

Ordinance No. 33 - 2011

**ORDINANCE OF THE TOWNSHIP OF LIVINGSTON ADDING A NEW
CHAPTER 306 TREES TO THE CODE OF THE TOWNSHIP OF LIVINGSTON**

WHEREAS, Ordinance No. 6-2004 was adopted by the Township Council of the Township of Livingston and subsequently codified as Article VIII - Trees of Chapter 170 of the Code of the Township of Livingston; and

WHEREAS, many Tree protection and replacement provisions of said Article VIII apply only to lots in excess of 1 acre, resulting in instances of complete clear cutting on smaller properties to the detriment of neighboring properties and the community at large; and

WHEREAS, it is in the public interest that the Township Council of the Township of Livingston further exercise its police power to broaden the scope of regulation of the preservation, removal and replacement Trees; and

WHEREAS, the Township Council of the Township of Livingston, having found that Trees provide many benefits to the community that include reducing noise, air and water pollution, reducing flooding, preventing erosion, producing oxygen, providing natural habitat for wildlife and birds, providing shade and aesthetic and scenic beauty, protecting and enhancing property values and the image of the community; and having therefore found that broader protection of the biomass within the Township should be encouraged and that the destruction or injuring of Trees should be further controlled, and lost Trees replaced; and

WHEREAS, certain Trees, because of their large size or age or other significance are particularly important to the community and deserving of special protection; and

WHEREAS, the Township Council of the Township of Livingston has found it appropriate and proper that a new Chapter 306 Trees be added to the Code of the Township of Livingston;

THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey, as follows:

Section 1. Article VIII - TREES of Chapter 170 of the Code the Township of Livingston is hereby repealed in its entirety as of the effective date of this ordinance provided, however, that any then outstanding authorization granted to, or obligation of or undertaking by, any property owner or developer thereunder, including obligations to make payments in lieu of planting of replacement Trees, shall remain in full force and effect.

Section 2. The following Chapter shall be added to the Code of the Township of Livingston:

CHAPTER 306 - TREES

§ 306-1. Purpose. The purpose of this Chapter is to preserve the biomass and its benefits, and, in certain circumstances, to provide for replacement of Trees that are removed or destroyed. Control of removal of trees, and requiring replacement plantings for trees removed, will mitigate noise, soil erosion, the buildup of atmospheric carbon dioxide and other pollutants, and protect natural habitat for wildlife and birds, provide shade, protect aesthetic and scenic beauty, and protect or enhance property values.

§ 306-2. Exemptions.

- A. The following shall be exempt from the requirements of this Chapter:
- (1) Golf courses, commercial tree nurseries, and commercial fruit orchards; while operated as such.
 - (2) Removal or pruning of any Tree growing
 - (a) on or over a public right-of-way when such action is performed by, or at the direction of, a governmental authority, or
 - (b) in a streetscape within the Livingston Community Partnership Special Improvement District when such action is performed by, or at the direction of, the Livingston Community Partnership Management Corporation.
 - (3) Removal of any Tree growing on a utility right-of way or pruning of branches growing over such a right-of-way, when such action is performed by, or under contract from, the public utility.
 - (4) Removal of any Tree that is dead, irreversibly diseased, or constitutes a hazard to the safety of life or property; provided that: if requested by the Administrator, credible evidence of such condition, in the form of, but not limited to, a written certification by a New Jersey Licensed Tree Expert or Licensed Tree Care Operator, or a photograph or video, is provided by the property owner to the Administrator. However, such evidence shall not be required if removal of the Tree was pursuant to a notice issued by the Township under Chapter 227 Property Maintenance of the Township Code.
- Note: Provisions of general application requiring pruning of trees and removal of dead trees are in Section 227-16 of the Township Code.
- B. The exemptions granted under this Chapter do not relieve any person of possible liability to others for hazards to safety of life or property.
- C. Voluntary compliance, by any person having the benefit of exemptions, with the Tree protection provisions of § 306-6 on their properties is encouraged.

§306-3 Definitions. The following words and expressions, and their derivations as used in this Chapter, shall have the following meanings unless the context indicates a different meaning. When not inconsistent 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 word "shall" is always mandatory and not merely directory.

ADMINISTRATOR - The Zoning Officer.

BOARD - The Planning Board or the Zoning Board of Adjustment, as the case may be.

CALIPER - The diameter of a Tree trunk measured in inches at a height of four-and-a-half (4.5) feet above ground level. When multiple trunks are joined together below a height of four feet, the caliper shall be deemed to be 75% of the sum of the calipers of the individual joined trunks.

DEAD TREE - A Tree that has ceased to function physiologically. Such a Tree is typically devoid of leaves and may have loose bark.

DISEASED TREE - A Tree that is terminally infested with fungus, or virus or insects.

DRIPLINE - A perimeter on the ground below a Tree established by the maximum horizontal reach of the Tree's branches measured from the trunk of the Tree.

LANDMARK TREE - A Tree that meets any one or more of the following criteria:

- (a) A species rarely found within the Township; or
- (b) More than one hundred and fifty (150) years old; or
- (c) Directly connected to an historic event; or
- (d) Has extraordinary physical characteristics for its species; and

has been identified as a Landmark Tree in a register maintained by the Administrator.

LICENSED TREE EXPERT OR LICENSED TREE CARE OPERATOR - An individual who has been licensed in that capacity by the State of New Jersey after successfully passed an examination administered by the New Jersey Board of Tree Experts.

REMOVE OR REMOVAL - Any cutting down, poisoning, or any other action destroying a Tree.

REPLACEMENT TREE - A healthy nursery-grown Tree, having a caliper of not less than 2.5 inches if deciduous, or a height of not less than six to eight (6-8) feet if coniferous, properly balled and marked with a durable label showing genus, species, variety, watering and fertilization requirements.

ROOT PROTECTION ZONE - An area extending 360 degrees around a Tree trunk for the greater of either the distance from the Tree trunk to the dripline or a distance equal to caliper multiplied by one foot; but never less than eight feet in radius.

SHRUB - A woody plant ordinarily having several stems arising from its base and normally lacking a single trunk. A shrub is not a Tree.

SIGNIFICANT TREE - A deciduous Tree with a caliper that is then greater than twenty (20) inches, or a coniferous Tree with a height that is then greater than thirty (30) feet. Provided, however, that a Dogwood with a then caliper in excess of five (5) inches is a Significant Tree.

TREE - Any live deciduous or coniferous species, normally having a single trunk, for which the typical mature height is not less than ten (10) feet or for which the typical mature caliper is not less than 3.5 inches.

TREE INVENTORY PLAN - A plan prepared in compliance with §306-5.

TREE REMOVAL PERMIT - The permit required to be obtained before the removal of any Tree not exempt or excepted from the requirements of this Chapter.

TREE REPLACEMENT PLAN - A plan prepared in compliance with §306-5.

§306-4 Fees and Deposits

A. The following non-refundable fees are required:

- (1) Upon submission of a Tree Removal Permit application:
 - (a) For a developed lot: \$150.00
 - (b) For an undeveloped lot: \$150.00 plus \$150.00 for each acre or fraction of an acre in addition to the first acre.
- (2) Upon submission of an appeal to the Township Council of denial of a Tree Removal Permit by the Administrator: \$200.00.

B. The following technical review escrow deposits are required:

- (1) Upon filing of a Tree Removal Permit application:
 - (a) For a developed lot of one (1) acre or more: \$500.00
 - (b) For an undeveloped lot: \$500.00 plus \$500.00 for each acre or fraction of an acre in addition to the first acre.

§ 306-5 Tree Removal Permit

A. No Tree for which a Tree Removal Permit is required shall be removed by any means unless such a permit has been granted.

B. A Tree Removal Permit is required for removal of any:

- (1) Landmark Tree.
- (2) Significant Tree.
- (3) Any other deciduous Tree with a then caliper in excess of four (4) inches or a then height in excess of ten (10) feet, or other coniferous Tree with a then height in excess of eight (8) feet.,

(a) Exceptions. However, no Tree Removal Permit shall be required for the following removal of Trees that are not Landmark Trees or Significant Trees:

(i) Removal of any such Tree, when any part of the trunk of the Tree is within five (5) feet of the residential building on the property, or of the principal building on a property in a non-residence zone district.

(ii) Removal of any such Tree growing on a developed residential property when any part of such Tree's trunk is within five (5) feet of a rear yard or side yard line of the property; provided that the owner of the property has first received written consent to such removal from the owner of the immediately adjacent property. The recipient shall keep the written consent available for one (1) year for examination by the Administrator upon request.

(iii) Removal of up to three (3) such Trees elsewhere on a developed residential property if no Tree for which a Tree Removal Permit is required, exempted or excepted has been removed on the property within the prior twelve (12) months; provided however, that no more than one (1) such Tree shall be removed from the front yard under this clause.

C. An application for a Tree Removal Permit shall be submitted to the Administrator in duplicate. If the request for a Tree Removal Permit is in connection with a development application for subdivision or site plan approval, an additional copy of the Tree Removal Permit application shall be submitted with the application for development approval submitted to a Board. The submission of the application for a Tree Removal Permit shall constitute the applicant's consent to entry upon the applicant's property by Township personnel both for determination of whether the permit should be granted and determination of compliance with a granted permit and the provisions of this Chapter.

D. The Tree Removal Permit application shall be on the form provided by the Administrator and shall provide the following information:

- (1) Street address, tax block and lot numbers of the property.
- (2) Name, address, telephone number and signature of the applicant.
- (3) If the applicant is not the property owner; the name, address, telephone number and consenting signature of the owner.
- (4) The name, address, telephone number and license number of the licensed tree expert or licensed tree care operator who will accomplish the Tree removal; and shall be accompanied by two copies of:
 - (a) A Tree Inventory Plan, showing all Trees on the site; their species, size and condition and indicating those that the applicant wishes to remove. The location of existing streams, brooks, ponds or wetlands on, or within 50 feet of, the site shall also be shown.
 - (i) If the site is non-residential or is larger than one (1) acre, the Tree Inventory Plan shall be drawn to a scale of not more than 50 feet to the inch and prepared and signed by a licensed New Jersey land surveyor or landscape architect.
 - (ii) If the site is a developed residential lot that is one (1) acre or less and Tree removal proposed is limited to only one side yard or only to the rear yard or the front yard; the Tree Inventory Plan may be prepared by the applicant on a copy of a certified lot survey, shall be prepared only for the relevant yard, and may show the approximate locations of the Trees then in that yard.
 - (iii) If the Tree Inventory Plan was prepared by a licensed New Jersey land surveyor or landscape architect a copy in digital format shall also be provided.
 - (b) A Tree Replacement Plan prepared and submitted in the same manner as the Tree Inventory Plan and showing the locations of all Trees to be preserved and all Replacement Trees to be planted on the site.

E. If Tree removal is proposed for a Landmark Tree or a Significant Tree, or in connection with an application for development, the applicant shall also provide eight (8) copies of the Tree Removal Permit application to the Livingston Environmental Commission. However, if the Tree Inventory Plan and the Tree Replacement Plan are in electronic format only two (2) hard copies need be provided to the Livingston Environmental Commission. Within thirty (30) days, that commission shall provide its non-binding recommendations to the Administrator, with a copy to the Board if the proposed removal is in connection with an application for development.

F. If the Administrator shall find a Tree Removal Permit application to be incomplete, the applicant shall be notified thereof within 20 days after submission of the application or it shall be deemed to be complete.

G. The time period for grant or denial of an application for a Tree Removal Permit shall be:

- (1) 45 days after the application submitted has been determined, or deemed, to be complete; or
- (2) within such greater time as may apply to any application for development with which the application is connected; or
- (3) such greater period as may be consented to by the applicant.

H. A Tree Removal Permit may be denied by the Administrator if removal would result in excessive run-off of surface water onto adjacent property; soil instability or erosion, silting, create any hazardous or dangerous condition, endangerment or loss of a Landmark Tree, or violate any provision of this Chapter.

I. Remediation of any ground for denial of a permit under H above may be made a condition of grant of a Tree Removal Permit.

J. A Tree Removal Permit issued by the Administrator shall be valid for a period of 180 days. However, if the removal is in connection with an application for development the Tree Removal Permit shall remain valid until the later of final action of the Board denying the application for development or the expiration of any development approval granted by such Board.

K. Any applicant aggrieved by denial of a Tree Removal Permit by the Administrator may make a written appeal to the Township Council by filing such appeal with the Township Clerk within fourteen (14) business days after the denial. The Township Council shall hear the matter at an open meeting, upon notice to the applicant, within forty-five (45) days after the filing of the notice of appeal.

§ 306-6 Removal pursuant to permit; required protection; replacement.

A. Posting of permit. No Tree removal authorized by a Tree Removal Permit shall commence until the applicant shall have prominently posted the permit in public view on the property. The permit shall remain posted until the tenth day after the approved Tree removal work and required Tree preservation work have been completed.

B. Removal.

- (1) Tree removal shall be conducted in such a way as to minimize the risk of harm to other Trees, to life and to property.

- (2) Each Tree permitted to be removed shall be marked in advance with a tag or other prominent marking of high visibility.
- (3) All parts of any removed Tree, and all debris or residue, shall promptly be removed from the site. On-site burial or burning is prohibited.
- (4) Every reasonable measure shall be taken to avoid the removal of deciduous Trees with a caliper in excess of thirty-six (36) inches, and coniferous Trees with a caliper in excess of twelve(12) inches.
- (5) When a tree removal permit is sought in connection with an application for development, every reasonable measure shall also be taken to avoid removal of all Trees that are within fifteen (15) feet of the side or rear property lines. In the discretion of the Board acting on the application for development, or upon recommendation by the Administrator, such measures may include, but are not limited to, changes in the location of proposed infrastructure and improvements, and in the size or number of lots on the site.
- (6) Unless the Tree Removal Permit granted provides for removal on a day certain and there is no delay, the Administrator shall be given at the least three (3) business days prior notice of the date on which removal will commence. Except for emergency work, no work pursuant to a permit shall take place on Sunday or later than 5:00 P.M. or earlier than 7:30 A.M. on other days.

C Protection. Trees not to be removed shall be protected from harm during Tree removal, as well as during any work to be accomplished on the site pursuant to development approval or any other permit issued. During such work:

- (1) Each Tree, or group of Trees, not to be removed shall be protected by erection of snow fencing or another appropriate high-visibility barrier around the Root Protection Zone of the Tree or the outer limit of the aggregate Root Protection Zone of the group of Trees.
- (2) The grade of land located within the Root Protection Zone shall not be raised or lowered more than three (3) inches unless compensated for by welling or retaining wall methods. In no event shall welling or any retaining wall be installed less than eight (8) feet from the trunk of the Tree or Trees to be protected by it.
- (3) No soil, excavated materials, building materials, construction equipment or supplies shall be stored or operated within a Root Protection Zone.
- (4) No fueling, lubricating, or washdown of construction vehicles or equipment shall be performed within fifty (50) feet of any Tree to be preserved.
- (5) When Tree removal has been approved in connection with an application for

development approved by a Board, no permitted removal of Trees on any lot shall be carried out, except as required for the construction of streets and sidewalks, or the installation of public utilities, prior to a building permit having been issued for that lot.

- (6) If any Tree that is to be preserved is removed, or so severely damaged other than by accident as to necessitate its removal, the property owner shall replace it with three (3) times the number of Replacement Trees required under Schedule 1.

D. Replacement. Replacement Trees, in kind or of such other species as the Board may find appropriate, shall be provided according to the following Schedule:

Schedule 1
Tree Replacement Schedule
(Whether deciduous or coniferous)

Size of Tree Removed	Number of Replacement Trees Required
4 – but less than 10 inches caliper	1
10 – but less than 20 inches caliper	2
20 – less than 30 inches caliper	3
30 inches or greater caliper	4

The required number of Replacement Trees for a Landmark Tree shall be 5.

§306-7. Trees Trust Fund.

A. There is hereby established a reserve in the Township’s general capital fund which shall be known and designated as the “Trees Trust Fund”. A separate bank account shall be opened and maintained for this purpose.

B. Funds from this account shall be used, as directed by the Administrator, for the planting of trees and shrubs on public lands or rights-of-way within the Township.

C. When a Tree Removal Permit is granted and the space on the property is inadequate for the planting of all the Replacement Trees required; in lieu of planting those Trees that cannot be accommodated on the site the applicant shall make a cash contribution in lieu of each such Replacement Tree to the Township’s Trees Trust Fund. The cash contribution per each such Tree shall be equal to the then most recent cost to the Township of purchasing and planting a Tree of that species and size, plus twenty-five percent (25%) for administrative expense. The contribution shall be used by the Township solely for expenses of preservation or planting of Trees or shrubs elsewhere in the Township.

D. If a Tree Removal Permit is granted for Tree removal necessary for adding a patio, sundeck, outdoor private swimming pool, tennis court, sports court or other permitted accessory use on an already developed single-family residence lot, the cash contribution to the Trees Trust Fund in lieu of planting on the property in respect of such removal shall not exceed \$2,000.00.

§ 306-8. Performance and maintenance guarantees.

A. Performance guarantee. A performance guarantee, in an amount determined by the Administrator to cover the cost of performing the Tree Replacement Plan, and such soil stabilization as the Township Engineer shall find necessary, shall be submitted by the applicant upon issuance of a Tree Removal Permit or approval by a Board of an application for development that includes Tree removal.

B. Maintenance guarantee. Notwithstanding any limitations that may be set forth elsewhere in this Chapter, following completion of performance of a Tree Replacement Plan in connection with an approved application for development the developer shall post a maintenance guarantee with the Township. Such guarantee, which may be a surety bond, shall not exceed fifteen percent (15%) of the total cost of performing the Tree Replacement Plan and shall be in effect for a period of three (3) years after the planting of the last Replacement Tree on the property. The maintenance guarantee shall provide that any Replacement Tree that dies prior to or during the guarantee period will be replaced in kind (or by such other species as may be approved by the Administrator) within the current or next planting season, and at the same size as it had reached at the time of death; except that if it died more than three (3) years after planting its replacement need not be larger than the size it had reached three (3) years after planting. The same replacement requirements shall apply to a Replacement Tree that is removed because of damage or disease.

§306-9 Enforcement.

A. The Administrator may suspend any Tree Removal Permit when there has been a false or misleading application or when it appears that the terms of the permit are not being complied with.

B. The Administrator shall have the duty to enforce this Chapter and to investigate any violation or alleged violation of any prohibition in this Chapter or requirements of any Tree Removal Permit issued or of authorization contained in a Board's approval of a connected application for development. The Administrator shall proceed with the enforcement of this Chapter and the penalties provided for violations. Such officer may also pursue such of the statutory method or methods, heretofore or hereinafter provided, as may be open to such officer.

C. Each day in which a person engages in Tree removal without a permit, or in violation of a permit, or of a Board approval of an application for development in connection with a Tree Removal Permit, shall be deemed a separate violation of this Chapter. Each Tree removed without a permit, or in violation of any permit, or of a Board approval of an application for development in connection with a Tree Removal Permit, shall be an additional separate violation. Any person convicted in Municipal Court of violation of this Chapter shall be subject to a fine, imprisonment or community service as provided in Section 1-7 General Penalty of Chapter 1 at the discretion of the Municipal Court Judge.

D. In addition, for each Tree removed without a required Tree Removal Permit the property owner shall make restitution to the Township by payment to the Trees Trust Fund in an amount equal to the payment in lieu calculated under § 306-7.

§306-9 Voluntary Reports.


In order to assist in the maintenance of a data base of all Trees in the Township, when a Tree is removed without need for a Tree Removal Permit the owner or tenant of the property on which the removal took place may voluntarily submit a Tree Removal Report in the form, and by the method, established by the Township.

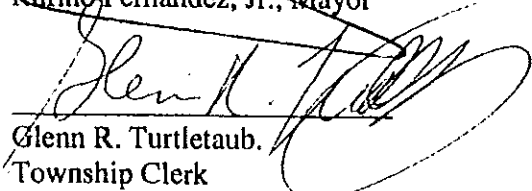
Section 3. Repeal of Article VIII - TREES of Chapter 170 by this ordinance shall not relieve any person of any requirement or liability incurred in respect of any tree removal or replacement previously authorized pursuant to the Article so repealed.

Section 4. Should any provision of this ordinance be held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the ordinance shall continue in full force and effect.

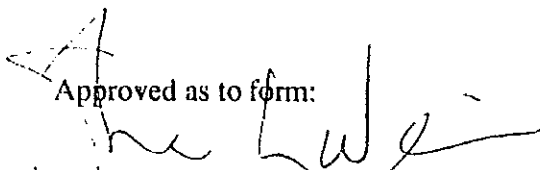
Section 5. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

Section 6. This ordinance shall take effect twenty (20) days after its final passage and publication in accordance with law.


Rufino Fernandez, Jr., Mayor

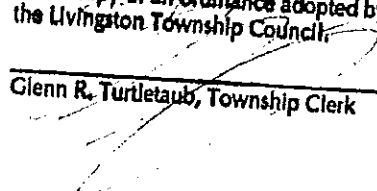

Glenn R. Turtletaub,
Township Clerk

Approved as to form:


Sharon L. Weiner, Esq.
Township Attorney

11/21/11

I HEREBY CERTIFY the foregoing to be a true copy of an ordinance adopted by the Livingston Township Council.


Glenn R. Turtletaub, Township Clerk