

**FIRST READING: March 19, 2024**

**ORD. NO.:** 68-22

**2<sup>ND</sup> & FINAL READING: April 16, 2024**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XX,  
SHADE TREES OF AN ORDINANCE ENTITLED, "AN ORDINANCE  
ADOPTING AND ENACTING THE REVISED GENERAL ORDINANCES OF  
THE CITY OF LINDEN, 1999," PASSED NOVEMBER 23, 1999 AND APPROVED  
NOVEMBER 24, 1999, AND AS AMENDED AND SUPPLEMENTED**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINDEN:**

Section 1. That Chapter XX, Shade Trees, is hereby repealed in entirety and shall be and replaced as follows:

**REPLACE CHAPTER 20 SHADE TREES as follows:**

**20-1 Purpose:**

The indiscriminate, uncontrolled and excess destruction, removal and cutting of trees upon lots and tracts of land within the City of Linden will cause increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increased buildup of atmospheric carbon dioxide, the establishment of a heat island effect and increased dust and pollution. The singular or cumulative effect of any of the foregoing could adversely impact the character of the City of Linden, decrease property values, render the land unfit and unsuitable for its most appropriate use, and negatively affect the health, safety and general welfare of the City's residents. Thus, the City governing body desires to regulate and control indiscriminate and excessive cutting of trees within the City and to require appropriate tree replacement.

**20-2 Definitions:**

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" means the requirement is always mandatory and not merely directory.

“Applicant” means any “person”, as defined below, who applies for approval to remove trees regulated under this Ordinance.

“Critical Root Radius (CRR)” – means the zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6” DBH would have a CRR = 6”x1.5’ = 9’.

“Diameter at Breast Height (DBH)” means the diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the downhill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.

“Enforcement Officer” means either the Director of the Shade Tree Advisory Board or the Director of the Department of Community Services or their designee.

“Hazard Tree” means any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs 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, or welfare.

“Person” means any individual, resident, corporation, utility, company, partnership, firm, or association, political subdivision of this State and any state, interstate, or Federal agency.

“Planting strip” means the part of a street right-of-way between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

“Public place” means any public street or highway accepted and maintained by the City, and any public park in the City.

“Shade Tree Advisory Board” means the Shade Tree Advisory Board and its duly authorized representatives.

“Street Tree” means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.

“Tree” means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

“Tree Caliper” means the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.

“Tree removal” means to kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, over-mulching or improper mulching, and improper grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

### **20-3 Permit Required:**

- A. It shall be unlawful for any person to cut, destroy, remove or trim more than thirty percent (30%), or cause to be cut, destroyed, removed or trimmed more than thirty percent (30%), of any healthy mature tree upon any lands within the City without a tree removal permit. Property owners are encouraged to keep and build structures and sidewalks around trees whenever possible. If a tree on private property does not meet the size requirements of a mature tree, a permit is not required.
- B. No more than three (3) trees shall be permitted for removal on any property per calendar year.
- C. Tree removal permits shall be issued by the Director of the Shade Tree Advisory Board or the Director of the Department of Community Services or their designee and shall be valid for twelve (12) months.
- D. Excepted from specific tree removal permit application fee, but not from tree replacement or from mitigation payments to the tree replacement fund, shall be:
  - a. All land-clearing operations as authorized in accordance with a site plan approval or subdivision approval and conditions imposed with respect to tree removal and planting granted by the Planning Board or Zoning Board of Adjustment in accordance with the provisions of N.J.S.A. 40:55D-20. Under no circumstances shall clearcutting be permitted on any property.

- b. The pruning or trimming of trees in a manner that is not harmful to the health of the tree.
- c. The cutting, removal, or destruction of any tree pursuant to an order or directive of any municipal, county, or state agency or court.

#### **20-4 Application and Replacement Requirements:**

##### **A. Application Process.**

Any person planning to remove a street tree, as defined as Tree removal, with DBH of 2.5” or more or any non-street tree with DBH of 6” or more on their property shall submit a Tree Removal Application to the Director of the Shade Tree Advisory Board or their designee. No tree shall be removed until municipal officials have reviewed and approved the Tree Removal Application.

##### **a. Permit Application Contents**

- i. The name and address of the applicant.
- ii. The name and address of the owner of the property from which the trees are to be removed.
- iii. The address, tax lot, and block of the property.
- iv. A tree removal plan consisting of a map drawn to scale showing the following information:
  - 1. The shape and dimensions of the lot or parcel, including the location of all easements.
  - 2. The limits of all existing and proposed tree line limits.
  - 3. The identification and location of all trees to be removed, specifically by an assigned number, species, and the DBH of each tree.
  - 4. The installation and limits of a temporary existing tree protection fence along the limit of proposed tree removal.
  - 5. The location of all existing and proposed structures on the property, along with the distance that the trees proposed to be removed are located from such structures and from property lines. A reproduction of the Tax Map or an existing survey modified to provide this information would be acceptable.
  - 6. Tree removal and replacement plan shall include specific information regarding the disposal of the removed trees in a manner to avoid spreading disease or pests harbored in the wood.
  - 7. Any other information which may reasonably be required to enable the application to be properly evaluated, including but not limited to a description of the purpose for which this application is to be made; e.g., clearing land for agricultural use, fire protection, private parks, scenic improvements, hardship, danger to adjacent properties, removal of diseased or damaged trees, transplanting or removal in a growing condition to other locations, installation of utilities, or drainage of surface water.
  - 8. Applicants shall provide proof of liability insurance of the tree removal contractor.

9. Any and all environmentally sensitive areas including but not limited to floodplains, riparian zones, steep slopes, transition zones, and wetlands.
  - v. A tree replacement plan showing the location of all trees to be planted, the species of such trees and their caliper or size as required.
  - vi. Any permit application for trees to be removed pursuant to this Chapter shall be accompanied by a certification from a licensed tree expert, hired by the applicant, verifying that any tree to be removed qualifies under said section.
- b. **Inspection.** The applicant shall place a one-inch-wide ribbon around the trunk or mark 'X' with chalk of each tree to be removed at a height of 4-1/2 feet above the ground so that the proposed tree removal may be inspected in the field.

**B. Tree Replacement Requirements.**

1. Any person who removes one or more street tree(s) with a DBH of 2.5” or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.
2. Any person, who removes one or more tree(s), as defined as Tree removal, with a DBH of 6” or more per acre, unless otherwise detailed under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table.

The species type and diversity of replacement trees shall be in accordance with the approval of the Shade Tree Advisory Board or the Director of Community Services, or their designee.

Replacement tree(s) shall:

1. Be replaced in kind with a tree that has an equal or greater DBH than tree removed or meet the Tree Replacement Criteria in the table below;
2. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the City of Linden;
3. Be monitored by the applicant for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12) months; and
4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

Category	Tree Removed (DBH)	Tree Replacement Criteria	Application Fee
1	DBH of 2.5” or greater (for street trees) or 6” (for non-street trees) to 12.99”	Replant 1 tree with a minimum tree caliper of 1.5” for each tree removed	\$30.00
2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 1.5” for each tree removed	\$30.00
3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 1.5” for each tree removed	\$30.00
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 1.5” for each tree removed	\$30.00

### **C. Replacement Alternatives.**

If the Shade Tree Advisory Board or the Director of Community Services or their designee, determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:

1. Plant replacement trees in a separate area(s) approved by the Director of the Shade Tree Advisory Board or by the Director of Community Services or their designee.
2. Pay a fee of \$500.00 per each replacement tree required. This fee shall be placed into a City fund dedicated to tree planting.

### **20-5 Exemptions:**

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below. Proper justification shall be provided, in writing, to the City of Linden by all persons claiming an exemption as set forth below:

- A. Residents who remove less than four (4) trees per acre that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a five-year period. [The number of trees removed is a rolling count across a five-year period. For example, if 3 trees from category 1 are removed in July 2023, the 'count' resets to zero in July 2028. However, if 1 tree from category 1 is removed in July 2023 and another in July of 2025 the first tree will come off the count in July 2028 and the second in July 2030.]
- B. Nurseries and garden centers in active operation;
- C. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the City of Linden;
- D. Any trees removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan;
- E. Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan;
- F. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- G. Hazard trees may be removed with no fee or replacement requirement.

### **20-6 Time of Permit:**

All tree removal permits shall be limited to one (1) year from date of issuance as designated by the permit. If the approved tree removal has not occurred within one (1) year, a new permit must be applied for and is subject to the payment of new application fees. If, however, the applicant diligently pursues other governmental approval, or if approved development is ongoing, the permit may be renewed for up to two (2) six-month periods.

### **20-7 Protection of existing trees:**

During construction. In connection with any construction, subsequent to tree removal but prior to the issuance of a building permit or start of construction, the developer shall be required to erect snow fencing or other tree protective barriers acceptable to the Enforcement Officer. Such barriers shall be placed at least 10 feet from the trunk of any tree and shall remain in place until the Enforcement Officer authorizes the removal of the protection. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Nor

shall any attachments or wires be attached to any of said trees so protected. Any landscaping activities subsequent to removal of barriers shall be accomplished with light machinery or hand labor.

**20-8 Enforcement:**

This Ordinance shall be enforced by the Shade Tree Advisory Board or the Director of Community Services or their designee during the course of ordinary enforcement duties.

**20-9 Violations and Penalties:**

Any person(s) who is found to be in violation of the provisions of this Ordinance shall be subject to a fine as follows:

- \$ 875.00 per tree removed without a permit;
- \$875.00 per tree not replaced per Chapter requirements.

**20-10 Severability:**

Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase, and finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause or reason shall not affect any other portion of this Ordinance.

**20-11 Effective Date:**

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

PASSED: April 16, 2024

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President of Council

APPROVED: April 17, 2024

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Mayor

ATTEST:

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City Clerk