

**BOROUGH OF NEW PROVIDENCE  
ORDINANCE NO. 2011-1**

**“AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 247 OF THE  
CODE OF THE BOROUGH OF NEW PROVIDENCE ENTITLED ‘TREES AND  
SHRUBS’”**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey as follows:

Section 1. Section 3 of Chapter 247, entitled “Permit required; application” shall be amended in full as follows:

**247-3. Permit required; application.**

All persons desiring to destroy or remove any such tree or trees in excess of the size referred to in § 247-2 shall file an application for a permit with the Borough Clerk [or his/her designee] on the form to be provided for such purpose. Such application shall identify the lot or tract of land upon which the tree or trees are located, shall disclose the name and address of the owner, tenant or duly authorized agent of the owner or tenant and shall show the exact location of the tree or trees sought to be destroyed or removed.

Section 2. Section 4 of Chapter 247, entitled “Issuance of permits involving three or fewer trees” shall be amended in full as follows:

**247-4. Issuance of permits involving three or fewer trees.**

If such application, together with any previous application or applications, discloses that no more than three trees in excess of the size referred to in § 247-2 are to be destroyed or removed or have been destroyed or removed from the lot or tract of land referred to in such application, the Borough Clerk [or his/her designee] shall issue the permit as a matter of course. An application to remove a dead tree or a tree that by virtue of its condition constitutes a hazard to the public health and safety shall not apply against the three tree limit as described herein and no fee shall be collected. The applicant shall provide documentation concerning the condition of the tree.

Section 3. Section 5 of Chapter 247, entitled “Removal of more than three trees” shall be amended in full as follows:

**247-5. Removal of more than three trees.**

If such application, together with any previous application or applications, discloses that more than three trees in excess of the size referred to in § 247-3 are to be or have been destroyed or removed from such lot or tract of land, the

Borough Clerk [or his/her designee] shall refer such application to the Borough Engineer for consideration. The Borough Engineer shall thereupon examine the matter by visiting the premises referred to in the application, by inspecting the tree or trees referred to therein and by observing the drainage conditions and physical conditions existing upon such lands and in the vicinity thereof.

Section 4. Section 6 of Chapter 247, entitled "Conditions for approval of permit involving removal of more than three trees" shall be amended in full as follows:

247-6. Conditions for approval of permit involving removal of more than three trees.

- A. After completing his examination, the Borough Engineer shall make a determination with respect to whether or not the permit applied for should be granted.
- B. He shall thereupon endorse his determination upon the application and return it to the Borough Clerk [or his/her designee]. The Borough Engineer shall, at all times, follow the intent of this chapter, which is to preserve trees wherever this can be accomplished, and he shall not make a favorable determination with respect to the aforesaid application unless he finds one or more of the following conditions exist:
  - (1) That the area where such tree is located will be occupied by a building or structure, a driveway or recreation area, a roadway, a drainage right-of-way or a sewer line or the area where such tree is located is within 15 feet of any of the foregoing.
  - (2) That the area where such tree is located has a depression or fill of land, which is deemed injurious or dangerous to such tree or other trees located nearby.
  - (3) That the presence of such tree is likely to cause hardship or will endanger the public or an adjoining property owner, by reason of it being diseased or dead or for some other adequate reason within the intent of this chapter.
  - (4) Where the premises for which a tree removal permit is sought comprise vacant land and front on an improved street, that a building permit for the erection of a structure thereon is in existence.
  - (5) Notwithstanding anything to the contrary in this chapter, a developer or property owner who intends to grade or re-grade any portion of his or her property, or to demolish an existing dwelling in order to build a replacement dwelling, or to build an addition which equals or exceeds 25% of the existing home's footprint, and in doing so, intends to remove designated trees located within twelve (12) feet of the property line which is shared by an adjoining property owner, shall not be issued a permit by the Borough Engineer unless there is compliance with the Borough's Steep Slope Ordinance (§310.36.1), the Stormwater Control Ordinance

(Chapter 301) and Lot Grading Ordinance (Chapter 298), as may be applicable, and it is shown to the reasonable satisfaction of the Borough Engineer that:

- (i) no adverse, underground or surface drainage condition will occur on the applicant's property and/or the property of an adjoining property owner; and
  - (ii) neither the root system of any of the remaining trees on the applicant's property, if any, nor the root system of any of the trees located on an adjoining property will be substantially damaged as a direct result of such tree removal. "Substantially damaged", for purposes of this section, shall mean that the root system of a tree shall be so diminished, infringed or reduced that the long-term survival of the tree is threatened, or the tree may constitute a hazard from falling. The Borough Engineer may request the applicant, at the applicant's own cost and expense, provide the Borough Engineer with a report issued by the Borough's New Jersey licensed Arborist, that describes the effect(s) the tree removal will have on the conditions of the root system of the remaining trees on the applicant's property and/or trees of an adjoining property owner.
- (6) Except for the trees removed as set forth in sub-paragraph (3) above, the applicant shall replace each tree designated for removal, and which is located within twelve (12) feet of an adjoining property, with a mature tree of not less than eight (8) feet in height when planted into the ground and located within the yard (side or rear) from which the designated tree was removed.

Section 5. Section 7 of Chapter 247, entitled "Issuance or denial of permit involving more than three trees; fees." shall be amended in full as follows:

247-7. Issuance or denial of permit involving more than three trees; fees.

Upon receipt of the aforesaid application from the Borough Engineer, the Borough Clerk [or his/her designee] shall note the action taken, and if the determination of the Borough Engineer is favorable, the Borough Clerk [or his/her designee] shall promptly issue the permit upon payment of the permit fee in the amount of \$10 per tree for the first three trees. The fee for any tree(s) removed in excess of the three tree limit shall be \$50 per tree, provided the tree is being replaced on the subject property. The replacement tree shall be at least five feet in height. If the trees are not to be replaced, the fee for each tree shall be \$100 with \$75 dedicated to the Borough's Tree Replacement Fund.

Section 6. Section 8 of Chapter 247, entitled "Appeals" shall be amended in full as follows:

247-8. Appeals.

The applicant is hereby granted the right to appeal the determination as provided in § 247-7 to the Mayor and Council of the Borough, in which event such applicant must file a written notice of appeal with the Borough Clerk within 10 days after receipt of the Borough Clerk's [or his/her designee] notification. Thereupon the Mayor and Council shall proceed to hear the matter upon notice to the applicant within 30 days after the filing of such notice of appeal. The decision of the Mayor and Council of the Borough may affirm, reverse or modify the aforesaid determination.

Section 7. This Ordinance shall take effect twenty (20) days after final passage and publication in the manner as provided by law.

INTRODUCTION: January 24, 2011  
PUBLIC HEARING: February 14, 2011  
ADOPTION: February 14, 2011

BOROUGH OF NEW PROVIDENCE  
COUNTY OF UNION  
STATE OF NEW JERSEY

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J. Brooke Hern, Mayor

Attest:

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Wendi B. Barry, Borough Clerk