

**ORDINANCE 08-2014**

**ORDINANCE AMENDING CHAPTER 16, SECTION 20, "TREE CLEARING AND REMOVAL," OF THE CODE OF THE TOWNSHIP OF TEWKSBURY, COUNTY OF HUNTERDON, STATE OF NEW JERSEY TO REVISE THE TREE REMOVAL REGULATIONS.**

**WHEREAS**, the Chapter 16.20 of the Code of the Township of Tewksbury currently regulated the clearing and removal of trees within the municipality; however, this code section, in its current form, has been deemed by some residents as complicated and confusing; and

**WHEREAS**, despite the aforesaid, the Township Committee of the Township of Tewksbury believes that this section of its Code is still important as it is intended to prevent clear cutting and other tree removal that if not properly controlled could increase soil erosion, stream pollution and generally deteriorate the value of neighboring properties; and

**WHEREAS**, the Township Committee of the Township of Tewksbury wishes to amend Section 20, "Tree Removal and Clearing" thereby rendering it simpler for residents to understand and follow.

**NOW THEREFORE IT BE ORDAINED** by the Township Committee of the Township of Tewksbury that Chapter 16, Development Code," Section 20, "Tree Removal and Clearing," of the Code of the Township of Tewksbury, County of Hunterdon, State of New Jersey shall be deleted in its entirety and replaced with the following:

Section 1:

**Chapter 16.20  
TREE CLEARING AND REMOVAL**

**16.20.010 - Findings; purpose.**

The Township Committee does herein decide and find that the uncontrolled destruction, removal and cutting of trees upon lots and tracts within the Township can result in increased municipal costs for drainage control and can increase soil erosion and stream pollution, decrease the fertility of soil, increase dust which will have a deleterious impact on property values and can further render land unfit and unsuitable for its most appropriate uses and has caused deterioration in the value of improved and unimproved real estate within the Township with a resulting adverse effect upon the health, safety and general well-being of the inhabitants. The aforesaid findings have caused the passage of this chapter to regulate and control the indiscriminate and excessive cutting of trees in the Township.

**16.20.020 - Definitions.**

As used in this chapter:

"Enforcement officer" shall mean the Tewksbury Township Zoning Officer or designee.

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"Garden center" shall mean a retail business of which the principal sales are garden and landscaping related products.

"Nursery" shall mean a tree farm and/or wholesale grower of deciduous and/or evergreen trees.

"Person" shall mean an individual, partnership, corporation, firm, association or any other entity recognized by law.

"Remove" shall mean to destroy, cut, chop, displace and shall also mean to perform any act of tree pruning or thinning, equipment operation, soil compaction or materials storage, soil removal or paving that results in tree destruction.

"Tree" shall mean any living deciduous tree having a trunk of a diameter greater than four inches, measured at a point 4 1/2 feet above the ground, or any living coniferous tree having a trunk of a diameter greater than four inches, measured at a point 4 1/2 feet above the ground, or a height greater than six feet. Nothing in this chapter is intended to conflict with or supersede the provisions of the Soil Erosion and Sediment Control Act of the State of New Jersey, Chapter 251 of the Public Laws of New Jersey. See N.J.S.A. 4:24-39 et seq.

**16.20.030 - Unique and irreplaceable trees; tree in historic district.**

A. Unique and irreplaceable trees. No person shall cut, remove or destroy upon any lands within the Township any tree considered to be unique and irreplaceable by reason of age, historical associations, or botanical rarity as determined by the Township Enforcement Official.

B. Trees in historic district. The goal is to preserve many large trees in the historic districts in order to retain the established character which they contribute to these areas. Property owners must obtain prior written approval from the Township's Historical Preservation Commission before any trees can be removed from properties located with the Historic Preservation District. Depending on the number and size of the tree removal proposed, the Historical Preservation Commission may require the property owner to submit a landscaping plan to providing for the number and species of replacement trees required.

**16.20.040 - Prohibited activities.**

No person shall cut or remove any tree upon any lands within the Township, unless such action accomplishes a useful purpose and is done in accordance with the regulations and provisions of this chapter.

**16.20.050 - Exemptions.**

Excepted from this chapter shall be:

- A. Any tree located on a tract or parcel of land 1 1/2 acres or less in size on which a residential dwelling is located.
- B. Any tree growing on property actually being used as a nursery, garden center, or orchard.
- C. Any tree growing in a public right-of-way, private right-of-way, drainage or utility easement, as designated on the Tewksbury Township Tax Map.

- D. Any tree located on a tract or parcel of land in excess of 1 1/2 acres, to be cut for personal use as firewood by the owner of such property. Not more than five trees per acre shall be cut in any one year, and in no case shall more than 30% of the total number of trees located on such property be removed.
- E. Any tree dead or diseased as a result of natural causes, or other tree that is likely to endanger life or property.
- F. The removal or clearing is on property subject to an approved woodland management program pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq. or on property actively operated as a farm under the State's Right To Farm Act, which is removed to create fields for crops or pasture, or to construct a farm building.
- G. Any tree located on or within 20 feet of a proposed residential structure, its well, septic system or other accessory structures.
- H. Any tree located within 10 feet of the planned paved areas of a residential driveway, provided that the alignment of the driveway is planned to save as many trees as possible.
- I. The tree is required to be cut or removed in order to install or maintain public utilities (such as electricity, telephone, water or sewer lines).
- J. The trees to be removed are in accordance with a subdivision or site plan finally approved by the township land use board.
- K. Any trees located on township-owned property.

**16.20.060 - Permit required.**

- A. Application. Any person desiring to destroy, cut or remove any such tree which is not excepted under terms of Section 16.20.050 shall apply to the Township Enforcement Officer for a permit to remove such tree.
- B. Information.
  - (1) The applicant shall identify by block and lot the land upon which the tree is located and shall disclose the name and address of the owner, tenant or duly authorized agent of such owner or tenant, and the applicant shall also identify the species and generally designate the location of the tree sought to be cut, removed or destroyed.
  - (2) A tree removal permit, if required, shall be obtained prior to the approval of all minor and major subdivisions, site plans, building applications and certificates of occupancy on a map which shall include the following:
    - (a) Area of tract or parcel of land.
    - (b) General location of wooded areas and trees to be removed.
    - (c) Exact location of rare or historic trees as required by the Township enforcement officer.
    - (d) General topographic conditions of site as derived from USGS map of the Tewksbury area.

- C. Fees. All applications shall be accompanied by the proper fee as set forth in Section 16.20.70. No application shall be deemed complete until all fees are paid in full.

**16.20.070 - Permit application fee.**

Upon application for a permit, the applicant shall pay to the Township the following fees:

- A. For any application consisting of five acres or less: \$25.
- B. For each additional acre: \$5.
- C. There is no maximum permit fee.

**16.20.080 - Criteria for determination of permitted tree removal.**

As a basis for determining permitted tree removal, the duly appointed officer shall give due consideration to the following:

- A. For purposes other than commercial lumbering. The lands covered by each application shall be inspected by the Township Enforcement Officer who shall issue a permit upon a finding that the destruction or removal to be permitted would not impair the growth and development of the remaining trees on the applicant's property or adjacent properties, would not cause soil erosion, would not impair existing drainage patterns, would not lessen property values in the neighborhood and would not impair substantially the aesthetic values of the area. The Township Enforcement Officer shall have the authority to affix reasonable conditions to the approval of a permit required by this chapter.
- B. For the purposes of commercial lumbering in accordance with the following restrictions:
  - (1) The lumbering company or individual owner of the property in question shall file with the duly appointed officer a forest management plan approved by the New Jersey Department of Environmental Protection, Bureau of Forestry, or other professional forester. Such plan shall be subject to the approval of or disapproval of the Township Enforcement Officer. Any deviation taken from this plan shall be considered a violation of this chapter.
  - (2) In no case shall more than 30% of the total number of trees be removed from the entire tract.

**16.20.090 - Time period to approve or deny application.**

The enforcement officer shall act upon a complete application for tree removal or clearing within ten (10) business days, unless the applicant has consented to an extension of such time period. Failure of the enforcement officer to act within this time period shall not constitute an automatic approval; however, the applicant may contact the Township Administrator who shall act, or cause the enforcement officer, on the application within 5 business days. Failure to act within this time period shall be deemed an automatic approval.

**16.20.100 - Replacement of non-exempt trees and reforestation required.**

Any person who removes any non-exempt tree without having first obtained a permit or does so in violation of any condition of such a permit, shall replace the removed tree(s) on the property at a one-to-one ratio. As an example, if a thirty (30) inch caliper public tree is removed, trees having a combined diameter of thirty (30) inches shall be planted in its place. All new trees planted shall be in accordance with Sections 630 B.2 and 3 of the Tewksbury Township Development Regulations Ordinance (2000) or successor ordinance. In the event such replacement or restoration cannot reasonably be accomplished on the property where the removal or clearing occurred, with the approval of the enforcement officer, the person who effected the removal or clearing without a permit or in violation of any condition of the permit may deposit a sum equivalent to the value of the replacement trees required hereunder and the cost of their planting as determined by the enforcement officer, using the wholesale prices of a local nursery as multiplied by a factor of two and one-half (2½), in an account maintained and used by the township for purpose of tree planting and reforestation. The township may institute a civil action to compel replacement, as herein provided, if the person who effected the tree removal or clearing does not complete the herein-required tree replacement or make the herein described money deposit.

**16.20.110 - Issuance of construction permit.**

Whenever a construction permit is requested for a structure which will require the removal of trees as herein protected, the enforcement officer shall decline to issue local clearance for the construction official to issue any such construction permit until a tree removal permit, where required, is applied for and issued. The construction official shall not issue a construction permit or certificate of occupancy for any building on any site, parcel or tract for which there is an outstanding complaint pursuant to this chapter.

**16.20.120 - Appeal of enforcement officer's decision**

The applicant shall have the right to appeal the decision of the Township Enforcement Officer to the Township Administrator within 10 days of receipt of such decision. The appeal shall be by written notice to appeal. The Township Administrator shall proceed to hear such appeal upon notice to the applicant within 30 days after the filing of such notice of appeal. The Township Administrator may, in his discretion and upon complete review of the application, and after hearing the testimony of the Township Enforcement Official and the applicant, reverse, modify or affirm the aforesaid decision

**16.20.130 - Violations and penalties.**

Each tree that is removed or cleared in violation of this section shall constitute a separate violation.

Any person convicted of a violation of any portion of this chapter shall be punishable by a fine not exceeding two thousand dollars (\$2,000.00), by imprisonment for a term not exceeding ninety (90) days or by a period of community service not exceeding ninety (90) days or by both such find and imprisonment or community service.

Section 2:

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Continuation. In all other respects, the Development of the Township of Tewksbury shall remain unchanged.

Section 3:

Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Development Code as a whole, or any other part thereof.

Section 4.

Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 5.

Enactment. This Ordinance shall take effect after final passage, adoption, and publication by the Township Clerk of the Township of Tewksbury in the manner prescribed by law.

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Shaun C. Van Doren  
Mayor

Attest:

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Roberta Brassard  
Municipal Clerk