

TOWNSHIP OF VERONA
COUNTY OF ESSEX, STATE OF NEW JERSEY

ORDINANCE No. 2023-06

AN ORDINANCE AMENDING CHAPTER 493, ARTICLE II OF THE
TOWNSHIP CODE ENTITLED, "TREE PROTECTION, REMOVAL AND
REPLACEMENT"

BE IT ORDAINED by the Township Council of the Township of Verona, in the County of Essex, State of New Jersey that Chapter 493 of the Code of the Township be amended as follows:

SECTION 1:

ARTICLE II TREE PROTECTION, REMOVAL AND REPLACEMENT

§ 493-17 Purpose; findings of fact.

A. The Verona Township Council finds that the preservation, maintenance, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces stormwater runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; provides protection against severe weather; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; protects and increases property values; preserves and enhances the Township's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare. It is the intent, therefore, of this article to regulate and control the indiscriminate and excessive cutting of trees on private property in the Township. It is the further intent of this article to encourage property owners to preserve and build around trees whenever possible.

B. Trees are declared important cultural, ecological, scenic, and economic resources. It is recognized that there is a strong relationship between the integrity of the Township's water resources, development on steep slopes, tree removal, soil disturbance, stormwater management and the general use of the land resources; and a correlation between increased air pollution and high-density residential and commercial or industrial uses. Therefore, the Township finds that the appropriate management of these resources is an important health, safety, and general welfare concern.

C. Nothing contained in this article shall be held to take away or diminish any of the powers or authority of the Shade Tree Commission pursuant to statute.

§ 493-18 Definitions.

As used in this article, the terms hereafter set forth shall be defined and deemed to have the following meanings:

CALIPER

The diameter of a tree trunk measured in inches at the height of 4 1/2 feet above ground level on the downhill side of the tree. When multiplied, trunks are joined together below a height of four feet, the caliper shall be deemed to be 75% of the sum of the calipers of the individual joined trunks.

DEAD TREE

A tree that has ceased to function physiologically. Such tree is typically devoid of leaves and may have lost bark.

DIAMETER AT POINT OF MEASUREMENT or DPM

The diameter of a tree measured 4 1/2 feet (forestry method) above the ground level on the downhill side for existing trees. Trees utilized in the replacement of existing trees or proposed as part of a landscape plan shall be measured 12 inches above ground level for trees over a four-inch diameter, and the measurement shall be six inches above grade for trees up to four-inch diameter (nursery method).

DISEASED TREE

A tree that is terminally infested with fungus, virus or insects.

DRIPLINE

The circular area surrounding a tree, the radius of which area shall be the distance from the trunk of the tree to the tip of the outermost branch of the tree.

EXTRAORDINARY TREE

Any tree with a DPM of 36 inches or greater or any tree designated by the Township Council as an historic or landmark tree and such other trees or species of tree as the Council may, from time to time, designate as an extraordinary tree.

LICENSED TREE EXPERT or LICENSED TREE OPERATOR

An individual who is licensed as a tree expert or a tree operator by the State of New Jersey after successfully passing an examination administered by the Board of Tree Experts.

MANAGEMENT PLAN

Plan for the management of timbered or forested lands developed by the New Jersey Department of Environmental Protection (DEP), Bureau of Forestry, or similar state or federal agency.

MATURE TREE

Any deciduous tree that has a caliper at the point of measurement of six inches or more or any coniferous tree with a height of more than 10 feet.

REPLACEMENT TREE

A nursery-grown certified tree, having a caliper of no less than two inches if deciduous or a height of no less than five feet above the root ball if coniferous, properly balled and burlapped, and marked with a durable label indicating genus, species, and variety, and satisfying the standards for nursery stock and installation thereof set forth by the American Association of Nurserymen. Native species are encouraged to be used whenever possible. Nonbiodegradable materials such as plastic must be removed.

ROOT PROTECTION ZONE

An area extending 360° around a tree trunk for the greater of either the distance from the tree trunk to the dripline or a distance equal to caliper multiplied by one foot (12 inches), but never less than eight feet in radius.

SHADE TREE COMMISSION or STC

The Shade Tree Commission of the Township of Verona, including any of its duly appointed members and alternates and any of its duly authorized agents, contractors, consultants, or employees.

SIGNIFICANT TREE

A deciduous tree with a caliper that is then greater than 20 inches, or a coniferous tree with a height that is then greater than 30 feet; provided, however, that a Dogwood with a then caliper in excess of five inches shall be considered a significant tree.

TREE OF HEAVEN

(*Ailanthus altissima*) Rapidly growing deciduous tree with an aggressive root system, that has become a widespread invasive species across North America. Harbors and supports the Spotted Lanternfly.

TOWNSHIP FORESTER

A person employed by the Township who is certified by the State of New Jersey as a licensed tree expert (LTE) and has a minimum of three years of experience in the planting, care and maintenance of trees.

§ 493-19 Prohibited acts

No person shall:

- (1) Cut down, destroy or remove or allow or cause such cutting, destruction or removal of any mature tree, (which, as defined above, is any deciduous tree that has a caliper at the point of measurement of six inches or more or any coniferous tree with a height of more than 10 feet) except as permitted by this Article.
- (2) Cause or allow any willful damage, injury or disfigurement of any mature tree growing within the Township. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as a result of but not limited to the following: cutting, gashing, nailing (exception for Township authorized marking of trees), spiking or slitting of any tree; pouring any liquid or other material on any tree or on the nearby ground; construction or placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placement or removal of any soil from within 15 feet of any tree; or mounding mulch against the tree trunk; painting (exception for trailblaze markers) or marking with any permanent compound even if such compound would not cause the death of the tree.
- (3) Store or pile building material or debris or place construction equipment within 10 feet of any tree.

Any term or provision of this article that contemplates, directs, regulates or prohibits the doing of any act may, in applicable cases and where the context so requires, be construed to include the causing, allowing, permitting or suffering of such act to be done by others under the direction, control or supervision of the person charged therewith. Every such act shall be deemed to be within the scope of this article, regardless of whether it is a deliberate, intentional, or purposeful act or a careless, negligent, or unintentional act.

§ 493-20 Protection of trees during construction.

A. Before construction begins, the developer shall erect snow fencing or other protective barriers around all mature trees not approved for removal during construction. Such barriers shall be placed at least 10 feet from the trunk of any tree and shall remain in place until the Construction Code Official authorizes the removal of the protection after issuance of a certificate of occupancy or temporary certificate of occupancy. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Nor shall any

attachments or wires be attached to any trees so protected. Any landscaping activities subsequent to removal of barriers shall be accomplished with light machinery or hand labor.

(1) A description of the existing tree protective barrier shall be provided on all major applications. The protective barrier shall be four feet high.

(2) The protective barrier shall be placed at the dripline of any tree along the limit of clearing and around the entire tree dripline for trees to remain undisturbed within the limit of clearing.

(3) It shall be unlawful for any person in the construction of any structure or other improvement to place solvents, material, construction machinery or temporary soil deposits within the dripline.

(4) Street right-of-way and utility easements may be ribboned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of such areas to be cleared.

(5) Large property areas separate from the construction or land-clearing area into which no equipment will venture may also be ribboned off as determined by the Zoning Official following a field evaluation.

B. In the event that any tree to be saved in connection with construction as set forth above shall die within two years after planting, it shall be replaced by the applicant or property owner within six months.

§ 493-21 Permit Required and Permit Posting Requirements

A. It shall be unlawful for any person to cut, destroy, remove or trim more than 30%, or cause to be cut, destroyed, removed or trimmed more than 30%, of any mature tree upon any lands within the Township without a tree removal permit. If a tree on private property does not meet the size requirements of a mature tree, a permit is not required unless declared by Township Council to be an extraordinary tree. All permits granted under this Article must be displayed before any work or staging of equipment begins and remain posted for 2 calendar days after the work is complete.

B. No more than two healthy mature trees shall be permitted for removal on any property per calendar year unless approved by the Planning Board in accordance with § 493-24. Trees determined to be dead, diseased, or a safety hazard by the Township Forester shall not count toward the total removal limit.

C. Extraordinary trees shall be maintained in a living condition, and it shall be unlawful for any person to harm or remove said tree without an approved tree removal permit. All reasonable efforts shall be made to preserve extraordinary trees, including but not limited to, if feasible, relocation of infrastructure, roadways, and buildings. Removal of extraordinary trees shall be prohibited except upon the specific written recommendation of the Zoning Official after consultation of the Township Forester and approval by Resolution of the Township Council.

D. Excepted from specific tree removal permit application fee, but not from tree replacement or from mitigation payments to the tree replacement fund, shall be:

(1) All land-clearing operations as authorized in accordance with a site plan approval or subdivision approval and conditions imposed with respect to tree removal and planting granted by the Planning Board or Board of Adjustment of the Township in accordance with the provisions of N.J.S.A. 40:55D-20. Under no circumstances shall clear-cutting be permitted on any property.

(2) The pruning or trimming of trees in a manner that is not harmful to the health of the tree.

(3) The cutting, removal, or destruction of any tree pursuant to an order or directive of any municipal, county, or state agency, court order, or action by the Verona Board of Education.

§ 493-22 Permit application.

A. Applications for a permit shall be made to the Zoning Official with the fee set forth in Chapter A565 and shall contain the following information:

(1) The name and address of the applicant;

(2) The name and address of the owner of the property from which the trees are to be removed;

(3) The address of the property from which the trees are to be removed;

(4) The number of trees requested to be removed and the reason for removal; and

(5) A tree replacement plan describing or showing the approximate location of all trees to be planted, the species of such trees and their caliper or size as required.

If known, if applicant shall also provide the following information:

(1) Species of tree(s) to be removed;

(2) DPM if deciduous or height if coniferous; and

(3) Health condition of each tree being removed.

B. The applicant shall place a one-inch-wide red, yellow, or blue ribbon around the trunk of each tree to be removed at a height of 4 1/2 feet above the ground so that the proposed tree removal may be inspected in the field by the Township.

C. A permit shall be issued or denied by the Zoning Official within 20 business days of submission of an application for a permit based upon the Township Forester's final assessment.

§ 493-23 Conditions for issuance of permit.

A. Upon receipt of an application for the cutting, destruction or removal of trees, the Zoning Official, Township Forester, and/or Township Engineer shall inspect the site on which the trees sought to be cut, destroyed, or removed are located and shall evaluate the tree conditions, the drainage, and other physical conditions existing on the subject property and adjoining properties. The following factors shall be considered in deciding whether to issue such permit:

(1) Whether the area where the trees are located shall be used for a building or other structure, a patio, a driveway, a recreation area, a roadway, a drainage right-of-way, or a sewerage line or whether the trees are located within 15 feet of any of the foregoing.

(2) Whether the topography of the land in which the trees are located is deemed dangerous for the continued existence of the tree or trees located nearby.

(3) Whether the trees, if left undisturbed, are likely to cause a hardship upon the applicant or place the community in danger or affect deleteriously an adjacent property owner.

(4) Whether the proposed cutting, destruction, or removal of the trees would change existing drainage patterns, allow soil erosion, increase dust, or decrease the fertility of the soil on the land under consideration or shall similarly affect adjacent land or land located downstream from the land under consideration.

(5) Whether the proposed cutting, destruction, or removal would impair the growth and redevelopment of the remaining trees on the applicant's property or adjacent property.

(6) Whether the proposed cutting, destruction, or removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or the wooded aspect of the lot as viewed from the adjacent public road.

(7) Whether the proposed cutting, destruction, or removal would constitute a horticulturally advantageous thinning of an existing overgrown area or the removal of dead or diseased trees.

(8) Whether the proposed cutting, destruction, or renewal would affect the physical and aesthetic value of the property and the neighborhood or would remediate a safety hazard to persons or structures.

(9) Whether the proposed changes in the topography of the area where such trees are located will have depressed land configuration or fill of land which shall be deemed injurious to the tree or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.

(10) If any area of the property for which the tree removal permit is sought meets the definition of a "steep slope," as set forth in § 150-21 of this Code, then no mature trees shall be removed from such area unless certified by the Township Forester to pose a threat to the public health, safety, or welfare.

(11) If any area of the property for which the tree removal permit is sought meets the definition of "riparian zone," as set forth in N.J.A.C. 7:13-4.1, then no trees shall be removed from such area.

(12) No street tree planted in Township right-of-way is to be removed by adjacent property owners.

(13) No permits shall be granted for any properties who are delinquent in payments of property taxes, sewer, or water utility payments or any other charges levied by the Township.

B. A tree removal permit shall be granted for the removal of trees, without mitigation, if the tree is dead, diseased, injured, in danger of falling; poses a safety hazard; or interferes with existing utility service and cannot be reasonably remedied by trimming, as determined by the Township Forester or the continued presence of the tree conflicts with any other ordinances or regulations. Both the permit fee and mitigation requirements for the removal of any mature Tree of Heaven shall be waived.

§ 493-24 Planning Board hearing required for removal of more than two healthy mature trees.

A. Upon receipt of an application for removal of more than two trees, the Zoning Official will visit the site, issue a report after consultation with the Township Forrester, and will forward the application and his report to the Planning Board within 20 days of receiving the application. After receipt of the report of the Zoning Official, the Planning Board shall schedule a hearing allowing enough time for the applicant to prepare and serve the required notice. The applicant must notice the owners of all property within 200 feet of the affected premises. The 200 foot notice shall be conducted in the same manner as provided under Chapter **150**, Zoning (by certified mail or hand delivery with affidavit of service, at least 10 days prior to the public hearing).

B. The Planning Board, at its hearing, shall consider the following criteria to determine whether the cutting, removal or destruction of the trees will:

(1) Impair drainage conditions.

(2) Impair soil erosion.

(3) Increase dust concentration.

(4) Decrease soil fertility.

(5) Deteriorate property value.

(6) Cause a deleterious effect on the land's physical condition.

(7) Destroy a buffer between residential and nonresidential uses.

(8) Actions endanger life or property within the property, adjoining properties and/or the public right-of-way.

C. The Planning Board shall not permit removal of a tree unless the applicant proves that the removal of the trees will not have a negative impact on any of the criteria listed above or unless it determines that the continued existence of the tree will cause a hardship to the owner of the property or the occupant of the property where the tree is located, or endanger the public on the property where the tree is located, or adjoining property owner.

D. This section of the article shall not apply to any tree certified to be a dead tree or a Tree of Heaven by Verona's Township Forester.

§ 493-25 Expiration of permit.

All tree removal permits shall expire one year from the date of issuance. If the approved tree removal has not occurred within one year, a new permit must be applied for and is subject to the payment of new application fees.

§ 493-26 Tree Removal Contractor Requirements; Registration; Notice and Deadlines.

A. All tree contractors must register with the Township of Verona and pay a registration fee on an annual basis in order to conduct business within the Township. (see §A565)

B. All tree contractors operating within the Township shall be licensed in accordance with the NJ Tree Experts and Tree Care Operators Licensing Act; maintain the required insurance; hold valid registration with the Township of Verona; and display proof of same on each of its vehicles operating in the Township.

C. All tree removal contractors shall carry and provide proof of at least the following minimum insurance coverage: \$2,000,000 property damage and bodily injury insurance per incident; \$300,000 automobile insurance per incident; and workers' compensation insurance in such amounts as required by law. All tree removal contractors shall require their insurers to provide the Township with a minimum of 30 days' advance notice of the cancellation of any required coverage. Upon the cancellation of any of the required insurance coverage, the tree removal contractor's registration shall automatically be suspended, and the tree removal contractor shall thereafter be prohibited from performing. Upon the submission of proof of satisfactory proof of insurance coverage, licensure in accordance with the New Jersey Tree Experts and Tree Care Operators Licensing Act, and a certification that the tree removal contractor has read, understands, and will comply with all requirements of this rule, then the Township Clerk shall register the tree removal contractor as approved to do business in the Township.

D. Within 30 days of the adoption of this article, the Town Clerk shall mail a copy of this article to persons and entities known to be in the business of maintaining, cutting, or removing trees within the Township.

E. Within 30 days thereafter, any company desiring to conduct the business of maintaining, cutting, or removing trees within the Township shall register with the Township.

§ 493-27 Applicability of permit.

A. Residential development. For residential development where tree removal is to occur within public or private roadways/rights-of-way, drainage facilities, parking areas or proposed open space or private property, all trees are subject to replacement in accordance with this article. All required escrow and bond fees for said subdivision application, including required tree

replacement, shall be verified as paid prior to the issuance of the tree removal permit by the Zoning Official.

B. Nonresidential development. All commercial and industrial developments are required to replace all trees removed in accordance with § 493-28 of this article.

C. The Township, the County of Essex, the State of New Jersey, or its agencies, and all public utilities are exempt from the permit application process.

§ 493-28 Tree replacement.

A. For each mature tree removed, the applicant shall prepare a replanting scheme for other treeless areas of the property to compensate for the removal of the tree(s). The replanting scheme shall reflect a one-to-one tree replacement unless otherwise stated herein. All replacement deciduous trees shall have a DPM of not less than two-inch caliper. For each deciduous tree to be removed, that is: (1) six inches DPM but less than 16 inches, replacement shall be by a single replacement tree; (2) 16 inches DPM but less than 24 inches, replacement shall be by two replacement trees; (3) 24 inches DPM or greater, replacement shall be by four replacement trees. For each coniferous tree to be removed, that is: (1) between 10 feet and under 25 feet in height, replacement shall be by a single replacement tree; (2) 25 feet and over in height, replacement shall be by two replacement trees. A list showing species and size of all proposed replacement trees shall be submitted for review and approval prior to the issuance of a tree removal permit. Only native and noninvasive species shall be planted.

(1) In the event that the tree removal occurs other than as permitted under the article mitigation shall be required at the greater of the rate of two replacements or as per replacement schedule in 493-28A above for each mature tree removed in addition to any fines, fees or penalties imposed by the Court.

(2) In the event that it is unknown how many trees were removed from any given site, and removal took place without a tree permit issued pursuant to this article, the number of trees requiring mitigation shall be computed by the Zoning Official (based on an average number of trees/lot from comparable lots in the Township).

(3) Mitigation in any instance is not to be considered a penalty, but rather an implementation of the purposes of this article. Mitigation shall not be a substitute for, but shall be in addition to, any penalty imposed for violation of the provisions of this article.

B. Trees determined to be dead, diseased, or a safety hazard by the Township Forester shall be exempt from the replacement requirements of this article (not the permit fees) but are encouraged to be replaced on a one-to-one ratio on a voluntary basis.

C. Tree of Heaven trees are uncommonly susceptible to regional pest infestation. This species is recommended for removal, however a permit is required for removal but it is not subject to the permit application fees or replacement requirements.

D. For sites where trees (regardless of size) cover large portions of the site, so that those portions may be considered woods or forest or recovering woods or forest, the applicant shall prepare a reforestation scheme on other treeless open space to compensate for clearing of the tree area with equal square-foot area of new plantings. If sufficient suitable on-site area is not available, the Zoning Official or Land Use Board may direct that the compensating reforestation take place on municipally owned open space and or along a public street upon the consent of the STC.

E. Reforestation. The reforestation plan shall be based on twenty-foot-by-twenty-foot grid. Of this number of trees, 10% shall be balled and burlapped two-inch-to-2 1/2-inch caliper, 20% shall be balled and burlapped 1 3/4-inch-by-two-inch caliper, 30% shall be bare root 1 1/4-inch-by-1 1/2-inch caliper and 40% shall be bare root six-foot-to-eight-foot-tall whips. A mixture of trees indigenous to the area and site shall be utilized. Proposed trees shall be planted in natural groves and may be spaced five feet to 20 feet on center. The ground shall be seeded with a meadow grass mixture approved by the Zoning Official.

F. Tree Replacement Fund. The Zoning Official may permit an applicant to make a payment to the Township's Tree Replacement Fund, established hereunder in § 493-29 in lieu of replacement of part or all of the trees removed pursuant to this article.

G. All replacement trees shall be planted on site in accordance with the foregoing. However, if one or more of the following conditions exist, some or all of the replacement trees may be planted off-site:

(1) The site in question cannot physically accommodate the total replacement amount of trees, and the applicant contributes an amount equal to the calculated monetary value of unreplaced trees to the Tree Replacement Fund;

(2) The Zoning Official and applicant agree in writing that the applicant shall make payment to the Tree Replacement Fund based upon the above; or

(3) The Zoning Official in agreement with the STC and applicant agree in writing that the applicant shall plant replacement trees off-site on municipally owned property pursuant to the municipal Community Forestry Management Plan.

H. All tree replacement requirements and/or fees as set forth in this section shall be approved and/or paid prior to the issuance of the tree removal permit by the Zoning Official.

I. In the event that any tree to be planted in mitigation shall die within two years after planting, it shall be replaced by the applicant or property owner within six months.

§ 493-29 Tree Replacement Fund.

A. There is hereby established a Tree Replacement Trust Fund to receive and disburse replacement tree contributions. The Tree Replacement Fund shall be the repository of all monies paid to the Township pursuant to this article and may also accept contributions for its purposes from private sources.

B. The primary purpose of said fund is to provide for the replacement, planting and maintenance of trees and woody shrubs on public property within the Township (including ground covers, grasses, ferns, vines, and forbs when they are part of an ecological project using native plants). Professional consultant fees for administrative and/or consultant costs to implement the provisions of this article, including but not limited to site inspections, processing of permits, supervision of tree replacement, and enforcement of this article, shall not exceed 30% of the fund's expenditures. Appropriations from the Tree Replacement Fund shall be authorized by the Township Manager in accordance with the Community Forestry Management Plan of the Township.

§ 493-30 Appeal of Zoning Official's rejection of tree removal permits.

Any applicant aggrieved by the Zoning Official's rejection of an application for a tree removal permit or other determination made under this article may appeal the determination to the

Planning Board by filing the appeal with the Secretary of the Planning Board within 10 days of the determination of the Zoning Official. The Planning Board shall hear the appeal within 30 days and may affirm, reverse, or modify the determination of the Zoning Official by setting forth a resolution with the Board's holding and the reasons for its result.

§ 493-31 Enforcement and violations and penalties.

A. Any person, firm, partnership, corporation, association, or other legal entity violating any of the provisions of this article shall, upon conviction of such violation, be punished by a fine not less than \$200 and not to exceed \$2,000 for each offense, in addition to the required mitigation for each tree illegally removed. Each illegally removed or damaged tree shall constitute a separate offense. Violations of this ordinance shall be heard in the Municipal Court of any other Court of competent jurisdiction.

B. The Zoning Official, Construction Code Official, Superintendent of Public Works, Township Engineer, Township Manager and Police Officers all have full authority to enforce the provisions of this article, including the power to enter upon private property make inspections; issue summonses or complaints; and issue cease-and-desist notices and stop work orders.

C. The Township shall suspend the Township Registration of any Tree Removal Contractor who has submitted a fraudulent Tree Removal Permit application or a false tree certification(s) for up to three months. Any subsequent offenses shall require revocation of Township Registration and shall void all business within the Township of Verona.

D. Non-Compliance with the provisions of this ordinance may be grounds for denial of registration of a Tree Removal Contractor.

SECTION 2: This ordinance shall take effect after final adoption and publication and otherwise as provided by law.



ATTEST:
Jennifer Kiernan
JENNIFER KIERNAN
MUNICIPAL CLERK

NOTICE

I HEREBY CERTIFY THAT THE AFOREMENTIONED ORDINANCE WAS PUBLISHED IN THE STAR LEDGER, A NEWSPAPER PUBLISHED IN THE COUNTY OF ESSEX AND CIRCULATED IN THE TOWNSHIP OF VERONA, IN THE ISSUE OF JANUARY 30, 2023 AND FEBRUARY 10, 2023

**JENNIFER KIERNAN
MUNICIPAL CLERK**

INTRODUCTION: January 23, 2023
PUBLIC HEARING: February 6, 2023
EFFECTIVE DATE: February 26, 2023