

**BOROUGH OF OLD TAPPAN
ORDINANCE 1248-24**

AN ORDINANCE TO REPEAL AND REPLACE SECTIONS 234-8 THROUGH 234-18 OF THE CODE OF THE BOROUGH OF OLD TAPPAN ENTITLED “TREE PRESERVATION AND REMOVAL”

BE IT ORDAINED by the Mayor and Council of the Borough of Old Tappan, County of Bergen and State of New Jersey, as follows:

Section 1. Sections 234-8 through 234-18 of Article II in Chapter 234 of the Code of the Borough of Old Tappan, titled “Tree Preservation and Removal” are hereby repealed and replaced by the following:

§ 234-8 Definitions.

As used in this article, the following terms shall have the following meanings:

APPLICANT

The owner or lessee of real property or duly authorized agent.

DIAMETER AT POINT OF MEASUREMENT (DPM)

The diameter of a tree measured at a point on the tree four feet above the ground level.

DRIPLINE

A line connecting the tips of the outermost branches of a tree projected vertically to the ground.

ENVIRONMENTAL COMMISSION

The Environmental Commission of the Borough of Old Tappan, established pursuant to N.J.S.A. 40:56A-1 et seq. and with the powers provided by N.J.S.A. 40:55D-27.

HABITAT

The natural growing characteristics of any tree, which include branch spread and distribution, dripline, branch height above ground and root spread and distribution.

LANDSCAPE BUFFER AREA

An area adjacent to any side yard or rear yard of the lot. The width of the buffer for each side yard shall be ten feet and the width of the buffer for the rear yard shall be fifteen feet.

DAMAGED OR NUISANCE TREE

Any tree, or limb thereof, that has a disease or insect infestation; is dead or dying; obstructs the view of traffic signals or the free passage of pedestrians or vehicles; is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or threatens public health, safety and welfare. The decision of whether a tree meets this definition shall be made by the Superintendent of the Department of Public Works or the Environmental Commission.

PERSON

Any individual, firm, partnership, corporation, association, public utility or organization of any kind, or agent thereof.

PRIVATE REAL PROPERTY

All improved and unimproved privately owned real property within the Borough of Old Tappan. Land

owned by the Borough of Old Tappan, the County of Bergen, or the State of New Jersey is excluded.

PUBLIC TREE

A tree located on public property owned by the Borough of Old Tappan, the County of Bergen or the State of New Jersey.

REGULATED TREE

A woody perennial plant which has attained a height of at least 20 feet or a DPM of at least six inches prior to any pruning, limb removal, topping, or other such activity.

SHRUB

A low, usually several-stemmed woody plant.

SUBSTANTIAL ALTERATION

Any cutting, pruning of a tree or the alteration of the habitat of a tree which impairs, destroys or endangers the life of such tree or its natural symmetry.

SUPERINTENDENT

The Superintendent of the Department of Public Works.

TREE

Any woody perennial plant and its root system.

§ 234-9 Prohibited acts and activities.

- A.(1) It shall be unlawful for any person to cut, destroy, remove, substantially injure or substantially alter the habitat of any regulated tree located on private real property that is located within the landscape buffer area.
- A.(2) For trees not located in the landscape Buffer Area, trees may be removed upon obtaining a tree removal permit which shall be issued without charge for the first **two** trees within a calendar year and at the cost set forth in Chapter 100 of this code for each tree above four (4) removed during a calendar year.
- B. The following activities shall be expressly prohibited with respect to public trees without the prior written permission of the Superintendent of Public Works of the Borough:
 - (1) To cut, prune, break, injure, alter or remove any public tree; or cut, unduly disturb or interfere in any way with a root of public tree.
 - (2) To spray any public tree with a chemical.
 - (3) To fasten any rope, cable, sign, light or other device to a public tree, except for holiday lighting for no more than an eight-week period during holiday seasons.
 - (4) To install, remove or injure any guard or device placed to protect a public tree.
 - (5) To close or obstruct any open spaces provided about the base of a public tree to permit access of air, water or fertilizer to tree roots.
- C. Any person causing damage to a public tree by machines, automobiles or other implements shall be liable for damage to the tree. Damage shall be corrected or repaired, or the tree replaced by the Borough, and the person liable shall repay the Borough for the costs of replanting including labor and materials.

- D. No person shall operate, place or maintain within the dripline of any public tree any machinery, equipment, heavy object, stone, rocks, cement, soil or other substance which may harm such public tree by unduly compressing the earth or otherwise impeding the movement of water, air or fertilizer to the roots of such tree.
- E. Notwithstanding anything to the contrary which may be set forth in Subsection **B** hereinabove, the Superintendent shall not permit any public tree to be cut, destroyed or removed unless it is diseased, dead, a danger to public safety or threatens damage to private property, except that any public tree may be cut, destroyed or removed as may be directed by the Mayor and Council-after consultation with the Environmental Commission.

§ 234-10 Permitted activities with respect to private real property trees.

Notwithstanding the restrictions contained in § **234-9** hereof, the following activities shall be specifically permitted with respect to trees on private real property:

- A. The cutting, pruning or trimming of trees in a manner which is not harmful to the health of the tree and will not endanger the tree's continued vitality.
- B. The cutting, destruction or removal of trees which are diseased or dead or which endanger public safety or threaten damage to private property. In order to remove a tree under this exception, a property owner or developer shall be required to submit, to the building department, a report from a licensed arborist or similar professional attesting to the need to remove the tree.
- C. The cutting or removal of trees in accordance with a landscape plan as part of a subdivision or site plan application approved by the Planning Board or Board of Adjustment in conjunction with subdivision or site plan approval; provided, however, that the cutting or removal of trees shall not commence until all conditions of approval by the Planning Board or Board of Adjustment have been satisfied and an appropriate tree removal permit is issued.
- D. The cutting or removal of a tree as may be necessary to construct any structure or improvements for which a building permit has been issued by the Borough Construction Official, including but not limited to a building permit issued in conjunction with subdivision or site plan approval.
- E. The cutting, removal or destruction of any tree pursuant to an order or directive of any municipal, state or federal court or any governmental agency.
- F. An applicant shall make every effort to locate the proposed building or structure within a less wooded area of the lot which is proposed for development. Subject to this requirement, the applicant shall be permitted to remove trees within the footprint of the building, plus a ten-foot perimeter, as well as within existing and proposed rights-of-way, without being obligated to replace same as set forth in § **234-15**. Notwithstanding the foregoing, a developer or builder shall still be obligated to plant shade trees as required by § **234-4**.

§ 234-11 Excluded activities.

- A. The provisions of this article shall not apply to the following:
 - (1) Activities involving shrubs.
 - (2) Activities with respect to trees growing on property being used as a nursery, orchard or garden center.
- B. For purposes of this section, if tree removal is proposed in connection with an application for development, nursery shall be defined to include land of which at least 80% of the area has been determined by the Borough Assessor to be devoted to horticultural uses for purposes of qualifying the property for farmland assessment for the year prior to the application for development.

§ 234-12 Tree removal permit application procedure.

- A. Notwithstanding anything to the contrary which may be set forth in this § **234-12**, prior to the cutting, destroying or removal of any regulated tree situated on private real property within the Borough of Old Tappan the owner or developer of such private real property shall file with the building department an application for a tree removal permit. The construction official shall have the authority to waive any or all of the below listed conditions.
- B. An application for a tree removal permit shall include the following information, unless waived by the Construction Official :
- (1) Name and address of the applicant.
 - (2) Date of the application.
 - (3) Description of the subject property, including lot and block numbers.
 - (4) A specifically described location of the regulated tree or trees proposed for removal.
 - (5) The purpose or reason for the proposed tree cutting or removal.
 - (6) The location of all structures and improvements on the property shown in relation to the proposed trees to be removed, including building foundation, garages, driveways and other paved areas, outbuildings, swimming pools, tennis courts.
 - (7) The tree species, size, quantity and diameter at a point of measurement (DPM).
 - (8) The proposed date or dates for commencement and completion of the tree removal project.
 - (9) The name and address of the person having express charge, supervision and/or control of the proposed removal of trees.
 - (10) A grant of express, written permission to Borough officials, employees, and consultants, and members of the Environmental Commission to enter upon the property to inspect the trees to be removed and to inspect the tree removal project as the work is in process.
- C. Applicants shall be required to protect from damage all trees which are not to be removed and shall install fencing at least ten feet from the trunks of said trees.
- D. Applications for tree removal permits shall also require the applicant to provide notice to all adjacent property owners, at least 10 days prior to the removal, depicting the tree or trees that are proposed to be removed. Applicant shall supply proof of notification to the building department prior to the issuance of any permit.

§ 234-13 Application review process.

- A. Any applicant seeking approval of the Planning Board shall file, together with any and all other applications and plans as may be required by the Land Use Ordinances of the Borough of Old Tappan, an application for a permit for removal of regulated trees as hereinabove set forth.
- B. A completed application for regulated tree removal shall be forwarded by the enforcing agent to the Construction Official of the Borough of Old Tappan. The Construction Official shall have a period of 45 days from receipt of a completed application to make a report and recommendation to the Planning Board pursuant to its powers established under N.J.S.A. 40:55D-27.

§ 234-14 Criteria for review of application.

The evaluation of said application by the Planning Board, as well as the report and recommendation of the Environmental Commission, shall be based on the following criteria:

- A. The necessity of the removal of the regulated tree for the project in question in the context of the development proposed.
- B. The condition of the tree with respect to diseases and safety hazards.
- C. The effect of the tree removal on ecological systems.
- D. The aesthetic and environmental character existing at the site of the proposed regulated tree removal with respect to existing vegetation on the property, the immediate vicinity and the general area.

§ 234-15 Tree replacement plan.

- A. As part of its review and approval process, the Planning Board may require the applicant to replace regulated trees where their removal has been permitted in connection with proposed development. Further, the Planning Board may require that the replacement trees have heights of at least eight feet at the time of planting and be planted in accordance with the following schedule:
 - (1) A deciduous tree shall be replaced by a tree the species of which is identical to the tree being removed or is otherwise referred to in the United States Conservation Service as compatible with the soil type. A coniferous tree shall be replaced by a similar coniferous tree.
 - (a) On a case-by-case basis subject to Environmental Commission and Planning Board review and approval, an applicant may propose a tree replacement plan proposing alternate species of trees. The alternate plan must provide details, rationale, justification and evidence supporting the request to approve the alternate plan to show that said plan promotes the general welfare of the community and that the proposed tree species are compatible with local environs.
 - (2) A tree with a six inch to less than twelve-inch diameter is to be replaced by one two-and-one-half-inch caliper tree. A tree with a twelve-inch to eighteen-inch diameter is to be replaced by two trees with diameters of at least 2 1/2 inches.
 - (3) A tree with a diameter of more than 18 inches to 24 inches is to be replaced by three trees with diameters of at least 2 1/2 inches.
 - (4) A tree with a diameter of more than 24 inches to 36 inches is to be replaced by four trees with diameters of at least 3 1/2 inches.
 - (5) A tree with a diameter of more than 36 inches shall be replaced by not less than six trees with diameters of at least four inches.
- B. In the event that the replacement of the required number of trees cannot reasonably be achieved on site, the applicant may request to contribute an amount equal to the cost of the replacement tree, including installation and guarantee (three times the current wholesale value of each unplanted tree), to a fund established by the Borough for the purpose of tree maintenance, tree preservation, tree planting, landscaping, and including the donation of trees to be planted within the Borough.
- C. As a condition of its approval of a tree removal permit in connection with any development, the Planning Board shall require the owner or applicant to obtain a guarantee in a form satisfactory to the Borough Attorney that will cover the replacement of any replacement trees and plantings for a period of two years from the date of installation. A two-year warranty on new and existing trees will be required for trees within 25 feet of the area of disturbance.

- D. Any trees approved to be removed will be red-flagged and numbered according to the tree replacement plan. All remaining trees in the area of disturbance will be yellow-flagged and numbered. Upon issuance of a certificate of occupancy, all flags shall be removed by the property owner.

§ 234-16 Fees.

In addition to the application fees required for minor subdivision, major subdivision or site plan application, an application for a tree removal permit shall be accompanied by a fee as set forth in Chapter 100 of this Code.

§ 234-17 Violations and penalties.

Any person, applicant, developer or owner who violates any provision of this article shall be liable for a fine not to exceed \$1,000 or imprisonment for a term not in excess of 90 days or both. Each and every day that a violation hereof exists shall constitute a separate offense for which a fine or other penalty may be imposed.

§ 234-18 Enforcement.

The Borough building inspector/construction code official is designated as the enforcing agent for this article. Such enforcing agent shall deliver to the Environmental Commission copies of all orders enforcing the provisions of this article contemporaneously with the issuance of such orders.

Section 2. If any part of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

Section 3. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed or amended to the extent of such inconsistency.

Section 4. This Ordinance shall take effect upon final passage and publication according to law.