

ORDINANCE NO. 22-13

**AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF
THE TOWNSHIP OF HANOVER AMENDING AND SUPPLEMENTING CHAPTER 166
OF THE CODE OF THE TOWNSHIP ENTITLED, LAND USE AND DEVELOPMENT
LEGISLATION, BY AMENDING THE REGULATIONS FOR TREE PRESERVATION,
REMOVAL AND PLANTING**

WHEREAS, the Township of Hanover has for many years had in effect regulations intended to promote the preservation and replacement of trees due to their environmental, esthetic and other benefits; and

WHEREAS, various comments have been submitted by applicants and staff suggesting that the tree regulations be revised to reduce excessive requirements, provide clarification, and to make the ordinance more reasonable in its application; and

WHEREAS, the Township Committee has considered these suggestions and finds that they have merit.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Hanover in the County of Morris and State of New Jersey that Chapter 166 of the Code of the Township of Hanover, entitled Land Use and Development Legislation, is hereby amended and supplemented as follows:

Section 1. Subsection A. in Section 166-4., *Definitions and word usage*, in Article II, *Definitions*, is hereby amended by revising the definitions of “DBH (DIAMETER AT BREAST HEIGHT),” and “DRIP LINE” to read as follows:

DBH (DIAMETER AT BREAST HEIGHT) – The diameter of a tree trunk, measured at a height of 4.5 feet above the ground at the base of the tree, calculated as the circumference (or girth) of the tree divided by pi (3.1416). On sloping ground, the "above ground" reference point is the average between the highest and lowest points of ground at the base of the tree. If the DBH point falls on a swelling in the trunk, it is measured below the swelling at the point where the diameter is smallest. In the case of trees with multiple trunks, the DBH of each trunk shall be measured separately.

DRIP LINE - An imaginary line on the surface and subsurface of the ground defined 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 1 1/2 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.

Section 2. Paragraph (1) of Subsection M. in Section 166-48., *Schedule of fees and deposits*, in Article VII, *Fees*, is hereby amended to read as follows:

- (1) Tree removal as part of a site plan, subdivision or variance application. No additional application fee above that required for the development application by this chapter shall be required for tree removal requested as part of a site plan, subdivision, variance or other development application or appeal submitted to the Planning Board or Board of Adjustment.

Section 3. Subsection C. in Section 166-131., *Tree preservation, removal and replanting*, is hereby amended to read as follows:

- C. Applicability to prior approvals. The following provisions shall govern development applications involving tree removal that were filed or approved prior to the effective date of Ordinance No. 22-13:
 - (1) Development activities and approvals for which the required payment in lieu of replanting has been made or for which a final certificate of occupancy has been issued prior to the effective date of Ordinance No. 22-13 shall continue to be subject to regulations in effect at the time of the approval.
 - (2) Developments which have received approvals for tree removal and/or planting prior to the effective date of Ordinance No. 22-13, but for which neither a payment in lieu of replanting has been made nor a final certificate of occupancy has been issued, shall have the option to comply with the terms of the prior approval or to comply with the regulations of this section, subject to the following:
 - (a) The developer shall be required to comply completely with the requirements of either the prior approval or of this section.
 - (b) If the developer chooses to comply with this section, and such option results in different tree removals or plantings than under the prior approval, the developer shall be required to obtain amended approval.
 - (c) If the developer chooses to comply with this section, the developer shall not be entitled to a refund of application fees or other payments made under any prior approvals or to a waiver of any fees or other payments required for any amended approvals.

Section 4. The opening paragraph and Paragraphs (1) and (2) of Subsection G. in Section 166-131., *Tree preservation, removal and replanting*, are hereby amended to read as follows:

- G. Tree preservation, removal and planting requirements. This subsection sets forth requirements for tree preservation, tree removal and tree planting. When existing trees are removed, replacement trees are required to be planted in accordance

with Paragraph (1) below. The planting of trees is also required when properties are developed or redeveloped, when such properties have fewer trees than required, even when no tree removal is proposed, in accordance with Paragraph (2) below. Paragraphs (3), (4) and (5) below contain supplemental provisions.

(1) Tree removal and replacement. For each living regulated tree, or for each trunk of a multiple trunk regulated tree, having a DBH of at least 6 inches, the following number of replacement trees shall be required to be planted on site and/or a payment in lieu made in accordance with §166-131.G.(5):

(a) Invasive trees. Removal of the following invasive species may be removed, without any replacement requirement, in circumstances where such trees are determined by the Township Arborist to present a threat to more desirable tree species in the vicinity or to otherwise pose a threat to the public health, safety and welfare, but only if such removal would not violate the provisions of Paragraph (2) below and if such removal is not otherwise prohibited by this Chapter or by any current development approval in effect. Any such removal shall be required to obtain a tree removal permit in accordance with §166-131.F.

Black Locust - *Robinia pseudoacacia*
Mazzard/Sweet Cherry – *Prunus avium*
Norway Maple – *Acer platanoides*
Tree of Heaven – *Ailanthus altissima*
Autumn Olive – *Eleagnus umbellata*

(b) One tree of any species may be removed on each lot during any calendar year without any replacement requirement, but only if such removal would not violate the provisions of Paragraph (2) below and if such removal is not otherwise prohibited by this Chapter or by any current development approval in effect. Any such removal shall be required to obtain a tree removal permit in accordance with §166-131.F.

(c) Replacements for first ten tree removals. Excluding the removals permitted by Subparagraphs (a) and (b) above, one replacement tree shall be required for each of the first ten trees removed on any lot, regardless of the tree DBH, subject to the limitation in Subparagraph (e) below. This replacement ratio shall only apply to the first ten trees removed from the property, not to each tree removal event. After ten trees have been removed from the property, the replacement ratios in Subparagraph (d) below shall apply.

(d) Excluding the tree removals regulated by Subparagraphs (a), (b) and (c) above, the following number of replacement trees shall be required to be planted on the property for each tree removed, subject to the limitation in Subparagraph (e) below:

<u>DBH of Removed Trees</u>	<u>Required Number of Replacement Trees</u>
6 to 11.99 inches	1
12 to 23.99 inches	3
24 to 35.99 inches	5
36 inches or greater	7

- (e) Notwithstanding the replacement requirements in Subparagraphs (c) and (d) above, in no case shall the total number of replacement trees be required to exceed 40 trees for each acre of the property.
 - (f) Any trees planted to address the obligation in §166-131.G.(2) shall be credited against this obligation.
- (2) Minimum tree preservation, replacement and planting ratios. There shall be maintained on every lot a minimum number of trees in accordance with the following table. Such trees shall include all trees within the planting area of the lot which are to be preserved, replaced and planted.

<u>Land Use Category</u>	<u>Minimum Tree Preservation/Planting Ratio</u>
Single-family detached or two-family residential	1 tree per 3,000 sq. ft. planting area on the lot
Other	1 tree per 750 sq. ft. planting area on the lot

In administering this requirement, the following shall apply:

- (a) For purposes of administering this requirement, “planting area” shall mean the area within which trees may reasonably be preserved and/or planted after completion of the development. The term “planting area” shall specifically exclude the following:
 - Areas covered by buildings.
 - The area of contaminated soils or groundwater where tree planting is prohibited.
 - Areas covered by pavement, and curbing.
 - Stormwater detention basins, retention basins or subsurface stormwater retention or recharge structures.
 - Areas needed to provide exposure to the sun for photovoltaic panels used to produce electricity, where trees would unreasonably interfere with such exposure as determined by the board having jurisdiction or the Township Engineer, as applicable.

- Areas designed and used for athletic fields and any team or spectator seating areas for such fields.
 - Easements restricted for access, utilities, drainage and roadway sight distance. In cases where such easements are general in location and/or not limited to only those areas actually needed for such functions, the areal extent of the exclusion shall be determined by the Township Engineer.
 - Areas within the limits of disturbance which have been disturbed solely for the purpose of removing existing structures and which are not proposed to be redeveloped as part of a proposed development application. This exclusion shall expire for such areas, or portions of such areas, at such time that they are proposed for development in a development application, provided the application is approved and the development actually occurs.
 - Areas within the limits of disturbance identified on the currently approved plans as part of a future phase of development, and which are not proposed to be developed until such future phase is developed. This exclusion shall expire for such areas, or portions of such areas, at such time that they are proposed for development in a development application, provided the application is approved and the development actually occurs.
- (b) Replacement trees planted or for which a payment has been made in accordance with §166-131.G.(1) shall be credited against this obligation.
- (c) In cases where development is proposed on an existing property that contains fewer trees than required by this Paragraph (2), the required number of trees to be planted for the proposed development shall be calculated using the planting area of the development, not the planting area of the entire lot. For purposes of administering this provision, the “area of the development” shall mean the area within the limits of disturbance, plus the area within the drip line of trees to be removed located outside the limits of disturbance.

Section 5. Paragraph (5) of Subsection G. in Section 166-131., *Tree preservation, removal and replanting*, is hereby amended to read as follows:

- (5) Payments in lieu of required tree planting. If the developer demonstrates to the reviewing authority that the subject property is not reasonably able to preserve and/or plant the number of trees required by this Section, then the developer shall be required to make a payment in lieu of planting the number of trees to address the deficiency. The amount of such payment shall be \$400 per tree.

Section 6. Paragraph (2) of Subsection H. in Section 166-131., *Tree preservation, removal and replanting*, is hereby amended by adding and inserting a new Subparagraph (f), to read as follows:

- (f) Trees to be planted shall not be planted within the drip line of existing trees to remain.

Section 7. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

Section 8. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

Section 9. This ordinance shall take effect in accordance with the law.

TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATE OF INTRODUCTION: July 11, 2013

DATE OF ADOPTION: August 8, 2013

NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, That the foregoing Ordinance was submitted in writing at a meeting of the Township Committee of the Township of Hanover, in the County of Morris and State of New Jersey, held on the 11th day of July, 2013, introduced and read by title and passed on first reading and the Governing Body will further consider the same for second reading and final passage thereof at a meeting to be held on the 8th day of August, 2013, at 8:30 o'clock in the evening prevailing time, at the Municipal Building, 1000 Route 10, Whippany, in said Township of Hanover, at which time and

place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

JOSEPH A. GIORGIO, TOWNSHIP CLERK
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATED: July 18, 2013