**Harmony Township**

**Warren County, NJ**

**O:24-16**

**ORDINANCE OF THE TOWNSHIP OF HARMONY, COUNTY OF WARREN, STATE OF NEW JERSEY, CREATING ARTICLE II ENTITLED “TREE REMOVAL AND REPLACEMENT” OF CHAPTER 400 – STORMWATER MANAGEMENT - TO ESTABLISH CERTAIN RULES AND REGULATIONS RELATED TO THE REMOVAL AND REPLACEMENT OF CERTAIN QUALIFYING TREES, AS REQUIRED BY THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**WHEREAS,** the Township of Harmony is required by the State of New Jersey Department of Environmental Protection (NJDEP) to administer certain stormwater pollution prevention requirements within the Township, and

**WHEREAS**, the State of New Jersey, pursuant to N.J.A.C. 7:14A, on December 22, 2022, issued a New Jersey Pollutant Discharge Elimination System (NJPDES) Permit to the Township of Harmony as an operator of a Municipal Separate Storm Sewer System (MS4) within the State, and

**WHEREAS**, said NJPDES Permit is a renewal of the Township’s previous NJPDES permit with said new permit having an effective date of January 1, 2023; and

**WHEREAS**, the Township of Harmony under said new permit is required to adopt certain ordinances to protect water resources within the Township.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Harmony, County of Warren, State of New Jersey that Article II, entitled “Tree Removal and Replacement” of Chapter 400 – Stormwater Management – be created to establish certain rules and regulations related to the removal and replacement of certain qualifying trees, as required by the New Jersey Department of Environmental Protection, as follows:

**SECTION I:**

**Article II. Tree Removal and Replacement**

**§ 400-15. Purpose:**

An ordinance to establish requirements for tree removal and replacement in the **Township of Harmony** to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare.

**§ 400-16. 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.

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

1. “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’.

1. “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 uphill 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.

1. “Hazard Tree” means a tree or limbs thereof that meet one or more of the criteria below.  Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.

1. Has an infectious disease or insect infestation;

1. Is dead or dying; senescence

1. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;

1. May cause damage to structures (such as building foundations, sidewalks, utilities etc.);
2. Any trees whose angle or growth makes them a hazard to structure or human life, or
3. Is determined to be a threat to public health, safety, and/or welfare.

1. “Person” means any individual, resident, corporation, utility, company, partnership, firm, or association.

1. “Resident” means an individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.

1. “Tree” means a woody plant having one erect perennial stem (trunk), that can support itself, at least three (3) inches in diameter at a point 4-½ feet above the ground, a definitely formed crown of foliage and a mature height of at least 13 feet. If the tree is removed, the tree is measured by the remaining stump. If the diameter of the stump is greater than twelve inches (12”), such tree is subject to the provisions of this Ordinance.

1. “Tree Caliper” means the diameter of the trunk of a tree, measured 4-½ feet above the ground.

1. “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. Removal of trees that cause an obstruction to the line of sight on public or private right of way(s) shall also be exempt from this Chapter.

**§ 400-17. Regulated Activities:**

1. **Tree Replacement Requirements**
2. Any person who removes four (4) or more trees, as defined as Tree removal, with a DBH of 6” or more, unless exempt under Section 400-18, and as part of a Land Use Board application, shall be subject to the requirements of the Tree Replacement Requirements Table below.
3. Any person, who removes one (1) or more tree(s), as defined as Tree removal, within 300 feet of a designated C-1 stream, and/or within 300 feet of a wetlands classified as “high value” by NJDEP, shall be subject to the requirements of the Tree Replacement Requirements Table below.
4. Any residential use lots, clearing an acre or more of land, unless exempt by Section 400-18. Clearing area shall not include buildings, accessory structures, driveways, stormwater facilities, septic system and other ancillary structures.

The species type and diversity of replacement trees shall be in accordance with Appendix A

Replacement tree(s) shall:

1. Be replaced in kind with a tree that has an equal or greater DBH than the 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 municipality;
3. Be monitored by the applicant for a period of two (2) years to ensure their survival and shall be replaced as needed within a twelve-month (12) period; and
4. Be planted in the ground. Pots and container trees will not be considered replacements.

**Tree Replacement Requirements Table:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Category** | **Tree Removed (DBH)** | **Tree Replacement Criteria (See Appendix A)** | **Application Fee** |
| 1 | DBH of 6” to 13.99” | Replant 1 tree with a minimum tree caliper of 2.5” | $10.00 |
| 2 | DBH of 14” to 22.99” | Replant 2 trees with minimum tree calipers of 2.5”  | $10.00 |
| 3 | DBH of 23” to 47.99” | Replant 3 trees with minimum tree calipers of 2.5”  | $10.00 |
| 4 | DBH of 48” or greater | Replant 4 trees with minimum tree calipers of 2.5”  | $10.00 |

1. **Replacement Alternatives:**
2. If the municipality 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 municipality.
	2. Pay a fee of one hundred dollars ($100.00) per non-exempt tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

**§ 400-18. Exemptions:**

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below. Proper justification, as outlined below, shall be provided, in writing, preferably with supporting photos, to the by all persons claiming an exemption.

1. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
2. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan, approved by the State of New Jersey Department of
3. Environmental Protection, the New Jersey Forest Service, that is active and on file with the municipality;
4. 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.
5. 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;
6. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
7. Hazard trees may be removed with no fee or replacement requirement.

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1. Removal of invasive trees.
2. Any tree which is part of a cemetery.
3. Tree directed to be removed by municipal, County, State or Federal authority pursuant to law.
4. Pruning or removal of trees within the right-of-way by utility companies for the maintenance of utility wires or pipelines
5. Trees removed in conjunction with farmland greater than five (5) acres in size, that will be actively devoted primarily to agricultural uses, where the owner desires to remove any trees for the purpose of expanding the farmland(s), the owner is required to submit a tree-removal plan to the Township Committee and receive such approval before commencing any such removal.
6. Fallen Trees due to exceptionally high winds, a snowstorm, a hurricane, or any other kind of natural disaster.
7. Tree planted in a decorative planter.

**§ 400-19. Enforcement:**

This Ordinance shall be enforced by the Zoning Officer and Township Engineer during the course of ordinary enforcement duties.

**§ 400-20. Violations and Penalties:**

Any person(s) who is found to be in violation of the provisions of this Ordinance shall be required to replace the removed tree(s), as well as be subject to a fine not exceeding one hundred dollars ($100.00.

**SECTION II: 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.

**SECTION III: Repealer.**

Any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

**SECTION IV: 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.

**NOTICE**

**NOTICE** is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Committee of the Township of Harmony held on October 1, 2024 and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Committee to be held on November 5, 2024 at 6:00 p.m. or as soon thereafter as the Township Committee may hear this Ordinance at the Municipal Building, 3003 Belvidere Road, Phillipsburg, NJ 08865, at which time all persons interested may appear for or against the passage of said Ordinance.

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Kelley Smith
Township Clerk

**Appendix A**

Recommended replacement tree Species and Planting for **Harmony Township**

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| --- | --- | --- |
| Tree Species | Planting Season | Planting Procedure(soil type, watering, pruning, staking, wrapping, exposure, depth, mulching, etc.) |
| American Basswood | Spring |  |
| American Witch-Hazel | Spring or Fall |  |
| American Hornbeam | Spring |  |
| American Beech | Spring |  |
| Bald Cypress | Spring or Fall |  |
| Black Gum, Black Tupelo | Spring |  |
| Common Alder | Spring or Fall |  |
| Common Hackberry | Spring |  |
| Dawn Redwood | Spring or Fall |  |
| Dogwood | Spring |  |
| Eastern Redbud | Spring |  |
| Pink Oak | Spring |  |
| Red Maple | Spring |  |
| Red Oak | Spring |  |
| River Birch | Spring |  |
| Swamp White Oak | Spring |  |
| Sweetgum | Spring |  |
| Scarlet Oak | Spring |  |
| Shadbush, Serviceberry | Spring or Fall |  |
| Sugar Maple | Spring |  |
| White Oak | Spring or Fall |  |
| White Pine | Spring or Fall |  |