TOWNSHIP OF SOUTHAMPTON

ORDINANCE NO. 2024-13

AN ORDINANCE TO CREATE CHAPTER 26 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF SOUTHAMPTON TO ESTABLISH PROVISIONS PERTAINING TO TREE REMOVAL AND MITIGATION DUE TO STATE OF NJ STORMWATER POLLUTION PREVENTION REGULATIONS

WHEREAS, the New Jersey Department of Environmental Protection (NJDEP) developed the Municipal Stormwater Regulation Program as a result of the US Environmental Protection Agency's (USEPA) Phase II rules addressing pollutants entering into our water tributaries; and

WHEREAS, the NJDEP mandates that Southampton Township ("Township") develop a Stormwater Pollution Prevention Program in furtherance of the NJDEP's Municipal Stormwater Regulation Program; and

WHEREAS, the NJDEP mandates that each municipality adopt certain ordinance in furtherance of that municipality's Stormwater Pollution Program, and NJDEP has promulgated a model ordinances; and

WHEREAS, Southampton's land use provisions are dominated by agricultural preservation and Pinelands regulations; and

WHEREAS, as the State reauthorizes the Municipal Stormwater Discharge Permits, it requires the Township to periodically adopt or amend municipal Ordinances aimed to prevent stormwater pollution from commercial areas and high density housing developments, none of which is are present in Southampton; and

WHEREAS, in a community such as Southampton, regulations pertaining to tree removal and the potential impact upon the community's forested areas, tree canopy cover, and related environmental impacts upon pollutants, soil erosion, and flooding must reflect the needs of a community with extensive land area dedicated to agricultural use and comparatively small areas without crops and trees; and

WHEREAS, the Township must adopt an ordinance even where such provisions contravene best management farming practices and Pinelands regulations;

NOW, THEREFORE, BE IT ORDAINED, by the Township of Southampton, County of Burlington, State of New Jersey, that the Code of Southampton Township, enacts Chapter 26 of the Township Code to now read as follows:

Section 1. Chapter 26 of the Code of the Township of Southampton to be entitled "Trees" is hereby enacted to read as follows:

Part II: General Legislation
Chapter 26 Trees

§ 26-1 Trees on Public and Private Property
The purpose of this Chapter is to establish requirements for tree removal and replacement and penalties for noncompliance in the Township as mandated by the State of New Jersey with the intent to protect the environment.

§ 26-2. Definitions:
For this chapter, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this chapter 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.

APPLICANT Any "person", as defined herein, who applies for approval to undertake the removal of a tree or trees regulated under this ordinance.

DIAMETER AT BREAST HEIGHT (DBH) The diameter in inches of the trunk of a mature tree measured at a point four and a half feet above ground level from the downhill side of the tree.

PERSON Any individual, corporation, company, partnership, firm, political subdivision of this State and any state, interstate or federal agency.

PLANTING STRIP The part of a street right-of-way between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

STREET TREE A tree planted in the sidewalk or planting strip in the public right of way.

TREE 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 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, and improper grading and/or soil compaction 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 tree treatments intended to manage invasive species.

TREE OF SIGNIFICANCE means any tree that is recognized by the municipal governing body as being of significance due to its size, unique value, age, rarity, or the aesthetic, botanical, ecological and historical value.

§ 26-3 Regulated Activities:

A. Unless exempt under § 26-4, no person, corporation, or entity shall remove or destroy any street tree with a DBH or 2.5" or more or any non-street tree with a DBH of 6" or more. If Code Enforcement finds any tree removal to not be in compliance with this Chapter, they shall notify the person, corporation, or entity with regard to a potential violation of this Chapter. The person, corporation or entity shall provide a response to the notice within twenty (20) days of the date of the notice advising, which response may include assertion of exemptions(s) as set for below.

B. Tree Replacement Requirements:

1. Any person who removes one or more street tree(s) with a DBH of 2.5" or more, within a five year period, unless exempt under § 26-4, shall be subject to the requirements of the Tree Replacement Requirements Table below.

2. For applicants, other than "Homeowners":
Any person, other than a homeowner, who removes one or more tree(s) with a DBH of 6" or more per acre, within a five year period unless exempt under § 26-4, shall be subject to the requirements of the Tree Replacement Requirements Table below.

3. For Homeowner applicants:
Any person that removes more than three (3) trees per acre within a five year period, with a DBH between 6" and 32.99", or any one (1) tree with a DBH 33" of great or a tree of significance, unless exempt under § 26-4, shall be subject to the requirements of the Tree Replacement Requirements Table below.

The species type and diversity of replacement trees shall be in accordance with the lists of approved trees which shall be adopted from time to time by resolution of the Township Committee and be incorporated herein by reference: Tree Planting List, Right-of-Way Tree List, and Invasive Tree List.

Replacement tree(s) shall meet the Required Actions in Table below, and shall be planted within twelve (12) months of the date of removal of the original tree(s). Replacement tree(s) shall be monitored by the applicant for a period of two (2) years to ensure their survival and shall be promptly replaced if they die during the monitoring period. Trees planted in temporary containers or pots do not count towards tree replacement requirements.

Tree Replacement Requirements Table	
Tree Removed (DBH)	Required Action
DBH of 2.5" (for street trees) or 6" (for other trees) to 12.99"	Replant 1 tree in with a minimum DBH of 1.5" for each tree removed
DBH of 13" to 22.99"	Replant 2 trees with minimum DBHs of 1.5" for each tree removed
DBH of 23" to 32.99"	Replant 3 trees with minimum DBHs of 1.5" for each tree removed

DBH of 33” or greater	Replant 4 trees with minimum DBHs of 1.5” for each tree removed
Tree of Significance	Replant 5 trees with minimum DBHs of 1.5” for each tree removed

C. Tree of Significance.

1. All Tree of Significance removals shall be approved by the Code Enforcement Officer prior to removal.

2. The Township Committee may designate, by resolution, a certain tree or a certain species of trees as being of special value based on rarity or historical importance.

D. 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 representing the cost to replace the removed or destroyed tree(s), including administration and labor costs, per tree removed. This fee shall be placed into a Township fund dedicated to planting and maintaining trees and shrubs on public property.

§ 26-4. Exemptions:

All persons shall comply with the tree replacement and permit standards described within this Chapter, except in the cases detailed below.

A. Clearing, cutting, and/or removal of trees which is necessary to service, maintain, or ensure the continued safe use of a lawfully existing structure, right-of-way, firebreak, field, park, and/or garden.

B. Farms in active operation, nurseries, fruit orchards, and garden centers;

C. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan;

D. 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;

E. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;

F. Trees that are damaged as a result of storms and or other naturally occurring calamities, that if not immediately removed, pose an imminent threat or danger to life and/or property.

G. Any tree located on publicly owned land and removed by the public agency or its representatives or by a tenant in furtherance of the other exemptions in this ordinance.

H. Any trees removed within 100 feet of any structure for the purposes of fire safety. Any activity promoting public health and safety by creating, maintaining and improving fire defensible space around structures or other fire suppression and control activities, such as, but not limited to, the creation of fire lanes.

J. Any tree, excluding street trees, with a DBH less than 6".

K. Any trees removed within one (1) acre surrounding a residential dwelling.

L. Tree removal, maintenance or land management by the Township, School District or Volunteer Fire Companies or its authorized contractors or subcontractors.

M. Any Tree removal causing damage or the risk of damage to structures such as buildings, walkways and driveways and roadways

§ 26-5. Enforcement, Appeals:

This ordinance shall be enforced by the Code Enforcement Officer or their designee during the course of ordinary enforcement duties.

§ 26-6. Violations and Penalties:

The burden of proof shall remain with the Township for any potential violations of this Chapter. Any person who is found to be in violation of the provisions of this ordinance shall, upon conviction, be liable of not more than $2,000 and costs of prosecution or imprisonment in the Burlington County Jail for a period of not more than 90 days, or both such fine and imprisonment, in addition to the applicable Tree Removal Permit application fee. The Township may, based upon individual circumstances, require the planting of additional trees in accordance with the provisions of this Chapter in lieu of a fine.

Repealer, Severability and Effective Date.

A. Repealer. Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

B. Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Township Committee hereby declares its intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Township to meet the goals of the Ordinance.

C. This Ordinance shall take effect upon passage and publication according to law.

ACTION ON INTRODUCTION:

Motion made by: _____
Motion seconded by: _____

VOTE:

Deputy Mayor Heston:	Yes	No	Abstain	Not Present
Committeewoman Rossell:	Yes	No	Abstain	Not Present
Committeeman Raftery:	Yes	No	Abstain	Not Present
Committeeman Young, Sr.:	Yes	No	Abstain	Not Present
Mayor Mikulski:	Yes	No	Abstain	Not Present

ACTION ON ADOPTION (after public hearing)

Motion made by: _____
Motion seconded by: _____

VOTE:

TOWNSHIP COMMITTEE:

Deputy Mayor Heston:	Yes	No	Abstain	Not Present
Committeewoman Rossell:	Yes	No	Abstain	Not Present
Committeeman Raftery:	Yes	No	Abstain	Not Present
Committeeman Young, Sr.:	Yes	No	Abstain	Not Present
Mayor Mikulski:	Yes	No	Abstain	Not Present

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true copy of the ordinance that was introduced after first reading at a meeting of the Southampton Township Committee held on May 21st, 2024 and adopted after a public hearing at a meeting of the Southampton Township Committee held on June 18th, 2024.

_____
Kathleen D. Hoffman, RMC
Township Clerk/Administrator