

ORDINANCE NO. 21-2018

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 REPLANTING

WHEREAS, the Township's zoning regulations currently permit and regulate the removal and replanting of trees; and

WHEREAS, the Planning Board has recommended that the regulations be amended to permit, in certain circumstances, the planting of trees in off-site locations in order to address the tree replacement obligations in the regulations.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Hanover in the County of Morris and State of New Jersey as follows:

Section 1. Subsection D. of Section 110.1., *Tree removal permits*, in Article XIX, *General Provisions*, is hereby amended to read as follows:

D. Unless determined incomplete, the Township Engineer shall issue or deny a tree removal permit within 10 business days of submission of the application; provided, however, that in the case of an application that proposes to plant replacement trees at an off-site location pursuant to §166-131.G.(5) and (6), the application shall be referred to the Planning Board for its review and comment, and in which case the Township Engineer shall issue or deny such tree removal permit within 45 days of submission of the application. Failure of the Township Engineer to act within the prescribed period shall be deemed to be an approval of the application. The Township Engineer shall grant or deny the application based upon the criteria in § 166-131 and shall inform the applicant of the decision.

Section 2. Subsection G. of Section 166-131., *Tree preservation, removal and replanting*, in Article XIX, *General Provisions*, is 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), (5) and (6) 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 planted in another location within the Township in accordance with

§166-131.G(6), 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.
- (3) In determining the number of trees required to be preserved and planted in accordance with Subsection G(1) and (2) above, fractions of trees below 0.5 shall be rounded down, and fractions of 0.5 or greater shall be rounded up.
- (4) Credits for sustainable development. In order to encourage development of sustainable buildings, credit against tree replacement and planting obligations in § 166-131.G(1) and (2) above shall be given for buildings that achieve various LEED ratings, as follows:

<u>LEED Rating</u>	<u>Tree Planting Credit</u>
Certified	15% of requirement
Silver	25% of requirement
Gold	35% of requirement
Platinum	50% of requirement

- (a) The requirement against which credit is calculated shall be only that tree planting requirement related to the construction of a LEED-rated building or buildings. Thus, in a development with one LEED-rated building and one non-LEED-rated building, the credit will be calculated as the LEED-rated building's portion of the total site gross floor area multiplied by the tree planting credit.
- (b) Applicants seeking to obtain tree planting credits for LEED-certified buildings shall be required to deposit a cash amount with the Township equal to the cost of any trees for which credit is sought, at a cost of \$400 per tree. The cash amount shall be deposited prior to the issuance of building permits. Thereafter, if the projected LEED certification is

achieved, the Township shall refund all or a portion of the deposit, depending upon the level of LEED certification actually achieved. No refund of such deposit shall be made for LEED certifications obtained more than two years after issuance of any certificate of occupancy for the building.

- (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 and/or to plant trees in off-site locations in accordance with Paragraph (6) below. The following shall apply to such payments:
 - (a) The amount of such payment shall be \$400 per tree.
 - (b) If the developer demonstrates that the number of trees to be replaced by § 166-131.G(1) and the number of trees to be preserved and planted within the limits of disturbance by § 166-131.G(2) are together at least 75% of the minimum required, then no payment in lieu of planting trees shall be required in excess of 5% of the total cost of site improvements for the development, excluding building costs, soft costs and land acquisition costs.
- (6) Planting of replacement trees in off-site locations. 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 may be permitted to plant replacement trees in other locations within the Township, subject to the following:
 - (a) In the event that the development is not part of an application that requires site plan, subdivision or variance approval from the Planning Board or Board of Adjustment, the reviewing official or agency shall refer the off-site tree replacement plan to the Planning Board for review and comment prior to the issuance of any tree removal permit.
 - (b) The developer shall demonstrate that location proposed for the planting of such trees is suitable for the future growth of such trees, taking into account such factors as the amount of available sunlight, soil conditions, moisture conditions, legal requirements, potential conflicts with existing or planned uses, structures or trees in the same or nearby locations, etc.
 - (c) The developer shall demonstrate that such trees will be preserved and maintained, or if removed in the future, that such trees will be replaced in equal amounts.


Section 3. 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 4. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

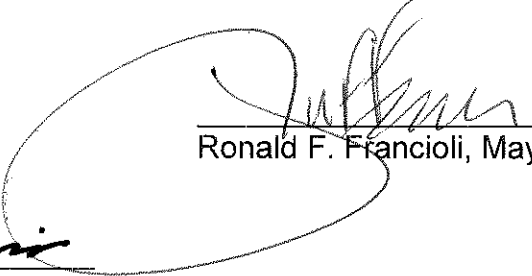
Section 5. This ordinance shall take effect in accordance with the law.

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

ATTEST:



Joseph A. Giorgio, Township Clerk



Ronald F. Francioli, Mayor

DATE OF INTRODUCTION: September 13, 2018
DATE OF ADOPTION: October 11, 2018

I hereby certify the foregoing to be a true copy of a Resolution/Ordinance adopted by the Township Committee of the Township of Hanover at a Regular/Special Meeting held on the 11th day of OCTOBER, 2018.



Joseph A. Giorgio, Township Clerk, R.M.C.