

§ 219-3. Compensation.

[Amended 2-19-1992 by Ord. No. 1992-02]

Members of the Commission shall serve without compensation.

§ 219-4. Powers and duties of Commission.

[Amended 2-19-1992 by Ord. No. 1992-02]

- A. It shall be the annual responsibility of the Commission to study, investigate, counsel, develop, update and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public places. Such a plan will be presented to the Township Council and, upon its acceptance and approval, shall constitute the official comprehensive municipal tree plan for the ensuing year for the Township of Lopatcong.
- B. The Commission, when requested by the Township Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

§ 219-5. Organization, rules and operation of Commission.

[Amended 2-19-1992 by Ord. No. 1992-02]

The Commission shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

§ 219-6. Applicability of regulations.

This chapter shall apply to persons, as herein defined, who cut down, destroy, injure or plant street or park trees, whether in preparation for building construction, grading or regrading of any lot or parcel of land or otherwise who intend to cut down, destroy or remove any street or park tree or who intend to place material, machinery or temporary soil deposit within 10 feet of any street or park tree trunk on Township property or easements.

§ 219-7. Definitions.

As used herein, the following terms shall have the meanings set forth:

PARK TREES

Trees, bushes and all other woody vegetation on public lands.

PERSON

Any individual, firm, corporation, association, syndicate, partnership, trust or any other legal entity.

PRUNING

The cutting of limbs back to the main stem or trunk, without leaving stubs, in such a manner that it does not severely disfigure the tree or to remove the normal crown.

PUBLIC LANDS

Any lands owned by the Township of Lopatcong, except roadways, whether or not the same are open to the general public.

PUBLIC ROADS

Any street, avenue, boulevard, road, parkway, drive or other way, whether open to vehicles or not, which includes the area between the right-of-way lines.

STREET TREES

Deciduous trees, shrubs, bushes and all other woody vegetation on public roads.

TOPPING

Severe cutting back of limbs to such a degree as to remove the normal crown or disfigure the tree.

TREE INSPECTOR

A representative of the Township Shade Tree Commission appointed by the Township Council to administer the provisions of this chapter.

[Amended 2-19-1992 by Ord. No. 1992-02]

§ 219-8. Planting restricted to official tree list.

[Amended 2-19-1992 by Ord. No. 1992-02]

No species other than those included on the official tree list may be planted as street trees or park trees without written permission of the Township Shade Tree Commission. For a tree list, refer to *Trees for New Jersey Streets*, a publication of the New Jersey Federation of Shade Tree Commissions, Cook College, Blake Hall, Rutgers University, New Brunswick, New Jersey 08903.

§ 219-9. Spacing.

The spacing of street trees will be in accordance with the three species size classes listed in *Trees for New Jersey Streets*, and no trees may be planted closer together than the following:

- A. Small trees and medium trees: 40 feet.
- B. Large trees: 60 feet, except in special plantings designed or approved by the Shade Tree Commission.

[Amended 2-19-1992 by Ord. No. 1992-02]

§ 219-10. Distance from curbs and sidewalks.

The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes listed in *Trees for New Jersey Streets*, and no trees may be planted closer than 1 1/2 feet to any curb or sidewalk.

§ 219-11. Distance from street corners and hydrants.

No street or park tree shall be planted within 35 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than 10 feet to any hydrant.

§ 219-12. Proximity to utility wires.

No street or park trees other than those species listed as small trees in *Trees for New Jersey Streets* may be planted under or within 10 lateral feet of any overhead utility wire.

§ 219-13. Planting, maintenance and removal by Township.

[Amended 2-19-1992 by Ord. No. 1992-02]

The Township shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary to preserve or enhance the symmetry and beauty of such public grounds. The Township Shade Tree Commission may remove or cause or order to be removed any street or park tree or part thereof which is in an unsafe condition or which, by reason of its nature, is injurious to sewers, electric power lines, gas lines, water lines or other public improvements or which is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners, provided that the selection and location of said trees are in accordance with §§ 219-8 through 219-12 of this chapter.

§ 219-14. Topping of trees.

[Amended 2-19-1992 by Ord. No. 1992-02]

It shall be unlawful as a normal practice for any person to top any street tree or park tree. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this chapter at the determination of the Township Shade Tree Commission.

§ 219-15. Removal of stumps.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

§ 219-16. Tree planting or replacement may be required.

[Amended 2-19-1992 by Ord. No. 1992-02]

If it is determined by the Township Shade Tree Commission that an insufficient number of trees remain within the public lands or easements of the Township as a result of the removal of existing trees or of the nonexistence of sufficient trees on said land, the planting of trees of an approved variety, as set forth in §§ 219-8 through 219-12 of this chapter, shall be required following all construction.

§ 219-17. Interference with Commission prohibited.

[Amended 2-19-1992 by Ord. No. 1992-02]

It shall be unlawful for any person to prevent, delay or interfere with the Shade Tree Commission or any of its agents while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street or park trees, as authorized in this chapter.

§ 219-18. Permit required; approval; exception.

No person shall cut down, destroy or remove any street or park tree, place any material, machinery, temporary soil deposit and/or regrade the soil within 10 feet of said tree trunk without first having secured a permit from the Township Tree Inspector. The Tree Inspector shall grant the permit if the proposed removal is not found to be in contravention of the purposes of this chapter as set forth in the preamble^[1] or in the applicable sections of this chapter. No permit shall be required of any public service company or Township employee doing such work in the pursuit of their public service endeavors.

[1] *Editor's Note: The preamble to the ordinance which established this chapter provided as follows:*

"Whereas the Council of the Township of Lopatcong, County of Warren and State of New Jersey, in the interests of public health and safety and the improvement of the environment, deems it necessary and

proper that an ordinance be adopted providing for the care, preservation, planting, pruning and removal of trees and shrubs in parks, streets and other public places in said Township; and

"Whereas the purpose of such an ordinance is to prevent the uncontrolled destruction and removal of trees growing upon public lands within the Township of Lopatcong which may result in soil erosion, stream pollution, inadequate or destructive surface drainage, a decrease in the fertility of the soil, the creation of dust and pollution and the creation of breeding places for mosquitoes, all of which result in increased costs to the Township for the correction thereof:"

§ 219-19. Review of Commission decisions; appeals.

[Amended 2-19-1992 by Ord. No. 1992-02]

The Township Council shall have the right to review the conduct, acts and decisions of the Township Shade Tree Commission and Tree Inspector. Any person may appeal from any ruling or order of the Township Shade Tree Commission and Tree Inspector to the Township Council, which may hear the matter and make a final decision.

§ 219-20. Violations and penalties.

- A. Any person or corporation violating any provision of this chapter shall be, upon conviction or a plea of guilty, subject to a fine not to exceed replacement cost of the tree. A violation affecting more than one tree shall be considered a separate violation as to each tree.
- B. Any violation of this chapter shall, upon conviction, be punishable by a fine not exceeding \$1,000, imprisonment for a term not exceeding 90 days or a period of community service not exceeding 90 days, or any combination thereof.
[Added 2-19-1992 by Ord. No. 1992-02]
- C. Any property owner found in violation of § 219-22 shall, after receiving written notice of said violation, have a period of 30 days to rectify said situation. In the event the property owner fails to comply with the terms and conditions as set forth above, the Township shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, interferes with the visibility of a traffic control device or sign or interferes with the clearance/removal of snow, ice or leaves from the street.
[Added 10-4-2006 by Ord. No. 2006-24]

§ 219-21. Trees not recommended for planting; availability of tree list.

- A. The following trees are not recommended for local planting as they are disease- or insect-prone:
 - (1) Upright Siberian crabapple (*Malus baccata columnaris*): fire blight troublesome.
 - (2) Marshall's seedless green ash (*Faxinus pennsylvanica*): oystershe scale; roundheaded borer.
 - (3) European white birch (*Betula pendula*): bronze birch borer and birchleaf miner.
 - (4) Shademaster thornless honeylocust (*Prunus avium f. plena*): tent caterpillar.
 - (5) European hornbeam (*Carpinus betulus*): bagworm; canker worm.
 - (6) Lavalley hawthorn (*Crataegus lavalleyi*): insects and disease sometimes troublesome.
 - (7) London plant tree (*Platanus acerifolia*): canker strain; anthracno lacebug; aphids.
 - (8) Yoshino cherry (*Prunus yedoensis*): tent caterpillar; scale.

(9) Flowering dogwood (*Cornus florida*): dogwood borer.

(10) Washington thorn (*Crataegus phaenopyrum*): lacebug.

(11) Kingan fruitless mulberry (*Morus alba*): canker.

B. The Township Shade Tree Commission shall furnish a list of Trees for New Jersey Streets with complete description of physical properties, average longevity, root system, growth factor, etc., upon request.

[Amended 2-19-1992 by Ord. No. 1992-02]

§ 219-22. Pruning, clearance.

[Added 10-4-2006 by Ord. No. 2006-24]

Any property owner whose trees or shrubs overhang any street or right-of-way within the Township shall prune the branches so that such branches shall not obstruct the view of any street intersection, shall not obstruct the light from any street lamp or impede the clearance/removal of snow, ice or leaves from the street. There shall be a clear space of 12 feet above the surface of the street or sidewalk. Said property owners shall remove all dead, diseased or dangerous trees or broken or decayed limbs which constitute a menace to the safety of the public.

ORD. 25-02

**ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF LOPATCONG,
COUNTY OF WARREN, STATE OF NEW JERSEY AMENDING
CHAPTER 219 OF THE TOWNSHIP CODE ENTITLED "TREES"**

WHEREAS, the Council of the Township of Lopatcong, County of Warren and State of New Jersey, in the interests of public health and safety and the improvement of the environment, deems it necessary and proper that an ordinance be adopted providing for the care, preservation, planting, pruning and removal of trees and shrubs in parks, streets and other public places in said Township; and

WHEREAS, the purpose of such an ordinance is to prevent the uncontrolled destruction and removal of trees growing upon public lands within the Township of Lopatcong which may result in soil erosion, stream pollution, inadequate or destructive surface drainage, a decrease in the fertility of the soil, the creation of dust and pollution and the creation of breeding places for mosquitoes, all of which result in increased costs to the Township for the correction thereof; and

WHEREAS, the Township of Lopatcong has a Municipal Separate Storm Sewer System (MS4) Permit from the State of New Jersey; and

WHEREAS, the Township of Lopatcong is subject to the Community-wide Ordinance requirements of the Tier A Municipal Stormwater Permit; and

WHEREAS, the Community-Wide Ordinance requirements in the Township of Lopatcong's Tier A Municipal Stormwater Permit necessitate the amendment of Ordinance 219 "Trees" by the Municipality.

NOW THEREFORE BE IT ORDAINED by the Township Council of the Township of Lopatcong, County of Warren and State of New Jersey that Chapter 219 of the Township Code of the Township of Lopatcong is amended as follows:

Section One – Section 219 of the Code of the Township of Lopatcong shall be amended as follows:

§219-6. Applicability of Regulations

This chapter shall apply to persons, as herein defined, who cut down, destroy, injure or trees, whether in preparation for building construction, grading or regrading of any lot or parcel of land or otherwise who intend to cut down, destroy or remove any tree or who intend to place material, machinery or temporary soil deposit within 10 feet of any tree trunk on any lot or parcel of land in the Township.

The requirements of §219-18 of this chapter shall apply to all persons, as herein defined, who engage in tree removal as defined below.

§219-7. 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 discretionary.

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 $CRR = 6" \times 1.5' = 9'$.

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 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.

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.

- A. Has an infectious disease or insect infestation;
- B. Is dead or dying;
- C. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
- D. Is causing obvious damage to structures (such as building foundations, etc.); or
- E. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).

PARK TREES

Trees, bushes and all other woody vegetation on public lands.

PERSON

Means any individual, resident, firm, corporation, trust, utility, company, syndicate, partnership, firm, association or any other legal entity.

PLANTING STRIP

Means the part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

PRUNING

The cutting of limbs back to the main stem or trunk, without leaving stubs, in such a manner that it does not severely disfigure the tree or to remove the normal crown.

PUBLIC LANDS

Any lands owned by the Township of Lopatcong, except roadways, whether or not the same are open to the general public.

PUBLIC ROADS

Any street, avenue, boulevard, road, parkway, drive or other way, whether open to vehicles or not, which includes the area between the right-of-way lines.

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.

STREET TREE

Means a tree, shrub, bush, and all other woody vegetation 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, shrubs, bushes, and woody vegetation planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.

TOPPING

Severe cutting back of limbs to such a degree as to remove the normal crown or disfigure the tree.

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 INSPECTOR

A representative of the Township Shade Tree Commission appointed by the Township Council to administer the provisions of this chapter.

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.

§219-18. Permit Required; approval; exception.

A. Application Process:

1. No person shall cut down, destroy or remove any street or park tree, place any material, machinery, temporary soil deposit and/or regrade the soil within 10 feet of said tree trunk without first having secured a permit from the Township Tree Inspector. The Tree Inspector shall grant the permit if the proposed removal is not found to be in contravention of the purposes of this chapter as set forth in the preamble[1] or in the applicable sections of this chapter. Tree removal permit applications shall be subject to a \$25.00 application fee. No permit shall be required of any public service company or Township employee doing such work in the pursuit of their public service endeavors.
2. No person shall cut down, destroy or remove any non-street tree or non-park tree with DBH of 6" or more on their property without first having secured a permit from the Township Tree Inspector. The Tree Inspector shall grant the permit if the proposed removal is not found to be in contravention of the purposes of this chapter as set forth in the preamble[1] or in the applicable sections of this chapter. No permit shall be required of any public service company or Township employee doing such work in the pursuit of their public service endeavors.
3. Applicants may be required to post an escrow deposit in the event that the Tree Removal Application and subsequent review requires the Township to engage a Licensed Tree Expert to review the requested trees to be removed. The escrow amount shall be determined at the time of the Application. Applicants shall be notified in writing at the time of application filing.
4. Trees of imminent threat do not require a permit in advance but require a permit to be filed within five (5) days after tree is removed.
5. Applications are available through the office of the Township Clerk.

B. Tree Replacement Requirements

1. Any person who removes one or more street tree(s) and/or park tree(s) with a DBH of 2.5” or more, unless exempt under Section 219-18D, shall be subject to the requirements of the Tree Replacement Requirements Table below.
2. Any person, who removes one or more non-street tree(s), as defined as Tree removal, with a DBH of 6” or more per acre, unless otherwise detailed under Section 219-18D, shall be subject to the requirements of the Tree Replacement Requirements Table.
3. The species type and diversity of all replacement trees shall be in accordance with the official tree list referenced in § 219-8 of this chapter.
4. Replacement tree(s) shall:
 - a. 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;
 - b. 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;
 - c. 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
 - d. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

Tree Replacement Requirements Table:

| Category | Tree Removed (DBH) | Tree Replacement Criteria (See Appendix A) |
|-----------------|---|--|
| 1 | DBH of 2.5” (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 |
| 2 | DBH of 13” to 22.99” | Replant 2 trees with minimum tree calipers of 1.5” for each tree removed |
| 3 | DBH of 23” to 32.99” | Replant 3 trees with minimum tree calipers of 1.5” for each tree removed |
| 4 | DBH of 33” or greater | Replant 4 trees with minimum tree calipers of 1.5” for each tree removed |

C. Replacement Alternatives:

1. 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:
 - a. Plant replacement trees in a separate area(s) approved by the municipality.
 - b. Pay a fee of \$100.00 per tree replacement planting not completed in accordance with the Tree Replacement Requirements Table above. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

- D. 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 municipality by all persons claiming an exemption. Exemptions shall be granted at the discretion of the Township Shade Tree Commission upon review of applications for tree removal.
 1. 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.
 2. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
 3. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan 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.

§219-22 Pruning, Clearance

Any property owner whose trees or shrubs overhang any street or right-of-way within the Township shall prune the branches so that such branches shall not obstruct the view of any street intersection, shall not obstruct the light from any street lamp or impede the clearance/removal of snow, ice or leaves from the street. There shall be a clear space of 14 feet above the surface of the street or sidewalk. Said property owners shall remove all dead, diseased, or dangerous trees or broken or decayed limbs which constitute a menace to the safety of the public.

SECTION 2:

Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder off this Ordinance shall not be affected thereby.

SECTION 3:

Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

SECTION 4:

Effective Date. This Ordinance shall take effect upon final passage and publication as provided by law.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Council of the Township of Lopatcong held on Wednesday, February 5, 2025 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 Council to be held on Wednesday, March 5, 2025 at 7:30 PM or as soon thereafter as the Township Council may hear this Ordinance at the Municipal Building located at 232 So. Third St., Phillipsburg, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

Margaret B. Dilts, MMC