacing Chapter 225, §225-111 as set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Harding in the County of Morris, New Jersey that Article XXI, Chapter 25, §225-111 of the Code of the Township of Harding is hereby rescinded and replaced as follows:

Section 1. §225-111 Tree Conservation

A. Purpose and intent. The purpose and intent of this article is as follows:

- (1) To preserve and protect trees that are an integral part of the ecosystem within the Township of Harding.
- (2) To control the indiscriminate destruction of trees which has been shown to have severe detrimental environmental, ecological and economic effects, including increased soil erosion and surface drainage problems, the creation of insect breeding sites, decreased oxygen production, decreased property values and increased costs to the Township.
- (3) To protect the semirural character and natural resources of the Township, consistent with the goals and objectives of the Township's Master Plan. This article is not intended, however, to restrict homeowners from removing dead, diseased, or hazardous trees, nor to restrict homeowners from conducting routine pruning of trees or other maintenance procedures.
- (4) This article places special emphasis on the preservation of trees around the perimeter of a property to create Conservation Areas and Tree Conservation Areas based upon setback requirements established within this chapter. The article also provides a sound management structure for the removal of trees in the Township.

B. Definitions. In addition to the definitions set forth in §225-5, the following definitions shall apply in this §225-111. To the extent that there are any inconsistencies, the definitions set forth below shall apply for purposes of enforcing this article.

Diameter at Breast Height ("DBH") shall mean the diameter of a tree measured 4'6" above the uphill/highest side above grade.

Enforcement Officer shall mean the Zoning Officer or Designee.

Hazardous Tree shall mean a tree that meets the following two criteria: (1) The tree, or a tree part, must be at an increased likelihood of failure, usually due to the presence of some structural defect e.g., the presence of a significant amount of decay in a portion of the tree, and (2) there must be one or more targets present. A target may be any property or roadway that could potentially be damaged, injured or impended, should a failure occur. If there are no targets present there is no risk and the tree will not be considered a hazard, even if it is structurally unsound and likely to fail at any time.

Healthy Tree(s) shall mean a tree(s) exhibiting good structural integrity, free of serious diseases, and maintaining the normal appearance and displaying the normal vigor and growth characteristics of the species as determined by the Township Zoning Officer after the inspection by the Township Tree Conservation Officer.

Landmark Tree(s) shall mean any tree(s) designated and identified by the Township Shade Tree Advisory Committee meeting the criteria for designation. This is a voluntary designation to made at the request of a property owner.

Private Tree(s) shall mean any tree(s) other than a Township Tree(s).

Screening shall mean one or more tree(s) or hedge(s) which provide a visual barrier between properties.

Township Tree(s) shall mean tree(s) located on Township property or within a Township right-of-way, as determined by the Township Zoning Officer.

Tree shall mean any self-supporting, single stem, perennial woody plant which reaches a typical height of 12 feet or more at maturity and has a typical mature DBH of six inches or greater.

Tree Conservation Area shall mean the 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 six inches or greater in diameter at a point 4 1/2 feet above the ground shall be cut down or removed without first submitting a Tree Removal Registration for tree removal therefor and receiving a Tree Removal Permit from the Zoning Officer in accordance with the standards and procedures of this article. Any tree removal within a Tree Conservation Area is subject to a 1:1 replacement ratio. 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 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.

Tree Conservation Officer

1. The Township Committee shall designate the Tree Conservation Officer.
2. The Tree Conservation shall provide advice to the Shade Tree Advisory Committee for plantings.
3. The Tree Conservation Officer shall provide advice to the Zoning Officer for tree removal.
4. The Township Committee may appoint and designate a Deputy Tree Conservation Officer to perform some or all of the duties of the Tree Conservation Officer when he or she is unavailable to perform the duties and responsibilities described above.

Tree Removal Registration shall mean the document that must be filed with the Township Zoning Officer on the official Township form before a property owner or tenant removes a tree with a DBH of six inches greater.

Tree Removal Permit shall mean that document issued by the Zoning Officer following submission of a Tree Removal Registration which constitutes the Zoning Officer's approval and written permission to remove the tree(s) that is/are the subject of the Tree Removal Registration.

Unhealthy Tree shall mean a tree that is in poor condition or represents a hazard with respect to its general health, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interference with utility services, and/or its status as a host for plant pest or disease, endangering the tree itself, or other trees or plants, with infection or infestation, that cannot be controlled or remedied through reasonable preservation and/or preventative procedures and practices.

Zoning Officer

1. With the advice of the Tree Conservation Officer, shall administer and enforce the provisions of Chapter 225, Land Use and Development, Article XXI, §225-111, Tree Conservation, and §225-116 M, Tree conservation.
2. Provide periodic reports to the Township Administrator with respect to permits issued and other actions to be taken to enforce the provisions of the aforementioned Code provisions.

3. Make recommendations with respect to the administration and enforcement of the aforementioned Code provisions to the Township Administrator.

C. Responsible officials; enforcement.

Enforcement Officer. The Zoning Officer, or designee, is hereby authorized to enforce the regulations set forth within this article. The Police Department is authorized to enforce the regulations during non-business hours.

D. Prohibition and requirements with respect to Township Trees.

- (1) It shall be unlawful to commit any of the following acts with respect to Township Trees(s) within parks, public property or within Township rights-of-way without first obtaining a Tree Removal Permit from the Zoning Officer.
 - a. Cut, prune, break, injure, alter or remove any tree; or cut, unduly disturb or interfere in any way with any root of a tree or trees.
 - b. Spray any tree with a chemical.
 - c. Fasten any rope, wire, sign, or other device to a tree or trees or to any guard about such a tree or trees.
 - d. Install, remove or injure any guard or device placed to protect any trees.
 - e. Obstruct access of air, water, or fertilizer to the roots of such tree or trees.
 - f. String any wires or lines through a public park.
 - g. Remove any tree without first obtaining written permission from the Zoning Officer pursuant to §225-111 E herein.
- (2) The Zoning Officer shall issue the Tree Removal Permit if the activity for which such permission is requested is in the public interest and, except in the case of removal, is not likely to materially injure any Township Tree. The Zoning Officer shall render his or her decision within 30 days after submission of a tree removal registration for tree removal. Failure of the Zoning Officer to render a decision within such 30-day period or within such further time as may be consented to by the applicant, shall constitute a decision favorable to the applicant.
- (3) Any person or persons who cause damage to any tree(s) by machines, autos, etc. shall be held liable for damages to the tree or trees. Damages shall be corrected or repaired by the liable person or persons billed for the damages and shall be liable for the penalties set forth in §1-3 of this Code.

E. Removal of Township Tree(s).

- (1) Any Township Tree(s) determined to be unhealthy, hazardous or dead by the Zoning Officer may be removed by the Township at the Township's expense. The Township may, in its sole discretion, replace any tree that it removes.
- (2) Any debris from Township Tree(s) falling within or onto any Township right-of-way, shall be removed by the Township at the Township's expense.
- (3) A property owner/tenant may not remove a Township Tree(s) unless he or she first files a tree removal registration and obtains a Tree Removal Permit from the Zoning Officer. Permission to remove healthy Township Tree(s) located in the Township right-of-way immediately adjacent to the property owner/tenant's property may be granted by the Zoning Officer, in his sole discretion, if the following conditions are met:
 - a. The cost of the removal is borne solely by the property owner/tenant.
 - b. The property owner/tenant, at his or her sole expense, shall plant a replacement tree in accordance with §225-111 N below.

F. Landmark Tree(s).

- (1) The Shade Tree Advisory Committee or its Chair upon request from the Zoning Officer, after consulting with the Tree Conservation Officer, shall determine whether any tree qualifies as a "Landmark Tree." A tree may qualify as a Landmark Tree if it meets one (1) or more of the following criteria:
 - a. The tree species is rare.
 - b. The tree is more than one hundred (100) years of age.
 - c. The tree is of an abnormal height or has an abnormal trunk diameter or dripline diameter for a tree of its species.
 - d. The quality of the tree foliage is abnormal for a tree of its species.
 - e. The location, shade value, fragrance, erosion control, aesthetic, features or scenic enhancement of such tree is of especial importance to the Township.
 - f. If the property owner(s) of the property on which a Landmark Tree is located consent(s) thereto, the Township may identify such tree as a Landmark Tree by the placement of a suitable marker thereon.
- (2) If and when, any Landmark Tree(s) is/are removed, the Shade Tree Advisory Committee shall arrange for the necessary changes to be made to the official

Landmark Tree inventory records and Township Map.

G. Protection of trees on private property and Tree Conservation Area(s).

- (1) Any person wishing to remove one or more trees with a DBH of greater than 6", on private property, including any Tree Conservation Area, shall file a Tree Removal Registration with the Township Zoning Officer in accordance with paragraph I below, which shall include a description of the tree(s) to be removed, their species, their size, their size, their health and their location on the property.
- (2) The failure to file the Tree Removal Registration and obtain a Tree Removal Permit before removing the any tree in accordance with subparagraph G (1) above shall subject the property owner and/or tenant to the penalties set forth in §225-111 P below.
- (3) During any type of construction on the property, trees in the area are to be fenced at the drip line to protect roots during construction.
- (4) Any tree removal with a Tree Conservation Area is subject to a 1:1 replacement ratio.

H. Exemptions from permit requirement and penalties.

The following lands, activities and uses shall be exempt from the terms and conditions of this section and shall also be exempt from any violations or penalties:

- (1) Activities lawfully conducted on public lands or rights-of-way by or on behalf of a local, federal, state, county or other governmental agency or entity or utility company, including the Township of Harding and Harding Township Board of Education.
- (2) The harvesting of trees in compliance with a woodland management plan that has been approved by NJDEP pursuant to N.J.S.A. 54:4-23.3 and N.J.A.C. 18:15-2.7 as part of an approved farmland assessment and that is on file with the Township Tax Assessor.
- (3) Any activity protected by the Right to Farm Act, N.J.S.A. 4:1 C-9 et seq. or any other State statute or regulation in an area in which local regulation has been preempted.
- (4) Trees removed in accordance with approved driveway permit or site plan, or subdivision plan approved by the Township Planning Board or Zoning Board of Adjustment.
- (5) 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 such installation has been approved by the Harding Township Board of Health and/or Township Engineer, as appropriate.

- (6) Trees removed by a commercial nursery or orchard on its own property in the normal course of business.
- (7) The emergency removal of trees that are diseased, severely damaged as certified by a New Jersey Tree Expert or New Jersey Tree Care Operation, or that pose an immediate hazard to person or property provided that a Tree Removal Registration is filed with the Zoning Officer within five (5) business days of the actual tree removal.
- (8) 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 Zoning Officer to remove same.

I. Permit procedures and appeal process. Whenever a Tree Removal Permit is required in connection with tree removal pursuant to this article, said permit shall be obtained from the Zoning 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 Zoning Officer may appeal his decision to or may request a variance from the Board of Adjustment pursuant to 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 a Tree Removal Registration therefor with the Zoning Officer on a form to be provided for said purpose and shall pay the removal registration fee and escrow (if required) set forth in Chapter 171, Fees, except that there shall be no application fee for a Tree Removal Registration for developed land. Said Tree Removal Registration 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 a Tree Removal Registration shall constitute the applicant's consent to the Zoning Officer, his designee or the Township Engineer for entry upon the land for purposes of inspection. The Zoning Officer, his designee or, at his request, the Township Engineer, 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) The Zoning Officer may, in his discretion, forward the Tree Removal Registration to the Township Engineer for his review and recommendations in accordance with the standards of this article.
- (4) Except as otherwise provided in Section I(5) below, within 15 days of the filing of the Tree Removal Registration, the Zoning Officer shall endorse his decision upon the Tree Removal Registration and, in the case of partial or complete disapproval, shall set forth the basis for such decision. Any Tree Removal Registration approved, in whole or in part, shall automatically become a Tree Removal Permit in accordance with the terms of said endorsement. Any Tree Removal Permit not acted upon within one year from the date of such approval shall automatically expire.
- (5) Upon the filing of any Tree Removal Registration for the cutting or removal of trees located on any lot or tract for which a removal registration for subdivision or site plan review is required to be submitted to the Planning Board or Board of Adjustment, the applicant shall furnish the Zoning Officer with a copy of the subdivision plat or site plan therefore, and the Zoning 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 Zoning Officer shall act upon the application as provided above. The permit shall only be issued in accordance with the approved subdivision or site plan.

J. 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 Tree Removal 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.
- (10) Any planned tree replacement or other landscape plan for revegetating cleared areas.

K. Display of permit by applicant and contractor, right of entry.

- (1) The applicant shall prominently display on the site the Tree Removal Permit issued such that the permit is easily visible to the general public. 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 Tree Removal Permit, the applicant shall agree in writing to the entry onto his/her premises by the Zoning Officer, his designee, or at his request, the Township Engineer, as necessary to effectuate the provisions of this article, 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.
- (3) To the extent that an applicant utilizes the services of any third-party to remove the trees from the affected premises,

L. Applicability to tree removal companies/contractors; permit required. All provisions of this chapter shall apply to any person removing trees on behalf of any other person, including all tree removal companies, construction companies or persons, companies or contractors in the business of removing trees or construction. It shall be unlawful for any person or company to remove or cause to be removed any tree or undertake any work for which a permit is required pursuant to this chapter unless a valid permit therefor is in effect, is displayed in accordance with the provisions set forth in paragraph K above and the person, contractor or individual doing the work on behalf of company has a copy of the permit on their person at all times during which the removal work is being performed. Such removal or work that is not performed in accordance with the requirements of this section, shall

constitute a violation of this article and shall subject the person or company violating this section to all penalties provided herein.

M. Non-liability of township.

- (1) Nothing in this article shall be deemed to impose any liability upon the Township or its officials, officers or employees or agents or upon the Shade Tree Advisory Committee or any of its members.
- (2) Nothing in this article shall be deemed to relieve the owner and/or occupant of any private property from the duty to keep trees and shrubs thereon in a safe condition.

N. Tree replacement for Township Trees removed pursuant to §225-111 E.

The Zoning Officer, or designee, shall require that any Township Tree(s) removed pursuant to this article, be replaced under the following guidelines:

- a. Trees should be replaced on a 1:1 basis.
- b. Deciduous replacement trees should be a minimum of 2 - 2.5" caliper, balled and burlapped and suitable for Zone 6 and guaranteed for two years.
- c. Evergreen replacement trees should also be balled and burlapped and of a minimum size of 7' -8' in height and suitable for Zone 6 and guaranteed for two years.
- d. When appropriate, the Zoning Officer, or designee, may permit the planting of hedges or other screening as an alternative to replacement tree(s) if same would provide a more suitable visual barrier and/or better serve the purpose of this section.
- e. The preferred tree replacement locations should be on the actual tree removal site, however in lieu of providing a replacement tree on site, an applicant may request that the Zoning Officer allow the applicant to contribute \$400 per tree to the Township Tree Trust Fund as established by §225-111 O herein.

O. Township tree trust fund.

- (1) Tree Trust Fund. All contributions to the township tree trust fund pursuant to §225-111 N (e) above shall be deposited in a separate interest-bearing tree trust fund. All interest accrued in the tree trust fund shall only be used on eligible tree replacement and maintenance activities.
- (2) Use of the Money. The township may use revenues and interest collected from the tree trust fund for any purpose which promotes the planting and maintenance of trees in the Township. Such activities include, but are not limited to, planting trees

in township rights-of-way, township parks and on other public lands.

- (3) Expenditure of funds from the tree trust fund shall be approved by resolution of the governing body.
- (4) Failure of owner to plant required trees within twenty-four (24) months of the deposit being made with subject the deposit to be forfeited to the Township. The Township will use forfeited funds solely for planting requested by Shade Tree Commission within the Township.

P. Violations and Penalties.

(1) Any person/entity violating or causing to be violated any of the provisions this article shall be subject to the penalties set forth in Article I, §1-3 of the Township Code. Any person removing or destroying any Township Tree(s) in violation of this article shall replace each tree destroyed or removed with another tree of the same species or a species approved by the Zoning Officer, at least two inches in diameter measured at a point four feet above the ground. Each tree destroyed or removed in violation of this article shall be considered a separate offense.

(2) Notwithstanding the provisions of this paragraph P, with respect to § 225-111 G herein, only the failure to file a Tree Removal Registration prior to removal or destruction of a tree located on private property and within a Tree Conservation Area shall constitute a violation of this article.

(3) Notwithstanding the provisions of Article I, §1-3 B of the Township Code, the minimum fine for a violation of this article shall be \$1000. Each day said violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

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.A. 40:55D-15. Upon adoption of this Ordinance, after public hearing thereon, the Municipal 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.A. 40:55D-16 and with the Township Tax Assessor.

Section 5. All Ordinance or parts of Ordinances inconsistent herewith are hereby repealed.

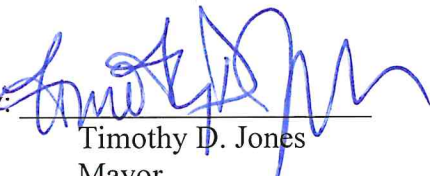
Section 6. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity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

ATTEST

TOWNSHIP OF HARDING



Lisa A. Sharp, RMC
Township Clerk

By: 

Timothy D. Jones
Mayor

INTRODUCED: September 12, 2022

ADVERTISED: September 14, 2022

Vote on Introduction:

	MOTION	FOR APPROVAL	AGAINST APPROVAL	ABSTAIN
Ms. Chipperson		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dr. Lacz		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. Platt	1st	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Yates		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. Jones	2nd	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>