

**2016-34 AN ORDINANCE BY THE MUNICIPALITY OF PRINCETON CONCERNING TREES AND SHRUBS AND AMENDING THE “CODE OF THE BOROUGH OF PRINCETON, NEW JERSEY, 1974” AND “CODE OF THE TOWNSHIP OF PRINCETON, NEW JERSEY, 1968.”**

BE IT ORDAINED by the Princeton Council as follows:

Section 1. Chapter 22 of the “Code of the Township of Princeton, New Jersey, 1968” (“Code”), entitled “Trees and Shrubs,” is hereby amended as follows (additions are underlined and deletions are [bracketed]):

**CHAPTER 22. TREES AND SHRUBS.**

*Article I. Findings, Intent and Purpose; Definitions.*

**Sec. 22-1. Findings, intent and purpose.**

The mayor and council recognize that trees and shrubs are a natural resource that provide aesthetic, economic, ecological, environmental and health benefits to the municipality of Princeton and its inhabitants, and that the treatment of trees and shrubs on individual properties can have significant impacts not only on those individual properties, but also on neighboring properties, the streetscape, the tree canopy and the entire municipality.

For these reasons, the mayor and council find that it is in the interest of Princeton and its inhabitants to establish rules and regulations for the stewardship of trees and shrubs within Princeton, on both public and private property, and more specifically, for the care and protection of trees and shrubs, preservation of the maximum number of trees and shrubs, safeguarding of specimen and significant trees and replacement of removed or destroyed trees.

**Sec. 22-2. Definitions.**

As used in this chapter, the following terms shall have the following definitions:

- (a) Caliper shall mean the diameter of the trunk of a tree measured at a point six inches above ground level.

- (b[a]) *Canopy* shall mean the upper and outermost part of a tree created by the tree's crown and shall mean, in the case of contiguous trees, the upper and outermost parts of the trees' crowns.
- (c[b]) *Crown* shall mean the upper mass or head of a tree created by its branches and leaves.
- (d) *Deciduous tree* shall mean any woody plant with a main stem or multiple stems with branches protruding above the root flare and that seasonally loses its leaves.
- (e[c]) *Destroy* shall mean to kill or damage irreparably, which shall be deemed to include, but not be limited to: damage inflicted to the root system by machinery, storage of materials, soil compaction or change of natural grade above or below the root system or around the trunk; damage inflicted on the tree permitting fungus, pests or other infestation; excessive pruning or thinning not in conformance with American National Standards Institute (ANSI) standards, leading to a failure to thrive; paving over the root system with any impervious materials within such proximity as to be fatally harmful to the tree; or application of any substance toxic to the tree or causing the tree to be exposed to any such substance.
- (f[d]) *Diameter Breast Height* or *DBH* shall mean the diameter of the trunk of a tree measured at a point four and one-half feet about ground level on the downhill side of the tree.
- [*Diameter shoulder height* or *DSH* shall mean the diameter of the trunk of a tree measured at a point four and one-half feet above ground level.]
- (g) *Drip line* shall mean an imaginary line on the surface and subsurface of the ground delineated by the outer limits of the branches of a tree and measured plumb from the branches to the ground. When the outer limits of the branches are indistinct or otherwise unclear, the drip line shall be presumed to be located one and one-half feet from the center of the trunk of a tree for each inch of the trunk DBH. In the case of trees with multiple trunks, the drip line of each trunk shall be measured separately.
- (h[e]) *Enforcement officer* shall mean a certified arborist appointed by the administrator upon consultation with the shade tree commission for the purpose of enforcing the terms of this chapter.
- (i[f]) *Evergreen tree* shall mean a tree with foliage that remains green and functional throughout the year.
- (j[g]) *Ornamental tree* shall mean a tree that can be single or multiple stemmed and that grows to a maximum height of twenty-five feet.

- (k) Princeton Shade Tree Trust Reserve shall mean a fund established and maintained by Princeton for purposes of planting and maintaining trees and shrubs on public property.
- (l[h]) Replacement tree shall mean, in the case of a deciduous tree, a tree which measures at least[no smaller than] two [to two]and one-half inches in caliper, and in the case of an evergreen tree, a tree which measures at least six feet in height measured from grade. In all cases, the replacement tree shall be of a species and size appropriate for the [site]premises on which it will be planted. Replacement nursery stock shall adhere to the American Standard for Nursery Stock (ANSI Z60.1).
- (m[i]) *Significant tree* shall mean a tree or grove of trees recognized as significant by the shade tree commission or enforcement officer on the basis of specimen, quality, historical significance, location, size or other unique characteristics.
- (n[j]) *Specimen tree* shall mean any tree equal to at least eighty percent of the size of those listed on the “Champion Big Tree Register” of the New Jersey Community Forestry Program in the Department of Environmental Protection’s Division of Parks and Forestry, or any tree actually listed on the “Champion Big Tree Register.”
- (o[k]) *Shrub* shall mean any woody plant with persistent stems protruding from grade level.
- (p[l]) *Tree* shall mean any woody plant with a main stem or multiple stems with branches protruding above the root flare, which includes all deciduous, ornamental and evergreen trees.
- (q) Tree protection zone shall mean the area within the “drip line” of a tree, as that term is defined in section 22-2(g) above.

***Article II. Shade Tree Commission.***

**Sec. 22-3. Commission created; membership; term of office of members.**

- (a) There is hereby established a shade tree commission consisting of seven members and two alternates, designated as “Alternate No. 1” and “Alternate No. 2.” There shall also be one non-voting liaison appointed from the governing body. The mayor, upon consultation with the council, shall appoint the members and alternates. All members and alternates shall be Princeton residents. The term of office of the members shall be five years. The term for members of the initial commission shall begin on the date of their appointment and shall be as follows: one member shall be appointed for one year, one member shall be appointed for two years, one

member shall be appointed for three years, two members shall be appointed for four years, and two members shall be appointed for five years. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January 1. The commission shall annually elect its chairperson from among its members.

- (b) Alternate No. 1 and Alternate No. 2 shall serve during the absence or disqualification of any regular member or members. The term of each alternate member shall be five years commencing on January 1 of the year of appointment; provided, however, that in the event two alternate members are appointed, the initial term of Alternate No. 2 shall be four years and the initial term of Alternate No. 1 shall be five years. The terms of the initial alternate members appointed shall commence on the day of their appointment and shall expire on the fourth or fifth December 31 next ensuing after the date of their appointments, as the case may be. An alternate member may participate in discussion of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

**Sec. 22-4. Powers and duties of the shade tree commission.**

The shade tree commission shall have the following general powers and duties:

- (a) Policy making responsibility in the regulation, planting, care and control of trees and shrubs upon and in the streets, highways, public places, public right-of-ways and parks of the municipality. The shade tree commission shall have responsibility for the regulation, planting, care and control of trees and shrubs upon and in state and county highways and county parks only to the extent authorized or required by law;
- (b) Responsibility to consult and advise with the enforcement officer in all matters within its purview;
- (c) All authority conferred by N.J.S.A. 40:64-1 *et seq.*, to the extent applicable;
- (d) Authority to review tree surveys, removal plans and planting plans submitted with land development applications referred to it by the planning board or zoning board. After its review the commission may prepare a report of its findings and recommendations to be sent to the board of jurisdiction at least fourteen days prior to that board's scheduled hearing of the development application;
- (e) Authority to prepare criteria, standards, guidelines, and recommendations, including recommendations as to specific appropriations, for the use of funds collected in the Princeton Shade Tree Trust Reserve. The use of

said funds shall be subject to the prior review and recommendation of the shade tree commission;

- (f) Authority to develop a list of sites throughout Princeton that require the replacement of trees or the addition of new trees, and regularly update the list to reflect the replacement or removal of trees;
- (g) Authority to develop and maintain a recommended tree species list;
- (h) Authority to develop and maintain an inventory of trees and shrubs upon and in the streets, highways, public places, public right-of-ways and parks of the municipality;
- (i) Responsibility to develop and recommend tree removal standards for trees located on private property;
- (j) Responsibility to make, keep, and preserve minutes and records of its meetings and activities, and to make annual reports to the mayor and council. Copies of all minutes and records of its meetings and activities shall be filed with the clerk;
- (k) Responsibility to decide appeals and recommend informal resolution of complaints, as set forth in sections 22-15 and 22-16, respectively, below; and
- (l) Such additional functions as required by this chapter or within the law as may be delegated to it.

**Sec. 22-5. Interference with work prohibited.**

No person shall prevent, delay or interfere with any lawful work undertaken by the shade tree commission or its authorized agent.

***Article III. Protection of Trees and Shrubs on or Extending onto Public Streets, Highways and Right-of-Ways, and Public Property.***

**Sec. 22-6. Approval required for certain actions concerning trees and shrubs located on public streets, highways and right-of-ways, and property under municipality's jurisdiction.**

- (a) No person shall do, or cause to be done, any of the following acts upon public streets, highways, right-of-ways or parks or other lands under the municipality's jurisdiction, or cause or permit the same to be done by any third party contractor or subcontractor, without obtaining the written approval of the enforcement officer, in accordance with subsection (b) below:

- (1) Cut, trim, break, climb with spikes, disturb the roots of or otherwise injure, remove or destroy any tree or shrub or injure, misuse or remove any structure or device placed to support or protect such tree or shrub.
  - (2) Plant any tree or shrub.
  - (3) Fasten or affix any rope, wire, electric attachment, sign or other device to a tree or shrub.
  - (4) Place or maintain, or cause to be placed or maintained, in or upon the ground, any stone, cement, sidewalk, mortar, building material, impervious material or other substance that shall impede or prevent the free access of water, air or fertilizer to the roots of any tree or shrub or within the drip line of a tree or shrub.
  - (5) Place or cause to be placed any chemical or substance harmful to tree life, including but not limited to gasoline or oil, on any tree or shrub or within the drip line of any tree or shrub.
  - (6) Hitch or fasten an animal to any tree or shrub, or to any guard or support provided for the same, or permit any animal to bite or otherwise injure any tree or shrub.
  - (7) Hitch or fasten a bicycle or other personal property to any tree or shrub, or to any guard or support provided for the same.
- (b) A person may request in writing the approval of the enforcement officer to undertake an activity otherwise prohibited in section 22-6(a) above. Within twenty [fifteen] business days of said written request, the enforcement officer shall, in his or her discretion, approve or deny the request. The failure of the enforcement officer to approve or deny the request within twenty [fifteen] business days shall constitute an approval of the request.
- (c) Excepted from the requirements of this section are the following:
- (1) The treatment of trees and shrubs by the appropriate public agency with the consent of the enforcement officer; and
  - (2) The management, including integrated pest management, of Ash (*Fraxinus* spp.) trees to protect against damage and/or loss of the trees due to infestation by the Emerald Ash Borer (*Agilus planipennis*), with the consent of the enforcement officer.

**Sec. 22-7. Removal or trimming by municipality when interfering with public street, highway or right-of-way use; duty to reimburse municipality for work performed.**

If the limbs or branches of any trees or shrubs grown on any land in the municipality extend over or into any of the public streets, highways or right-of-ways in the municipality and interfere with the free and uninterrupted use of such

streets, highways or right-of-ways for any lawful purpose, the enforcement officer shall notify and direct the owner of the premises on which such trees or shrubs may stand, or the agent of such owner, to trim or detach, on or before a time to be fixed in such notice, any limbs, branches or parts of trees or shrubs so extending in the street, highway or right-of-way in the municipality. If the owner of any such trees or shrubs shall fail or neglect to comply with the terms of such notice, the enforcement officer is authorized and empowered to trim or detach, or cause to be trimmed or detached, any limbs, branches or parts of trees or shrubs so extending into the street, highway or right-of-way in the municipality. Upon completion of such work, there shall be rendered, by the enforcement officer, to the owner of the premises on which such trees or shrubs stood and for whom such work was done, a bill for such work, showing the money expended by the municipality therefor, and upon failure of the party for whom such work was done and such money expended to reimburse the municipality within sixty days from the time of completion of such work, suit shall be brought in the name of the municipality for the amount due in any court of competent jurisdiction.

**Sec. 22-8. Removal of substance, material or covering at base of trees and shrubs; duty to reimburse municipality for work performed.**

Where any tree or shrub in any public street, highway or right-of-way in the municipality may be surrounded at the base of its trunk by ground which is not open as required in section 22-6(a)(4) above, or by open ground of less quantity or measurement than that herein required in section 22-6(a)(4) above, it shall be the duty of the enforcement officer to notify the owner of the property in front of which any such tree or shrub may be to remove, within a time fixed in such notice, so much of the substance, material or other covering as may be necessary to give the space of open ground herein required. If the person so notified shall not remove the substance, material or covering by the time so fixed, the enforcement officer may do so, or cause the same to be done and, upon completion thereof, render a bill to the person so notified for the work done and the money expended therefor. If payment shall not be made within sixty days from the time of completion of such work, suit shall be brought in the name of the municipality for the amount due in any court of competent jurisdiction.

**Sec. 22-9. Protection of trees and shrubs from utility wires.**

Any person having control over any wire for the transmission of electric current or telephone, cable or any other utility service along a public street, highway or right-of-way shall at all times guard all trees and shrubs through which such wires pass against any injury from the wires or from the current carried by them. Prior to undertaking any work on the utility affecting any such tree or shrub, the utility company shall provide at least five days' prior written notice to the enforcement officer and abutting property owner of same. The device or means used shall be subject to the approval of the enforcement officer.

***Article IV. Removal of Trees on Private Property; Permit Requirements.***

**Sec. 22-10. Purpose.**

This article is intended to further the intent and purpose of this chapter, as set forth in Article I above. To that end, this article establishes tree removal standards for trees located on private property. The purpose of these specific standards is to encourage and further the protection and preservation of trees and their canopy as important public and environmental resources and to:

- (a) Control and prevent the indiscriminate or excessive removal and destruction of trees and their canopy.
- (b) Control and prevent conditions that cause an increase in stormwater run-off, sedimentation, soil erosion, loss of wildlife habitat and air and noise pollution, or that inhibit aquifer recharge or impair the ambiance or physical appearance of neighborhoods, historic landscapes and streetscapes.
- (c) Strike a balance between limiting the adverse impacts of tree removal and not unduly interfering with the ability of a property owner to appropriately remove trees on private property.

**Sec. 22-11. Trees requiring permit before removal.**

It shall be a violation of this article for any person to remove or otherwise destroy any tree as set forth in this section, or to cause or permit the same to be done by any third party contractor or subcontractor, without first obtaining a permit or approval as provided herein below. Except as otherwise provided in section 22-12 below, the following acts are hereby regulated and shall require a tree removal permit:

- (a) Removal of or otherwise destroying a tree with a [DSH]DBH of eight inches or more;
- (b) Removal of or otherwise destroying an ornamental or evergreen tree with a height of ten feet or more;
- (c) Removal or otherwise destroying a tree with a canopy extending over a public right-of-way; and
- (d) Removal of or otherwise destroying any specimen or significant tree, as defined in section 22-2 above.

**Sec. 22-12. Exceptions.**

Excepted from the requirements of this article are the following:

- (a) Any tree that poses imminent danger to life or property or where removal is in response to an emergency. To qualify under this exception, the tree shall only be removed to the extent necessary to abate the imminent danger or emergency. If notification of the removal of said tree pursuant to this article has not been given to the enforcement officer prior to removal, then notification must be provided by the next business day or as soon as practicable thereafter. [but no later than the next business day.] Said notification shall include verification that the tree removal was necessary to abate the imminent danger or emergency;
- (b) Any tree that has fallen solely as a result of storm damage or other natural causes;
- (c) Any dead tree or substantially diseased tree as a result of natural causes or storm damage where:
  - (1) The tree is still standing;
  - (2) The person desiring to destroy or remove the tree is the owner of the land upon which the tree is located;
  - (3) The person notifies the enforcement officer of the desire to remove the tree; and
  - (4) The enforcement officer verifies in writing that the tree is dead or substantially diseased as a result of natural causes. The failure of the enforcement officer to approve or deny the request within fifteen days shall constitute an approval of the request;
- (d) Tree removal that is a part of any land development application subject to the jurisdiction of the planning or zoning boards, or any of their subcommittees. The shade tree commission may, however, provide its review and comment, if any, regarding the tree removal to the [municipal engineer]board of jurisdiction;
- (e) Tree removal as part of an application requiring preservation plan approval by the historic preservation commission or the commission's administrative officer for properties that are subject to the commission's jurisdiction within the historic preservation zoning districts or historic preservation buffer zoning districts; and
- (f) The removal of any trees that are a part of an approved woodland management program pursuant to the provisions of the New Jersey Farmland Assessment Act of 1964.

**Sec. 22-13. Application for tree removal permit.**

- (a) General Application Requirements. A person desiring to remove or otherwise destroy a tree or trees as provided for in section 22-11 above

shall first apply to the enforcement officer for a permit, on forms provided by the municipality and containing the information required in subsections (b), (c) and (d) of this section.

- (b) Narrative. The application required by subsection (a) above shall include a narrative specifying:
  - (1) The location of the premises where the tree removal or destruction is to take place, by both street address and lot and block number;
  - (2) The name and address of the owner of the premises;
  - (3) The name and address of the applicant for the permit, if other than the owner, accompanied by the owner's consent to said application;
  - (4) A list providing the species, [DSH]DBH and number of trees to be destroyed or removed;
  - (5) The reason or purpose for the destruction or removal of trees; and
  - (6) A description of the applicant's tree replacement plan, in accordance with subsection (d) below.
  
- (c) Sketch/Printed Plan. The application required by subsection (a) above shall be accompanied by a sketch and/or printed plan showing the following:
  - (1) The size of the lot;
  - (2) All structures and their appurtenances, including but not limited to any building, garage, shed, deck, pool, driveway, walkway, patio or other impervious surface;
  - (3) The location upon the lot where the destruction or removal of the tree or trees is proposed to take place;
  - (4) The identity and location of trees to be destroyed or removed;
  - (5) The location of all streams and wetlands on the lot; and
  - (6) The proposed location(s) for planting of replacement tree(s), as well as their species and [DSH]DBH.
  
- (d) Tree Replacement Plan. The application required by subsection (a) above shall be accompanied by a narrative and/or sketch or printed plan showing a tree replacement plan, to include and comply with the following:
  - (1) The tree replacement plan shall provide for replacing the removed or destroyed tree(s) in the same or contiguous location(s) on the premises, and in accordance with the following specific requirements. The tree replacement plan shall [have the goal of a one-to-one tree replacement. In lieu of replacing the]require that the applicant replace each removed or destroyed tree with one or more trees depending upon the DBH of the removed or destroyed tree, and in accordance with Schedule A immediately below, the "Tree Replacement Schedule."

**SCHEDULE A – TREE REPLACEMENT SCHEDULE**

<u>Tree Removed/Destroyed</u>	<u>Required Replacement Tree</u>	<u>Tree Replacement Fee</u>
<u>Tree with DBH of 8” to 16.99”</u>	<u>One (1) Replacement Tree</u>	<u>\$ 400.00</u>
<u>Tree with DBH of 17” to 30.99”</u>	<u>Two (2) Replacement Trees</u>	<u>\$ 800.00</u>
<u>Tree with DBH 31” to 38.99”</u>	<u>Three (3) Replacement Trees</u>	<u>\$1,200.00</u>
<u>Tree with DBH of 39” or greater</u>	<u>Four (4) Replacement Trees</u>	<u>\$1,600.00</u>

- (2) Based on industry standards and site conditions on the premises, and in consultation with the enforcement officer, the applicant may, in lieu of on-premises planting of the required replacement tree(s), be permitted to plant the replacement tree(s) on one or more appropriate off-premises locations, or pay a tree replacement fee into the Princeton Shade Tree Trust Reserve for each tree removed based on the foregoing Tree Replacement Schedule. The tree replacement fee shall [be a sum] represent[ing] the cost to replace the removed or destroyed tree(s), including administration and labor costs, and shall be maintained and utilized by Princeton for purposes of planting and maintaining trees and shrubs on public property. At least fifty percent of the required replacement trees shall be planted either on the premises or in an appropriate off-premises location(s). As used hereafter, the phrase “tree replacement plan” shall be deemed to include reference to the payment of a tree replacement fee.
- [(2) A tree replacement plan shall not be a mandatory requirement for submission of an application for a tree removal permit. However, whether an applicant has included a tree replacement plan as part of his or her application, and the substance of that plan, shall be among the factors considered by the enforcement officer in making a decision on the application, in accordance with section 22-14(a)(3) below.]
- (3) The tree replacement plan shall identify the applicant’s proposal for compliance with this subsection (d), including specifying the species, size and quantity of replacement trees, the proposed location(s) for planting of replacement trees on and off the premises and the applicant’s acknowledgment of the required tree replacement fees. In order to maintain the existing canopy, preference shall be for the replacement of deciduous trees with deciduous trees and evergreen trees with evergreen trees.

- (e) Marking. The applicant shall conspicuously mark each tree to be removed or destroyed with a material which can be wrapped around the trunk of each tree, such as ribbon or string.
- (f) Notice. Prior to filing the application, the applicant shall mail or hand deliver a [A] copy of the application [shall be mailed or hand delivered] to the owners of the properties contiguous to the premises where the proposed tree destruction or removal is to take place. The applicant shall confirm compliance with this requirement on the application.
- (g) The fee for each application shall be forty [twenty-five] dollars.

**Sec. 22-14. Review of application for tree removal; decision on application; time requirements; expiration.**

- (a) The enforcement officer shall accept for filing the permit application referenced in section 22-13 above. Said application shall be date and time stamped when received. Thereafter, the enforcement officer shall within [fifteen]twenty business days of receipt of the completed application:
  - (1) Visit and inspect the location and inspect the land and trees that are the subject of the application;
  - (2) If necessary, meet with the applicant to discuss the application; and
  - (3) Grant or deny the requested permit in whole or in part, or make recommendations that would make the application acceptable to the enforcement officer, in writing and in accordance with the following considerations:
    - a. Whether the removal or destruction of the tree or trees will cause or contribute to physical or environmental problems on the land and other property, including but not limited to flooding, soil instability and erosion.
    - b. Whether the destruction or removal of the tree or trees will have a negative impact on the contiguous canopy or on the growth and development of the remaining trees on the land and other property.
    - c. Whether the destruction or removal of the tree or trees will have a negative aesthetic or visual impact on the land and other property.
    - d. Whether the destruction or removal of the tree or trees will threaten or otherwise lead to a loss of wildlife habitat or tree species.
    - e. Whether the tree or trees are specimen or significant tree(s) as defined in section 22-2 above.
    - f. Whether the destruction or removal of the tree or trees [is proposed to take place in an area identified by] is under the jurisdiction of a New Jersey or Federal agency, including

but not limited to the New Jersey Department of Environmental Protection [as a riparian buffer zone].

- g. Whether the destruction or removal of the tree or trees is a part of an overall landscape plan for the property.
  - h. Whether a denial of the permit, in whole or part, would cause an undue hardship on the applicant.
  - i. Whether the [application includes a] applicant's tree replacement plan [which] will mitigate the negative impact that the tree removal or destruction will have on the land and other property.
- (b) A decision other than one to grant the requested permit in its entirety shall include the enforcement officer's written findings and reasons for said decision.
- (c) The failure of the enforcement officer to grant or deny the application for a permit for the removal or destruction of a tree or trees within the [fifteen]twenty-business-day period shall constitute approval of said application and entitle the applicant to the permit requested unless an extension of the [fifteen] twenty-business-day period has been agreed upon between the applicant and the enforcement officer in writing before the period expires.
- (d) The removal of trees and any tree replacement plan are to be implemented within one year from issuance of the permit. A permit shall expire and shall no longer be in effect twelve months after the date said permit was first granted, unless an extension of the twelve-month period has been agreed upon between the permittee and the enforcement officer in writing before the period expires.
- (e) Permits shall not be transferrable.

**Sec. 22-15. Appeals.**

- (a) If an application for a permit is denied or otherwise not granted in whole, the applicant shall have a right to appeal the matter.
- (b) The applicant may appeal to the shade tree commission or may choose to appeal directly to the mayor and council. Should the applicant choose to appeal to the shade tree commission and is not thereafter satisfied with the shade tree commission's decision, the applicant shall have the right to appeal to the mayor and council. An applicant who appeals the enforcement officer's decision directly to the mayor and council waives his or her right to appeal to the shade tree commission.

- (1) Appeal to shade tree commission. An appeal to the shade tree commission is taken by submitting written notice to the shade tree commission within ten days of receipt of a full or partial denial from the enforcement officer. The applicant will be notified as to the date and time when his or her matter will be heard by the shade tree commission. The shade tree commission shall decide the matter anew and in accordance with the standards set forth in subsections (a)(3) a.- i. of section 22-14 above. The shade tree commission shall render its decision within forty-five days of receipt of the written notice of appeal. The failure of the shade tree commission to decide the appeal within forty-five days shall constitute reversal of the decision by the enforcement officer. In any event, the applicant shall be notified of the shade tree commission's action or failure to act by written notice from the shade tree commission. If the applicant is not satisfied with the shade tree commission's decision, then the applicant shall have a right to appeal to the mayor and council as set forth in paragraph (2) below.
- (2) Appeal to mayor and council. An appeal to the mayor and council is taken by submitting written notice to the clerk within ten days of receipt of a full or partial denial from the enforcement officer or within ten days of receipt of the shade tree commission's decision, as the case may be. The applicant will be notified as to the date and time when his or her matter will be heard by the mayor and council. The mayor and council shall decide the matter anew and in accordance with the standards set forth in subsections (a)(3) a.- i. of section 22-14 above. The mayor and council shall render their decision within forty-five days of receipt of the written notice of appeal. The failure of the mayor and council to decide the appeal within forty-five days shall constitute reversal of the decision by the enforcement officer. In any event, the applicant shall be notified of the mayor and council's action or failure to act by written notice from the clerk. If the applicant is not satisfied with the mayor and council's decision, then the applicant shall have a right to pursue an appeal in a court of competent jurisdiction as permitted by law.

*Article V. General Provisions.*

**Sec. 22-16. Violations and penalties; informal resolution and formal complaint procedures.**

A person who removes or destroys a tree without a required permit or approval, or otherwise violates or causes to be violated any of the provisions of this chapter, shall be subject to the following informal resolution and formal complaint procedures, as applicable:

- (a) *Informal [complaint]resolution.* Any person who removes or destroys a tree without a required permit or approval under this chapter[, or who otherwise violates or causes to be violated any of the provisions of this chapter,] shall have the opportunity to resolve the matter [before the shade tree commission] prior to the issuance of a summons and complaint. The following procedure shall apply:
- (1) The enforcement officer [shade tree commission] shall offer a written recommendation (using a form approved by the public works department) that is, in [its]his or her judgment, sufficient to resolve the matter, which [may] shall include [payment] either replacement of [a fine] the removed or destroyed tree(s) or the payment of a replacement fee to the municipality for removal or destruction of the tree(s), or both, in accordance with Schedule A above, the Tree Replacement Schedule. In addition to the planting of a replacement tree(s) and/or payment of a tree replacement fee(s) in accordance with Schedule A, there shall also be required the payment of an administrative service fee, which shall be charged per hour based on the anticipated staff time in investigating and resolving the matter, and which may include site visits and analysis, supervisory services and/or clerical services. The hourly rate shall be the hourly wage of the employee conducting the site visit(s) and analysis, supervisory services and/or clerical services as set by the council by resolution from year to year. The hourly wage of salaried personnel shall be calculated by dividing the employee's annual salary as set by the council by resolution by twenty-six (weeks) and then dividing that biweekly pay by the number of hours worked in a biweekly period. [Fines and/or] The tree replacement and service fees shall be paid into the Princeton Shade Tree Trust Reserve.
  - (2) The [violator]person shall have ten days following receipt of the enforcement officer's written recommendation to accept said recommendation in writing. If the person accepts the enforcement officer's recommendation in writing within the ten-day period, then any agreed-upon tree replacement or payment of a tree replacement fee, and payment of the service fee, shall be completed within ten days of written acceptance of the enforcement officer's recommendation. If not completed within this ten-day period, then the enforcement officer shall have the authority to cause the issuance of a summons and complaint returnable in the Princeton municipal court.
  - (3) If the person does not accept the enforcement officer's recommendation, then during the initial ten-day period the person may request, in writing, that the shade tree commission review the enforcement officer's recommendation. If such request is timely

submitted to the enforcement officer, then the person shall have the opportunity to bring the matter before the shade tree commission during its next regularly scheduled meeting. The shade tree commission shall have thirty days after said meeting to issue its recommendation on the matter, or until and including its following regularly scheduled meeting, whichever occurs first. The person seeking such review shall have ten days after receipt of the shade tree commission's recommendation to advise the shade tree commission and enforcement officer in writing as to whether he or she accepts the shade tree commission's recommendation. Any agreed-upon tree replacement or payment of a tree replacement fee, and payment of the service fee, shall be completed within ten days of written acceptance of the shade tree commission recommendation. If not completed within this ten-day period, the enforcement officer shall have the authority to cause the issuance of a summons and complaint returnable in the Princeton municipal court.

(4) If the person does not accept the enforcement officer's initial recommendation or the shade tree commission's recommendation within the applicable periods set forth above, [within ten days of the shade tree commission's recommendation advise the enforcement officer as to whether or not the violator accepts said recommendation. If at the end of said ten-day time frame said recommendation is not accepted by the violator,] then the enforcement officer shall have the authority to cause the issuance of[e the violator] a summons and complaint returnable in the Princeton municipal court.

(b) *Adjudication of complaints in municipal court.* [Only in the event the shade tree commission's recommendation is not accepted by the violator within the ten days as provided for in subsection (a) above and all attempts at informal resolution have been unsuccessful may a summons and complaint be issued.] A person violating this chapter, who has not otherwise resolved the matter as set forth above in subsection (a) of this section, [In the event a summons and complaint are issued, the violator] shall be subject to the penalties set forth in section 1-6 of this Code. In addition, the court may order restitution (appraised value) and/or replacement of the tree or trees illegally removed or destroyed. [Replacement of an illegally removed or destroyed tree shall be with another tree of a species and size appropriate for the site, no smaller than two to two and one-half inches in caliper.] Each tree removed or destroyed on the same lot in violation of this chapter shall be considered a separate violation.

**Sec. 22-17. Annual report.**

The enforcement officer shall make an annual report to the shade tree commission, which shall then report to the mayor and council, as to permits granted and denied in each calendar year pursuant to this article. Said report shall also include data concerning the quantity of complaints resolved, fees and assessments collected and disbursements from the Princeton Shade Tree Trust Reserve. Such report shall be submitted by February 1 of each year as to the preceding year's activities.

**Sec. 22-18. Severance.**

In the event that any portion of this chapter, or the application of this chapter to any specific situation, shall be declared invalid, such declaration shall not, in any manner, prejudice the enforcement of the remaining provisions, or the enforcement of this chapter in other situations.

***Article VI. Contractor Registration.***

**Sec. 22-19. Registration requirements.**

- (a) No person shall engage in tree pruning, removal and/or repair in the municipality for hire without first registering with the enforcement officer, on forms to be supplied by said enforcement officer. Completed registration forms shall become public records.
- (b) The purpose of this registration requirement is to ensure that persons engaged in tree pruning, removal and/or repair in the municipality for hire are cognizant of the municipality's tree ordinances and other applicable ordinances, laws and regulations.
- (c) At the time of registration, applicants shall certify that they have received a copy of and will comply with the municipality's tree ordinances.
- (d) The municipality makes no guarantee or representation regarding the fitness, knowledge or qualification of any person that is registered by the municipality to engage in tree pruning, removal and/or repair for hire.
- (e) Every registration shall be issued and renewed on an annual basis, effective January 1 of each year, upon payment of an annual fee to the enforcement officer in the amount of fifty dollars.
- (f) No registration shall be required of any owner of real property in the municipality who shall personally perform activities otherwise requiring a registration; except that all such work must otherwise comply with the municipality's tree ordinances.

- (g) The [shade tree commission] mayor and council may, upon recommendation of the [enforcement officer] director of infrastructure and operations, or his or her designee, after notice and an opportunity for a hearing, suspend or revoke any registration for violation of law (including but not limited to wage theft laws) or related municipal ordinances, or for good cause, which is shown to be prejudicial to the public health, safety or welfare. When the [enforcement officer] director of infrastructure and operations, or his or her designee, has reasonable cause or belief that an emergency affecting the public health, safety or welfare so requires, said [enforcement officer] director (or designee) may temporarily suspend any registration for a period not to exceed one week, until the [shade tree commission] mayor and council can be convened to consider said suspension.
- (h) Applicants shall be advised at the time of registration that they are required to dispose of [damaged or infested] all trees for which a permit of removal is granted pursuant to section 22-14 in accordance with then current industry standards of proper disposal for said trees.
- (i) Any person who violates this section shall be subject to the penalties set forth in section 22-16 above.
- (j) As used in this article, “wage theft” shall mean having been found guilty, liable or responsible in any judicial or administrative proceeding of committing a violation of the Federal Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201 et seq., the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a. et seq., the New Jersey State Wage Payment Law, N.J.S.A. 34:11-4.1 et seq. or N.J.S.A. 2C:40A-2 (violation of contract to pay employees).

**Article VII. Tree Protection on Construction Sites.**

**Sec. 22-20. Tree protection and tree protection zones on construction sites.**

- (a) As used in this article, reference to “construction site” or “site” shall refer to any real property upon which any person (referred to herein as a “contractor”) proposes to or does engage in the construction, reconstruction or demolition of any building, structure or other improvement including landscaping located upon said real property.
- (b) Contractors shall comply with the provisions of this chapter on site during construction.
- (c) Contractors shall safeguard areas referred to herein as “tree protection zones” on the site during construction. The phrase “tree protection zone” is defined in section 22-2 above.

- (1) No contractor shall be permitted to place or maintain, or cause to be placed or maintained, in or upon a tree protection zone, any stone, cement, sidewalk, mortar, building material, impervious material, dumpster or roll-off container, construction or storage trailer, portable toilet or other material, item or substance that shall impede or prevent the free access of water, air or fertilizer to the roots of any tree. No contractor shall disturb the soil within a tree protection zone.
- (2) A contractor shall be required to use fencing to protect areas identified as tree protection zones for every tree on site the removal or destruction of which is regulated under this chapter and for which the contractor has not received a permit allowing its removal or destruction.
- (3) The fence required by this section shall be a four-foot tall wooden-slat snow fence with five-strand metal wire installed with metal posts at intervals of six feet.

Section 2. Chapter 10A of the “Code of the Borough of Princeton, New Jersey, 1974” shall be amended by adding a new section thereto, entitled “Tree protection and tree protection zones,” as follows:

**Sec. 10A-7A. Tree protection and tree protection zones.**

- (a) The Contractor shall ensure compliance with Chapter 22 of the Code, entitled “Trees and Shrubs,” on the site during construction.
- (b) In addition, the contractor shall be responsible for safeguarding areas referred to in this section as “tree protection zones” on the site during construction. The phrase “tree protection zone” is defined in section 22-2 of Chapter 22 of the Code, entitled “Trees and Shrubs.”
- (c) No contractor shall be permitted to place or maintain, or cause to be placed or maintained, in or upon a tree protection zone, any stone, cement, sidewalk, mortar, building material, impervious material, dumpster or roll-off container, construction or storage trailer, portable toilet or other material, item or substance that shall impede or prevent the free access of water, air or fertilizer to the roots of any tree. No contractor shall disturb the soil within a tree protection zone.
- (d) A contractor shall be required to use fencing to protect areas identified as tree protection zones for every tree on site the removal or destruction of which is regulated under Chapter 22 and for which the contractor has not received a permit allowing its removal or destruction.

- (e) The fence required by this section shall be a four-foot tall wooden-slat snow fence with five-strand metal wire installed with metal posts at intervals of six feet.

Section 3. All ordinances and resolutions or parts thereof inconsistent with this Ordinance are repealed.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

Section 5. This Ordinance shall take effect upon its final adoption and publication as provided for by law. The provisions of this Ordinance shall be applicable within Princeton upon taking effect and shall become a part of the new Princeton Code once completed and adopted.

The purpose of this ordinance is to update and strengthen the existing standards and regulations affecting trees and shrubs on public and private property in Princeton.

I, Kathleen K. Brzezynski, Deputy Clerk of Princeton, County of Mercer, State of New Jersey, do hereby certify that the foregoing is a true copy of an ordinance adopted by the Mayor and Council of Princeton at its meeting held September 12, 2016.



Kathleen K. Brzezynski  
Deputy Clerk