

Township of West Milford

Passaic County, New Jersey

~ Ordinance 2024 - 016 ~

ORDINANCE OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC, STATE OF NEW JERSEY, AMENDING CHAPTER 371 "TREE REMOVAL" WITHIN THE CODE OF THE TOWNSHIP OF WEST MILFORD

WHEREAS, the Township of West Milford is located entirely within the Highlands Preservation Area and considered an existing Tier A municipality under the enhanced regulations of the Tier A Municipal Stormwater General Permit (R9) by the New Jersey Department of Environmental Protection according to N.J.A.C. – 7:14A, Municipal Stormwater General Permit; and

WHEREAS, the enhanced regulations require municipal review and update to certain existing ordinances to maintain compliance, including regulations for tree removal; and

WHEREAS, the Mayor and Township Council have reviewed said revisions and believe that the changes are in the public interest and required by the NJDEP regulations.

NOW THEREFORE BE IT ORDAINED, by the Township Council of the Township of West Milford, County of Passaic, State of New Jersey, that the Chapter 371 Tree Removal of the Township of West Milford shall be amended as follows:

SECTION 1. Chapter 371 "Tree Removal" is amended to read as follows:

§ 371-1 Findings; purpose.

The purpose of this chapter is to protect and preserve the forests and neighborhood trees of West Milford from indiscriminate destruction, disturbance or removal, to provide protection of the streams and lakes from damage caused by tree loss, and to provide for the protection of water quality. The Township Council does herein decide and find that the uncontrolled destruction, removal and cutting of trees upon lots and tracts within the Township has resulted in creating increased municipal costs for drainage control and has further caused increased soil erosion and stream pollution, decreased the fertility of soil, increased dust which has further deteriorated property values and has further rendered land unfit and unsuitable for its most appropriate uses and has caused deterioration in the value of improved and unimproved real estate within the Township with a resulting adverse effect upon the health, safety and general well-being of the inhabitants. The aforesaid findings have caused the passage of this chapter to regulate and control the indiscriminate and excessive cutting of trees in the Township.

§ 371-2 Regulation of tree removal; compliance required.

It has been determined, therefore, that no person shall cut or remove any tree upon any lands within the Township, unless such action accomplishes a useful purpose and is done in accordance with the regulations and provisions of this chapter.

§ 371-3 Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning stated herein unless their use in the text of this ordinance demonstrates a different meaning. All definitions herein contained shall be considered in conformance with those set forth in the Zoning Ordinance of the Township of West Milford, N.J., 1969, and as amended, and as in Chapter 500 of the Code of the Township of West Milford, with the following additions:

- A. Applicant - refers to any person, organization or entity who applies for approval to remove trees regulated under this ordinance.

- B. Diameter – means the diameter of the trunk of a tree measured at a point four and a half feet above ground level from the uphill side of the tree (Diameter Breast Height, “DBH”). If there is uncertainty as to the measurement of the diameter of a tree, the diameter shall be conclusively presumed to be the circumference of the tree in inches divided by 3.1416 and rounded to the nearest inch. In the event a tree is removed, the diameter shall be that of the remaining stump if less than four and one-half feet remain. In the event a tree contains more than one trunk at less than four and one-half feet above the ground, the diameter of each trunk shall be summed together to determine the diameter of the tree.
- C. Immature Tree – Shall mean any tree having a diameter less than six inches. Further, an immature tree shall not meet the definition of “Tree”.
- D. Forest Management Plan – means a plan which establishes best conservation and management practices and has been reviewed and approved by the NJDEP New Jersey Forest Service. Nothing in this chapter is intended to conflict with or supersede the provisions of an approved Forest Management Plan if work is within compliance of the approved plan.
- E. Nuisance Tree – refers to any tree, or limb thereof, that has an infectious or insect- inflicted disease; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; is causing obvious damage to structures or threatens public health, safety and welfare; negatively impacts municipal, private or semi-private infrastructure systems; or negatively impacts municipal, private or semi-private stormwater systems.
- F. Rare, Historic or Tree of Significance – any tree that is recognized by the municipal governing body, the State, or a local historical organization as being of significance due to its age, size, unique value, rarity, or its aesthetic, ecological or historic value.
- G. Replacement Tree – A tree proposed as a replacement for a qualified tree removed under a permit.
- H. Township Forester – The duly designated representative or duly appointed officer of the Township given the authority to enforce the provisions of this chapter. If absent, the Zoning Officer, Township Engineer, Construction Official, Director of Planning or their authorized agent(s) may perform the administrative duties as it pertains for permit processing.
- I. Tree – Any living coniferous or deciduous tree having a trunk of a diameter greater than ~~four~~ or equal to six (6) inches. Nothing in this chapter is intended to conflict with or supersede the provisions of the Soil Erosion and Sediment Control Act of the State of New Jersey, Chapter 251 of the Public Laws of New Jersey. See N.J.S.A. 4:24-39 et seq.
- J. Tree Removal – means to kill or cause irreparable damage that leads to the decline and/or death of a tree. Removal does not include responsible pruning and tree maintenance. When applicable, removal of trees shall be governed by a variety of New Jersey Department of Environmental Protection regulations, including those that are promulgated under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), the Flood Hazard Control Act Rules (N.J.A.C. 7:13) and the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38).

§ 371-4 Permit required.

- A. Application. Any person desiring to destroy, cut or remove any such tree which is not accepted under terms of subsection 371-3 and 371-8 shall apply to the Township forester for a permit to remove such tree(s). Permits shall be required for removal of more than five (5) trees per acre per calendar year, not to exceed fifteen (15) trees per lot annually. Lot area shall be rounded up to one (1) acre for lots less than 1.000 acre and subsequently rounded up to the nearest one-fifth (0.2) acre for the purposes of calculating tree removal quantity at a rate of one (1) tree per one-fifth (0.2) acre thereafter. A separate application shall be required for each lot.
- B. Information.
 - 1. The applicant shall identify by block and lot the land upon which the tree(s) is located and shall disclose the name and address of the owner, tenant or duly authorized agent of such owner or tenant, the entity performing tree removal with contact information, and the applicant shall also identify by copy of a survey or other means the location of the tree(s) sought to be cut, removed or destroyed. At the discretion of the Township Forester, an inspection of the site where a removal of trees is proposed may be conducted prior to and/or after the removal is completed. Prior to an inspection, the Township Forester shall have the right to request the trees proposed for removal be marked in a temporary manner for identification.

2. A tree removal permit, if required, shall be obtained prior to the approval of all minor and major subdivisions, site plans, building applications and certificates of occupancy on a map which shall include the following:
 - a. Area of tract or parcel of land.
 - b. (*General*) location of wooded areas and trees to be removed.
 - c. Exact location of rare or historic trees as defined by Section 371-3.
 - d. General topographic conditions of site as derived from USGS map of the West Milford area or current topographic survey.
 - e. Manner or method of tree removal
 - f. Person(s) to perform the removal, with contact information when applicable
 - g. Reason for removal
 - h. Total quantity of trees on the property, if required by the Township Forester
 - i. Estimated start and completion date
3. When applicable per Section 371-9, a tree remediation or restoration plan, to identify the specific location where trees will be planted to mitigate the proposed removal of trees in accordance with the requirements of this chapter. Species of replacement trees shall be noted on the plan.

§ 371-5 Fees.

Upon application for a permit, the applicant shall pay to the Township the fees set forth in Chapter 135, Fees and Costs.

§ 371-6 Criteria for determination of permitted tree removal.

As a basis for determining permitted tree removal, the duly appointed officer shall give due consideration to the following:

- A. For purposes of tree removal on a lot with an approved, single-family residential dwelling. The lands covered by each application shall be inspected by the Township Forester who shall review the application and land and consider issuance of a permit. Considerations of permit issuance include but are not limited to future land development, existing and resultant drainage patterns, and governance of other regulatory agents. The Township Forester shall have the authority to affix reasonable conditions to the approval of a permit required by this chapter.
- B. For the purposes of commercial and/or silviculture lumbering in accordance with the following restrictions:
 1. The lumbering company or individual owner of the property in question shall file with the Township a forest management plan approved by the New Jersey Department of Environmental Protection, Bureau of Forestry, or other professional forester. Any deviation taken from this plan shall be considered a violation of this chapter.
 2. In no case shall more than 30% of the total number of trees be removed from the entire tract.
 3. No fee(s) shall be incurred for work in accordance with an approved plan.
- C. For purposes of tree removal on a lot other than with an approved, single-family residential dwelling or for commercial and/or silviculture lumbering. The applicant shall confirm no violation of prior land development approvals, if any. The Township Forester shall review an application, inspect the lands covered by said application and consider issuance of a permit with coordination with other municipal officials, if warranted. The Township Forester shall have the authority to affix reasonable conditions of approval of a permit required by this chapter, including but not limited to municipal board approval and/or exceptions.
- D. No permit shall be issued for any of the following conditions, except with prior documented approval from the governing regulatory agent(s) if applicable:
 1. Trees located on any portion of a lot having a slope greater than 20%, excluding when approved, permitted provisions are constructed to prevent uncontrolled erosion and provide soil stabilization as much as practical. Slope shall be determined by available topographic survey records or on-site slope averaging of the area.
 2. Trees located in an environmentally regulated area as defined and identified by NJDEP, including but not limited to wetlands, wetland transition areas, flood zones, and riparian zones.

3. Trees located on a vacant lot without an approved forest management plan, approved future land improvement plan / permit(s), or similar approval permitting the removal of specified tree(s).
4. Where removal of said trees would exceed fifteen (15) trees per lot annually, excluding those excepted as defined in §371-8.

§ 371-7 Issuance of permit.

- A. If the applicant as defined in § 371-4 discloses that no more than five trees per acre per calendar year in excess of the size referred to aforesaid in this chapter are to be removed, cut or destroyed, or have been cut, removed or destroyed from the lot or tract of land identified in the application, then no permit shall be required.
- B. If the applicant as defined in §371-4 satisfies the conditions listed aforesaid in this chapter, the Township Forester may issue a permit for the removal of identified tree(s).

§ 371-8 Exceptions.

Excepted from this chapter shall be:

- A. Any tree growing on property being used as a nursery, garden center, Christmas tree plantation or orchard.
- B.. Any tree growing on land actually being used for a sanitary landfill operation or for surface mining, or on land approved for such use by the Township or applicable agencies.
- C. Any tree growing in a public right-of-way, private right-of-way, drainage or utility easement, as designated on the West Milford Township Tax Map or property survey performed by a New Jersey professional land surveyor.
- D. Any tree located on a tract or parcel of land with an existing and approved, single-family residential dwelling to be cut for personal use as firewood by the owner of such property. Not more than five trees per acre shall be cut in any one calendar year as calculated in §371-4, and in no case shall more than 30% of the total number of trees located on such property be removed.
- E. Any tree infected, dead or diseased as a result of natural causes, or other tree that is deemed a nuisance tree.
- F. Any tree cut or removed in accordance with a management plan developed by the New Jersey Department of Environmental Protection, Bureau of Forestry, or other professional forester, and filed with and approved by the Township Forester duly appointed by the Township.
- G. Any tree located on or within 50 feet of a proposed or existing residential structure.
- H. Any tree located on or within 20 feet of a proposed or existing well, septic system and associated components, groundwater recharge provision or permitted and approved accessory structure.
- I. Any tree located within 15 feet of an approved existing or proposed residential driveway.
- J. Any tree located within 15 feet of an approved existing or proposed paved area(s), or equivalent impervious surface.
- K. Any tree located within 15 feet of an approved existing or approved proposed off-street parking area.
- L. Any tree located near utility lines or substations, provided that the reason for the tree removal is related to public safety purposes.

§ 371-9 Tree Replacement and Remediation.

- A. For the purposes of permitted tree removal. Tree(s) requiring permit issuance shall be replaced at a rate of one (1) tree per removed tree as defined in this chapter.
 1. The species shall be of non-invasive type and suitable as per the current United States Department of Agriculture Plant Hardiness Zone Map. Alternatives, as recommended by a licensed tree expert, approved forester or NJ licensed engineer, can be considered by the Township Forester.
 2. Tree planting location shall be shown on the provided copy of a lot survey as part of the application.
 3. Replacement trees shall be planted with the wire basket, burlap and twine removed and be located in an area to promote optimal tree growth.
 4. Replacement trees shall be planted within six (6) months of the date of removal and/or completion of proposed work.

5. Replacement trees shall be monitored for a period of no less than two years to ensure their survival and be replaced as needed.
 6. Replacement trees shall have a diameter no less than 2.5".
- B. For the purposes of remediation as a result of unapproved removal. Any person who damages, removes or destroys trees without complying with this chapter shall be required to remediate said noncompliance by replacement of such tree(s).
1. Tree(s) shall be replaced at a rate of one (1) replacement tree per each twelve (12) inches of diameter of determined removed tree, rounded up to the nearest twelve-inch increment.
 2. Replacement trees shall be of nursery grade quality, balled and burlapped and planted on the site where the violation occurred in locations and with species approved by the Township Forester and shall have a diameter no less than 2.5".
 3. Replacement species include: red maple, sugar maple, red oak, white oak, chestnut oak, scarlet oak, pin oak, black oak, hickory, American birch, yellow birch, black birch, dogwood, yellow poplar, black locust, red cherry, sweet gum and weeping willow. Alternatives may be considered at the discretion of the Township Forester.
 4. In the event that the Township Forester determines all or some of the replacement trees are inappropriate where the violation occurred, the Township Forester may approve an alternate location either on the subject property or off of the site on property owned by the Township of West Milford.
 5. The obligation of this section may be enforced by a civil action in any court of competent jurisdiction and shall not affect the liability of the violator for the fines and penalties set forth in subsection §371-13.
 6. The violator will be subject to a two-year cash bond amount, in an amount determined by the Township Forester or other municipal official, to ensure the restoration and remediation of the violation as set forth in subsection §371-5. The base amount shall be \$500 plus applicable cost estimates for remediation action.

§ 371-10 Unique and irreplaceable trees.

No person shall cut, remove or destroy upon any lands within the Township any tree considered to be unique and irreplaceable by reason of age, historical associations, or botanical rarity as determined by the Township Forester.

§ 371-11 Right of appeal.

[Amended 9-1-2004 by Ord. No. 2004-6]

The applicant shall have the right to appeal the decision of the Township Forester to the Township Administrator within 10 days of receipt of such decision. The appeal shall be by written notice to appeal. The Township Administrator shall proceed to hear such appeal upon notice to the applicant within 30 days after the filing of such notice of appeal. The Township Administrator may, in his discretion and upon complete review of the application, and after hearing the testimony of the Township Forester and the applicant, reverse, modify or affirm the aforesaid decision.

§ 371-12 Enforcing officer and enforcement.

- A. Enforcing Officer. The enforcement of the provisions of this chapter shall be designated to the Township Forester or other duly designated individual(s) as directed by the Township Administrator. The Township Forester, Township Engineer, Zoning Officer, Construction Official, Director of Planning or their authorized agent(s) may enter upon lands for the purpose of examination, inspection or similar without advance notice.
- B. Enforcement. The Township Forester shall have the right to enter upon lands to ensure compliance of lands for which a permit has been granted and enforce the provisions of this chapter. Violations for which permits have been previously issued shall be enforced by the Township Forester or other duly designated individual(s) as directed by the Township Administrator.

- C. In addition to the penalties set forth in §371-14, the Township shall have the right, but not the obligation, to pursue injunctive relief in the Superior Court of New Jersey, Passaic County, including but not limited to requiring the remediation and restoration of the site.

§ 371-13 Interpretation.

All trees protected by this chapter shall be protected against construction damage, soil deposits or other activities to the satisfaction of the Township Forester.

§ 371-14 Violations and penalties.

Any person violating any provisions of this chapter shall be, upon conviction, subject to the penalty as provided in Chapter 1, Article III, General Penalty, of the Township Code in addition to the Township Forester's cost estimate for remediation, if applicable.

SECTION 2. All ordinances of the Township of West Milford which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, preempted by Federal or State law, or otherwise invalid by any court or competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. No provision of this Ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this Ordinance or from other law.

SECTION 5. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law and upon the posting of appropriate signs.

SECTION 6. This Ordinance may be renumbered for codification purposes.

Introduced: April 3, 2024
Adopted: May 1, 2024
Effective Date: May 21, 2024

TOWNSHIP OF WEST MILFORD
COUNTY OF PASSAIC
STATE OF NEW JERSEY

ATTEST:

William Senande, Township Clerk

By: _____
Michele Dale, Mayor