

**AN ORDINANCE AMENDING AND SUPPLEMENTING VARIOUS SECTIONS OF CHAPTER 356, TREES, OF THE CODE OF THE BOROUGH OF SPRING LAKE, COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

**WHEREAS**, Chapter 356, Trees, Various Sections of the Borough Code governs tree issues in the Borough of Spring Lake; and

**WHEREAS**, the following sections of Chapter 356 are amended and supplemented with deletions reflected in ~~strikethrough~~ and additions reflected in underline;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Spring Lake in the County of Monmouth and State of New Jersey as follows:

**ARTICLE I. Right-of-Way Tree Removal and Protection**

**§ 356-1. Findings and purpose.**

The Borough Council of the Borough of Spring Lake finds that the preservation, maintenance, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces stormwater runoff and the potential damage it may create; aids in the removal of pollutants; provides protection against severe weather; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; protects and increases property values; preserves and enhances the Borough's physical and aesthetic appearance; and generally protects the public health and safety, as well as the general welfare. It is also believed that the use of deciduous street trees along the rights-of-way, as set forth below, will encourage the development of a shade canopy of tree branches over the streets within the Borough thus enhancing the beauty of the area.

**§ 356-2. Definitions.**

The following definitions shall apply to this article:

**ORNAMENTAL TREE**

A small tree at least six feet or more at mature height (e.g., birch, dogwood, Japanese maple, cherry, crabapple, magnolia, Bradford pear, willow).

**RIGHT-OF-WAY**

That area between the sidewalk and the curbing along the street cartways.

**STRUCTURE**

A combination of materials to form a structure for occupancy, use or ornamentation installed on a parcel of land.

**TREE**

A deciduous or evergreen tree with an anticipated mature height of 20 feet or more (e.g., oaks, maples, London Planes, elms, spruce, pine, fir, or hemlock).

**§ 356-3. Permit required for removal of Right-of-Way trees.**

No person shall cut down or remove any ornamental tree of a diameter of three inches or more measured at a height of four feet above the ground, nor any other tree of a diameter of six inches or more measured at a height of 4 1/2 feet above the ground within the right-of-way without a tree removal permit. Proper removal of the tree will include removal of the entire stump.

**§ 356-4. Application procedure.**

A. Application for a tree removal permit shall be made by submission of the following:

- (1) The application form provided by the Borough containing the following information:
- (2) The name and address of the applicant and owner, if not the same person.
- (3) The street address and tax lot and block of the property in question.
- (4) The number of trees to be removed.
- (5) If the applicant is not the owner, then the owner's written consent which must be attached to the application.
- (6) The reason(s) for removing the trees.
- (7) A tree mitigation plan (if mitigation is required pursuant to § 356-5C hereof) to be reviewed and approved by the Code Enforcement Officer. The plan shall consist of a diagram showing the location of all trees to be planted, the species of such trees and their diameter or size as required.
- (8) A fee of \$25 for processing a tree removal permit.

B. The applicant shall place a one-inch wide yellow ribbon to be provided by the Borough around the trunk of each tree to be removed at a height of 4 1/2 feet (or three feet for ornamental trees) above the ground so that the proposed tree removal may be inspected in the field.

**§ 356-5. Standards for application review.**

A. Upon receipt of an application for cutting or removal of trees or ornamental trees, the Code Enforcement Officer shall inspect the site on which the trees sought to be cut or removed including entire root structure are located and shall evaluate the drainage and other physical conditions existing on the subject property and adjoining properties. The Code Enforcement Officer shall consider the following factors in deciding whether to issue such permit:

- (1) Whether the proposed cutting or removal would change existing drainage patterns.
- (2) Whether the proposed removal would allow soil erosion or increase dust.
- (3) Whether the proposed removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or the wooded aspect of the lot as viewed from the adjacent public road.
- (4) Whether the proposed removal would constitute a horticulturally advantageous removal of dead or diseased trees.
- (5) The overall effect of removal of such tree(s) on the physical and aesthetic value of the property and the neighborhood.
- (6) Whether the area where such tree(s) are located will be occupied by a driveway, a roadway, or a sewer line, or whether such area is within 15 feet of any of the foregoing.
- (7) Whether the proposed removal would remediate a safety hazard to persons or structures.
- (8) ~~Recommended deciduous street trees include Sycamore, Willow Oak, Red Maple (not Japanese or swamp variety), Green Spire Littleleaf Linden, Pear trees (Red Spire and Aristocrat) and Red Oak.~~
- (9) ~~Recommended deciduous ornamental trees include Amur Maple, Snowcloud or Robin Hill Pink Serviceberry, Yellowwood, Carolina Snowbell, Golden Rain Tree, Purpleleaf Flowering Plum, Red Spire or Aristocrat Pear trees, Bradford Pear and Japanese Tree Lilac. Deciduous ornamental trees shall no longer be permitted to be planted within the right-of-way as defined in § 356-2, except along Third Avenue between Passaic Avenue and Madison Avenue.~~
- (10) ~~Proper removal of the tree will include the removal of the stump.~~

B. Permission will be granted for the removal of the following trees, without mitigation.

- (1) Located between the curblines of a new roadway approved pursuant to the Subdivision Ordinance. Editor's Note: See Ch. 225, Land Development.
- (2) Located within the roadway right-of-way but outside the curblines of a new roadway approved pursuant to the Subdivision Ordinance.
- (3) Specifically permitted to be removed in a site plan approved pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

C. Mitigation plan.

- (1) With respect to the removal of all other trees, not described in Subsection B above, the Code Enforcement Officer shall require a mitigation plan (i.e., the planting of replacement trees at other locations on the subject right-of-way or elsewhere within the Borough). The purpose of such plan shall be the ultimate replacement on the property of the trees being removed, giving due consideration to a reasonable maturity period for new plantings.
- (2) Trees to be planted along the road right-of-way shall be balled or burlapped and not less than 2 1/2 inches in caliper, measured one foot above the ball, nor less than ~~±0~~ 15 feet high. They must be well branched, the branches to start not less than six feet from the crown of the root system. The leader branch for each specimen tree shall be intact at the time of delivery and planting.
- (3) In general, excavation for planting shall be large enough to accommodate the natural spread of the root system and at least one foot deeper and two feet wider than the ball of earth supplied with the tree. The pit shall be rock-free and refilled with one part topsoil, one part clean fill and one part humus and the parent soil discarded. Hardpan shall be loosened an additional 12 inches from the bottom and sides of the pit. Trees shall be adequately fertilized and watered at the time of planting and mulched with three inches of approval mulch immediately after planting.
- (4) Trees shall be staked and guyed immediately after planting. Stakes shall be of cedar or oak, eight feet long and no less than two inches in diameter. Trees shall be guyed to the stake using No. 10 wire covered with rubber hose, or its equal. The wire shall be attached to the stake in such a manner that it will not slip or come in contact with the tree trunk. The trunk of the tree may be protected by tree wrapping paper. The stake shall remain until directed by the Code Enforcement Officer.
- (5) The owner shall be required to see that the new planting is adequately watered during the first year of its existence.
- (6) Any tree improperly planted or not meeting these specifications will be subject to removal. Any tree that does not survive, or is in an unhealthy condition at the end of one year shall be replaced within 60

days following the written request for such replacement, or within a more extended period as may be specified.

(7) The only trees permitted to be planted in the Right-of-Way are: Honey Locust (Cultivars: Skyline, Halka and Shade Master); Linden (Species: Little Leaf, Silver and American); London Plane (Cultivars: Bloodgood, Yarwood and American Plane); Oak (Species: White and White Swamp); Red Maple (Cultivars: October Glory, Red Sunset and Autumn Flame); Zelkova (Cultivars: Green Vase and Village Green).

(8) Trees may be planted in the Fall from October 1<sup>st</sup> through December 31<sup>st</sup> and in the Spring between March 1<sup>st</sup> through May 31<sup>st</sup>.

D. Conflict with other laws. Notwithstanding anything in this section to the contrary, no tree removal shall be permitted where prohibited by the Chapter 225, Land Development (e.g., buffer zones and landscaping provisions) or any other municipal, state or federal statute, ordinance or regulation.

E. Action. The Borough Code Enforcement Officer must respond to all applications within 15 business days.

F. Hardship appeal. In the event that an applicant believes the standards set forth in Subsection A above constitute a hardship which prohibits a reasonable use of the property in question, the applicant may appeal to the Planning Board of the Borough of Spring Lake following the established rules of application for such Board.

### **§ 356-6. Protection of existing trees.**

A. In connection with construction, subsequent to any necessary tree removal but prior to the issuance of a building permit or start of construction, snow fencing or other protective barrier acceptable to the official charged with the administration and enforcement of this article shall be placed around trees that are not to be removed. The protective barriers shall be placed at least five feet from the trunk of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

B. No person shall:

(1) Cause or allow any willful damage, injury or disfigurement of any tree growing within the Borough. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as the result of but not limited to the following: cutting, gashing or slitting of any tree; or on the nearby ground, the construction or placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placement or removal of any soil from within five feet of any tree or ornamental tree as defined in § 356-2 above.

(2) Store or pile building material or debris or place construction equipment within five ten (10) feet of any tree or ornamental tree as defined in § 356-2 above.

### **§ 356-7. Administration and enforcement.**

This article shall be administered and enforced by the Code Enforcement Officer.

### **§ 356-8. Appeals.**

Any person aggrieved by the decision of the official charged with the administration and enforcement of this article shall have the right, within 10 days of the issuance of any decision by such official, to appeal to the Planning Board for approval of an alternate plan, and such Board shall take action as it deems necessary in the matter. In the event of such an appeal, the procedures set forth with reference of applications based on hardship contained in § 356-5F of this article shall apply.

### **§ 356-9. Violations and penalties.**

Any person who violates any provision of this article shall, upon conviction thereof, be punished as provided in Chapter 1, Article II, General Penalty, and each tree removed or damaged in violation of this article shall be deemed a separate offense.

## **ARTICLE II. Tree Removal Project Permit and for New Construction; Tree Replacement Program**

### **§ 356-10. Purpose.**

The purpose of this article is to control and regulate the indiscriminate or excessive removal, large-scale clear-cutting and destruction of trees and to control, regulate and prevent conditions which cause an increase in stormwater runoff, sedimentation, soil erosion, loss of wildlife habitat, air or noise pollution or inhibit aquifer recharge or impair the ambiance or physical appearance of a neighborhood. The regulations contained in this article are designed to limit such adverse impact while not interfering with the right of a Borough property owner to appropriately remove trees in accordance with the regulations set forth herein below.

### **§ 356-11. Definitions.**

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

B&B (BALLED AND BURLAPPED)

A method of excavation in which the subject tree is removed along with soil surrounding its roots and such soil and roots are wrapped and laced.

DIAMETER AT POINT-OF-MEASURE or DPM-BREAST HEIGHT (DBH)

The diameter (caliper) in inches of a tree at a ~~point on the tree~~ the height of an adult's breast or 54 inches above the actual ground level.

**EMERGENCY REMOVAL**

A removal which is necessitated by any event, whether natural or man-made, which requires the immediate removal of a regulated tree because it has been determined that such tree presents an immediate hazard to the public's safety. Such determination shall be made by the Code Enforcement Officer or other designee, as authorized by the Borough Administrator.

**ENFORCEMENT OFFICER**

The Code Enforcement Officer and/or qualified arborist appointed by the Mayor and Borough Council for the purpose enforcing the terms of this article.

**PERSON**

An entity whose existence is recognized by law, including but not limited to, any individual, partnership, corporation (for-profit, nonprofit, or municipal and its agencies), firm, association or any combination of the foregoing.

**PROJECT**

Any undertaking whatsoever which would involve potential damage to or which may result in the planned or unplanned removal of regulated trees.

**REMOVAL**

Any activity that results in cutting down completely or substantially eliminating a living regulated tree within the Borough.

**REPLACEMENT PLAN**

A plan developed in accordance with and conforming to provisions of this article which as been approved by the Enforcement Officer.

**REPLACEMENT TREE**

A nursery-grown certified, balled and burlapped tree bearing a durable label upon which the following data is set forth: genus, species, variety, watering and fertilization requirements.

**SITE PLAN**

A plan as defined by Chapter 225, Land Development.

**TREE**

Any living woody perennial plant having a trunk diameter of at least four inches measured at 54 inches above the natural ground level.

**VACANT LAND**

Land where no principal structure currently exists or where the principal structure is demolished pursuant to a demolition permit.

**§ 356-12. Applicability.**

A. The terms and provisions of this article shall apply to real property, in all cases of vacant lots upon which new construction will take place and/or cases of demolition of existing principal structures. Nothing contained herein is intended to restrict a property owner's right to remove trees on his own property where no building permit for a new or replacement principal structure is ~~sought~~ required.

B. Unless specifically exempted herein, it shall be unlawful for any person to remove or cause to be removed any tree, under the circumstances set forth in Subsection A above, with the trunk diameter of four inches or more ~~DPM~~ DBH (54 inches above the actual ground level) without first having obtained a tree removal project permit to do so as provided herein. Tree removal project permits shall be issued by the Enforcement Officer or his/her designee.

C. Notwithstanding Subsections A and B above, trees removed from a property within ~~six months~~ one-year prior to an application for a building permit for a new or replacement principal structure shall be subject to the provisions of this article.

**§ 356-13. Tree removal project permit process.**

A. Any person wishing to obtain a permit to remove one or more trees or clear land as required under the provisions of this article shall make application to the Enforcement Officer by filing a written application and paying such fee as set forth in § 356-18 of this article. Where an application, as required by this article, has been submitted, no permit shall be issued until a site plan, survey or plot plan of the lot or parcel has been reviewed and a tree replacement plan approved.

B. Where an application is made in connection with the construction of a new principal structure, no building permit shall be issued until the tree removal project permit has been granted.

C. The Borough Enforcement Official shall review the application to determine whether such project complies with this article and shall provide written notice to the applicant indicating one of the following:

- (1) The project permit is granted.
- (2) The project permit is granted subject to prescribed conditions attached to such notice.
- (3) The project permit is denied, in which event the written notice shall state the reasons for such denial.

- D. The Borough Enforcement Officer shall make the foregoing determination and prepare and furnish the foregoing notices within 20 days following submission of a completed application.
- E. Failure of the Enforcement Officer to make said determination within such twenty-day period or within any extension of time granted by the applicant shall constitute and have the same effect as an approval.
- F. Any proposed change in the approved project shall be submitted to the Borough Enforcement Officer for approval in the same manner as an original application for approval of a project.
- G. The applicant shall maintain a copy of the approved project at the project location that shall be available for inspection.

**§ 356-14. Conditions for issuance of permits.**

Upon receiving an application for tree removal the Borough Enforcement Officer shall issue a permit, if the Enforcement Officer determines that one or more of the following criteria is met:

- A. The tree is located in an area where a principal structure will be placed according to an approved site plan and the tree cannot be relocated on the site because of age, type of size of tree.
- B. The tree is dead, diseased, injured, in danger of falling, or is too close to existing or proposed structure(s) thereby creating an unsafe situation.
- C. The applicant elects to make a contribution to the Tree Replacement Fund in accordance with § 356-19, Tree Replacement Fund.

**§ 356-15. Tree removal project permit application.**

A. The contents of the tree removal project permit applications shall be as follows:

- (1) The name and address of the owner of the land.
- (2) Description of land in question including block and lot numbers of the land as shown on the current Tax Map of the Borough of Spring Lake.
- (3) The purpose or reason for removing the tree(s);
- (4) The quantity, caliper size and species of tree(s) to be removed. In the case of the removal of trees with  $\text{DPM DBH}$  greater than 24 inches the plan shall include an analysis of design or layout alternatives;
- (5) The proposed dates for commencement and completion of the project;
- (6) Name and address of the person having express charge, supervision, and/or control of the proposed removal;
- (7) A tree replacement plan, as set forth in § 356-17;
- (8) A statement granting permission to Borough officials or their employees to enter the premises to survey and inspect the project as work progresses; and
- (9) A tree replacement plan that includes location, quantity, caliper size and species of tree(s) to be replanted.

B. Application fees. An application for tree removal project permit shall be accompanied by an application fee of \$50 <sup>75</sup>.

C. Arborist fees. In the event that it is necessary for the qualified arborist to assist in the review or enforcement of the terms and conditions of this article, the said arborist shall be compensated by the owner or contractor for the cost of the services provided, not to exceed \$250. Said payment will be made to the Borough of Spring Lake, who shall compensate the arborist.

**§ 356-16. Appeal.**

Within 10 days of receipt of decision of the Enforcement Officer, or his/her designee, which denies the approval for the tree removal or otherwise destruction, the applicant may appeal in writing to the governing body.

**§ 356-17. Tree replacement plan.**

A tree replacement plan shall consist of the following:

- A. A site plan, survey or plot plan of one inch equals 20 feet or less, showing the location of existing trees and clearly marked property boundaries. There shall be a list identifying the number and species of trees inventoried. The site plan shall include the lot and block numbers, the street address if assigned and a certification that it complies with the requirements of this article.
- B. The locations on the lot where tree removal is to take place.
- C. The total square footage of the lot.
- D. The total number by species of existing trees with a  $\text{DPM DBH}$  of four inches or greater on the lot.
- E. The total number by species of trees with a  $\text{DPM DBH}$  of four inches or greater which are to be removed.
- F. A planting detail for replacement trees.
- G. All specific plans for replacement of removed trees shall be based on the following requirements:
  - (1) The replacement tree shall be planted on the property where the trees were removed or in a location designated by the Enforcement Official.
  - (2) Replacement tree, including the size number of trees, shall be planted in accordance with the following table:

Size of Tree Removed (inches ØPM <u>DBH</u> )	Number of Replacement Trees With at Least 2 1/2 inches ØPM <u>DBH</u>
4 but not more than 8 <u>6</u>	1
More than 8 <u>6</u> but less than 10	2
More than <del>12</del> <u>10</u> but less than <del>18</del> <u>16</u>	3
More than <del>18</del> <u>16</u>	4

**§ 356-18. Replacement tree value calculations.**

The replacement value of all trees to be removed, where replacement trees are required by this article, shall be calculated as follows:

A. Trees to be removed.

Size/ØPM DBH	Replacement Tree Value
Greater than 4 inches up to 8 <u>6</u> inches	\$ <del>200</del> <u>400</u>
Greater than 8 <u>6</u> inches up to <del>12</del> <u>10</u> inches	\$ <del>400</del> <u>800</u>
Greater than <del>12</del> <u>10</u> inches up to <u>16</u> inches	\$ <del>600</del> <u>1,200</u>
<u>Greater than 16 inches</u>	<u>\$1,500</u>

B. Dead and diseased trees as determined by the Borough Enforcement Officer shall not be included as trees to be replaced.

C. The applicant may elect, in lieu of planting replacement trees, to pay to the municipality a sum of money as set forth in Subsection A for each tree required to be planted pursuant to this subsection for the purpose of planting shade trees elsewhere in the Borough. Said funds shall be deposited into the Tree Replacement Fund.

**§ 356-19. Tree Replacement Fund.**

Where an applicant chooses to make a contribution to the Tree Replacement Fund in lieu of physically replacing the trees on said property as provided in § 356-14C, the amount of said contribution shall be as set forth in § 356-18. The Tree Replacement Fund shall be in a separate fund with the dedicated purpose of tree replacement and maintenance within the Borough of Spring Lake.


**§ 356-20. Violations and penalties.**

A. In the event that it is unknown how many trees were removed from any given site, and removal took place without a tree removal permit issued pursuant to this article, the number of trees requiring mitigation shall be computed by assuming 10 trees greater than 12 inches ØPM DBH unless adequate proof is provided to the Borough Enforcement Officer.

B. Any person who violates, or who fails, or refuses to comply with this article, shall be liable to the penalty provided in Chapter 1, Article II, General Penalty, for each tree removed.

INTRODUCED: April 25, 2017

ADOPTED: May 9, 2017

APPROVED:   
JENNIFER NAUGHTON, Mayor

Attest:

  
DINA M. ZAHORSKY, Borough Clerk