

LAWS FOR NEW JERSEY TREES

2010

This publication contains laws taken from the New Jersey Permanent Statutes Database as well as examples of municipal ordinances and county resolutions. We offer this publication as a reference guide to identify the specific statutes pertaining to individuals whose responsibilities include the care and maintenance of Shade Trees. Laws change all of the time. Although we attempt to update the publication on a regular basis, users should exercise caution, consult legal counsel, and are encouraged to use applicable statute source law and case law.

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THE NEW JERSEY SHADE TREE FEDERATION

MISSION STATEMENT

Our mission is to continually educate our profession and to establish relationships between allied associations, businesses, and federal, state and municipal governments in order to provide tree-lined streets for future generations.

A properly selected tree, given a suitable location and proper care, will outlive the person who plants it, while benefiting people and communities for generations to come.

Greening and maintaining a community landscape is a long-term commitment that depends on people! Urban forests, parks and other built landscapes require an infusion of human energy to survive.

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STATE STATUTE MUNICIPAL SHADE TREE COMMISSIONS INTRODUCTION

By Dave Johnson, LTE, NJ Community Forestry

In 1893, the New Jersey legislature passed the Tree Ordinance Law. This legislation empowered municipalities with the authority to enact tree ordinances and to establish shade tree commissions. By 1904, the cities of Passaic, South Orange, East Orange, and Newark had functioning commissions: by the year 1912 another thirty-seven communities had taken advantage of the 1893 Law and enacted municipal shade tree ordinances.

Around this same time period, the first state forester was appointed and the Forest Park Reservation Commission was formed, later to evolve into the New Jersey Forest Service. The Commission's 1908 report which included a bulletin on the "Planting and Care of Shade Trees" was in demand for many years after its release. By 1912 the Forest Park Reservation Commission had formed a State Shade Tree Federation and was looking into ways to strengthen the 1893 Tree Ordinance Law. As a result, the 1893 Tree Ordinance Law would be amended five times over the next one hundred years.

The last amendments passed in 1991 and allowed monetary penalties to be enacted through municipal ordinance of up to \$1,500 per violation in addition to a "replacement assessment" that "shall be the value of the tree" as determined by an expert hired by the commission. These amendments allowed seven commissioners to serve each community. This increase in commissioners reduced the amount of turnover and allowed new appointees time to become familiar with the responsibilities associated with the position.

The Tree Ordinance Law is still a vital part of New Jersey's ability to manage its tree resource. Without it, local involvement and decision making on trees would be greatly diminished and many streets in our towns would not be as shady and inviting as they are today.

STATE STATUTE

MUNICIPAL SHADE TREE COMMISSIONS

Title 40: Chapter 64

40:64-1. Commission; personnel; appointment

The body having charge of the finances of any municipality, and in case of a municipality governed by commissioners, the board of commissioners thereof, may provide by ordinance that the regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways, public places, parks and parkways, of the municipality except State highways unless the Department of Transportation shall assent thereto and except county highways, parks and parkways, in counties now or hereafter having a county shade tree commission, unless the county shade tree commission or county department of parks and recreation shall assent thereto, shall be exercised by and be under the authority of a commission, which shall be known as the shade tree commission of _____. The commission shall consist of not less than five nor more than seven members, and may include not more than two alternate members. The members and alternate members shall be appointed by the mayor or other chief executive officer of the municipality, shall be residents of the municipality, and shall serve without compensation except as hereinafter provided.

Amended 1958,c.42,s.1; 1984,c.164,s.1; 1995,c.1,s.1.

40:64-2. Commissioners' term lengths; alternates

The first commissioners shall be appointed within 60 days after the ordinance providing for the commission shall become effective, and their terms of office shall commence upon the day of their appointment and be for the respective periods of one, two, three, four and five years, if the commission consists of five members, beginning on January first next succeeding such appointment. If the commission is to consist of six members, the first commissioners shall be appointed as above, except that two shall be appointed for five years; and if the commission is to consist of seven members, two shall be appointed for five years and two shall be appointed for four years. In the event that the membership of any commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing. The terms of each appointee shall be designated in his appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January first.

If the ordinance providing for alternate members provides for two alternate members, they shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2" and 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 first of the year of appointment. ; However, in the event that 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 first alternate members appointed pursuant to this section 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 discussions 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.

Amended 1958,c.42,s.2; 1984,c.164,s.2; 1995,c.1,s.2.

40:64-3. Organization; salaries of officers and employees

The commission shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually by the election of one of its members as chairman, and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated even if a member of the commission, shall be fixed by the governing body of the municipality; the salary of all

other employees shall be fixed by the commission. All salaries shall be fixed as nearly as practicable in accordance with the salary schedule, if any, of the municipality for corresponding positions.

Amended by L.1958, c. 42, p. 137, s. 3.

40:64-4. Vacancies

Any vacancy occurring by reason of the death, resignation or removal of any commissioner shall be filled for the unexpired term, by the authority having power to make the original appointments.

40:64-5. Powers of commission

A shade tree commission organized under this chapter shall have power to:

- a. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted in any public highway, park or parkway, except such as are excluded pursuant to section 40:64-1 of this Title in the municipality for which it was created, including the planting, trimming, spraying, care and protection thereof;
- b. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection;
- c. Move or require the removal of any tree, or part thereof, dangerous to public safety;
- d. Care for and control such parks and parkways; encourage arboriculture; make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the governing body of the municipality, any and all ordinances necessary or proper for carrying out the provisions hereof;
- e. Administer treatment to, or remove, any tree situate upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the municipality and enter upon private property for that purpose, with the consent of the owner thereof, provided the suspected condition is first confirmed by certificate issued by or on behalf of the Department of Agriculture.

Amended by L.1958, c. 42, p. 137, s. 4, eff. May 20, 1958.

40:64-6. Performance of duties of shade tree commission by park commission

If in any municipality there is a park or parkway commission of the municipality, as distinguished from a shade tree commission, such existing commission shall, if the ordinance providing for a shade tree commission for the municipality so provides, exercise the powers granted to and discharge the duties imposed upon a shade tree commission by this chapter, but shall receive no additional compensation, and in such case no shade tree commissioners shall be appointed, and all the provisions of this chapter with respect to a shade tree commission shall be deemed and taken as applicable to such park or parkway commission discharging the duties of a shade tree commission.

Amended by L.1958, c. 42, p. 138, s. 5, eff. May 20, 1958.

40:64-7. Existing commissioners continued; duties and powers; funds, contracts and employees

L.1915, c. 325, s. 12, p. 593, as amended by L.1918, c. 58, s. 4, p. 170 [1924 Suppl. s. 136-3650A(12)], said amendatory section being section four of an act "An act to amend an act entitled "An act providing for the regulating, care and control of shade trees and shrubbery upon the public highways and in municipal parks, and for the care, control and improvement of such parks; authorizing the continuance of existing shade tree commissions, and the appointment of shade tree commissions and prescribing their powers and duties (Revision of 1915), approved April fourteenth, one thousand nine hundred and fifteen, approved February

sixteenth, one thousand nine hundred and eighteen, saved from repeal. [This section preserved shade tree commissions established theretofore, prescribed their duties and provided for the disposition of funds, rights of employees and execution of their contracts.]

40:64-8. Cost of trees and improvements; charge and lien on property; exceptions

Except as hereinafter provided the initial cost of all trees planted by the commission, the cost of planting the same, the cost of the posts and boxes or guards used for the protection thereof, and the cost of the removal of any tree or part thereof dangerous to public safety shall, if the commission shall so determine, in accordance with uniform rules and regulations promulgated for this purpose, be a charge upon the real estate in front of which such tree or trees shall be planted or removed as an improvement thereof. Such cost if it is so determined that it is to be paid by the owner shall, unless paid directly to the commission be certified by it to the collector of taxes of the municipality, shall thereupon become and be a lien upon said real estate, shall be included in the next tax bill rendered to the owner or owners thereof, and be collected in the same manner as other taxes against that property.

The provisions of this section shall not apply to:

- a. A planting to replace a tree or trees theretofore planted by the commission;
- b. A planting in connection with Arbor Day exercises or other educational demonstration.

Amended by L.1958, c. 42, p. 138, s. 6, eff. May 20, 1958.

40:64-9. Planting and removal of trees; notice and hearing; emergencies

In every case where the property of an abutting owner will be chargeable with the cost of the planting of any shade tree or trees the commission shall give notice of the meeting at which it is proposed to consider said planting by publishing the notice at least once, not less than twenty days before the meeting, in a newspaper circulating in the municipality, or by personal service of a copy of the notice upon the abutting owner at least ten days before the meeting. The notice shall specify the street, streets, or portions thereof, on which such planting is proposed and require all persons who may object thereto to present their objections in writing at the office of the commission at or before the meeting. Before final action shall be taken all objections so filed shall be considered. The commission shall give reasonable notice of its intention to remove, or cause the removal of, a tree, or part of a tree, dangerous to public safety, unless public safety requires immediate removal, in which case no notice shall be necessary.

40:64-10. Public improvements affecting trees; consent of commission; county park commissions unaffected

No statute giving any person or State, county or municipal board, body or official, power or authority to lay any sidewalk along, or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to a highway shade tree without the consent of the shade tree commission within whose jurisdiction such tree shall be located. In all cases such commission shall reasonably co-operate with such person, board, body or official for the general public good.

Nothing in this chapter contained shall be held to take away or diminish any of the powers or authority of any county park commission over the trees or shrubbery in any county park or parkway within its jurisdiction, or to give any other commission or board any power or authority with respect to such trees or shrubbery.

Amended by L.1958, c. 42, p. 139, s. 7, eff. May 20, 1958.

40:64-11. Annual appropriation; estimate; amount

During the month of December in each year, the shade tree commission shall certify to the governing body of the municipality, the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated

expenditure will be made for; namely,

(1) Payment of wages and salaries of employees;

(2) Expenses of commission members in discharging official duties including expenses incident to attendance at professional meetings;

(3) Purchase of trees and shrubbery; and

(4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

The governing body of the municipality shall annually appropriate such sums as it may deem necessary for said purposes.

Amended by L.1958, c. 42, p. 140, s. 8, eff. May 20, 1958.

40:64-12. Penalty; jurisdiction of courts; copy of ordinance as evidence

Penalty; jurisdiction of courts; copy of ordinance as evidence.

a. The commission may prescribe a fine for the violation of each of its ordinances in an amount not exceeding \$1500.00 for each violation, and the courts which now or hereafter shall have jurisdiction over actions for the violation of ordinances of the municipality in which the commission has been or shall be appointed shall have jurisdiction in actions for the violation of such ordinances as the commission shall enact.

The ordinances shall be enforced by like proceedings and process and the practice for the enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the municipality in which the commission exists.

The officers authorized by law to serve and execute process in the aforementioned courts shall be the officers to serve and execute any process issued out of any court under this chapter.

A copy of any ordinance of the commission, certified to under the hand of its secretary, or chairman shall be received in any court of this State as full and legal proof of the existence of the ordinance, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

b. In addition to the penalties authorized by subsection a. of this section, the commission may require a person who removes or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment to the municipality. The replacement assessment shall be the value of the tree as determined by the appraisal of a trained forester or Certified Tree Expert retained by the commission for that purpose. In lieu of an appraisal, the commission may adopt a formula and schedule based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed \$27.00 per square inch. The square inch cross section shall be calculated from the diameter at breast height and, if there is a multiple stem tree, then each trunk shall be measured and an average shall be determined for the tree. For the purposes of this section, "diameter at breast height" shall mean the diameter of the tree taken at a point 4.5 feet above ground level. The commission shall modify the value of the tree based upon its species variety, location and its condition at the time of removal or destruction.

c. Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication, or cable television services

upon any lands in which it has acquired an easement or right-of-way, shall not be subject to any penalty imposed by a commission pursuant to subsections a. or b. of this section. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions.

Amended 1958,c.42,s.9; 1991,c.396.

40:64-13. Disposition of penalties

In event that the cost of any such improvement is to be borne wholly or in part by the owner or owners of such real estate, the governing body shall, before making any such improvement or awarding any contract therefore cause notice of the proposed improvement to be given to the owner or owners of all real estate affected thereby. The notice shall contain a description of the property affected sufficient to identify it, a description of the improvement, and a statement of the percentage of the cost to be borne by the owner or owners of such real estate: if the cost thereof is to be borne in part by such owners, or a statement that unless the owner or owners complete the same within 30 days after service thereof the municipality will make the improvement at the expense of the owners, if the cost of the improvement is to be borne wholly by the owner or owners of such real estate.

Amended by L.1958, c. 133, p. 634, s. 2.

40:64-14. No liability for death or injury

No liability for death or injury. Nothing in this chapter contained shall be construed to make any shade tree commission or any member thereof, or any volunteer participating in a community forestry program as provided for by section 4 of P.L.1996, c.135 (C.13:1L-17.4), responsible for the death or injury of any person, or for an injury to any property or highway tree or shrub. Liability for any such death or injury shall be governed by the provisions of section 16 of P.L.1996, c.135 (C.59:4-10) and any other relevant provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

Amended 1958, c.42, s.11; 1996, c.135, s.17.

MUNICIPAL ORDINANCES INTRODUCTION

By Dave Johnson, LTE, NJ Community Forestry

The state statute identifies the powers of shade tree commissions and outlines the format that municipalities should use if they decide to establish a commission. There are two types of ordinances that a municipality should enact: a basic or “enabling” type of ordinance and a supplemental or “operational” type of ordinance. Both are included in this publication and should be passed by the local governing body in order to create a fully functional municipal shade tree commission. Although some municipal ordinances have combined the two into a single ordinance, it may be more prudent to enact them separately as maintaining two distinct and different functions. As separate ordinances, if a problem occurs with one ordinance, the chance of impact upon the other is greatly reduced.

Sample Basic Ordinance

The sample basic ordinance was developed directly from the state statute authorizing the creation of shade tree commissions and should be considered an “enabling” ordinance for the municipality. It creates the commission, describes how it will be organized and administered and lists the commission’s powers, responsibilities and constraints. It is not meant to operate as a stand-alone or complete ordinance. The basic ordinance lays out a working foundation for the commission but does not describe in detail how to actually manage the tree resource. This detail is decided through the enactment of additional ordinances created by the commission and the local governing body. The basic ordinance is considered the first step in managing a municipality’s tree resource.

Sample Supplemental Ordinance

The sample supplemental ordinance should be considered an “operational” ordinance for the shade tree commission. Supplemental ordinances regulate a person’s actions regarding the municipality’s trees. They can be simple or complex depending on local issues and situations. Simple supplemental ordinances often describe what can and cannot be done to trees, the process that must be followed in order to do tree work, the type of trees species that can be planted and any exemptions to the ordinance.

More complex supplemental ordinances often deal with the regulation of trees on private property. The authority to regulate trees on private property must be granted to the shade tree commission by the municipality itself through ordinance. This specific power is not conveyed by the enabling state statute. Regulation of trees on private property may be done to preserve the character of a town, to minimize damage from soil erosion, mudslides and flooding, to protect view sheds or to preserve the overall municipal canopy cover. Supplemental ordinances that seek to regulate these types of actions may include formulas for replacing removed trees with smaller trees, criteria for preserving trees during construction, limitations on the number of trees permitted to be removed or the procedures for allowing monetary compensation for any trees removed.

Each municipality should examine its individual needs and craft their supplemental ordinances accordingly. These ordinances are not “one size fits all”. The practice of enacting the same ordinance as a neighboring town should be avoided. Your town is unique. Craft your supplemental ordinances with that thought in mind.

MUNICIPAL SHADE TREE COMMISSION TEXT FOR GOVERNING BODY BASIC (ENABLING) ORDINANCE

(Note: The R.S. references are indicated for the convenience of attorneys engaged for basic ordinance preparation. The fictitious political unit names of Lakeland Township and Eureka County are employed in lieu of gaps in the text)

AN ORDINANCE PROVIDING FOR THE CREATION OF A SHADE TREE COMMISSION OF THE TOWNSHIP OF LAKELAND, AND THE APPOINTMENT OF COMMISSIONERS, FOR THE PURPOSE OF THE REGULATION, PLANTING, CARE AND CONTROL OF SHADE AND ORNAMENTAL TREES AND SHRUBBERY IN THE STREETS, HIGHWAYS, PUBLIC PLACES OF THE TOWNSHIP OF LAKELAND AND PROVIDING FOR THE ENFORCEMENT THEREOF.

PURSUANT TO THE AUTHORITY (TITLE 40: CHAPTER 64, SECTIONS 1-14, AS AMENDED PUBLIC LAWS OF NEW JERSEY 1986 - CHAPTER 42) VESTED IN THE MUNICIPALITIES OF NEW JERSEY:

THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKELAND, COUNTY OF EUREKA, STATE OF NEW JERSEY ORDAINS:

Sec. 1. (Ref. R.S. 40:64-1). Commission; personnel; appointment. The regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in (1) the streets, highways, public places and (2) parks and parkways of the Township of Lakeland except State highways, unless the Department of Transportation shall assent thereto and except county highways, parks and parkways, if a county shade tree commission is operative and gives assent to, shall be exercised by and under the authority of Lakeland Township Shade Tree Commission, which is hereby created. The Commission shall consist of not less than five nor more than seven members, and may include not more than two alternate members. The members and alternate members shall be appointed by the Mayor (or other chief executive), who shall be residents of this Municipality and shall serve without compensation except as hereinafter provided.

Sec. 2. (Ref. R.S. 40:64-2). First commission; subsequent commissions; terms. The first Commissioners shall be appointed within 60 days after the effective date of this ordinance, and their terms of office shall commence upon the date of their appointment and be for the respective periods:

5 members - of 1, 2, 3, 4, and 5 years

6 members - of 1, 2, 3, 4, and 5 (2 appointees) years

7 members - of 1, 2, 3, 4 (2 appointees), and 5 (2 appointees) years

The terms of each appointee shall be designated in their appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January first, next succeeding such appointment. In event that the membership of any commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing.

If the ordinance provides for alternate members, the term of each alternate member shall be five years commencing on January first 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. An alternate member may participate in discussions 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. 3. (Ref. R.S. 40:64-3). Organization; salaries of officers and employees. The Commission shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually by the election of one of its members as chairman, and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated even if a member of the Commission, shall be fixed by the governing body of the Municipality; the salary of all other employees shall be fixed by the Commission. All salaries shall be fixed as nearly as practicable in accordance with the salary schedule, if any, of the Municipality for corresponding positions.

Sec. 4. (Ref. R.S. 40:64-4). Vacancies. Any vacancy occurring by reason of the death, resignation or removal of any Commissioner shall be filled for the unexpired term by the Mayor or other chief executive of this Municipality.

Sec. 5 (Ref. R.S. 40:64-5). Powers of commission. The Shade Tree Commission organized under this ordinance shall have power to:

a. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted in any (1) public highway and (2) park or parkway, except such as are excluded pursuant to Section 1 of this ordinance including the planting, trimming, spraying, care and protection thereof;

b. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection;

c. Move or require the removal of any tree, or part thereof, dangerous to public safety;

d. Make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the governing body of this Municipality, any and all ordinances necessary or proper for carrying out the provisions hereof;

e. Administer treatment to, or remove, any tree situated upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of this Municipality and enter upon private property for that purpose, with the consent of the owner thereof, provided the suspected condition is first confirmed by certificate issued by or on behalf of the New Jersey Department of Agriculture.

f. Encourage arboriculture.

Sec. 6 (Ref. R.S. 40:64-8). Cost of trees and improvements; charge and lien on property; exception. Except as hereinafter provided the initial cost of all trees planted by the Commission, the cost of planting the same, the cost of the posts and boxes or guards used for the protection thereof, and the cost of the removal of any tree or part thereof dangerous to public safety shall, if the Commission shall so determine, in accordance with uniform rules and regulations promulgated for this purpose, be a charge upon the real estate in front of which such tree or trees shall be planted or removed as an improvement thereof. Such cost if it is so determined that it is to be paid by the owner shall, unless paid directly to the Commission, be certified by it to the collector of taxes of this Municipality, shall thereupon become and be a lien upon said real estate, shall be included in the next tax bill rendered to the owner or owners thereof, and be collected in the same manner as other taxes against that property.

The provisions of this section shall not apply to:

a. A planting to replace a tree or trees theretofore planted by the Commission;

b. A planting in connection with Arbor Day exercises or other educational demonstration.

Sec. 7 (Ref. R.S. 40:64-9). Planting and removal of trees; notice and hearing; emergencies. In every case where the property of an abutting owner will be chargeable with the cost of the planting of any shade tree or trees, the Commission shall give notice of the meeting at which it is proposed to consider said planting by publishing the notice at least once, not less than twenty days before the meeting, in a newspaper circulating in the Municipality, or by personal service of a copy of the notice upon the abutting owner at least ten days before the meeting. The notice shall specify the street, streets, or portions thereof, on which such planting is proposed and require all persons who may object thereto to present their objections at the office of the Commission at or before the meeting. Before final action shall be taken, all objections so filed shall be considered. The Commission shall give reasonable notice of its intention to remove, or cause the removal of a tree, or part of a tree, dangerous to public safety, unless public safety requires immediate removal in which case no notice shall be necessary.

Sec. 8 (Ref. R.S. 40:64-10). Public improvements affecting trees; consent of commission, county park commissions unaffected. No statute giving any person or State, county or municipal board, body or official, power or authority to lay any sidewalk along, or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to a highway shade tree without the consent of the Shade Tree Commission within whose jurisdiction such tree shall be located. In all cases such Commission shall reasonably co-operate with such person, board, body or official for the general public good.

Nothing contained in this ordinance shall be held to take away or diminish any of the powers or authority of the Eureka County Park Commission over the trees or shrubbery in any Eureka County Park or Parkway within its jurisdiction, or to give any other commission or board any power or authority with respect to such trees or shrubbery.

Sec. 9 (Ref. R.S. 40:64-11). Annual appropriation; estimate; amount. During the month of December in each year, the Shade Tree Commission shall certify to the governing body of this Municipality the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made for; namely,

- (1) Payment of wages and salaries of employees;
- (2) Expenses of Commission members in discharging official duties including expenses incident to attendance at professional meetings;
- (3) Purchase of trees and shrubbery; and
- (4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

The governing body of this Municipality shall annually appropriate such sum as it may deem necessary for said purposes.

Sec. 10 (Ref. R.S. 40:64-12). Penalty, jurisdiction of courts; copy of ordinance as evidence.

a. The Commission may prescribe a fine for violation of its ordinances in an amount not exceeding \$1500.00 for each violation, and the Municipal Court of Lakeland shall have jurisdiction over actions for the violation of such ordinances, and its ordinances shall be enforced by like proceedings and process as that provided by law for the enforcement of ordinances of this Municipality. The officers authorized by law to serve

and execute process for the Municipal Court of this Municipality shall be the officers to serve and execute any process issued out of the Municipal Court for violations of the ordinances of the Commission.

A copy of any ordinance of the Commission, certified to under the hand of its secretary, or chairman shall be received in any court of this State as full and legal proof of the existence of the ordinance, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

b. In addition to the penalties authorized by subsection a. of this section, the commission may require a person who removes or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment to the municipality. The replacement assessment shall be the value of the tree as determined by the appraisal of a trained forester or Certified Tree Expert retained by the commission for that purpose. In lieu of an appraisal, the commission may adopt a formula and schedule based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed \$27.00 per square inch. The square inch cross section shall be calculated from the diameter at breast height and, if there is a multiple stem tree, then each trunk shall be measured and an average shall be determined for the tree. For the purposes of this section, "diameter at breast height" shall mean the diameter of the tree taken at a point 4.5 feet above ground level. The commission shall modify the value of the tree based upon its species variety, location and its condition at the time of removal or destruction.

c. Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication, or cable television services upon any lands in which it has acquired an easement or right-of-way, shall not be subject to any penalty imposed by a commission pursuant to subsections a. or b. of this section. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions.

Sec. 11 (Ref. R.S. 40:64-13). Disposition of penalties. All moneys collected, either as fines or penalties, for any violation of a rule or regulation of a shade tree commission enacted by ordinance, or as a charge against real estate, under any provision of this ordinance shall be forthwith paid over to the custodian of the municipal funds.

Sec. 12. Ordinances by shade tree commission. The Shade Tree Commission is hereby authorized and empowered to promulgate such ordinances as may be necessary, pursuant to statute, and for the proper interpretation, administration and enforcement of this basic ordinance, provided that such ordinances do not conflict with this ordinance and conform to the general standards prescribed by this ordinance.

Sec. 13. Public notice. All regulations adopted by the Shade Tree Commission shall be filed with the municipal clerk for inspection by the public during regular business hours.

Sec. 14. Severance. If any section, subsection, paragraph, sentence, clause, phrase or word contained in this code shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code which shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared to be severable.

TOWNSHIP OF FREEHOLD SHADE TREE ORDINANCES INTRODUCTION

By Michael Alvarado

Freehold Township is both a suburban and rural community located in Monmouth County, forty miles south of New York City, sixty-five miles northeast of Philadelphia, Pennsylvania, and twelve miles west of Belmar. The township is approximately 38 square miles containing 9,170 acres of Open Space, fourteen parks, six elementary and two middle schools as well as one high school. Many of its approximately 36,142 residents commute to work in New York City daily. Freehold Township was formally established on October 31, 1693, as one of three original townships in Monmouth County. It is a community of farms, churches, homes, neighborhoods, and small businesses with strong roots in a rich colonial tradition, dating back to the historic Battle of Monmouth, fought in June 1778.

The Freehold Township Shade Tree Commission, established on December 12, 1962, will be celebrating 30 years as a Tree City USA in 2011 at the Durand Park Memorial Arboretum, site of the State Arbor Day Celebration. It is the mission of the Freehold Township Shade Tree Commission to improve the quality of life in Freehold Township by maximizing the environmental, social, and economic benefits of trees to the community while minimizing their costs and liabilities.

The Freehold Township Shade Tree Commission consists of seven resident volunteers and one alternate, appointed to five year terms by the Township Committee. Currently the Shade Tree Department is in a transition period, moving under the Department of Public Works. The commission is preparing its third five-year Community Forestry Management Plan, 2011-2015.

There are over 20,000 street beautification trees growing on residential, commercial, public right of way, school and park properties within the township and protected by various tree ordinances.

It is the goal of the Freehold Township Shade Tree Commission to plant and maintain its tree populations; to reduce risk to public safety; to minimize conflicts between trees and sidewalks, curbs, sewers, overhead utilities and other fixtures; to encourage the proper stewardship of trees on private property and public lands; to improve and maintain public interest, appreciation and support for community forestry programs; and to encourage volunteer participation.

Many of the Freehold Township Shade Tree Commission ordinances have been amended since December 12, 1962 and other ordinances have been added. The changes occurred as residential and commercial growth developed. A sub-committee of the Shade Tree Commission recently amended the entire ordinance and it was adopted by the Township Committee on June 29, 2010.

Refer to the ordinances online at <http://www.ecode360.com/?custId=FR2121>. Chapter 10 “Shade Tree Commission” and Chapter 400 “Shade Trees” have been re-printed in this publication for your convenience. Following is a list of the Chapters to view.

Chapter 10 Shade Tree Commission (10-1 – 10-6) (Adopted 12/12/1962)

10-1 Establishment and purpose of a Shade Tree Commission

10-2 Appointment of members and alternate members, terms, vacancies (Amended 10/21/2008)

10-3 Officers (Amended 12/27/2005)

10-4 Powers and duties

10-5 Annual appropriations

10-6 Contractor maintenance guarantees

Chapter 336 Shade Tree Planting and Care (336-1 – 336-5)

Article I (Adopted 12/12/1962)

336-1 Responsibility for costs

336-2 Responsibility of tree trimming: failure to comply (Amended 6/29/2010)

336-3 Notice and hearing (Amended 6/29/2010)

336-4 Consent of commission required for work near trees

336-5 Powers of other boards and authorities

Article II Tree Preservation (336-6 – 336-20)

336-6 Title

336-7 a. Intent and purpose

b. Heritage/Historic Trees

336-8 Definitions

336-9 Acts prohibited without a tree removal permit

336-10 Application procedures for tree removal

336-11 Appeal procedures for Heritage/Historic tree determination

336-12 Appeal procedures for all other determinations

336-13 Exceptions from requirement to secure tree removal permit or for abbreviated procedures

336-14 Other prohibited acts

336-15 Safety barrier

336-16 Non-liability of Township

336-17 Violations and permits

336-18 Farming activities

336-19 Establishing a home site

336-20 Heritage/Historic tree data collections

Chapter 399 General Provisions Shade Tree Commission (Adopted 3/17/2009)

Chapter 400 Shade Trees (400-1 – 400-7)

400-1 Contains Shade Tree Commission rules and regulations for the planting, control, protection, and improvement of shade trees upon highways and public places in the Township of Freehold and providing penalties for the violation thereof

400-2 Definitions

400-3 Required permits (Amended 6/29/2010)

400-4 Required permits for all public utilities

400-5 Public utility performance standard

400-6 Violations and penalties: replacement assessment (Amended 5/23/2006, 10/4/2006)

400-7 Consent conceding limited jurisdiction to county

Chapter 150-31 Tree/Natural Resource Preservation

(Amended 12/27/2005) Tree removal fees

TOWNSHIP OF FREEHOLD BASIC SHADE TREE ORDINANCE

ARTICLE I. Shade Tree Commission

[Adopted 12-12-1962 (§ 2-21 of the Revised General Ordinances), as amended through Ord. No. O-81-24]

§ 10-1. Establishment

A Shade Tree Commission is established for the purpose of regulating, planting, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways, public places, parks and parkways of the Township, except state highways unless the State Department of Transportation assents thereto, and except county highways, parks and parkways if a County Shade Tree Commission is operative, unless the county Shade Tree Commission gives assent thereto. The Commission members shall be residents of the Township and serve without compensation except as hereinafter provided.

§ 10-2. Appointment of members and alternate members; terms; vacancies

[Amended 10-21-2008 by Ord. No. O-08-25]

A. The Shade Tree Commission shall consist of seven members appointed by the Mayor for a term of five years, except that those first appointed shall be on a staggered basis; provided further that the initial appointment of the sixth person shall be for a term of five years and the seventh member shall be for a term of four years, retroactive to January first of the year of appointment. All appointments, except those to fill vacancies, shall be effective January first next succeeding the appointment. Any vacancy occurring by reason of the death, resignation or removal of any Commissioner shall be filled for the unexpired term by the Mayor.

B. Appointment of alternate members; terms; vacancies.

(1) The Mayor may appoint up to two alternate members to the Shade Tree Commission. Alternate members shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2." The length of the term of the alternate members shall be for a term of five years. However, the terms shall be staggered so that they do not both expire in the same year, but rather shall expire in two consecutive years. A vacancy occurring otherwise than by expiration of term shall be filled by the Mayor for the unexpired term only.

(2) No alternate member shall be permitted to act on any matter in which the alternate has either directly or indirectly any personal or financial interest. An alternate member may, after public hearing, if he or she requests one, be removed by the Mayor for cause.

(3) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of the Commission. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

§ 10-3. Officers

[Amended 12-27-2005 by Ord. No. O-05-48]

In January of each year, the Commission shall organize by the election of one of its members as Chairperson, and the appointment of a Secretary, who need not be a member.

§ 10-4. Powers and duties

The Shade Tree Commission shall have the power to:

A. Promulgate such ordinances and written rules and regulations as may be necessary, pursuant to statute, and for the proper interpretation, administration and enforcement of this article, provided that the ordinances and regulations do not conflict with this article and conform to the general standards.

B. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted, in any public highway, park or parkway, except such as are excluded pursuant to § 10-1, including the planting, trimming, spraying, care and protection thereof.

C. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection.

D. Move or require the removal of any tree, or part thereof, dangerous to public safety.

E. Care for and control such parks and parkways; encourage arboriculture; make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the Township Committee, any and all ordinances necessary or proper for carrying out the provisions hereof.

F. Administer treatment to or remove any tree situated upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the Township and enter upon private property for that purpose, with the consent of the owner, provided the suspected condition is first confirmed by certificate issued by or on behalf of the New Jersey Department of Agriculture.

§ 10-5. Annual appropriations

A. During the month of October in each year, the Shade Tree Commission shall certify to the Township Committee the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made:

(1) Payment of wages and salaries of employees.

(2) Expenses of Commission members in discharging official duties, including expenses incident to attendance at professional meetings.

(3) Purchase of trees and shrubbery.

(4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

B. The Township Committee shall annually appropriate such sum as it may deem necessary for the purposes.

§ 10-6. Contractor maintenance guaranties

Whenever the Shade Tree Commission shall accept any bid from any contractor to perform services for and on behalf of the Shade Tree Commission, a condition of that bid shall be the posting of a maintenance guaranty upon completion of the services, which maintenance guaranty shall be in a sum equal to 20% of the amount of the contract price. Said guaranty shall be in the form of cash, certified check, letter of credit or bond as approved to form and sufficiency by the Municipal Attorney. The maintenance guaranty shall be posted upon completion of the work and before final release of any performance guaranties which may have been posted and shall be expressly conditioned upon the maintenance by the contractor of all such work for a period of one year and particularly shall guarantee the remedy of any defects in such work which occur or become evident during said period.

BOROUGH OF PARAMUS SHADE TREE ORDINANCES INTRODUCTION

By William R. Comery, LLA, LTE

Paramus is a suburban community of 26,500 residents located in Bergen County, seven miles from New York City. Paramus is best known as the retail-shopping mecca of the northeast, but also is a leading Tree City USA community in New Jersey. After World War II, Paramus began to change its farmland into a residential and retail center. The Shade Tree & Parks Commission was established in 1951 to help transform the farmland into tree-lined residential and commercial streets. Today, Paramus boasts of over 30,000 street trees lining the residential and commercial areas of this 10.5 square mile community. Paramus has a seven-member Board of Shade Tree & Parks Commissioners to set policy and a full time Director and staff to implement and support a complete range of programs. Such programs include planting, removal, pruning, special care, a municipal tree nursery and a leaf composting program.

Originally Passed February 28, 1952

A simple but complete ordinance based on State Statute 40:64, 1-14. This one-page ordinance has been amended three times since 1952, but never to remove any part of the original ordinance that has withstood several court challenges. The key to the success of this ordinance has been its uniform and consistent enforcement by the Shade Tree & Parks Commission and staff.

Amended August 11, 1982 (Section 7)

This amendment requires all utility companies to obtain a tree-trimming permit before performing routine line clearance tree trimming. Standards and pruning practices are established between the Shade Tree & Parks Commission and the utility company before pruning begins.

Amended March 11, 1992 (Section 11)

This amendment requires that restitution be paid to the Shade Tree & Parks Commission for damaged or destroyed shade trees.

Amended March 10, 2010 (Section 6)

This amendment requires a cash bond to insure the protection of existing street trees during demolition or construction on any site that has existing street trees.

BOROUGH OF PARAMUS

BASIC SHADE TREE ORDINANCE

AN ORDINANCE TO ESTABLISH A SHADE TREE COMMISSION IN AND FOR THE BOROUGH OF PARAMUS.

BE IT ENACTED AND ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PARAMUS THAT:

SECTION 1. There is hereby established and created in and for the Borough of Paramus a shade tree commission which shall be known as the Shade Tree Commission of Paramus Borough.

SECTION 2. The regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways, public places, parks and parkways of the Borough of Paramus, except County parks and parkways, shall be exercised by and be under the authority of the Shade Tree Commission of Paramus Borough.

SECTION 3. The Shade Tree Commission of Paramus Borough shall consist of three members who shall be residents of the Borough and who shall serve without salary except as hereinafter provided.

SECTION 4. The members of the Shade Tree Commission of Paramus Borough shall be appointed by the mayor. The first commissioners shall be appointed within sixty days after the effective date of this ordinance and their terms shall commence on the day of their appointment and be for the respective periods of three, four and five years from January first next succeeding such appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years to take effect on January first. Any vacancy occurring by reason of the death, resignation, or removal of any commissioner shall be filled for the unexpired term, by appointment by the Mayor.

SECTION 5. Within thirty days after the appointment of its total membership, the Shade Tree Commission of Paramus Borough shall organize for the remainder of the then calendar year, and thereafter annually, by the election of one of its members as president and by the appointment of a secretary, who need not be a member. The salary of the secretary and of all other employees shall be fixed by the Commission.

SECTION 6. The Shade Tree Commission of Paramus Borough shall have power to:

- a. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located or which may hereafter be planted in any public highway, park or parkway of the Borough of Paramus including the planting, trimming, spraying, care and protection thereof;
- b. Regulate and control the use of the ground surrounding such trees and shrubbery, so far as may be necessary for their proper growth, care, and protection;
- c. Move or require the removal of any tree, or part thereof, dangerous to the public safety at the expense of the owner of such tree;
- d. Remove any tree, or part thereof, at the request and expense of the owner of such tree;
- e. Care for and control parks and parkways of the Borough of Paramus and encourage arboriculture;
- f. Contract with the owner of any real estate in the Borough of Paramus to supply to him material and labor for the purpose of planting, cultivating, or removing trees, grass, flowers or shrubbery, and to charge the actual cost thereof such owner. If, after such material or labor is supplied, payment thereof is not made on demand, the Commission may certify the actual cost thereof to the Collector of Taxes, who shall collect the sum so certified as other taxes on real property are collected;
- g. Make, alter, amend and repeal any and all ordinances necessary or proper for carrying out the provisions of this ordinance.

SECTION 7. Except as hereinafter provided, the initial cost of all trees planted by the Commission, the cost of planting them, the cost of posts, boxes or guards used for the protection thereof, and the cost of removal of any trees dangerous to public safety, shall be a charge upon the real estate in front of which such tree or trees shall be planted or removed, as an improvement thereof.

Such cost, unless paid directly to the Commission, shall be certified by it to the Collector of Taxes, shall thereupon be and become a lien upon said real estate shall be included in the next tax bill rendered to the owner or owners thereof, and shall be collected in the same manner as other taxes against that property.

The provisions of this section shall not apply to:

- a. A planting to replace a tree or trees theretofore planted by the Commission.
- b. A planting in connection with Arbor Day exercises or other educational demonstration.

SECTION 8. In every case where the property of an abutting owner will be chargeable with the cost of the planting of any shade tree or trees, the Commission shall give notice of the meeting at which it is proposed to consider said planting, by publishing the notice at least once, not less than twenty day before the meeting, in a newspaper circulating in the Borough of Paramus, or by personal service of a copy of the notice upon the abutting owner at least ten days before the meeting. The notice shall specify the street, streets or portions thereof, on which such planting is proposed, and shall require all persons who may object thereto to present their objections in writing to the secretary of the Commission at or before the meeting. Before final action shall be taken, all objections so filed shall be considered.

The Commission shall give reasonable notice of its intention to remove, or cause the removal of a tree, or part of a tree, dangerous to public safety, unless public safety requires immediate removal, in which case no notice shall be necessary.

SECTION 9. Appropriations of funds necessary for the proper conduct of the work of the Shade Tree Commission of Paramus Borough shall be made at the times, to the extent, and in the manner provided by law.

SECTION 10. This ordinance shall become effective immediately upon publication after final passage and approval as required by law.

**MUNICIPAL SHADE TREE COMMISSION
TEXT FOR GOVERNING BODY
SUPPLEMENTAL (OPERATIONAL) ORDINANCE**

(Note: The R.S. references are indicated for the convenience of attorneys engaged for basic ordinance preparation. The fictitious political unit names of Lakeland Township and Eureka County are employed in lieu of gaps in the text)

AN ORDINANCE PROVIDING FOR THE PLANTING, CONTROL, PROTECTION, REGULATION AND IMPROVEMENT OF SHADE TREES AND SHRUBBERY UPON PUBLIC HIGHWAYS AND PUBLIC PLACES IN THE TOWNSHIP OF LAKELAND, IN THE COUNTY OF EUREKA AND STATE OF NEW JERSEY.

PURSUANT TO THE AUTHORITY (R.S. 40:64-5D as amended Public Laws of New Jersey, 1996 - Chapter 42) VESTED IN THE LAKELAND TOWNSHIP, EUREKA COUNTY, SHADE TREE COMMISSION, IT DOES HEREBY ENACT THE FOLLOWING REGULATIONS:

Sec. 1. DEFINITIONS:

- A. SHADE TREE COMMISSION shall mean the Shade Tree Commission of the Township of Lakeland.
- B. The term STREET shall mean:
 - (1) Any public street, designated by the governing body, to be within the jurisdiction of the Shade Tree Commission.
 - (2) Municipal Parks and Parkways.
 - (3) County Roads.
 - (4) State Highways.
- C. The term TREE shall mean:
 - (1) Trees and shrubs.
- D. PERSON shall mean every person, firm, association, partnership and corporation.
- E. The term PUBLIC UTILITY COMPANY shall refer to a public utility as defined in the Revised Statutes of the State of New Jersey (R.S. 48:2-13).
- F. The term PLANT CONSTRUCTION as applied to public utility companies shall mean poles, wires, cables, sub-surface conduits, pipes, manholes and appurtenant facilities of such companies installed in a street.

Sec. 2. REQUIRED PERMITS (NON-UTILITY OPERATIONS)

- A. NO PERSON SHALL DO any of the following acts to any tree on a street WITHOUT THE PRIOR PERMIT of the Shade Tree Commission:

- (1) Cut, prune, climb with spikes, break, damage or remove or kill.
- (2) Cut, disturb or interfere in any way with any root.
- (3) Spray with any chemical.
- (4) Fasten any rope, wire, sign or other device. (Nothing herein shall prevent any governmental agency from affixing in a manner approved by the Shade Tree Commission a public notice upon a tree in connection with administering governmental affairs.)
- (5) Remove or damage any guard or device placed to protect any tree or shrub.
- (6) Conduct razing, removal or renovation of any structure if deemed, by the Commission, to be damaging to neighboring street trees.
- (7) Place or distribute chemicals, including, but not limited to, salt deleterious to tree health.
- (8) Maintain a stationary fire or device which vaporizes noxious fumes deleterious to tree health.
- (9) Remove soil, either for trenching or otherwise.
- (10) Construct new sidewalks and/or driveways with any material whatsoever within 5 feet of a tree.
- (11) Plant any tree or shrub within the designated area under the control of the Commission.

Sec.3. REQUIRED PERMITS: UTILITY OPERATIONS; EXCEPTIONS

- (1) The Shade Tree Commission may grant to PUBLIC UTILITY COMPANIES a blanket permit for tree pruning for line clearance and (2) for the installation and maintenance of sub-surface and above ground Plant Construction if there is interference with or endangerment to street trees.
- (2) PUBLIC UTILITY COMPANIES may, during periods of emergency, without specific prior permit (1) install temporary attachments to trees and (2) make emergency sub-surface repairs.
- (3) Each PUBLIC UTILITY COMPANY shall exercise reasonable diligence in the maintenance of its Plant Construction so as to avoid damage to trees under the jurisdiction of the Lakeland Township Shade Tree Commission.

Sec. 4. ISSUANCE OF PERMITS

- A. Requests for permits required by the provisions of this ordinance for the performance of work should be directed to the Shade Tree Commission, Lakeland Township, Eureka County, New Jersey.

Sec. 5. VIOLATION AND FINES

- A. Any person found guilty of violating any of the provisions of these regulations shall upon conviction by a Magistrate officiating within the Lakeland Township County of Eureka be fined a sum not exceeding fifteen hundred dollars (\$1500.00) for each offense. Each day any violation of this ordinance shall continue shall constitute a separate offense.

In addition to the fine of \$1500.00 referred to in section A, a municipality may impose an additional penalty of an assessment paid to the municipality based upon the value of the tree as determined by a Certified Tree Expert or trained forester or by the formula of not exceeding \$27.00 per square inch of a cross section of the trunk measured 4.5 feet above ground level. This amount shall be modified by the tree's species variety, location, and its condition at the time of damage or destruction.

TOWNSHIP OF FREEHOLD SUPPLEMENTAL SHADE TREE ORDINANCE

CHAPTER 400. SHADE TREES

[HISTORY: Adopted by the Shade Tree Commission of the Township of Freehold by Ord. No. O-01-24. Amendments noted where applicable.]

GENERAL REFERENCES

Shade Tree Commission — See Ch. 10, Art. I.

Trees — See Ch. 336.

§ 400-1. Purpose.

This chapter contains Shade Tree Commission rules and regulations for the planting, control, protection and improvement of shade trees upon highways and public places in the Township of Freehold and providing penalties for the violation thereof.

§ 400-2. Definitions.

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

PERSON

An individual, firm, partnership, association, corporation, joint-stock company, limited liability company, public utility and/or the agents of any of the same.

PLANT CONSTRUCTION

As applied to public utilities, means appurtenances and devices, including poles, wires, cables, subsurface conduits, pipes and other requisite facilities.

PUBLIC UTILITY

The same definition as contained in N.J.S.A. 48:2-13 and shall include any person franchised by the Board of Public Utility Commissioners of New Jersey to supply electrical, gas, water, sewage, communicative (telephone), cable TV (and any other overhead wire) services.

SHADE TREE COMMISSION

The Shade Tree Commission of Freehold Township and its duly authorized representatives.

STREET

- A. Any public, Township-accepted and maintained highway;
- B. Any Township-accepted and maintained park, and building grounds and parkways as may be assigned to the Shade Tree Commission.

TREE

Any tree or woody plant and any shrub, both annual and perennial, located in any street.

§ 400-3. Required permits.

No person shall do to any tree on a street, without first having obtained a permit from the Shade Tree Commission, any of the following acts:

- A. Cut, prune (except when tree is located on property owned by a person or entity doing or causing said pruning to be done), climb with spikes, break, damage, remove or kill;
- B. Cut, disturb or interfere in any way with any root;
- C. Spray with any chemical;
- D. Fasten any rope, wire, sign or other device; provided, however, that nothing herein shall prevent any agency of government from affixing, in a manner approved by the Shade Tree Commission, public notices upon a tree in connection with the administration of governmental affairs;
- E. Remove or damage any guard or device placed to protect any tree;
- F. Create a hazard to any tree by the placement of building materials on property on which a tree is located, or upon any property adjacent to property upon which a tree is located;
- G. Create conditions deleterious to the health of any tree by the placement or distribution of chemicals, including salt;
- H. Maintain a stationary fire or device which vaporizes noxious fumes deleterious to the health of any tree;
- I. Remove soil, either for trenching or otherwise, that will affect any tree;
- J. Construct new sidewalks and/or driveways with any material whatsoever within 15 feet of any tree;
- K. Plant any tree.

§ 400-4. Required permits for all public utilities.

- A. A public utility shall first obtain a permit from the Shade Tree Commission for the trimming or removal of any tree or other vegetation located on any street, Township right-of-way or other Township property.
- B. The Shade Tree Commission may grant to a public utility a blanket permit for the installation and the maintenance of subsurface and aboveground plant construction.
- C. A public utility may, during periods of emergency, and without first obtaining a permit from the Shade Tree Commission:
 - (1) Install temporary attachments to any tree; and
 - (2) Make subsurface emergency repairs.
- D. All tree work done while trimming around utility lines in and along Township rights-of-way shall be by target pruning. All trimming is to be conducted with consideration for the health of any tree while allowing for proper utility line clearance. Any improper work will void the issued permit. Any work performed under permit from the Shade Tree Commission shall be performed in accordance with current recommendations and approved standards of the National Arborist Association, American National Standards Institute ("ANSI"), ANSI-Z133.1 & 300A, and the New Jersey Certified Tree Experts Board.

§ 400-5. Public utility performance standard.

Every public utility shall insure that wires and conduits are fastened and maintained in such manner as shall prevent damage to trees, including damage by reason of leakage of gas or other substances injurious to trees.

§ 400-6. Violations and penalties; replacement assessment.

A. Except as provided in Subsection C below, any person who violates any of the provisions of this chapter shall, upon conviction thereof, be subject to a penalty as stated in Chapter 1, Article II (re-printed at the end of this ordinance), General Penalty for each such offense. Each day that a violation of this chapter shall continue shall constitute a separate offense.

[Amended 5-23-2006 by Ord. No. O-06-16; 10-4-2006 by Ord. No. ST-06-01]

B. Except as provided in Subsection C below, in addition to the monetary penalty provided in Subsection A above, the Commission may require a person who removes or otherwise destroys a tree in violation of Chapter 336, Article II, Tree Preservation, of the Township Code, or in violation of this chapter, to pay a replacement assessment to the Township, such assessment to be determined pursuant to N.J.S.A. 40:64-12b.

C. Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication or cable television services upon any lands in which it has acquired an easement or right-of-way, shall not be subject to any penalty imposed by the Commission pursuant to Subsection A or B above. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions, or for actions not taken within its easement or right-of-way.

D. For purposes of this section, if a public utility or cable television company takes action in violation of any provision of this chapter or of Chapter 336, Article II, Tree Preservation, of the Township Code, it shall be deemed to create a rebuttable presumption of negligence.

§ 400-7. Consent conceding limited jurisdiction to county.

Pursuant to N.J.S.A. 40:37-11a, the Commission hereby consents to the Monmouth County Shade Tree Commission exercising jurisdiction in any circumstance involving a public utility or cable television company under which this Commission is prevented from seeking a monetary penalty under § 400-6A or from imposing an assessment under § 400-6B.

**TOWNSHIP OF FREEHOLD
CHAPTER 1, ARTICLE II
GENERAL PENALTY**

(Adopted by Ord. No. O-84-10 (6-11 of the Revised General Ordinance), as amended through Ord. No. O-02-8)

1-3 Maximum Penalty

(Amended 12-27-2005 by Ord. No. O-05-48; 5-23-2006 by Ord. No. O-16-16)

A. For a violation of any provision of this Code, or any other ordinance of the Township where no specific penalty is provided regarding the section or sections violated, the maximum penalty, upon conviction, shall be one or more of the following: a fine not exceeding \$2,000 or imprisonment for a period not exceeding 90 days or a period of community service not exceeding 90 days.

B. In the event that a fine greater than \$1,250 is imposed upon an owner for violations of housing or zoning codes, the owner shall be provided with a thirty-day period in which the owner shall be afforded the opportunity to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent determination concerning the violation. Subsequent to the expiration of the thirty-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise, or, upon re-inspection of the property, it is determined that the abatement has not been substantially completed.

1-4 Penalty for solid waste disposal violations

(Added 4-27-2004 by Ord. No. O-04-18)

For a violation of any ordinance of the Township pertaining to solid waste disposal, pursuant to N.J.S.A. 40:49-5, the minimum penalty shall be \$500, upon conviction, and the maximum fine shall not exceed \$10,000 upon conviction.

1-5 Separate violations

Except as otherwise provided, each and every day in which a violation of any provision of this chapter or any other ordinance of the Township exists shall constitute a separate violation.

1-6 Application

The maximum penalty stated in this section is not intended to state an appropriate penalty for each and every violation. Any lesser penalty, including a nominal penalty or no penalty at all, may be appropriate for a particular case or violation.

BOROUGH OF PARAMUS SUPPLEMENTAL SHADE TREE ORDINANCE

BOARD ON SHADE TREE AND PARK COMMISSIONERS

BOROUGH OF PARAMUS

Ordinance No, ST.1

AN ORDINANCE REGULATING THE PLANTING; CONTROL, PROTECTION AND IMPROVEMENT OF TREES AND SHRUBBERY UPON THE PUBLIC STREETS, PARKS AND PUBLIC PLACES IN THE BOROUGH OF PARAMUS, COUNTY OF BERGEN AND STATE OF NEW JERSEY.

BE IT ORDAINED by the Board of Shade Tree and Park Commissioners of the Borough of Paramus, New Jersey as follow:

SECTION 1. DEFINITIONS.

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

COMMISSION. The Board of Shade Tree and Park Commissioners of the Borough of Paramus including any of its duly appointed members and any of its duly authorized agents or employees.

PERMITS. Written permission of the Commission. Whenever, pursuant to any provision of this ordinance, the Commission shall have occasion to pass upon an application for a permit, it shall, in determining whether or not to issue such permit, take into consideration the nature, species, size, age and condition of any tree involved; the location thereof in the street or park; the planning, care, protection, maintenance, or removal procedures involved; the public safety and welfare; and the improvement and advancement of the shade tree plan or program of the Commission.

PERSON. Any individual, firm, partnership or corporation, or any combination thereof. Where, in the proper context, it is so required, this term may be construed to designate the plural as well as the singular.

STREET. Any road, avenue, street or highway dedicated to the public use for street purpose, regardless of whether or not it has been formally accepted by the Borough of Paramus. A street shall be deemed to include all portions lying between the dedicated or established right-of-way lines and/or planting easement thereof, said lines being identical with the front property lines of lands abutting the street.

TREE. Any tree, shrub or plant, or any root, branch, flower or other part thereof, that is located in or upon any street or park.

Any term or provision of this ordinance 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 ordinance, regardless of whether it is a deliberate, intentional or purposeful act, or a careless negligent or unintentional act.

SECTION 2. PERMITS.

No person shall, without a permit do any of the following acts:

- (a) Cut, prune, break, injure, remove, disturb, or interfere in any way with any tree;

- (b) Spray with any chemical any tree or near a tree to cause injury or death to said tree;
- (c) Fasten any rope, wire, sign or other device to a tree or to any guard about such tree;
- (d) Remove or injure any guard or device placed to protect any tree
- (e) Close or obstruct any open space provided about the base of a tree to permit the access of air, water and fertilizer to the roots of such tree.

SECTION 3. PLANTING.

No person shall plant any tree or shrub in any park or street without a permit.

SECTION 4. OBSTRUCTIONS.

No person shall, without a permit, place or maintain in any street or park, any stone, cement or other sidewalk or any stone, cement or other substance which shall impede the free access of air and water to the roots of any tree.

Where any tree is to be surrounded by pavement of stone, cement, asphalt or any other substance tending to impede the free access of air and water to the roots of the tree, no portion of such pavement shall be nearer to any portion of the base of the trunk than four (4) feet.

SECTION 5. INJURY.

- (a).No person shall place, salt, brine, oil or any other substance injurious to plant growth, in any street or park in such a manner as to injure any tree.
- (b) No person shall build any fire or station any tar kettle, road roller, fuel oil dispensing truck or other engine in any street or any other place in such a manner that the heat, vapors, fuel, or fumes there from may injure any tree.
- (c) Every person having or maintaining any underground utility lines in any street or park shall maintain such lines in such a manner as will safeguard the trees against any damage there from and shall make periodical adjustments whenever necessary to prevent damage to trees.

SECTION 6. PROTECTION.

- (a) In the erection, alteration, or repair of any structure or building, the owner contractor, or other person in charge thereof shall place such guards around all nearby trees as will effectually prevent injury to such trees.
- (b) No person shall do any excavating within four (4) feet of any tree without a permit.
- (c) No person shall use or operate any power shovel, bulldozer or any other implement or tool in such a manner as to damage or destroy any tree.
- (d) Any person developing property, redeveloping property or demolishing structures or existing developed property with Borough of Paramus street trees will provide the borough of Paramus with a Cash landscape Bond or equivalent in the amount of up to \$5,000.00 for the Borough of Paramus street tree on said property for a duration of up to five (5) years. After three (3) years, the tree/ trees will be evaluated by the Commission, base upon the evaluation, the Commission will determine whether the Cash Bond or equivalent will be returned, extended, or utilized to remove and replace any or all of the Borough of Paramus trees on said property.

SECTION 7. WIRES AND UTILITY TRIMMING

- (a) No person shall string any wires in or through a public park or property without a permit.
- (b) Every person having or maintaining any electric, telephone, telegraph, cable TV, or other wires running in or through a street or park, shall securely fasten and maintain such wires in such manner as will safeguard all trees against any damage there from and shall make periodical adjustments whenever necessary to prevent damage to all trees.
- (c) No person shall, without a permit, attach or fasten any wires, insulator or other device for holding any wire to any tree.
- (d) Whenever the Commission shall deem it necessary to prune or remove any tree, any person having a wire running in or through any street or park shall temporarily remove such wire within 24 hours after the service upon the owner of said, or his agent, of a written notice to do so.
- (e) Any public utility or its agents may upon receiving (written) permission from the Commission at least 72 hours prior to the start of work, prune or remove trees for line clearance of utility wires in non-emergency situations pursuant to a line clearance program.
- (f) Any public utility or its agents may undertake emergency tree work to restore electrical service or spot work to prevent interruption of electrical, telephone, telegraph, cable TV, or other wire services. In such event the utility will notify the Commission of said work within three (3) business days of its beginning.

SECTION 8. PARKS.

- (a) No person shall enter upon any portion of the lawn or ground within a public park or other public place when notified by a sign place in such a park or public place or by a guardian of such park or public place or by a police officer, not to enter upon such lawn or ground.
- (b) No person shall leave or deposit any paper or other waste material in any public park, except in such receptacle as may be provided therein for that purpose.
- (c) No person shall except at such time and under such regulations as may be designated by the Commission, play at any game in a public park.
- (d) No person shall, without a permit, place any booth, stand or other structure or station wagon, car or other vehicle in any public park, except in the area prescribed.
- (e) No person shall offer any article for sale, display any advertising device or distribute any commercial circulars or cards or political activity and/or signs in a public park.

SECTION 9. HINDRANCE.

No person shall prevent, delay or in any manner interfere with the Commission or its authorized agents in the performance of their lawful duties.

SECTION 10. PENALTIES.

Any person who violates any of the provisions of this Ordinance or who fails to comply with the terms and provisions of any permit issued pursuant hereto shall upon conviction in municipal court thereof pay a fine of not less than Two Hundred (\$200) dollars or to exceed Fifteen Hundred (\$1,500) dollars at the discretion of the court. Each day that a violation shall continue shall constitute a separate offense.

SECTION 11. RESTITUTION.

In addition to the penalties authorized by Section 10 of this Ordinance, the Commission may require a person who removes or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment to the municipality. The replacement assessment shall be the value of the tree as determined by the appraisal of a trained forester or Certified Tree Expert retained by the Commission for that purpose. In lieu of an appraisal, the commission may adopt a formula and schedule based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed \$48.00 per square inch. The square inch cross section shall be calculated from the diameter at breast height and if there is a multiple stem tree, then each trunk shall be measured and an average shall be determined for the tree. For the purposes of this Ordinance, diameter at breast height shall mean the diameter of the tree taken a point 4.5 feet above ground level. The commission shall modify the value of the tree based upon its species variety, location, and its condition at the time of removal or destruction.

SECTION 12.

All Ordinances, rules, and regulation parts of any ordinances, rules and regulations which are inconsistent with any provisions of this ordinance are hereby repealed as to the extent of such inconsistencies.

SECTION 13.

This Ordinance shall take effect immediately upon publication thereof after final passage and approval as required by law.

ORIGINALLY PASSED

February 28, 1952.

AMENDED: August 11, 1982

March 11, 1992

March 10, 2010

TOWNSHIP OF JACKSON COMBINED SHADE TREE ORDINANCE

29-1 COMMISSION; PERSONNEL; APPOINTMENT

The regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in (1) the streets, highways, public places and (2) parks and parkways of the Township of Jackson except State highways, unless the Department of Transportation shall assent thereto and except county highways, parks, and parkways, if the “Pinelands Commission” or a county shade tree commission is operative and gives assent to, shall be exercised by and under the authority of Jackson Township Shade Tree Commission, which is hereby created. The Commission shall consist of not less than five nor more than seven members, and may include not more than two alternate members. The members and alternate members shall be appointed by the Township Committee, who shall be residents of this Municipality and shall serve without compensation except as hereinafter provided.

29-2 FIRST COMMISSION; SUBSEQUENT COMMISSIONS; TERMS

The first Commissioners, shall be appointed within 60 days after the effective date of this ordinance, and their terms of office shall commence upon the date of their appointment and be for the respective periods: 5 members – of 1,2,3,4, and 5 years; 6 members – of 1,2,3,4, and 5 (2 appointees) years; 7 members – of 1,2,3,4 (2 appointees), and 5 (2 appointees) years. The terms of each appointee shall be designated in his appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January first, next succeeding such appointment. In event that the membership of any commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing.

If the ordinance provides for the appointment of two alternate members, the terms of each alternate member shall be five years commencing on January first of the year of appointment; provided; however, that in the event two alternate members are appointed the initial term of “Alternate No. 1” shall be five years, and the initial term of “Alternate No. 2” shall be four years.

An alternate member may participate in discussions 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.

29-3 ORGANIZATION; SALARIES OF OFFICERS AND EMPLOYEES

The commission shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually by the election of one of its members as chairman, and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated even if a member of the Commission, shall be fixed by the Township Committee; the salary of all other employees shall be fixed by the Township Committee. All salaries shall be fixed as nearly as practicable in accordance with the salary schedule, if any, of the Municipality for corresponding positions.

29-4 VACANCIES

Any vacancy occurring by reason of the death, resignation or removal of any Commissioner shall be filled for the unexpired term by another appointee of the Township Committee.

29-5 POWERS OF COMMISSION

The Shade Tree Commission organized under this ordinance shall have power to:

- a. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental tree and shrubbery now located, or which may hereafter be planted in any (1) public highway and (2) park or parkway, or other public lands except such as are excluded pursuant to Section I of this ordinance including the planting, trimming, spraying, care and protection thereof, with approval from the Township Committee.
- b. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their property growth, care and protection; with approval from the Township Committee.
- c. Move or require the removal of any tree, or part thereof, dangerous to public safety; with approval from the Township Committee.
- d. Make, alter, amend and repeal in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the Township Committee, any and all ordinances necessary or proper for carrying out the provisions hereof; with approval from the Township Committee.
- e. Administer treatment to, or remove, any tree situated upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of this Municipality and enter upon private property for that purpose, with the consent of the owner thereof, provided the suspected condition is first confirmed by certificate issued by or on behalf of the New Jersey Department of Agriculture and with approval from the Township Committee.
- f. Encourage arboriculture, regulate and provide recommendations to the Township Forester and Township Committee in matters pertaining to the removal and enforcement of tree removal on all lands within the Township of Jackson in accordance with the Township's Land Use and Development Regulations with approval from the Township Committee.

29-6 COST OF TREES AND IMPROVEMENTS; CHARGE AND LIEN ON PROPERTY; EXCEPTION

Except as hereinafter provided the initial cost of all tree planted by the Commission, the cost of planting the same, the cost of the posts and boxes or guards used for the protection thereof, and the cost of the removal of any tree or part thereof dangerous to public safety shall, if the Township Forester with recommendation of the Shade Tree Commission and approval of the Township Committee shall so determine, in accordance with uniform rules and regulations promulgated for this purpose, be a charge upon the real estate in front of which such tree or trees shall be planted or removed as an improvement thereof. Such cost if it is so determined that it is to be paid by the owner shall, unless paid directly to the Township Forester for the Township's tree escrow fund, be certified by it to the collector of taxes of this Municipality, shall thereupon become and be a lien, upon said real estate, shall be included in the next tax bill rendered to the owner or owners thereof, and be collected in the same manner as other taxes against that property and deposited in the Township's tree escrow fund.

The provisions of this section shall not apply to:

- a. A planting to replace a tree or trees theretofore planted by the Commission;
- b. A planting in connection with Arbor Day exercises or other educational demonstration.

29-7 PLANTING AND REMOVAL OF TREES; NOTICE AND HEARING; EMERGENCIES

In every case where the property of an abutting owner will be chargeable with the cost of the planting of any shade tree or trees, the Commission shall give notice of the meeting at which it is propose to consider said

planting by publishing the notice at least once, not less than twenty days before the meeting, in a newspaper circulating in the Municipality, or by personal service of a copy of the notice upon the abutting owner at least ten days before the meeting. The notice shall specify the street, streets, or portions thereof, on which such planting is proposed and require all persons who may object thereto to present their objections at the office of the Township Forester at or before the meeting. Before final action shall be taken, all objections so filed shall be considered. The Township Forester with recommendation of the Commission shall give reasonable notice of its intention to remove, or cause the removal of a tree, or part of a tree, dangerous to public safety, unless public safety requires immediate removal in which case no notice shall be necessary.

29-8 PUBLIC IMPROVEMENTS AFFECTING TREES; CONSENT OF COMMISSION, COUNTY PARK COMMISSIONS UNAFFECTED

No statute giving any person or State, county or municipal board, body or official, power or authority to lay any sidewalk along, or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to a highway shade tree without the consent of the Shade Tree Commission within whose jurisdiction such tree shall be located. In all cases such Commission shall reasonably co-operate with such person, board, body or official for the general public good. Nothing contained in this ordinance shall be held to take away or diminish any of the powers or authority of the Ocean County Park Commission over the trees or shrubbery in any Ocean County Park or Parkway within its jurisdiction, or to give any other commission or board any power or authority with respect to such trees or shrubbery.

29-9 ANNUAL APPROPRIATION; ESTIMATE; AMOUNT

Each year, the Shade Tree Commission shall certify to the Township Committee the estimated sum necessary for the property conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made for, namely,

- (1) Payment of wages and salaries of employees;
- (2) Expenses of Commission members in discharging official duties including expenses incident to attendance at professional meetings;
- (3) Purchase of trees and shrubbery; and
- (4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

The governing body of this Municipality shall annually appropriate such sum as it may deem necessary for said purposes.

29-10 PENALTY, JURISDICTION OF COURTS; COPY OF ORDINANCE AS EVIDENCE

a. The Commission may prescribe a fine for violation of its ordinances in an amount not exceeding \$ 1,500.00 for each violation, and the Municipal Court of Jackson shall have jurisdiction over actions for the violation of such ordinances, and its ordinances shall be enforced by like proceedings and process as that provided by law for the enforcement of ordinances of this Municipality. The officers authorized by law to serve and execute process for the Municipal Court of this Municipality shall be the officers to serve and execute any process issued out of the Municipal Court for violations of the ordinances of the commission.

A copy of any ordinance of the Shade Tree Commission and approved by the Township Committee, certified to under the hand of its secretary, or chairman shall be received in any court of this State as full and legal proof of the existence of the ordinances, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

b. In addition to the penalties authorized by subsection a. of this section, the Forester with recommendation of the Shade Tree commission may require a person who removes or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment shall be the value of the tree as determined by the appraisal of the Township Forester or another trained forester or Certified Tree Expert retained by the commission for that purpose. In lieu of an appraisal, the commission may adopt a formula and schedule based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a value per square inch as specified within the current "Guide for Plan Appraisal" published by the Council of Tree and Landscape Appraiser.

c. Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication, or cable television services upon any lands in which it has acquired an easement of right-of-way, shall not be subject to any penalty imposed by a commission pursuant to subsections a. or b. of this section. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions.

29-11 DISPOSITION OF PENALTIES

All moneys collected, either as tree cost replacement fees as required by the Jackson Township Land Use and Development Ordinance, as fines or penalties, for any violation of a rule or regulation of a shade tree commission enacted by ordinance, or as a charge against real estate, under any provision of this ordinance shall be forthwith paid over to the custodian of the municipality's Tree Escrow funds and subject to the approval of the Township Committee.

29-12 ORDINANCES BY SHADE TRE COMMISSION

The Shade Tree Commission with approval from the Township Committee is hereby authorized and empowered to promulgate such ordinances as may be necessary, pursuant to statute, and for the proper interpretation, administration and enforcement of this basic ordinance, provided that such ordinances do not conflict with this ordinance and conform to the general standards prescribed by this ordinance.

29-13 PUBLIC NOTICE

All regulations adopted by the Shade Tree Commission and approved by the Township Committee shall be filed with the municipal clerk for inspection by the public during regular business hours.

29-14 SEVERANCE

If any section, subsection, paragraph, sentence, clause, phrase or word contained in this code shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code which shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared to be severable.

MODEL TREE PRESERVATION ORDINANCE (PRIVATE PROPERTY)

This model ordinance is a compilation of many tree preservation ordinances that address private property. It is generic in nature and can be tailored to serve a community's needs. It is the model by which the Township of Jackson Supplemental Shade Tree Ordinance for private property was created. The text of the Township of Jackson Supplemental Shade Tree Ordinance follows this model tree preservation ordinance.

Section 1.

Intent and Purposes:

A. Indiscriminate, uncontrolled and excess destruction, removal and cutting of trees upon lots and tracts of land within _____ may cause increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increased buildup of atmospheric carbon dioxide, the establishment of a heat island effect and increased dust and pollution.

The singular or cumulative affect of any of the foregoing could adversely impact the character of _____, decrease property value, render the land unfit and unsuitable for its most appropriate use and negatively affect the health, safety and general welfare of _____ residents. Thus, _____ desires to regulate and control indiscriminate and excessive cutting of trees within _____ and require appropriate tree replacement.

B. It is recognized that there is a strong interrelationship between the integrity of _____ water resources, development on steep slopes, tree removal, soil disturbance, storm water management and the general use of the land resources. Fewer trees throughout _____ also correlate with increased air pollution. Therefore, _____ finds that the appropriate management of these resources is an important health, safety and general welfare concern. Managing _____ tree resource is consistent with _____ State-approved Community Forestry Management Plan, as P.L. 1996, c.135. The appropriate management guidelines for tree preservation to be utilized are:

1. The American National Standard, ANSI A300 (Part 5) - Management;
2. Trees and Development: A Technical Guide to Preservation of Trees During Land Development, Nelda Matheny and James R. Clark; and
3. Protection and Care of the Urban Forest, NJDEP Division of Parks and Forestry.

C. Trees are declared to be an important cultural, ecological, scenic and economic resource. Proper management of this resource will ensure its maintenance and result in economic returns. A forestry management program is intended to meet the objectives of preserving, protecting, enhancing and maintaining trees and providing opportunities for the continued use of forest resources which are compatible with the maintenance of the environment. This will be accomplished by ensuring proper management of forest and trees through the application of sound management practices. To that end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed any trees covered by this chapter, except in accordance with the provisions of this chapter.

D. The enforcement of this chapter shall be the duty of the Shade Tree Commission of _____ and its agents, such as the Tree Specialist, through the regulation, planting, care and control of shade, ornamental and evergreen trees and shrubs in the streets, highways, public places of _____ and tree removal on all lands within _____.

100-2 **Definitions**

DIAMETER BREAST HEIGHT (DBH) - The diameter of a tree measured four and one-half (4 1/2') feet above the ground level.

CALIPER: ANSI Z60 FOR NURSERY STOCK - Caliper is a type of diameter measurement used in the nursery industry. The height measurement shall be taken from ground level for field grown stock and from the soil line for container grown stock, which should be at or near the top of the root flare.

Caliper measurement of the trunk shall be taken six inches above the top of root flare up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches (4"), the caliper should be measured at 12 inches above the top of root flare. Seldom are tree trunks perfectly round. The most accurate measurement will result from the use of a diameter tape. Caliper measurements taken with manual or electronic "slot" or "pincer" type caliper tools should be the average of the smallest and largest measurements.

COMMUNITY FORESTRY MANAGEMENT PLAN - A plan developed by municipalities/counties outlining the goals and objectives for managing trees on municipal/county property with the intent of minimizing liability to the municipality/county and maximizing the useful life of the tree resource. The plan is to be approved by the N. J. Department of Environmental Protection, Division of Parks and Forestry, N. J. Forest Service. A Shade Tree Commission shall be formed to oversee the implementation of the Community Forestry Management Plan.

EROSION - The detachment and movement of soil or rock fragments by water, ice, wind and gravity.

EXEMPT AREA - The lot area as provided in this chapter for which tree replacement shall not be required.

FOREST MANAGEMENT PLAN - A plan for the management of timbered or forested lands approved by the New Jersey Department of Environmental Protection, N. J. Forest Service, or similar state or federal agency.

HISTORIC TREE - A tree that has been found to be of notable historic interest to _____ because of its age, type, size or historic association and which has been so designated and that designation has been officially made and promulgated as part of the official records of _____, county or state.

OPEN SPACE - Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use and enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open spaces, provided that such areas may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designated to be incidental to the natural openness of the land.

SHADE TREE COMMISSION - Shade Tree Commissions can be formed by municipal ordinance, Title 40:Chapter 64.sections 1-14 as amended 1984 or by a Board of Freeholder Resolution, Title 40: chapter 37. Sections 1.11 as amended 1958.

SPECIMEN TREE - Shall mean any tree in fair or better condition which is so designated by the Shade Tree Commission based on considerations of whether the tree is a rare species of specimen thereof: is abnormal in height, trunk diameter or drip line circumference for a tree of its species; has foliage of an unusual quality for a tree of its species; occupies a location which confers special shade tree, fragrance, erosion control, aesthetic, scenic enhancement, historic, preservation or cultural values to the community.

For purposes of this definition, "in fair or better condition" shall mean that a tree has a relatively sound and solid trunk with no evidence of extensive decay or visual evidence of being hollow and with no major insect or pathological problem.

TREE - Any deciduous or coniferous species which has a DBH of six inches (6") or greater.

TREE ESCROW FUND - A fund established by the governing body for the administration and promotion of tree and shrubbery resource sustainability projects and practices which may be consistent with the Community Stewardship Incentive Program as outlined within the New Jersey Shade Tree and Community Forestry Assistance Act P.L. 1996, chapter 135.

TREE PLANTING PLAN - A specific plan adopted by _____ for the location and placement of trees on public property.

TREE PRESERVATION & REMOVAL PLAN (Tree Save Plan) - A specific plan that contains tree locations and other information in accordance with 100-5B herein.

TREE REMOVAL PERMIT - The permit issued by the Shade Tree Commission or, its designee, to remove or destroy a tree or trees.

TREE REPLACEMENT PLAN - A specific plan for replacement of removed trees in accordance with the provision of this chapter.

TREE SPECIALIST - The governing body shall appoint a Tree Specialist. This individual shall be responsible for the inspection of sites for which application(s) are filed under this chapter. This individual will be responsible for the administration and protection requirements of this chapter and enforcement of the ordinance as directed by the Shade Tree Commission.

A Tree Specialist is either of the following:

1. A Forester who shall have a bachelors degree in forestry or arboriculture from a college or university, shall be certified as a Certified Tree Expert by the State of New Jersey and shall have a minimum of three years experience in planting, care and maintenance of trees. The Forester shall have the responsibility of reviewing an approved forest management plan and inspecting the forested site for plan compliance if requested by the tax assessor.
2. A Conservation Officer who shall be certified as a Certified Tree Expert by the State of New Jersey and shall have a minimum of three years experience in planting, care and maintenance of trees.

The Tree specialist shall be paid from the Tree Fund, which is established herein, and shall be paid in accordance with a fee schedule established by contract with the municipality.

100-3 Applicability

The terms and provisions of this chapter shall apply as follows:

- A. Unless specifically exempted in subparagraph C below, it shall be unlawful for any person to remove or cause to remove trees with a DBH of six inches (6") or more without first having obtained a tree removal permit as provided herein.
- B. Specimen trees: Trees which have been designated as specimen or historic under the provisions of this chapter shall be maintained in a living condition and it shall be unlawful for any person to remove such tree without an approved tree removal permit.

No specimen or historic tree shall be removed unless the applicant has obtained the approval of the governing body, with consideration of the Shade Tree Commission's recommendations.

The condition of trees proposed to be saved shall be evaluated by use of guides as follows:

1. Evaluation of Hazard Trees in Urban Areas, ISA Books, Nelda Matheny and James R. Clark.
2. Urban Tree Risk Management, USDA Forest Service, Northeastern Area.
3. The Guide for Plant Appraisal, The Council of Tree and Landscape Appraisers.

C. Exceptions: The provisions of this chapter shall not apply to the following:

1. Any property upon which no trees are located, as confirmed by a Statement of No Tree Verification.
2. Any tree of less than six inches (6") DBH.
3. Any tree or trees removed or cut in accordance with a forest management plan provided that such plan is filed with the Tree Specialist, Shade Tree Commission and tax assessor.
4. Any tree or trees removed or cut in accordance with an approved conservation plan prepared by the Soil Conservation District, provided that such plan has been filed with the Shade Tree Commission and tax assessor.
5. Any tree or trees planted and grown for commercial purposes on property used as a commercial nursery, tree farm, garden center, Christmas tree plantations or tree orchards.
6. Any tree growing in a utility right-of-way or fire trail subject to the approval of the _____ Shade Tree Commission.

100-4 Tree removal permits-general.

A. Any person wishing to obtain a tree removal permit shall make application to the Shade Tree Commission by filing a written application with the Tree Specialist and paying such fees as set forth in 100-8. No permit shall be issued until a Tree Preservation and Removal Plan for the lot or parcel has been reviewed and approved as compliant with 100-5B by the Shade Tree Commission and until the filing of a written on-site inspection report by the Tree Specialist.

B. Where an application as required by this chapter has been submitted, no permit shall be issued until a tree save plan for the lot or parcel has been reviewed and approved as compliant with 100-5B by the Tree Specialist, and until the filing of a written report of an on-site inspection by the Tree Specialist. Where an application is made in connection with the construction of a building or other improvement, no building permit shall be issued until the tree removal permit has been issued.

C. All required escrow and bond fees for any application, including required tree replacements or fees, shall be verified as paid prior to the issuance of the tree removal permit.

D. Tree removal permit applications shall be filed at the Tree Specialist's office and shall be completed in full. The application must be deemed complete and all required fees, as set forth in 100-8, be paid prior to review.

E. Inspections: Upon the approval of the Planning/Zoning Boards, and after the application is complete and reviewed, the Tree Specialist shall inspect the trees and property which are the subject of the permit application within thirty (30) days. The Tree Specialist may, upon inspection, provide recommendations to the applicant.

F. Permit approval or denial: Upon the Tree Specialist's recommendation the Shade Tree Commission shall approve or deny the tree removal permit within ten (10) business days after completion of the inspection. The Shade Tree Commission shall notify the applicant in writing of the factual basis and criteria for any denial. The final decision of the Shade Tree Commission may be appealed to the Governing Body by filing written notice within ten (10) days of the Shade Tree Commission's final decision. The governing body shall hold a public hearing and issue its decision within sixty (60) days after notice of appeal is filed, unless the applicant requests, and the Governing Body consents to an extension of time.

100-5 Tree removal permit application and Tree Preservation and Removal Plan.

A. Tree Preservation and Removal Plan shall be submitted to the Tree Specialist's office. Applications that require Planning Board or Zoning Board approval shall have tree preservation and removal plans as part of the submittal to the Planning Board or Zoning Board and said plans shall be provided to the Tree Specialist for review and approval in accordance with this chapter. Tree preservation and removal plans shall contain the following:

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 lot and block of the property.
4. The shape and dimensions of the lot or parcel, including the location of all easements. If the tree removal permit is for a single-family residence, the plan shall consist of a tree location sketch containing the minimum amount of pertinent information to enable the determination of compliance with the regulations in this chapter, including the information set forth in Subsection B(4)(a) and (b) below and, if necessary, in Subsection B(4)(f) and (h) below. The plan for any other property shall include a survey prepared by a licensed land surveyor that contains tree locations. The survey shall contain, at a scale of no less than one inch (1") equals fifty feet (50') the following information:
 - a. The existing and proposed tree preservation limits
 - b. The proposed limit of the clearing and all individual trees to be retained outside the tree clearing identified by some approved method as determined by the Tree Specialist such as flagging, prior to the field inspection. For any clearing greater than or equal to three (3) acres, a representative five percent (5%) of the wooded areas proposed to be cleared shall be inventoried.

The representative five percent (5%) of the wooded areas proposed to be cleared shall be inventoried. The representative five percent (5%) shall be determined by agreement between the Tree Specialist and the applicant. Where less than three (3) acres is proposed to be cleared, all trees to be removed shall be inventoried.

- c. The installation and limits of a temporary existing tree protection fence along the limits of the proposed tree removal shall be in compliance with 100-9
- d. Locations of all forest types shall be identified by common and botanical names of dominant tree species.
- e. All specimen and historic trees to be removed shall be indicated on the plan. All reasonable efforts shall be made to preserve such trees, including, but not limited to, if feasible, relocation of infrastructure, roadways and buildings. Removal of such trees shall require specific written approval of the governing body with consideration of the Shade Tree Commission's recommendations.
- f. A proposed tree replacement plan in accordance with this chapter. A tree replacement plan shall be considered the proposed landscaping plan required for all subdivision and site plan approvals.
- g. A North arrow.
- h. The location of existing and proposed structures and improvements, if any.

100-6 Term of permit.

Any and all permits approved by the Shade Tree Commission shall be declared null and void if the tree removal is not completed within a reasonable time, not to exceed twelve (12) months after permit issuance. In no case will the permit be valid for more than twelve (12) months. Permits not used within this period will require a new application and the payment of new fees. For purposes of this section, a permit shall no longer be valid when the work authorized by the permit is completed.

100-7 Criteria for issuance of permits.

A. Upon completion of the Tree Specialist's field inspection report and review of any requested recommendations, the Tree Specialist shall approve a permit if:

- 1. The Tree Preservation and Removal Plan is compliant with section 100-B;
- 2. The Tree Replacement Plan is approved;
- 3. None of the conditions set forth below in subsection B exists;
- 4. At least one of the criteria as follows has been satisfied:
 - a. The tree is located in an area where a structure or improvements will be placed according with the approval of Planning/Zoning Boards and the

tree cannot be relocated on the site because of age, type or size of the tree.

- b. The tree is dead, diseased, injured, in danger of falling, is too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision of clearance or conflicts with other ordinances or regulations.
- c. The tree is to be removed for harvesting as a commercial product or for the purpose of making land available for farming or other agricultural activity, or is to be removed in furtherance of a forest management plan or soil conservation plan, or to serve some other purpose which is consistent with the purposes of this ordinance.

B. The Shade Tree Commission with recommendations considered from the Tree Specialist, may deny a permit if the removal will contribute to:

1. Extra runoff of surface water onto adjacent properties;
2. Erosion; or
3. Silting

and such conditions are not otherwise satisfactorily abated; or if the tree removal causes:

- a. Impairment to the growth or development of remaining trees on the applicant's property or upon adjacent properties;
- b. Soil instability;
- c. Dust;
- d. Drainage or sewerage problems;
- e. Dangerous or hazardous conditions; or
- f. Depresses the value of adjacent properties.

100-8. Fees.

A. Application

1. The applicant, at time of filing the application with the Tree Specialist, shall pay the application fee of \$_____.00 in accordance with an approved fee structure for each new or existing lot. No application shall be considered without the payment of the required fees.

2. Replacement Fee will be in accordance with 100-10

B. Tree Fund - A Tree Fund shall be established by _____ to receive and disburse replacement tree contributions. Appropriations from the Tree Fund shall be

authorized by the governing body with consideration of the Shade Tree Commission recommendation in accordance with the municipal tree planting plan.

The primary purpose of said fund is to provide for the replacement of trees. The fund will also cover administrative costs to implement the provisions of this chapter, including but not limited to site inspections, processing of permits and supervision of tree replacements. Enforcement of this chapter shall not exceed 30% of the fund, as determined on an annual basis.

Replacement Trees

A. Any tree removed pursuant to this chapter, unless exempt under 100-3C, shall be replaced based on the following:

Trees to be Removed		Replacement Trees		
Number of Trees	Diameter (inches)	Number of Trees	Diameter (inches)	or Dollar Amount
1	Greater than 4, up to 12	1	2 to 2 1/2	\$240
2	Greater than 4, up to 12	1	3 1/2 to 4	\$480
1	Greater than 12, up to 18	2	2 to 2 1/2	\$440
1	Greater than 18, up to 24	2	3	\$840
1	Greater than 24	4	3	\$1,680

B. The applicant will receive a one-for-one replacement tree credit should stands of ten (10) or more trees greater than four inches in diameter be preserved within the limit of the disturbance line.

C. All replacement trees shall be planted on site in accordance with the foregoing. However, if one or more of the following conditions exist, come 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 non-replaced trees to the Tree Fund; or
2. The Tree Specialist and applicant agree in writing that the applicant shall make payment to the Tree Escrow Fund based upon the chart provided; or
3. The Tree Specialist and applicant agree in writing that the applicant shall plant replacement trees off-site on municipally owned property pursuant to the municipal tree planting plan.

100-9 Existing tree protection during construction.

A. (1) Prior to construction and any tree removals, suitable tree protective barriers shall be erected and this protection, where required, shall remain until such time as the protection is authorized to be removed by the Tree specialist or after issuance of a final certificate of occupancy. In addition, during construction no attachments or wires shall be attached to any of said trees so protected. Where some grading must take place within the drip line of trees in the protection zone, appropriate measures shall be taken to minimize impact to the trees. Any trees seriously damaged during construction must be professionally treated by a N. J. Certified Tree Expert or replaced if the damage is beyond treatment.

(2) A detail of the existing tree self-supported protective barrier shall be provided on all applications. The protective barrier shall be a minimum of four (4') feet high.

(3) The self-supported protective barrier shall be placed, as determined by the Tree Specialist, at the drip line of any tree along the limit of clearing and around the entire drip line for trees to remain undisturbed within the limit of clearing. Refer to: Trees and Development, Table 6.2, page 74.

(4) 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 drip line.

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

C. Large property areas separate from construction and land-clearing areas into which no equipment will venture may also be delineated as set forth above in 100-9B as determined by the Tree Specialist following a field evaluation.

100-10 Tree Replacement:

Any tree removed pursuant to a tree removal permit shall be replaced as provided below, unless said tree is located in an exempt area or is dead or fatally diseased as determined by a Certified Tree Expert. Tree replacement shall be required in accordance with the standards set forth in ANSI Z60.1, American Standard for Nursery Stock. Tree replacement shall be in accordance with either paragraph A,B,C or D below or a combination of paragraphs A,B,C and D.

A. One-to-one tree replacement. For each tree six inches (6") in DBH or greater that is removed, the applicant shall prepare a replanting plan for other areas of the property. The replacement plan or landscape plan shall reflect a one-to-one tree replacement for each tree six inches (6") or greater to be removed. All proposed replacement trees shall be in accordance with selections from Trees For New Jersey Streets, published by the New Jersey Shade Tree Federation, and "Street Tree Factsheets" a publication of the Municipal Tree Restoration Program, and submitted for review and approval prior to the issuance of a tree removal permit (Note: neither publication contains conifers!).

B. Tree area replacement/reforestation: For each square foot of tree area to be removed, the applicant shall prepare a reforestation scheme on other treeless open space areas of the property to compensate for the tree removals. The reforestation plan shall be based on a twenty foot (20') by twenty foot (20') grid. Of this number of trees, ten percent (10%) shall be balled and burlaped, two inch (2") to two and one-half inch (2 ½") caliper, twenty percent (20%) shall be balled and burlaped, one and three-quarter inch (1 ¾") to two-inch (2") caliper, thirty percent (30%) shall be bare root one and one-quarter (1 ¼") to one and one-half inch (1 ½") caliper, and

forty percent (40%) shall be bare root six foot (6') to eight-foot (8') 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 (5') to twenty feet (20') on center. The ground shall be seeded with a grass mixture approved by the Shade Tree Commission. The reforestation formula shall follow the guidelines as set forth in the New Jersey No Net Loss Reforestation Act, P.L. 1993, c.106 (c:13:1L-14.2).

C. Credits. The permit applicant will receive a one-to-one replacement tree credit:

- (1) For stands of ten (10) or more trees within a DBH of six inches (6") or greater preserved within the limit of the disturbance line; or
- (2) Forested areas of one (1) acre or greater, which are left natural and conveyed to _____ with a deed restriction, will remain forested and undeveloped. This conveyance excludes all previous dedicated easements.

D. All replacement trees shall be planted on site, unless all of the replacement trees cannot be physically accommodated. In such instance, the applicant shall plant replacement trees off-site as directed by the Shade Tree Commission or pay the tree replacement fee in accordance with the schedule in 100-8.

E. Exempt Areas.

- (1) For all existing residential properties and new residential development with a proposed lot area less than forty thousand (40,000) square feet, up to fifty percent (50%) of the lot area may be exempt area. For residential development with a proposed area of forty thousand (40,000) square feet or greater, up to twenty thousand (20,000) square feet in area may be exempt area. The exempt area shall be calculated as a contiguous, circular area from a fixed point within the footprint of the existing or proposed primary residential structure on the property. The exempt area should be calculated to minimize any adverse environmental impacts.
- (2) Agricultural operations are exempt from replacement requirements because such operations are governed by the Right-to-Farm act, N.J.S.A. 4:1C-1 to 10, which preempts local regulation. Property owners claiming exemption under this subsection must continue to farm the property in question as described on the tree removal permit for a minimum of five (5) consecutive years after the date of clearing or date of commencement of the prescribed farming activity is deemed compliant by the Tree Specialist. An approved permit must be submitted prior to clearing. If the property is not farmed as prescribed on the tree removal permit within three (3) years of the tree removal or is developed for any other use before the five (5) years expires, the reforestation replacement obligation in accordance with 100-10B will be enforced according to the new use of the property.
- (3) In all commercial and non-residential developments, fifty percent (50%) of the lot area may be exempt area. The exempt area should be calculated to minimize any adverse environmental impacts.

100-11 Emergencies:

In case of emergencies such as hurricanes, fire, windstorm, ice storm, flood, freezing temperatures or other disasters, or in the case of dead or diseased trees that are a hazard to persons or property, the requirements of the

regulations set forth in this chapter may be waived by the Tree Specialist upon a finding that such waiver is necessary so that the public or private work to restore order on the property in _____ will not be impeded.

100-12 Stop-work orders:

The Shade Tree Commission is hereby authorized to issue stop-work orders to the holder of the tree removal permit and the Tree Specialist is authorized to recommend the issuance of stop-work orders to the _____ officials in the event that there is:

- (1) A failure to comply with the approved plan such as a site plan, forest management plan or soil conservation plan;
- (2) Non-compliance with the tree removal permit granted pursuant to this chapter; or
- (3) Non-compliance with the provisions of this chapter.

The stop-work order shall remain in effect until the Shade Tree Commission, upon recommendation of the Tree Specialist, has determined that the resumption of work will not violate the plans, permit or the provisions of this chapter.

100-13 Enforcement

The Shade Tree Commission in conjunction with the Tree Specialist shall oversee all tree removals pursuant to an issued tree removal permit. The Tree Specialist shall conduct adequate inspections of all sites for which a tree removal permit has been issued. Upon the ascertainment of a violation of this chapter, the Tree Specialist or Shade Tree Commission shall refer enforcement actions to the Code Enforcement Officer.

100-14 Applicability to tree removal construction companies; permit required.

All provisions of this chapter shall apply to any person removing trees on behalf of any other person, including all tree removal construction companies or persons in the business of removing trees or construction. It shall be unlawful for any person or company to remove or cause to be removed any tree or undertake any work for which a permit is required pursuant to this chapter unless a valid permit therefore is in effect and is displayed in accordance with the provisions set forth in 100-15; such removal or work shall constitute a violation of this section and shall subject the person or company violating this section to all penalties provided herein.

100-15 Display of permit; carrying of plan or authorization; right of entry.

A. The applicant shall prominently display on the site the tree removal permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit and for ten (10) days thereafter. In addition, the person or persons cutting or removing trees, if other than the applicant, shall carry with him/her authorization from the owner or applicant authorizing such person to cut or remove trees. In the event that the trees are being cut or removed in accordance with a forest management plan or a soil conservation plan, a copy of the plan shall be in the possession of the person cutting or removing such trees.

B. As a condition for the issuance of the permit, the applicant shall agree in writing to the entry onto his/her premises by representatives of _____ and all law enforcement officers as necessary to

effectuate the provisions of this chapter, and such entries shall be deemed lawful. Failure to allow such entry shall be unlawful and shall constitute a violation of this chapter and shall constitute failure to display the permit as required herein. It shall be unlawful and considered a violation of this chapter for any person to engage in the business of plant cutting, trimming, removal, spraying or otherwise treating trees, shrubs or vines within _____ and without the applicable certification or license for the designated work. All contractors offering tree care services for hire within _____ shall register annually with the Tree Specialist, provide a current certificate of insurance showing evidence of employer liability and workers compensation coverage for the work to be performed, and shall comply with applicable OSHA regulations, ANSI A13.1 Safety Standards, New Jersey Board of Tree Experts Pruning Standards for Shade Trees and ANSI A300 Practice Standards. All work to be performed for _____ shall be by or under the direction of a New Jersey Certified Tree Expert and in compliance with New Jersey Board of Tree Experts Pruning Standards for Shade Trees, ANSI Z133.1 Safety Standards and ANSI A300 practice standards unless otherwise directed by or approved by the Tree Specialist and the Shade Tree Commission.

100-16 Duties of the Tree Specialist.

The Tree Specialist shall perform the duties set forth in this chapter and shall be responsible for the enforcement of the provisions of this chapter as directed by the Shade Tree Commission. In this regard the Tree Specialist is authorized and shall perform any necessary inspections and is further authorized and shall issue violation notices and shall sign complaints and provide testimony in the Municipal Court for violations of this chapter. The Tree specialist has the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part that is suspected to be a public nuisance and to order its removal if necessary. A public nuisance is any tree or plant with an infectious disease or insect problem; dead or dying trees; a tree limb(s) or root(s) that obstruct street lights, traffic signs, free passage of pedestrians or vehicles; a tree that poses a threat to safety, etc.

100-17 Violations and penalties.

A. Any person, firm, partnership, corporation, association or other legal entity violating any of the provisions of this chapter shall, upon conviction of such violation be punished by a fine of up to two thousand dollars (\$2,000.00) for each offense or to imprisonment for a term not to exceed ninety (90) days, or both, in the discretion of the Judge before whom conviction may be had. Each illegally removed tree shall be considered a separate violation. Each violation of any of the provisions of this chapter and each day the same is violated shall be defined and taken to be a separate and distinct offense. In addition, the court may order restitution (fine and/or appraised value, whichever is greater) and/or replacement of the tree illegally removed.

B. In addition to other remedies, the Shade Tree Commission, Tree Specialist or other authorized official may institute any appropriate legal action to prevent a continuing violation of the terms of this chapter.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a 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 portions hereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law and in accordance with N.J.S.A. 40:69A-181(b).

NOTICE

Notice is hereby given that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Governing Body of _____, in the County of _____, State of New Jersey, held on _____, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the _____ day of _____, at _____ p.m. or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at _____, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.

_____, Clerk

_____ of _____

TOWNSHIP OF JACKSON SHADE TREE ORDINANCE INTRODUCTION

**By Steve M. Chisholm, Sr., President, NJ Board of Tree Experts
Chairman Jackson Township Shade Tree Commission**

Jackson Township is a growing suburban community in northern Ocean County. It is the third largest municipality in New Jersey, covering over 100 square miles and having nearly 60,000 residents. This area that began as a Lenni Lenape Indian settlement in the 1600's has seen many changes from its early agricultural roots. Prior to 1859 it was part of Monmouth County, and the economy of the early 1900's was reliant on poultry farms, flour/saw mills and charcoal production. Today, the remaining agricultural activity in Ocean County is still centered in the northwest, primarily in Plumsted and Jackson Townships. With all the growth and change in Jackson Township, managing the tree resource has become even more critical.

Ordinance originally passed: February 26, 2001

The original ordinance, 07-01 amending Chapter 109, Section 159 was passed. The Shade Tree Commission Ordinance 06-01 was also established in Chapter 29 at this same time.

First Court Challenge June 25, 2003

The New Jersey Shore Builders Association challenged the ordinance in Superior Court, stating it to be discriminatory with regard to the fees and tree replacement requirements for builders and commercial properties vs. homeowners, and that it contained vague or imprecise language making the ordinance unenforceable.

Ordinance revised December 22, 2003

Tree removal was moved to Chapter 100 by Ordinance 41-03 and the ordinance revised with some changes to fees, some new number assignments and minor word changes.

Second Challenge 2005

The ordinance was challenged again in Superior Court and again, the ordinance was found lacking.

Court again 2007

The case was argued on February 7, 2007 and decided on July 11, 2007. Jackson lost again, but, being determined, appealed to the New Jersey Supreme Court. At this point the Shade Tree Commission, Jackson Township Forester and the Township Attorney drafted a revised ordinance to correct the inadequacies as contained in the lower court's decision. We were a little surprised that the Supreme Court would hear our case, as they only hear 1 out of 10 appeals that are sent to them. The NJ Supreme Court ruled that the intent of the ordinance was allowed, but that we needed to address the lower court's decision.

Success 2009

August 19, 2009 the successful ordinance was signed and became official on September 8, 2009 after a 20 day promulgation period. This ordinance effectively cured any defects that lingered after the Supreme Court decision.

Now Jackson Township has an ordinance that has overcome challenges, which will allow us to properly manage our tree resource and perhaps be a help and model to other municipalities hoping to do the same.

**TOWNSHIP OF JACKSON
TREE PRESERVATION ORDINANCE
(PRIVATE PROPERTY)**

ORDINANCE NO. 21~09

AN ORDINANCE OF THE TOWNSHIP OF JACKSON, COUNTY OF OCEAN,
STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE
TOWNSHIP CODE OF THE TOWNSHIP OF JACKSON, SO AS TO AMEND
CHAPTER 100, ENTITLED "TREE REMOVAL"

BE IT ORDAINED by the Mayor and Township Council of the

Township of Jackson, County of Ocean, and State of New Jersey, as follows:

SECTION 1. The Township Code of the Township of Jackson is hereby amended and supplemented so as to amend Chapter 100, entitled "Tree Removal," so as to delete it in its entirety, and replace it with the following, which shall read in its entirety as follows:

CHAPTER 100

TREE REMOVAL

§ 100-1. Intent and Purposes.

A. Indiscriminate, uncontrolled and excess destruction, removal and cutting of trees upon lots and tracts of land within Jackson Township will cause increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increased buildup of atmospheric carbon dioxide, the establishment of a heat island effect and increased dust and pollution.

The singular or cumulative effect of any of the foregoing could adversely impact the character of Jackson Township, decrease property values, render the land unfit and unsuitable for its most appropriate use, and negatively affect the health, safety and general welfare of Jackson's residents. Thus, the Township Governing Body desires to regulate and control indiscriminate and excessive cutting of trees within the Township and to require appropriate tree replacement.

B. It is recognized that there is a strong interrelationship between the integrity of the Township's water resources, development on steep slopes, tree removal, soil disturbance, storm water management and the general use of the land resources. Fewer trees throughout the Township also correlates with increased air pollution. Therefore, the Governing Body finds that the appropriate management of these resources is an important health, safety and general welfare concern. Managing the Township's tree resources is consistent with the State-approved Community Forestry Management Plan, as P.L. 1996, c.13 5. The appropriate management guidelines for tree preservation to be utilized are:

- (1) The American National Standard, ANSI A300 (Part 5) Management;
- (2) Trees and Development: A Technical Guide to Preservation of Trees During Land Development. Nelda Matheny and James R. Clark; and
- (3) Protection and Care of the Urban Forest, NJDEP Division of Parks and Forestry.

C. Trees are declared to be an important cultural, ecological, scenic and economic resource. Proper management of this resource will ensure its maintenance and result in economic returns. A forestry management program is intended to meet the objectives of preserving, protecting, enhancing and maintaining trees and providing opportunities for the continued use of forest resources which are compatible with the maintenance of the environment. This will be accomplished by ensuring management of forest and trees through the application of sound management practices. To that end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed any trees covered by this chapter, except in accordance with the provisions of this chapter.

D. The enforcement of this chapter shall be the duty of the Shade Tree Commission of Jackson Township and its agents, such as the Tree Specialist, through the regulation, planting, care and control of shade, ornamental and evergreen trees and shrubs in the streets, highways, public places of the Township and tree removal on all lands within the Township.

§ 100-2. Definitions.

DIAMETER BREST HEIGHT (DBH) -The diameter of a tree measured four and one-half (4 1/2') feet above the uphill/highest side.

CALIPER: ANSI Z60 FOR NURSERY STOCK -Caliper is a type of diameter measurement used in the nursery industry. The height measurement shall be taken from ground level for field grown stock and from the soil line for container grown stock, which should be at or near the top of the root flare. Caliper measurement of the trunk shall be taken six (6") inches above the top of root flare up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches (4"), the caliper should be measured at twelve (12") inches above the top of root flare. Seldom are tree trunks perfectly round. The most accurate measurement will result from the use of a diameter tape. Caliper measurements taken with manual or electronic "slot" or "pincer" type caliper tools should be the average of the smallest and largest measurements.

COMMUNITY FORESTRY MANAGEMENT PLAN -A plan developed by a municipality that outlines the goals and objectives for managing trees on municipal property with the intent of minimizing liability to the municipality and maximizing the useful life of the tree resource. The plan is to be approved by the New Jersey Department of Environmental Protection, Division of Parks and Forestry, New Jersey Forest Service. A Shade Tree Commission shall be formed to oversee the implementation of the Community Forestry Management Plan.

EROSION -The detachment and movement of soil or rock fragments by water, ice, wind and gravity.

EXEMPT AREA ~ The lot area as provided in this chapter for which tree replacement shall not be required.

FOREST MANAGEMENT PLAN -A plan for the management of timbered or forested lands approved by the New Jersey Department of Environmental Protection, New Jersey Forest Service, or similar state or federal agency.

HISTORIC TREE -A tree that has been found to be of notable historic interest to Jackson Township because of its age, type, size or historic association and which has been so designated and that designation has been officially made and promulgated as part of the official records of the Township.

OPEN SPACE -Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use and enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open spaces, provided that such areas may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designated to be incidental to the natural openness of the land.

SHADE TREE COMMISSION -Shade Tree Commissions can be formed by municipal ordinance, N.J.S.A. 40:64-1, et seq.

SPECIMEN TREE -Shall mean any tree in fair or better condition which is so designated by the Shade Tree Commission based on considerations of whether the tree is a rare species of specimen thereof: is abnormal in height, trunk diameter or drip line circumference for a tree of its species; has foliage of an unusual quality for a tree of its species; occupies a location which confers special shade tree, fragrance, erosion control, aesthetic, scenic enhancement, historic, preservation or cultural values to the community.

For purposes of this definition, "in fair or better condition" shall mean that a tree has a relatively sound and solid trunk with no evidence of extensive decay or visual evidence of being hollow and with no major insect or pathological problem.

TREE -Any deciduous or coniferous species which has a DBH of six (6") inches or greater.

TREE ESCROW FUND -A fund established by the governing body for the administration and promotion of tree and shrubbery resource sustainability projects and practices which may be consistent with the Community Stewardship Incentive Program as outlined within the New Jersey Shade Tree and Community Forestry Assistance Act P.L. 1996, chapter 135.

TREE PLANTING PLAN -A specific plan adopted by Jackson Township for the location and placement of trees on public property.

TREE PRESERVATION & REMOVAL PLAN (Tree Save Plan) -A specific plan that contains tree locations and other information in accordance with § 100-5 herein.

TREE REMOVAL PERMIT -The permit issued by the Shade Tree Commission or, its designee, to remove or destroy a tree or trees.

TREE REPLACEMENT PLAN -A specific plan for replacement of removed trees in accordance with the provision of this chapter.

TREE SPECIALIST -The Mayor shall appoint a Tree Specialist. This individual shall be responsible for the inspection of sites for which application(s) are filed under this chapter. This individual will be responsible for the administration and protection requirements of this chapter and enforcement of the ordinance as directed by the Shade Tree Commission.

A Tree Specialist is either of the following:

A. A Forester who shall have a bachelors degree in forestry or arboriculture from a college or university, shall be certified as a Certified Tree Expert by the State of New Jersey and shall have a minimum of three years experience in planting, care and maintenance of trees. The Forester shall have the responsibility of reviewing an approved forest management plan and inspecting the forested site for plan compliance if requested by the tax assessor.

B. A Conservation Officer who shall be certified as a Certified Tree Expert by the State of New Jersey and shall have a minimum of three years experience in planting, care and maintenance of trees.

The Tree specialist shall be paid from the Tree Escrow Fund, which is established herein, and shall be paid in accordance with a fee schedule established by contract with the municipality. .

§ 100-3. Applicability.

The terms and provisions of this chapter shall apply as follows:

- A. Unless specifically exempted in Subparagraph C below, it shall be unlawful for any person to remove or cause to remove trees with a DBH of six (6") inches or more without first having obtained a tree removal permit as provided herein.
- B. Specimen & Historic trees. Trees which have been designated as specimen or historic under the provisions of this chapter shall be maintained in a living condition and it shall be unlawful for any person to remove such tree without an approved tree removal permit. No specimen or historic tree shall be removed unless the applicant has obtained the approval of the Shade Tree Commission.

The condition of trees proposed to be saved shall be evaluated by use of guides as follows:

- (1) Evaluation of Hazard Trees in Urban Areas. ISA Books, Nelda Matheny and James R. Clark.
- (2) Urban Tree Risk Management, USDA Forest Service, Northeastern Area.
- (3) The Guide for Plant Appraisal, The Council of Tree and Landscape Appraisers.

C. Exceptions. The provisions of this chapter shall not apply to the following:

- (1) Any property upon which no trees are located, as confirmed by a Statement of No Tree Verification.
- (2) Any tree of less than six (6") inches DBH.
- (3) Any tree or trees removed or cut in accordance with a forest management plan, provided that such plan is filed with the Tree Specialist, Shade Tree Commission and Tax Assessor.
- (4) Any tree or trees removed or cut in accordance with an approved conservation plan prepared by the Soil Conservation District, provided that such plan has been filed with the Shade Tree Commission and Tax Assessor.
- (5) Any tree or trees planted and grown for commercial purposes on property used as a commercial nursery, tree farm, garden center, Christmas tree plantations or tree orchards.
- (6) Any tree growing in a utility right-of-way or fire trail subject to the approval of the Shade Tree Commission.

§ 100-4. Tree removal permits; general.

A. Any person wishing to obtain a tree removal permit shall make application to the Shade Tree Commission by filing a written application with the Tree Specialist and paying such fees as set forth in § 100-8. No permit shall be issued until a Tree Preservation and Removal Plan for the lot or parcel has been reviewed and approved as compliant with § 100-5 by the Tree Specialist.

B. Where an application, as required by this chapter, has been submitted, no permit shall be issued until a tree save plan for the lot or parcel, if necessary, has been reviewed and approved as compliant with § 100-5 by the Tree Specialist, and until the filing of a written report of an on-site inspection by the Tree Specialist. Where an application is made in connection with the construction of a building or other improvement, no building permit shall be issued until the tree removal permit has been issued.

C. All required escrow and bond fees for any application, including required tree replacements or fees, shall be verified as paid prior to the issuance of the tree removal permit.

D. Tree removal permit applications shall be filed at the Tree Specialist's office and shall be completed in full. The application must be deemed complete and all required fees, as set forth in § 100-8, be paid prior to review.

E. Inspections. After the application is complete and reviewed, the Tree Specialist shall inspect the trees and property which are the subject of the permit application within thirty (30) days.

F. Permit approval or denial. The Tree Specialist shall approve or deny the tree removal permit within ten (10) business days after completion of the inspection. The Tree Specialist shall notify the applicant in writing of the factual basis and criteria for any denial. The final decision of the Tree Specialist may be appealed to the governing body by filing written notice within ten (10) days of the final decision. The governing body shall hold a public hearing and issue its decision within sixty (60) days after notice of appeal is filed, unless the applicant requests, and the governing body consents to an extension of time. The governing body may delegate its appeal responsibilities to the Shade Tree Commission.

§ 100-5. Tree Preservation and Removal Plan.

A Tree Preservation and Removal Plan shall be submitted to the Tree Specialist's office. Applications that require Planning Board or Zoning Board approval shall, have tree preservation and removal plans as part of the submittal to the Planning Board or Zoning Board and said plans provided to the Tree Specialist for review and approval in accordance with this chapter. Tree preservation and removal plans shall contain the following:

A. The name and address of the applicant.

B. The name and address of the owner of the property from which the trees are to be removed.

C. The lot and block of the property.

D. The shape and dimensions of the lot or parcel, including the location of all existing and proposed easements. If the tree removal permit is for a single-family residence, the plan shall consist of a tree location sketch containing the minimum amount of pertinent information to enable the determination of compliance with the regulations in this chapter, including the information set forth in Subsections D(1), (2), (6) and (8) below. The plan for any other property shall include a survey prepared by a licensed land surveyor that contains tree locations. The survey shall contain, at a scale of no less than one (1") inch equals fifty (50') feet the following information:

(1) The existing and proposed tree preservation limits.

(2) The proposed limit of the clearing and all individual trees to be retained outside the tree clearing identified by some approved method as determined by the Tree Specialist, such as flagging, prior to the field inspection. For any clearing greater than or equal to three (3) acres, a representative five (5%) percent of the wooded areas proposed to be cleared shall be inventoried. The representative five (5%) percent of the wooded areas proposed to be cleared shall be inventoried. The representative five (5%) percent shall be determined by agreement between the Tree Specialist and the applicant. Where less than three (3) acres is proposed to be cleared, all trees to be removed shall be inventoried.

(3) The installation and limits of a temporary existing tree protection fence along the limits of the proposed tree removal shall be in compliance with § 100-9.

(4) Locations of all forest types shall be identified by common and botanical names of dominant tree species.

(5) All specimen and historic trees to be removed shall be indicated on the plan. All reasonable efforts shall be made to preserve such trees, including, but not limited to, if feasible, relocation of infrastructure, roadways and buildings. Removal of such trees shall require specific written approval of the governing body with consideration of the Shade Tree Commission's recommendations.

(6) A proposed tree replacement plan in accordance with this chapter. A tree replacement plan shall be considered the proposed landscaping plan required for all subdivision and site plan approvals.

(7) A North arrow.

(8) The location of existing and proposed structures and improvements, if any.

§ 100-6. Term of permit.

Any and all permits approved by the Shade Tree Commission shall be declared null and void if the tree removal is not completed within a reasonable time, not to exceed twelve (12) months after permit issuance. In no case will the permit be valid for more than twelve (12) months. Permits not used within this period will require a new application and the payment of new fees. For purposes of this section, a permit shall no longer be valid when the work authorized by the permit is completed.

§ 100-7. Criteria for issuance of permits.

A. Upon completion of the Tree Specialist's field inspection report and review of any requested recommendations, the Tree Specialist shall approve a permit if:

(1) The Tree Preservation and Removal Plan is compliant with § 100-5;

(2) The Tree Replacement Plan is approved by the Tree Specialist;

(3) None of the conditions set forth below subsection B exist;

(4) At least one of the criteria as follows has been satisfied:

(a) The tree is located in an area where a structure or improvements will be placed according with the approval of Planning/Zoning Boards and the tree cannot be relocated on the site because of age, type or size of the tree.

(b) The tree is dead, diseased, injured, in danger of falling, is too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision of clearance or conflicts with other ordinances or regulations.

(c) The tree is to be removed for harvesting as a commercial product or for the purpose of making land available for farming or other agricultural activity, or is to be removed in furtherance of a forest management plan or soil conservation plan, or to serve some other purpose which is consistent with the purposes of this ordinance.

B. The Tree Specialist may deny a permit if the removal will contribute to:

(1) Extra runoff of surface water onto adjacent properties;

(2) Erosion; or

(3) Silting

and such conditions are not otherwise satisfactorily abated; or if the tree removal causes:

- (a) Impairment to the growth or development of remaining trees on the applicant's property or upon adjacent properties;
- (b) Soil instability;
- (c) Dust;
- (d) Drainage or sewerage problems;
- (e) Dangerous or hazardous conditions; or
- (f) Depresses the value of adjacent properties.

§ 100-8. Fees.

A. Application.

(1) The applicant, at time of filing the application with the Tree Specialist, shall pay the application fee of ten (\$10.00) dollars for each new or existing lot. No application shall be considered without the payment of the required fees. An inspection fee of twenty-five (\$25.00) dollars will be applied to all applications requiring an onsite verification.

(2) Replacement Fee will be in accordance with § 100-8.1.

B. Tree Escrow Fund. A Tree Escrow Fund shall be established and maintained by the Chief Financial Officer of Jackson Township to receive and disburse replacement tree contributions. Appropriations from the Tree Fund shall be authorized by the governing body with consideration of the Shade Tree Commission recommendation in accordance with the municipal tree planting plan. The primary purpose of said fund is to provide for the planting and maintenance of trees and shrubs on public property. The fund will also cover administrative costs to implement the provisions of this chapter, including but not limited to site inspections, processing of permits and supervision of tree replacements. Administrative costs imposed in accordance with this chapter shall not exceed thirty (30%) percent of the fund, as determined on an annual basis.

§ 100-8.1. Replacement Trees.

A. Any tree removed pursuant to this chapter, unless exempt under § 100-3C, shall be replaced based on the following:	Size/Diameter in Inches	Number of replacement trees	Size of replacement trees	Or dollar amount

Number of trees to be removed				
I	Greater than 6" up to 10"	I	2-2W'	\$ 240.00
2	Greater than 6" up to 10"	I	3Y.. -4"	\$ 420.00
I	Greater than 10" up to 16"	2	2-2W'	\$ 480.00
I	Greater than 16" up to 23"	2	3"	\$ 840.00
I	Greater than 23" up to 30"	4	3Y.. -4"	\$1,680.00
I	Greater than 30"	5	3Y.. -4"	\$2,100.00

In cases where the tree cost requirement criteria is combined with other criteria of this subsection, the value of proposed shade, ornamental, evergreen and shrub material shall be deducted from the calculated amount for replacement trees. The value of the proposed landscape material shall be calculated based upon average local material costs for planting.

B. The applicant will receive a one-for-one replacement tree credit should stands often (10) or more trees greater than four (4") inches in diameter be preserved within the limit of the disturbance line.

C. 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 non-replaced trees to the Tree Escrow Fund; or

(2) The Tree Specialist and applicant agree in writing that the applicant shall make payment to the Tree Escrow Fund based upon the chart provided; or

(3) The Tree Specialist and applicant agree in writing that the applicant shall plant replacement trees off-site on municipally owned property pursuant to the municipal tree planting plan.

D. Notwithstanding the tree replacement fee schedule in paragraph A above, in all commercial and industrial applications the tree replacement fee shall be twenty-five (\$25.00) dollars per tree, with a maximum amount of two thousand five hundred (\$2,500.00) dollars per acre. Specimen and historic trees shall not be included in this fee calculation, but shall be assessed a separate fee in accordance with the fee schedule provided in paragraph A above.

§ 100-9. Existing tree protection during construction.

A.

(1) Prior to construction and any tree removals, suitable tree protective barriers shall be erected and this protection, where required, shall remain until such time as the protection is authorized to be removed by

the Tree specialist or after issuance of a final certificate of occupancy. In addition, during construction no attachments or wires shall be attached to any of said trees so protected. Where some grading must take place within the drip line of trees in the protection zone, appropriate measures shall be taken to minimize impact to the trees. Any trees seriously damaged during construction must be professionally treated by a N. J. Certified Tree Expert or replaced if the damage is beyond treatment.

(2) A detail of the existing tree self-supported protective barrier shall be provided on all applications. The protective barrier shall be a minimum of four (4') feet high.

(3) The self-supported protective barrier shall be placed, as determined by the Tree Specialist, at the drip line of any tree along the limit of clearing and around the entire drip line for trees to remain undisturbed within the limit of clearing. Refer to: Trees and Development, Table 6.2, page 74.

(4) 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 drip line.

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

C. Large property areas separate from construction and land-clearing areas into which no equipment will venture may also be delineated as set forth above in § 100-9B, as determined by the Tree Specialist following a field evaluation.

§ 100-10. Tree Replacement.

Any tree removed pursuant to a tree removal permit shall be replaced as provided below, unless said tree is located in an exempt area is dead or fatally diseased as determined by a Certified Tree Expert, or tree replacement payment is made pursuant to § 100-8.1. Tree replacement shall be required in accordance with the standards set forth in ANSI Z60.1, American Standard for Nursery Stock. Tree replacement shall be in accordance with either paragraph A, B, C or D below or a combination of paragraphs A, B, C and D.

A. One-to-one tree replacement. For each tree six (6") inches in DBH or greater that is removed, the applicant shall prepare a replanting plan for other areas of the property. The replacement plan or landscape plan shall reflect a one-to-one tree replacement for each tree six (6") inches or greater to be removed. All proposed replacement trees shall be in accordance with selections from Trees For New Jersey Streets, published by the New Jersey Shade Tree Federation, and "Street Tree Factsheets" a publication of the Municipal Tree Restoration Program, and submitted for review and approval prior to the issuance of a tree removal permit.

B. Tree area replacement/reforestation. For each square foot of tree area to be removed, the applicant shall prepare a reforestation scheme on other treeless open space areas of the property to compensate for the tree removals. The reforestation plan shall be based on a twenty (20') foot by twenty (20') foot grid. Of this number of trees, ten (10%) percent shall be balled and burlaped, two (2") inch to two and one-half (2 y,") inch caliper, twenty (20%) percent shall be balled and burlaped, one and three-quarter (1 3/4") inch to two (2") inch caliper, thirty (30%) percent shall be bare root one and one-quarter (1 1/4") inch to one and one-half (1 y,") inch caliper, and forty (40%) percent shall be bare root six (6') foot to eight (8') 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 (5') feet to twenty (20') feet on center. The ground shall be seeded with a grass mixture approved by the Shade Tree Commission. The reforestation formula shall follow the guidelines as set forth in the New Jersey No Net Loss Reforestation Act, P.L. 1993, c.I06 (c: 13: IL-I4.2).

C. Credits. The permit applicant will receive a one-to-one replacement tree credit:

- (1) For stands of ten (10) or more trees within a DBH of six (6") inches or greater preserved within the limit of the disturbance line; or
- (2) Forested areas of one (1) acre or greater, which are left natural and conveyed to the Township with a deed restriction, will remain forested and undeveloped. This conveyance excludes all previous dedicated easements.

D. All replacement trees shall be planted on site, unless all of the replacement trees cannot be physically accommodated. In such instance, the applicant shall pay the tree replacement fee in accordance with the schedule in § 100-8.1.

E. Exempt Areas.

(1) For all existing residential properties and new residential development with a proposed lot area less than forty thousand (40,000) square feet, up to fifty (50%) percent of the lot area may be exempt area. For residential development with a proposed area of forty thousand (40,000) square feet or greater, up to twenty thousand (20,000) square feet in area may be exempt area. The exempt area shall be calculated as a contiguous, circular area from a fixed point within the footprint of the existing or proposed primary residential structure on the property. The exempt area should be calculated to minimize any adverse environmental impacts.

(2) Agricultural operations are exempt from replacement requirements because such operations are governed by the Right-to-Farm Act, N.J.S.A. 4:IC-I to 10, which preempts local regulation. Property owners claiming exemption under this subsection must continue to farm the property in question as described on the tree removal permit for a minimum of five (5) consecutive years after the date of clearing or date of commencement of the prescribed fanning activity is deemed compliant by the Tree Specialist. An approved permit must be submitted prior to clearing. If the property is not fanned as prescribed on the tree removal permit within three (3) years of the tree removal or is developed for any other use before the five

(5) years expires, the reforestation replacement obligation in accordance with § 100-1 OB will be enforced according to the new use of the property.

(3) In all commercial, industrial and non-residential developments, with a proposed build able lot area less than forty thousand (40,000) square feet, up to fifty (50%) percent of the lot area may be exempt area. For development with a proposed buildable area of forty thousand (40,000) square feet or greater, up to twenty thousand (20,000) square feet in area may be exempt area. The exempt area shall be calculated as a contiguous, circular area from a fixed point within the footprint of the existing or proposed primary structure on the property. The exempt area should be calculated to minimize any adverse environmental impacts.

(4) Utility line clearance operations, provided that such plan is filed with the Tree Specialist and work performed in accordance with ANSI A300 Part 7: BMP "Utility Pruning of Trees", and Board of Tree Experts "Pruning Standards for Shade Trees" section 5.5.

§ 100-11. Emergencies.

In case of emergencies such as hurricanes, fire, windstorm, ice storm, flood, freezing temperatures or other disaster, or in the case of dead or diseased trees which are a hazard to persons or property, the requirements of the regulations set forth in this chapter may be waived by the Tree Specialist upon a finding that such waiver is necessary so that the public or private work to restore order on the property in the Township will not be impeded.

§ 100-12. Stop-work orders.

The Shade Tree Commission is hereby authorized to issue stop-work orders to the holder of the tree removal permit and the Tree Specialist is authorized to recommend the issuance of stop-work orders in the event that there is:

- A. A failure to comply with the approved plan such as a site plan, forest management plan or soil conservation plan;
- B. Non-compliance with the tree removal permit granted pursuant to this chapter; or
- C. Non-compliance with the provisions of this chapter.

The stop-work order shall remain in effect until the Shade Tree Commission, upon recommendation of the Tree Specialist, has determined that the resumption of work will not violate the plans, permit or the provisions of this chapter.

§ 100-13. Enforcement.

The Shade Tree Commission in conjunction with the Tree Specialist shall oversee all tree removals pursuant to an issued tree removal permit. The Tree Specialist shall conduct adequate inspections of all sites for which a tree removal permit has been issued. Upon the ascertainment of a violation of this chapter, the Tree Specialist or Shade Tree Commission shall refer enforcement actions to the Code Enforcement Officer.

§ 100-14. Applicability to tree removal construction companies; permit required.

All provisions of this chapter shall apply to any person removing trees on behalf of any other person, including all tree removal construction companies or persons in the business of removing trees or construction. It shall be unlawful for any person or company to remove or cause to be removed any tree or undertake any work for which a permit is required pursuant to this chapter unless a valid permit therefore is in effect and is displayed in accordance with the provisions set forth in § 100-15.; such removal or work shall constitute a violation of this section and shall subject the person or company violating this section to all penalties provided herein.

§ 100-15. Display of permit; carrying of plan or authorization; right of entry.

A. The applicant shall prominently display on the site the tree removal permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit and for ten (10) days thereafter. In addition, the person or persons cutting or removing trees, if other than the applicant, shall carry with him/her authorization from the owner or applicant authorizing such person to cut or remove trees. In the event that the trees are being cut or removed in accordance with a forest management plan or a soil conservation plan, a copy of the plan shall be in the possession of the person cutting or removing such trees.

B. As a condition for the issuance of the permit, the applicant shall agree in writing to the entry onto his/her premises by the Tree Specialist and all law enforcement officers as necessary to effectuate the provisions of this chapter, and such entries shall be deemed lawful. Failure to allow such entry shall be unlawful and shall constitute a violation of this chapter and shall constitute failure to display the permit as required herein. It shall be unlawful and considered a violation of this chapter for any person to engage in the business of plant cutting, trimming, removal, spraying or otherwise treating trees, shrubs or vines within the Township and without the applicable certification or license for the designated work. All contractors offering tree care services for hire within Jackson Township shall register annually with the Tree Specialist, provide a current certificate of insurance showing evidence of employer liability and workers compensation coverage for the work to be performed, and shall comply with applicable OSHA regulations, ANSI Z133.1 Safety Standards, New Jersey Board of Tree Experts Pruning Standards for Shade Trees and ANSI A300 Practice Standards.

§ 100-16. Duties of the Tree Specialist.

The Tree Specialist shall perform the duties set forth in this chapter and shall be responsible for the enforcement of the provisions of this chapter as directed by the Shade Tree Commission. In this regard the Tree Specialist is authorized and shall perform any necessary inspections and is further authorized and shall issue violation notices and shall sign complaints and provide testimony in the Municipal Court for violations of this chapter.

§ 100-17. Violations and penalties.

A. Any person, firm, partnership, corporation, association or other legal entity violating any of the provisions of this chapter shall, upon conviction of such violation be punished by a fine of up to two thousand (\$2,000.00) dollars for each offense, in the discretion of the Judge before whom conviction may be had. Each illegally removed tree shall be considered a separate violation. Each violation of any of the provisions of this chapter and each day the same is violated shall be defined and taken to be a separate and distinct offense. In addition, the court may order restitution (fine and/or appraised value, whichever is greater) and/or replacement of the tree illegally removed.

B. In addition to other remedies, the Shade Tree Commission, Tree Specialist or other authorized official may institute any appropriate legal action to prevent a continuing violation of the terms of this chapter.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a 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 portions hereof. INA

SECTION 4. This ordinance shall take effect after second reading and publication as required by law, and in accordance with N.J.S.A. 40:69A-18(b).

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Jackson, in the County of Ocean, State of New Jersey, held on July 28, 2009, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the 11th day of August, 2009, at 7:30 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 95 W. Veterans Highway, Jackson, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.

ANN MARIE EDEN, RMC Township Clerk, Township of Jackson

STATE STATUTE

COUNTY SHADE TREE COMMISSIONS

Title 40: Chapter 37

40:37-1. Shade tree commission; freeholders' powers

40:37-1. The board of chosen freeholders of any county may, by resolution, establish and appoint a board of shade tree commissioners to consist of not more than five residents of the county, and to be known as the "shade tree commission of county". The board of chosen freeholders may also, by resolution, appoint not more than two residents of the county as alternate members to the commission.

The board of chosen freeholders, or such committee or committees thereof as it may designate, may exercise all the functions herein conferred on the shade tree commission.

Amended 1995,c.1,s.3.

40:37-2. Commissioners' term lengths; alternates

40:37-2. Of the commissioners first appointed, if the commission is to consist of five members, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years; thereafter one commissioner shall be appointed annually for five years. If the commission is to consist of less than five members the appointments shall be so arranged as to have the term of one commissioner expire each year. Vacancies shall be filled by the board of chosen freeholders by appointment for the unexpired term only.

If the resolution provides for the appointment of two alternate members, they shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2" and shall serve during the absence or disqualification of any regular member or members. Of the alternate members first appointed, "Alternate No. 2" shall serve for one year and "Alternate No. 1" shall serve for two years. Thereafter alternate members shall be appointed for the same term of office as are commissioners. Vacancies shall be filled by the board of chosen freeholders by appointment for the unexpired term only. An alternate member may participate in discussions 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.

Amended 1995,c.1,s.4.

40:37-3. Organization; officers; salary of secretary

The shade tree commission shall organize within 30 days after the appointment of its total membership for the remainder of the then current calendar year, and thereafter annually, by the election of one of its members as chairman, and the appointment of a secretary who need not be a member of the commission. The salary of the secretary, who may be compensated even if a member of the commission, shall be fixed by the governing body of the county in accordance with the salary schedule, if any, of the county for corresponding positions.

Amended by L.1958, c. 41, p. 132, s. 1, eff. May 20, 1958.

40:37-4. Commissioners serve without compensation; expenses

The shade tree commissioners shall serve without compensation, but with the consent of the board of chosen freeholders, shall be entitled to be reimbursed for their necessary expenses, and, with the consent of the board, may employ such expert, clerical or other assistance as they deem necessary and proper, and may fix their compensation, which shall be paid as is the compensation of other employees of the county.

With the consent of the board the commissioners may buy, sell or exchange such trees, plants, equipment or

supplies as they deem necessary and proper for the work of the commission, and make payment therefor in the manner in which such expenditures are ordinarily made by the county.

40:37-5. Powers; regulations; trees on highways; parks

Except as hereinafter provided, the shade tree commission may exercise exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now situate or which may hereafter be planted in any public highway, park or parkway of the county, including:

- a. The planting, trimming, spraying, care and protection thereof;
- b. The regulation and control of the use of the ground surrounding the same so far as may be necessary for their proper growth, care and protection;
- c. The moving or requiring the removal of any tree or part thereof, dangerous to public safety;
- d. The care and control of the parks and parkways;
- e. The encouragement of arboriculture.

Amended by L.1958, c. 41, p. 132, s. 2, eff. May 20, 1958.

40:37-6. Regulations for protection of trees and shrubbery; penalties

The shade tree commission, with the consent of the board of chosen freeholders may make rules and regulations for the protection and care of the trees, shrubbery or ornamental material planted or growing naturally within the highways and parks under its jurisdiction, as provided in this article; and with the consent of the board may prescribe a suitable fine for the violation of each rule or regulation, in an amount not exceeding \$200.00 for each violation.

Amended by L.1958, c. 41, p. 133, s. 3, eff. May 20, 1958.

40:37-7. Enforcement of rules and regulations; jurisdiction of courts

Any court within the county having jurisdiction over proceedings for the violation of municipal ordinances in any municipality within the county, shall have jurisdiction in proceedings for the violation of the rules and regulations prescribed by the commission, which shall be enforceable in the same manner as ordinances of the municipality in which the proceeding is instituted.

Amended by L.1953, c. 37, p. 650, s. 63, eff. March 19, 1953.

40:37-8. Copy of rules as evidence

A copy of any rule or regulation of the shade tree commission, certified to under the hand of the secretary or chairman, shall be taken in all courts as full and legal proof of the existence of the rule or regulation, and of compliance with the requirements of law in relation to the making and approval thereof, unless the contrary be shown.

Amended by L.1953, c. 37, p. 651, s. 64; L.1958, c. 41, p. 133, s. 4, eff. May 20, 1958.

40:37-9. Disposition of fines

All moneys collected by the county shade tree commission, either as fines or penalties for violation of a rule or regulation of the commission, shall be forthwith paid over to the treasury of the county and shall become part of the funds of the county.

40:37-10.1. Estimated expenditures; purposes; annual appropriation

During the month of December in each year the commission shall certify to the board of chosen freeholders of

the county the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made for; namely,

- (1) Payment of wages and salaries of employees;
- (2) Expenses of commission members in discharging official duties including expenses incident to attendance at professional meetings;
- (3) Purchase of trees and shrubbery;
- (4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

The board of chosen freeholders of the county shall annually appropriate such sum as it may deem necessary for said purposes.

L.1958, c. 41, p. 134, s. 6, eff. May 20, 1958.

40:37-10.2. Immunity from liability for death, injury

7. Nothing in this article contained shall be construed to make any shade tree commission or a member thereof, or any volunteer participating in a community forestry program as provided for by section 4 of P.L.1996, c.135 (C.13:1L-17.4), responsible for the death or injury of any person, or for an injury to any property or highway tree or shrub. Liability for any such death or injury shall be governed by the provisions of section 16 of P.L.1996, c.135 (C.59:4-10) and any other relevant provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

L.1958,c.41,s.7: amended 1996, c.135, s.18.

40:37-11. Limitation of powers

Except with the consent of the agencies hereinafter named, the powers and duties provided for in this article for a county shade tree commission shall not be valid or operative:

- a. Within the limits of any highway, park or parkway now or hereafter under the jurisdiction of a municipal shade tree commission;
- b. Within the limits of any county park, for the establishment or maintenance of which there has or shall have been appointed a special park commission;
- c. Within the dedicated limits of any State highway with the establishment or maintenance of which the State Highway Commission of New Jersey is charged;
- d. Within the limits of any State forest park reservation or State park established by law under the jurisdiction of the Department of Conservation and Economic Development, or of any special park commission of this State, except with the consent of the respective agencies hereinbefore named. The county shade tree commission may co-operate with or contract with any of the agencies hereinbefore named for the establishment or maintenance of ornamental and shade trees or shrubs along any highway or within any forest park reservation or park within the county.

Amended by L.1958, c. 41, p. 134, s. 5, eff. May 20, 1958.

**COUNTY SHADE TREE COMMISSION
TEXT FOR
BOARD OF CHOSEN FREEHOLDERS RESOLUTION**

(Note: The R.S. references are indicated for the convenience of attorneys engaged for basic ordinance preparation. The fictitious political unit name Eureka County is employed in lieu of gaps in the text)

A resolution providing for the creation of a Shade Tree Commission of the County of Eureka, and the appointment of Commissioners, for the purpose of the regulation, planting, care and control of shade and ornamental trees and shrubbery in the streets, highways, public places of the County of Eureka and providing for the enforcement thereof.

Pursuant to the authority (Title 40: Chapter 37, Sections 1-11, as amended Public Laws of New Jersey 1996 - Chapter 41) vested in the counties of New Jersey:

BE IT RESOLVED by the Board of Chosen Freeholders of the County of Eureka in the State of New Jersey that:

Sec. 1. (Ref. R.S. 40:37-1). There is hereby established a Board of Shade Tree Commissioners to consist of not more than five (5) residents of the County of Eureka and to be known as the "Shade Tree Commission of Eureka County." The board of chosen freeholders may also, by resolution, appoint not more than two residents of the county as alternate members to the commission.

Sec. 2. (Ref. R.S. 40:37-2). Of the Commissioners first appointed, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one Commissioner shall be appointed annually for five years. Vacancies shall be filled by the Board of Chosen Freeholders by appointment for the unexpired term only.

If the resolution provides for the appointment of two alternate members, they shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2" and shall serve during the absence or disqualification of any regular member or members. Of the alternate members first appointed, "Alternate No. 2" shall serve for one year and "Alternate No. 1" shall serve for two years. Thereafter alternate members shall be appointed for the same term of office as are commissioners. Vacancies shall be filled by the board of chosen freeholders by appointment for the unexpired term only. An alternate member may participate in discussions 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. 3. (Ref. R.S. 40:37-3). The Shade Tree Commission of Eureka County shall organize within thirty (30) days after the appointment of its total membership for the remainder of the then current calendar year, and thereafter annually, by the election of one (1) of its members as chairman, and the appointment of a secretary who need not be a member of the Commission. The salary of the secretary, who may be compensated even if a member of the Commission, shall be fixed by the Board of Freeholders in accordance with the salary schedule, if any, of the County for corresponding positions.

Sec. 4. (Ref. R.S. 40:37-4). The Shade Tree Commissioners shall serve without compensation, but with the consent of the Board of Chosen Freeholders, shall be entitled to be reimbursed for their necessary expenses, and, with the consent of the Board, may employ such expert, clerical or other assistance as they deem necessary and proper, and may fix their compensation, which shall be paid as is the compensation of other employees of the County. With the consent of the Board, the Commissioners may buy, sell or exchange such trees, plants,

equipment or supplies as they deem necessary and proper for the work of the Commission, and make payment therefore in the manner in which such expenditures are ordinarily made by the County.

Sec. 5. (Ref. R.S. 40:37-5). Except as hereinafter provided, the Shade Tree Commission may exercise exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now situate or which may hereafter be planted in any public highway, park or parkway of the County, including:

- a. The planting, trimming, spraying, care and protection thereof;
- b. The regulation and control of the use of the ground surrounding the same so far as may be necessary for their proper growth, care and protection;
- c. The moving or requiring the removal of any tree or part thereof, dangerous to public safety;
- d. The care and control of the parks and parkways, if so designated;
- e. The encouragement of arboriculture.

Sec. 6. (Ref. R.S. 40:37-6). The Shade Tree Commission, with the consent of the Board of Chosen Freeholders, is hereby authorized and empowered to make all necessary rules and regulations for the protection and care of the trees, shrubbery or ornamental material planted or growing naturally within the highways and parks under its jurisdiction, as provided in this article; and with the consent of the Board may prescribe a suitable fine for the violation of each rule or regulation, an amount not exceeding \$1500.00 for each violation.

Sec. 7. (Ref. R.S. 40:37-7). Any court within the County having jurisdiction over proceedings for the violation of municipal ordinances in any municipality within the County, shall have jurisdiction in proceedings for the violation of the rules and regulations prescribed by the Commission, which shall be enforceable in the same manner as ordinances of the municipality in which the proceeding is instituted.

Sec. 8. (Ref. R.S. 40:37-8). A copy of any rule or regulation of the Shade Tree Commission, certified to under the hand of the secretary or chairman, shall be taken in all courts as full and legal proof of the existence of the rule or regulation, and of compliance with the requirements of law in relation to the making and approval thereof, unless the contrary be shown.

Sec. 9. (Ref. R.S. 40:37-9). All moneys collected by the County Shade Tree Commission, either as fines or penalties for violation of a rule or regulation of the Commission, shall be forthwith paid over to the treasury of the County and shall become part of the funds of the County.

Sec. 10. (Ref. R.S. 40:37-10.1). During the month of December in each year the Commission shall certify to the Board of Chosen Freeholders of the County the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made for; namely,

- (1) Payment of wages and salaries of employees;
- (2) Expenses of Commission members in discharging official duties including expenses incident to attendance at professional meetings;
- (3) Purchase of trees and shrubbery;

(4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

The Board of Chosen Freeholders of the County shall annually appropriate such sum as it may deem necessary for said purposes.

Sec. 11. (Ref. R.S. 40:37-10.2). Nothing herein contained by virtue of the act pursuant to which this resolution is adopted shall be construed to make the Shade Tree Commission of Eureka County, or any members thereof, or any volunteer participating in a community forestry program as provided for by section 4 of P.L. 1996 c.135 (C. 13:1L-17.4), responsible for the death or injury of any person, or for an injury to any property or highway tree or shrub. Liability for any such death or injury shall be governed by the provisions of section 16 of P.L. 1996, c.135 (C.59:4-10) and any other relevant provisions of the "New Jersey Tort Claims Act," N.J.S. 59:1-1 et. seq.

Sec. 12. (Ref. R.S. 40:37-11). Except with the consent of the agencies hereinafter named, the powers and duties provided for in this article for a county shade tree commission shall not be valid or operative:

- a. Within the limits of any highway, park or parkway now or hereafter under the jurisdiction of a municipal shade tree commission;
- b. Within the limits of any county park, for the establishment or maintenance of which there has or shall have been appointed a special park commission;
- c. Within the dedicated limits of any State highway with the establishment or maintenance of which the State Highway Commission of New Jersey is charged;
- d. Within the limits of any State forest park reservation or State park established by law under the jurisdiction of the Department of Conservation and Economic Development, or of any special park commission of this State except with the consent of the respective agencies hereinbefore named. The Shade Tree Commission of Eureka County may cooperate with or contract with any of the Agencies hereinbefore named for the establishment or maintenance of ornamental and shade trees or shrubs along any highway or within any forest park reservation or park within the county.

COUNTY SHADE TREE COMMISSION

TEXT FOR SUPPLEMENTAL (OPERATIONAL) REGULATIONS

(Note: The R.S. references are indicated for the convenience of attorneys engaged for basic ordinance preparation. The fictitious political unit name Eureka County is employed in lieu of gaps in the text)

REGULATIONS PROVIDING FOR THE PLANTING, CONTROL, PROTECTION, AND IMPROVEMENT OF SHADE TREES AND SHRUBBERY UPON PUBLIC HIGHWAYS AND PUBLIC PLACES OF THE COUNTY OF EUREKA AND STATE OF NEW JERSEY.

PURSUANT TO THE AUTHORITY (R.S. 40:37-6 as amended Public Laws of New Jersey, 1996 - Chapter 41) VESTED IN THE EUREKA COUNTY SHADE TREE COMMISSION, IT DOES HEREBY ENACT THE FOLLOWING REGULATIONS:

Sec. 1. DEFINITIONS:

- A. SHADE TREE COMMISSION shall mean the Shade Tree Commission of the County of Eureka.
- B. The term STREET shall mean:
 - (1) Any public street, designated by the Board of Freeholders, to be within the jurisdiction of the Shade Tree Commission.
 - (2) County Parks
(If so assigned by Freeholder resolution)
- C. The term TREE shall mean:
 - (1) Trees and shrubs.
- D. PERSON shall mean every person, firm, association, partnership and corporation.
- E. The term PUBLIC UTILITY COMPANY shall refer to a public utility as defined in the Revised Statutes of the State of New Jersey (R.S. 48:2-13).
- F. The term PLANT CONSTRUCTION as applied to Public Utility Companies shall mean poles, wires, cables, sub-surface conduits, pipes, manholes and appurtenant facilities of such companies installed in a street.

Sec. 2. REQUIRED PERMITS (NON-UTILITY OPERATIONS)

- A. NO PERSON SHALL DO any of the following acts to any tree on a street WITHOUT THE PRIOR PERMIT of the Shade Tree Commission:
 - (1) Cut, prune, climb with spikes, break, damage or remove or kill.
 - (2) Cut, disturb or interfere in any way with any root.

- (3) Spray with any chemical.
- (4) Fasten any rope, wire, sign or other device. (Nothing herein shall prevent any governmental agency from affixing in a manner approved by the Shade Tree Commission a public notice upon a tree in connection with administering governmental affairs.)
- (5) Remove or damage any guard or device placed to protect any tree or shrub.
- (6) Conduct razing, removal or renovation of any structure if deemed, by the Commission, to be damaging to neighboring street trees.
- (7) Place or distribute chemicals, including salt deleterious to tree health.
- (8) Maintain a stationary fire or device which vaporizes noxious fumes deleterious to tree health.
- (9) Remove soil, either for trenching or otherwise.
- (10) Construct new sidewalks and/or driveways with any material whatsoever within 5 feet of a tree.
- (11) Plant any tree or shrub within the designated area under the control of the Commission.

Sec. 3. REQUIRED PERMITS: UTILITY OPERATIONS; EXCEPTIONS

- (1) The Shade Tree Commission may grant to PUBLIC UTILITY COMPANIES a blanket permit for (1) tree pruning for line clearance and (2) for the installation and maintenance of sub-surface and above ground Plant Construction if there is interference with or endangerment to street trees.
- (2) PUBLIC UTILITY COMPANIES may, during periods of emergency, without specific permit (1) install temporary attachments to trees and (2) make emergency sub-surface repairs.
- (3) Each PUBLIC UTILITY COMPANY shall exercise reasonable diligence in the maintenance of its Plant Construction so as to avoid damage to trees under the jurisdiction of the Eureka County Shade Tree Commission.

Sec. 4. ISSUANCE OF PERMITS

- A. Requests for permits required by the provisions of this ordinance for the performance of work should be directed to the Shade Tree Commission, Eureka County, (County seat) New Jersey.

Sec. 5. VIOLATION AND FINES

- A. Any person found guilty of violating any of the provisions of these regulations shall upon conviction by a Magistrate exercising jurisdiction within the County of Eureka be fined a sum not exceeding fifteen hundred dollars (\$1500.00) for each offense. Each day any violation of this ordinance shall continue shall constitute a separate offense.

In addition to the fine of \$ 1,500.00 referred to in section A, a municipality may impose an additional penalty of an assessment paid to the municipality based upon the value of the tree as determined by a Certified Tree Expert or trained forester or by the formula of not exceeding \$ 27.00 per square inch of a cross section of the trunk measured 4.5 feet above ground level. This amount shall be modified by the tree's species variety, location, and its condition at the time of damage or destruction.

OCEAN COUNTY SHADE TREE RESOLUTION INTRODUCTION

By John Perry, LTE

On December 18, 1990 the Ocean County Board of Chosen Freeholders passed a resolution that established the Ocean County Shade Tree Commission. The commission was created pursuant to the authority (Title 40: Chapter 37, Section 1-11, as amended Public Laws of New Jersey 1958-Chapter 41) vested in the counties of New Jersey. Ocean County is the second largest county in New Jersey that contains 916 square miles and is one of four counties in New Jersey that border on the Atlantic Ocean. With 621 miles of county roads, 4,600 acres of county owned parks and 9,591 acres of natural lands, the Ocean County Shade Tree Commission was created to protect and preserve shade and ornamental trees and shrubbery along county roadways and county property. To this end the OCSTC reviews all planned plantings on all county projects.

Programs:

The Board of Chosen Freeholders has always supported the mission of the OCSTC with the appropriation of an annual budget. As the budget allows, the OCSTC assists in the funding of tree planting projects along county rights-of way to municipalities that submit tree planting and maintenance plans. The OCSTC also provides trees, upon request, to schools for Arbor Day Ceremonies. A seedling is given to all children participating in the Arbor Day event. This project has grown to forty-five Arbor Day programs annually. A county Big Tree List has been kept since the formation of the OCSTC. A nursery was established at the Ocean County Park in Lakewood. The purpose of the nursery is to be used as a holding area for trees used in capital improvement projects and Arbor Day ceremonies. In 1993 a detailed county-wide hazardous tree assessment was undertaken on all county roads.

Personnel:

Due to the heavy workload that had been building since the formation of the OCSTC a part-time position of Forester with a Certified Tree Expert credential was created in 1999. In 2001 the position was converted to full-time. Four county tree crews use the services of the County Forester: two from the Road Department, one from Parks and Recreation Department and one from the Buildings and Grounds Department. In 2008, one of the two tree crews in the Road Department became a full-time crew to maintain county trees. The second crew is used on an as needed basis such as in storm emergencies, road hazards or road accidents involving trees.

Training:

Since its inception in 1990 the OCSTC has developed a tradition of educating and training county employees in the value, care and proper maintenance of shade trees in a safe manner. Annually, a four-day training seminar takes place for county employees on all aspects of tree care and safety. As space allows, municipalities are encouraged to send a representative to this training session. The OCSTC sponsors employees of the Road, Parks and Recreation and Buildings and Grounds Departments to the climbing course offered by the Committee for the Advancement of Arboriculture.

OCEAN COUNTY SHADE TREE RESOLUTION

December 18, 1990

WHEREAS, the Ocean County Board of Chosen Freeholders wishes to establish a Shade Tree Commission to establish regulations to protect and preserve shade and ornamental trees and shrubbery along County roadways and to advise and assist County agencies in the proper care, planting and control of shade trees, ornamental trees and shrubbery on County property; and,

WHEREAS, this Commission shall be created pursuant to the authority (Title 40: Chapter 37, Section 1-11, as amended Public Laws of New Jersey 1958 – Chapter 41) vested in the counties of New Jersey;

NOW, THEREFORE, BE IT RESOLVED by the Ocean County Board of Chosen Freeholders that there is hereby established a Board of Shade Tree Commissioners as follows:

1. The Board of Shade Tree Commissioners is to consist of not more than (5) residents of the County of Ocean and to be known as the “Shade Tree Commission of Ocean County.”
2. Of the Commissioners first appointed, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter, one Commission shall be appointed annually for five years. Vacancies shall be filled by the Board of Chosen Freeholders by appointment for the unexpired term only.
3. The Shade Tree Commission of Ocean County Shall organize within thirty (30) days after the appointment of its total membership for the remainder of the then current calendar year, and thereafter annually, by the election of one (1) of its members as chairman, and the appointment of a secretary who need not be a member of the Commission. The salary of the secretary, who may be compensated even if a member of the Commission, shall be fixed by the Board of Freeholders in accordance with the salary schedule of the County for corresponding positions.
4. Members of the Shade Tree Commission shall serve without compensation, but with the consent of the Board of Chosen Freeholders, shall be entitled to be reimbursed for their necessary expenses. The County Engineering Department shall assign professional and clerical staff to assist and work with the Commission in the establishment of its rules and regulations and in the performance of its other duties and responsibilities. The County Engineer shall make provision in his budget to provide for the expenses of the Commission.
5. Except as hereinafter provided, the Shade Tree Commission may exercise control over the regulation, planting, and care of shade and ornamental trees and shrubbery now situated or which may hereafter be planted along County highways and County owned property including:
 - a. The planting, trimming, spraying, care and protection thereof;
 - b. The regulation and control of the use of the ground surrounding the same so far as may be necessary for their proper growth, care and protection;
 - c. The moving or requiring the removal of any tree or part thereof, dangerous to public safety;
 - d. The encouragement of arboriculture.
6. The Shade Tree Commission, subject to the review and approval of the Board of Chosen Freeholders, is hereby authorized and empowered to make necessary rules and regulations for the protection and care of the trees, shrubbery or ornamental material planted or growing naturally within the highways and County property under its jurisdiction, as provided in this article; and with the consent of the Board may prescribe a suitable fine for the violation of each rule or regulation, an amount not exceeding \$ 500.00 for each violation. Each day any violation of this ordinance shall continue shall constitute a separate offense.

7. Any court within the County having jurisdiction over proceedings for the violation of municipal ordinance in any municipality within the County shall have jurisdiction in proceedings for the violation of the rules and regulations prescribed by the Commission, which shall be enforceable in the same manner as ordinances of the municipality in which the proceeding is instituted.

8. A copy of any duly adopted rule or regulation of the Shade Tree Commission, certified to under the hand of the secretary or chairman, shall be taken in all courts as full and legal proof of the existence of the rule or regulation, and of compliance with the requirements of law in relation to the making and approval thereof, unless the contrary be shown.

9. All moneys collected by the County Shade Tree Commission, either as fines or penalties for violation of a rule or regulation of the Commission, shall be forthwith paid over to the treasury of the County and shall become part of the funds of the County.

10. Nothing herein contained by virtue of the act pursuant to which this regulation is adopted shall be construed to make the Shade Tree Commission of Ocean County, or any members thereof, responsible for the death or injury of any person or damage to any property or highway tree or shrub.

11. The powers and duties provided for in this article for a county shade tree commission shall not be valid or operative;

- a. Within the limits of any highway, park or parkway now or hereinafter under the jurisdiction of a municipal shade tree commission;
- b. Within the dedicated limits of any State Highway;
- c. Within the limits of any State forest, park reservation or State park established by law.

NEW JERSEY SHADE TREE AND COMMUNITY FORESTRY ASSISTANCE ACT

INTRODUCTION

By Todd Wyckoff, LTE, NJ Community Forestry

Why was the New Jersey Shade Tree and Community Forestry Assistance Act passed?

In the late 1990's there was a movement by municipalities to disband their Shade Tree Commissions throughout New Jersey. The Commissions feared that their decisions regarding tree care and maintenance would make them liable should a personal injury or property damage occur as a result of a tree incident. Without active Shade Tree Commissions in place the tree resource would suffer due to the lack of management.

The New Jersey Shade Tree and Community Forestry Assistance Act passed on December 5, 1996. The Act provides a strong foundation for active management of the tree resource and lays the framework by which a municipality has the ability to stand on strong legal ground regarding tree related decisions. By providing liability protection to participating municipalities and counties, the Act has ensured that Shade Tree Commissions are in place to provide more livable communities through the care and management of trees throughout New Jersey.

What does the Act provide?

Liability Protection- The Act enables a community to eliminate tree related liability if they satisfy four requirements for Approved Status under the Act. This includes writing a State approved Community Forestry Management Plan and participating in the State's Training Skills and Accreditation program.

Council- The Act established an official Community Forestry Council. The State's Community Forestry Council is comprised of 20 volunteers representing many groups involved with community forestry such as : arborists, tree growers, municipal/county governments, insurance companies, electric companies, and others to advise the State Forester on community forestry issues.

Grants- The Green Communities Grant aids a municipality or county in the engagement of a qualified forestry consultant to assist them in writing a Community Forestry Management Plan. The Community Stewardship Incentive Program (CSIP) Grant is offered to communities who have Approved Status under the Act to implement goals and objectives directly from their management plan. The "Treasure Our Trees" license plates generate the funding for these grants.

NEW JERSEY SHADE TREE AND COMMUNITY FORESTRY ASSISTANCE ACT

CHAPTER 135

AN ACT establishing a New Jersey Shade Tree and Community Forestry Program, providing for the issuance of certain license plates dedicated to the support and funding of the program, supplementing Title 13 and chapter 3 of Title 39 of the Revised Statutes and chapter 4 of Title 59 of the New Jersey Statutes, and amending R.S.40:64-14 and P.L.1958, c.41.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.13:1L-17.1 Short title.

1. Sections 1 through 9 of this act shall be known and may be cited as the "New Jersey Shade Tree and Community Forestry Assistance Act."

C.13:1L-17.2 Findings, declarations relative to shade trees, forests in communities.

2. The Legislature finds and declares that shade trees and forests are a necessary and important part of community and urban environments, and are critical to the environmental, social and economic welfare of the State; that the ability of all county and municipal governments to care for and manage their shade trees could be enhanced through technical and financial assistance from a State community forestry program; that local governments have experienced recurring and damaging exposure to litigation due to the drastic decline and poor condition of the State's community tree resource; that properly planned and implemented local community forestry programs can provide the necessary basis for local governments to reduce or eliminate liability associated with local tree care programs and shade tree commissions; and that the viability of county and municipal shade tree commissions is essential to the preservation and enhancement of the State's community tree resource.

The Legislature therefore determines that it is appropriate for the State to encourage, promote and assist in the establishment, retention and enhancement of shade tree and community forestry programs by local governments; and that it is altogether fitting and proper to establish a shade tree and community forest preservation license plate, the revenues from which would be dedicated to the support of a State community forestry program.

C.13:1L-17.3 Definitions relative to community forestry.

3. As used in sections 1 through 9 of this act:

"Commissioner" means the Commissioner of Environmental Protection;

"Community forestry" means the planting, protection, care and management of trees and other related natural resources within a municipality or county;

"Department" means the Department of Environmental Protection;

"Local government" means a municipality, county or other political subdivision of the State, or any agency thereof;

"Shade tree commission" means a municipal body created pursuant to R.S.40:64-1 et seq. or a county body created pursuant to R.S.40:37-1 et seq.; and

"State Forester" means the State Forester designated pursuant to section 17 of P.L.1983, c.324 (C.13:1L-17).

C.13:1L-17.4 "New Jersey Shade Tree and Community Forestry Program" established.

4. There is established in the Division of Parks and Forestry in the Department of Environmental Protection, under the supervision of the State Forester, the "New Jersey Shade Tree and Community Forestry Program," the purposes of which shall be to:

- a. Assist local governments and shade tree commissions in establishing and maintaining community forestry programs and in encouraging persons to engage in appropriate and approved practices with respect to tree management and care;
- b. Advise local governments and shade tree commissions in the development and coordination of policies, programs and activities for the promotion of community forestry;
- c. Provide grants to local governments and shade tree commissions applying for assistance in the development and implementation of a comprehensive community forestry plan approved pursuant to section 7 of P.L.1996, c.135 (C. 13:1L-17.7), to the extent monies are appropriated or otherwise made available therefore;
- d. Educate citizens on the importance of trees and forests and their role in the maintenance of a clean and healthy environment;
- e. Provide technical assistance, planning and analysis for projects related to community forestry;
- f. Provide training assistance to local governments and shade tree commissions regarding community forestry issues such as tree diseases, insect programs and tree planting and maintenance; and
- g. Provide volunteer opportunities for the State's citizens and organizations interested in community forestry activities.

C.13:1L-17.5 Community Forestry Council, establishment, membership, powers.

5.
 - a. There is established in the department a Community Forestry Council, which shall consist of 20 members, appointed by the State Forester, all of whom shall be citizens with expertise or interest in trees, forestry, or tree or forest management, maintenance or care. Each of the members appointed shall serve for a term of three years and until a successor is appointed and qualified, except that of the members first appointed, seven shall serve terms of one year and seven shall serve terms of two years. All vacancies, except those created through the expiration of term, shall be filled for the unexpired term only, and in the same manner as the original appointment. Each member shall be eligible for reappointment, but may be removed by the commissioner or the State Forester for cause.
 - b. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the full membership of the council.
 - c. Members of the council shall serve without compensation, but may be reimbursed for expenses necessarily incurred in the discharge of their official duties.
 - d. The State Forester shall appoint a chairperson and vice-chairperson and the council may elect such other officers as may be necessary. The council may appoint such staff or hire such experts as it may require within the limits of appropriations made for these purposes.

e. The council may call to its assistance such employees as are necessary and made available to it from any agency or department of the State or its political subdivisions.

f. The council may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in consultation with the department, any rules and regulations necessary to carry out its responsibilities pursuant to P.L.1996, c.135 (C.13:1L-17.1 et al.).

g. The council shall advise the State Forester, the Division of Parks and Forestry and the department on issues concerning community forestry and assist with such other functions as may be authorized pursuant to P.L.1996, c.135 (C.13:1L-17.1 et al.) or any other law.

C.13:1L-17.6 Duties of State Forester.

6. The State Forester, with the advice and assistance of the council, shall establish minimum standards, and provide a training skills and accreditation program, for representatives of local governments and shade tree commissions, the content of which shall be the appropriate and approved methods for the planting, protection, care and management of trees and other related natural resources under their control.

C.13:1L-17.7 Development, distribution of comprehensive community forestry plan, approval.

7. a. The State Forester, with the advice and assistance of the council, shall develop and make available to local governments and shade tree commissions a list of guideline elements found within a comprehensive community forestry plan. These guidelines shall establish but not limit the basic framework of an approved plan. The State Forester, with the advice and assistance of the council, shall develop and make available to local governments and shade tree commissions a procedure for submitting for approval a comprehensive community forestry plan.

b. A local government may develop and submit to the State Forester for approval a comprehensive community forestry plan according to procedures established by the department.

c. The State Forester, after review and comment by the council, shall approve a comprehensive community forestry plan if all required parts of the plan adequately address the needs of the community and the tree resource.

C.13:1L-17.8 Annual report on status of New Jersey Shade Tree and Community Forestry Program.

8. The commissioner, with advice from the State Forester, shall prepare an annual report on the status of the New Jersey Shade Tree and Community Forestry Program established pursuant to section 4 of P.L.1996, c.135 (C.13:1L-17.4), which shall also include any recommendations for legislative or administrative action to improve implementation of that act, and transmit that report to the Governor, the President of the Senate, the Speaker of the General Assembly, and the chairpersons of the Senate Natural Resources and Economic Development Committee, the Senate Budget and Appropriations Committee, the Assembly Environment, Science and Technology Committee, and the Assembly Appropriations Committee, or the successors of those committees as designated respectively by the President of the Senate and the Speaker of the General Assembly.

C.13:1L-17.9 Rules, regulations.

9. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement P.L.1996,

- c.135 (C.13:1L-17.1 et al.), including establishment of:
- a. Guidelines for development of a comprehensive community forestry plan;
 - b. Criteria for proper selection, planting and care of trees;
 - c. Procedures to accept and evaluate submitted comprehensive community forestry plans;
 - d. Procedures for the review and approval of training skills and accreditation programs in tree care and management for local officials;
 - e. Guidelines for the provision of technical assistance under the program to local governments and shade tree commissions in the formation of comprehensive community forestry plans; and
 - f. Criteria for ranking grant applications received from local governments and shade tree commissions applying for assistance in the development and implementation of comprehensive community forestry plans.

C.39:3-27.79 Issuance of shade tree, community forest preservation license plates.

10. The Director of the Division of Motor Vehicles in the Department of Transportation shall, upon proper application therefore, issue shade tree and community forest preservation license plates for any motor vehicle owned or leased and registered in the State. In addition to the registration number and other markings or identification otherwise prescribed by law, a shade tree and community forest preservation license plate shall display words or a slogan and an emblem indicating support for, or an interest in, shade tree and community forest preservation. The words or slogan and emblem shall be chosen by the director; however, the director shall solicit, in conjunction with the Legislature, input from the general public on the design of the plate and shall review the submissions prior to choosing the design. Issuance of shade tree and community forest preservation license plates in accordance with this section shall be subject to the provisions of chapter 3 of Title 39 of the Revised Statutes, except as hereinafter otherwise specifically provided.

C.39:3-27.80 Application, fee for shade tree, community forest preservation license plate.

11.
 - a. Application for issuance of a shade tree and community forest preservation license plate shall be made to the Division of Motor Vehicles on forms and in a manner as may be prescribed by the director. In order to be deemed complete, an application shall be accompanied by a fee of \$50 payable to the Division of Motor Vehicles, which fee shall be in addition to all fees otherwise required by law for the registration of the motor vehicle.
 - b. The annual fee for the registration certificate of a motor vehicle that has been issued a shade tree and community forest preservation license plate pursuant to the provisions of P.L.1996, c.135 (C.39:3-27.79 et al.) shall include in each year subsequent to the year of issuance a fee in the amount of \$10, which fee shall be in addition to all fees otherwise required by law for the renewal of the registration of the motor vehicle and shall be collected by the Division of Motor Vehicles and deposited in the Shade Tree and Community Forest Preservation License Plate Fund created pursuant to section 12 of P.L.1996, c.135 (C.39:3-27.81).

C.39:3-27.81 Creation of "Shade Tree and Community Forest Preservation License Plate Fund."

12.
 - a. There is created in the Department of Environmental Protection a special non-lapsing fund to be known as the "Shade Tree and Community Forest Preservation License Plate Fund." There shall be deposited in the fund the amount collected from all license plate fees collected pursuant to section 11 of P.L.1996, c.135 (C.39:3-27.80), less the amounts necessary to reimburse the Division of Motor Vehicles

for all costs authorized pursuant to section 13 of P.L.1996, c.135 (C.39:3-27.82). Monies deposited in the fund shall be dedicated for support and funding of projects and programs concerned with shade tree and community forest preservation, including but not limited to the awarding of grants for such purposes to municipal shade tree commissions created pursuant to R.S.40:64-1 et seq., county shade tree commissions created pursuant to R.S.40:37-1 et seq., municipalities, and counties. Monies in the fund may also be awarded as grants to local governments and shade tree commissions pursuant to subsection c. of section 4 of P.L.1996, c.135 (C.13:1L-17.4). Monies deposited in the fund shall be held in interest-bearing accounts in public depositories as defined pursuant to section 1 of P.L.1970, c.236 (C.17:9-41), and may be invested or reinvested in such securities as are approved by the State Treasurer. Interest or other income earned on monies deposited in the fund, and any monies which may be appropriated or otherwise become available for the purposes of the fund, shall be credited to and deposited in the fund for use as set forth in P.L.1996, c.135 (C.13:1L-17.1 et al.).

b. The Division of Parks and Forestry in the Department of Environmental Protection shall administer the fund and the distribution of grants pursuant to this section. The Division of Parks and Forestry shall, by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establish qualifications for determining grant eligibility, criteria for ranking grant applications, and standards and authorized purposes for the use of such grants.

C.39:3-27.82 Reimbursement to Division of Motor Vehicles.

13. a. Prior to the deposit of license plate fees collected pursuant to section 11 of P.L.1996, c.135 (C.39:3-27.80) into the fund, amounts thereof as are necessary shall be used to reimburse the Division of Motor Vehicles for all costs reasonably and actually incurred, as stipulated by the director, for:
- (1) producing, issuing, renewing, and publicizing the availability of shade tree and community forest preservation license plates; and
 - (2) any initial computer programming changes that may be necessary to implement the shade tree and community forest preservation license plate program established by P.L.1996, c.135 (C.39:3-27.79 et al.).
- b. The Director of the Division of Motor Vehicles shall annually certify to the Commissioner of Environmental Protection the average cost per license plate incurred in the immediately preceding year by the Division of Motor Vehicles in producing, issuing, renewing, and publicizing the availability of shade tree and community forest preservation license plates. The annual certification of the average cost per license plate shall be approved by the Joint Budget Oversight Committee, or its successor.
- c. In the event that the average cost per license plate as certified by the director and approved by the Joint Budget Oversight Committee, or its successor, is greater than the \$50 application fee established in subsection a. of section 11 of P.L.1996, c.135 (C.39:3-27.80) in two consecutive fiscal years, the director may discontinue the issuance of shade tree and community forest preservation license plates.

C.39:3-27.83 Notification of availability of shade tree, community forest preservation plates.

14. The Director of the Division of Motor Vehicles shall notify eligible motorists of the opportunity to obtain shade tree and community forest preservation license plates by including a notice with all motor vehicle registration renewals, and by posting appropriate posters or signs in all facilities and offices of the Division of Motor Vehicles. The notices, posters, and signs shall be designed by the Commissioner of Environmental Protection. The designs shall be subject to the approval of the director, and the Commissioner of Environmental Protection shall supply the Division of Motor Vehicles with the notices, posters, and signs to be circulated or posted by that division.

C.39:3-27.84 Interagency memorandum of agreement.

15. The Commissioner of Environmental Protection, the Director of the Division of Motor Vehicles, and the State Treasurer shall develop and enter into an interagency memorandum of agreement setting forth the procedures to be followed by the departments and the Division of Motor Vehicles in carrying out their respective responsibilities under P.L.1996, c.135 (C.13:1L-17.1 et al.).

C.59:4-10 Immunity from liability relative to community forestry.

16. a. Except as provided pursuant to N.J.S. 59:3-14, a shade tree commission, or a member of a shade tree commission, or a volunteer participating in a community forestry program as provided for by P.L.1996, c.135 (C.13:1L-17.1 et al.), is not liable for an injury or death caused directly or indirectly by a tree or shrub, or any part thereof, if:

(1) the tree or shrub, or pertinent part thereof, is on public property or on a public easement or right-of-way, or the tree or shrub, regardless of its location, is regulated, planted, cared for, controlled, or maintained by the shade tree commission; and

(2) the local government or the shade tree commission has participated in and successfully completed a training skills and accreditation program established pursuant to section 6 of P.L.1996, c.135 (C.13:1L-17.6) and has a comprehensive community forestry plan approved pursuant to section 7 of that act.

b. The existence of a municipal shade tree commission established pursuant to R.S.40:64-1 et seq. or a county shade tree commission established pursuant to R.S.40:37-1 et seq. or the fact that a municipality or county has otherwise provided for the regulation, planting, care, control, or maintenance of trees or shrubs within its jurisdiction, shall not be cause to immunize a private person from liability for an injury caused directly or indirectly by a tree or shrub, or any part thereof, who otherwise would be liable for that injury.

17. R.S.40:64-14 is amended to read as follows:

No liability for death or injury.

40:64-14. No liability for death or injury. Nothing in this chapter contained shall be construed to make any shade tree commission or any member thereof, or any volunteer participating in a community forestry program as provided for by section 4 of P.L.1996, c.135 (C.13:1L-17.4), responsible for the death or injury of any person, or for an injury to any property or highway tree or shrub. Liability for any such death or injury shall be governed by the provisions of section 16 of P.L.1996, c.135 (C.59:4-10) and any other relevant provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

18. Section 7 of P.L.1958, c.41 (C.40:37-10.2) is amended to read as follows:

C.40:37-10.2 Immunity from liability for death, injury.

7. Nothing in this article contained shall be construed to make any shade tree commission or a member thereof, or any volunteer participating in a community forestry program as provided for by section 4 of P.L.1996, c.135 (C.13:1L-17.4), responsible for the death or injury of any person, or for an injury to any property or highway tree or shrub. Liability for any such death or injury shall be governed by the provisions of section 16 of P.L.1996, c.135 (C.59:4-10) and any other relevant provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

19. Sections 1 through 9 and sections 15 through 18 shall take effect immediately. Sections

10 through 14 shall take effect on the 180th day after enactment, but the Commissioner of Environmental Protection, the State Treasurer, and the Director of the Division of Motor Vehicles may take such anticipatory acts in advance of that date as may be necessary for the timely implementation of the provisions of those sections of this act upon the effective date thereof.

Approved December 5, 1996.

NO NET LOSS REFORESTATION ACT INTRODUCTION

By Dave Johnson, LTE, NJ Community Forestry

The No Net Loss Reforestation Act, P.L. 1993, c. 106 (C.13:1L-14.2), was originally passed in 1993 and amended in 2001 to help conserve forested land in New Jersey by requiring state entities to replant forest areas that they remove. The Act applies to land that a state entity owns or maintains. The legislation mandates that any state entity planning to deforest a minimum of .5 acre must obtain an approval for reforestation prior to beginning the project. State entities include all the state departments, commissions and authorities, as well as the state universities and colleges. The NJ Community Forestry Program has developed guidelines to implement this legislation and is responsible for the administration and regulation of it.

Within the legislation, a hierarchy of possible planting locations is established with the highest priority being back on the project site. If this is not feasible, the next priority is to plant on state lands within the affected municipality or on municipal lands within the affected municipality. There are other criteria within the legislation that deal with circumstances if these secondary locations are not feasible.

If the state entity cannot plant trees back on the project site, another option is for them to submit a request to provide monetary compensation. Since most state agencies do not have the expertise or staff to oversee or maintain independent tree planting projects on municipal or other state agency's property, the monetary compensation option is often proposed in reforestation plans. Monetary compensation funds are deposited into the Shade Tree and Community Forest Preservation License Plate Fund and offered back to the affected municipality(ies) in the form of a tree planting grant.

This piece of legislation may affect almost any municipality in New Jersey and should be understood by those individuals charged with the care and management of trees at the municipal level. Some of the past projects that have fallen under this legislation include improved or expanded state highways, new state buildings, new dormitories at state colleges, expanded parking facilities at public transportation sites and new utility lines.

NO NET LOSS REFORESTATION ACT

13:1L-14.1. Definitions

1. As used in this act:

"Division" means the Division of Parks and Forestry in the Department of Environmental Protection.

"State entity" means a department, agency, or office of State government, including a State university or college, or an authority created by the State.

L.1993,c.106,s.1.

13:1L-14.2. Plan for compensatory reforestation

2. a. Each State entity, by July 1, 1993, and at least annually thereafter, shall develop, and submit to the Division of Parks and Forestry in the Department of Environmental Protection, a plan for compensatory reforestation for all areas at least one-half acre in size that are owned or maintained by that State entity and are scheduled for deforestation. A reforestation plan required pursuant to this act shall establish a goal of no net loss of existing forested area based upon a reasonable and practical Tree Replacement Factor developed due to the act of deforestation and in accordance with this act. The plan shall be subject to approval of the division after review and comment by the Community Forestry Council established pursuant to section 5 of P.L.1996, c.135 (C.13:1L-17.5). No project that would deforest land at least one-half acre in size that is owned or maintained by a State entity may be commenced without approval of that State entity's plan by the division.

A reforestation plan shall provide that, if tree planting adjacent to the deforested area is not feasible, it shall be conducted in the following order: within the municipality in which the deforestation occurred, within five miles of the site of deforestation, or off-site.

b. A reforestation plan developed pursuant to this section shall include appropriate and approved methods for the planting, protection, care and management of trees and other related natural resources. With the advice and assistance of the Community Forestry Council, the division shall develop and make available to State entities a list of guideline elements that shall be required in a reforestation plan. These guidelines shall establish but not limit the basic framework of an approved reforestation plan.

A reforestation plan developed pursuant to this section shall provide that:

(1) if the division determines that it is not feasible to conduct the tree planting efforts on-site, then the tree planting shall be conducted first on State property within the municipality in which the deforestation occurred or municipal property within the municipality in which the deforestation occurred. Municipal property may include property owned or maintained by that community including but not limited to parks, streets, schools, municipal facilities, and open space and recreation areas;

(2) if the division determines that it is not feasible to conduct the tree planting efforts on-site or within that municipality, then the tree planting shall be conducted within five miles of the site of the deforestation. Sites within five miles of the site of deforestation may include property owned or maintained by the State, county or other municipal entity;

(3) if the division determines that it is not practicable to conduct the tree planting efforts on-site, within the municipality or five miles of the site, then the tree planting shall be conducted off-site by the State entity. Off-site property may include property owned or maintained by a State entity other than the one developing and

implementing the plan if the State entity that is to receive the benefits of the off-site tree planting efforts agrees thereto;

(4) the State entity shall use native species when practicable;

(5) the shape or configuration of the reforested area may be substantially similar to the shape or configuration of the deforested area;

(6) the replacement of trees shall be determined by the Tree Replacement Factor and shall be based upon accepted forestry research and practices which show the average tree density within urban areas to be 204 trees per acre of tree cover;

(7) in using the Tree Replacement Factor (TRF) for sites that are deforested the following number of stems shall be calculated for seeding, caliper and whip/container trees:

$$\begin{aligned} \text{TRF} &= 204 (2" - 2 \frac{1}{2} ") \text{ caliper trees per acre} \\ &= 408 \text{ whip/container (4' - 6')} \text{ trees per acre} \\ &= 1210 \text{ tree seedlings per acre;} \end{aligned}$$

(8) the seedlings shall be planted from six to 10 feet apart, or at a distance mutually agreed to by the division and the State entity, and that the seedlings are obtainable from a tree nursery owned and operated by the State. Subject to availability from a State tree nursery, the seedlings used in reforestation by a State entity pursuant to this act shall be those that are the most suitable for the site; and

(9) the species of caliper nursery grown trees measured at two and one half inches and whips at one and one half inches shall be planted based upon the approved planting plan and subject to the standards established by the American Association of Nurserymen. Trees to be planted shall be selected from those recommended in the publication entitled Trees for New Jersey Streets published by the New Jersey Shade Tree Federation and in accordance with the recommended planting specifications. Diversity in species composition shall be required to reduce the risk of widespread loss of trees to single insect and disease infestation and, therefore, similar species shall not exceed 30 percent of the total planting.

c. The State entity shall enter into a memorandum of agreement with the division that guarantees the division reimbursement for actual labor hours attributable to the review and implementation of that State entity's reforestation plan pursuant to this act. If the compensatory reforestation as required by this act cannot be accomplished on the site of the project by the State entity, the division and the State entity may mutually agree within the memorandum of agreement that the State entity responsible for the deforestation shall pay an amount equal to the value of the number of trees required as determined by the Tree Replacement Factor and in accordance with an approved plan. This payment shall be deposited in the "Shade Tree and Community Forest Preservation License Plate Fund," established pursuant to section 12 of P.L.1996, c.135 (C.39:3-27.81), and shall be expended for reforestation by the division with the advice of the Community Forestry Council and the approval of the director of the division. The memorandum of agreement shall be part of the State entity's plan for compensatory reforestation.

L.1993,c.106,s.2; amended 2001, c.10, s.1.

13:1L-14.3 Non-applicability of act.

3. The requirements of P.L.1993, c.106 (C.13:1L-14.1 et seq.) shall not apply to activities:

a. that are deemed by the division to constitute standard forestry, wildlife management, or arboricultural practices, or to actively managed existing utility easements; or

b. conducted, or that are caused to be conducted, by the Department of Military and Veterans' Affairs at the Brigadier General William C. Doyle Veterans' Memorial Cemetery.

L.1993, c.106, s.3; amended 2001, c.10, s.3; 2009, c.191.

13:1L-14.4. Public forum to present plan for deforestation, reforestation by State entities

2. Whenever a State entity owns or maintains land on which an area of at least one acre in size is scheduled for deforestation, at least 180 days prior to the deforestation of the area the State entity shall hold at least one public forum within the municipality in which the deforestation is scheduled, or, if the forested area scheduled for deforestation spans more than one municipality, in any one of the municipalities in which deforestation is scheduled, to present its plan for deforestation and its plan for reforestation. The public shall be permitted to present oral and written comments to the State entity within a comment period of 60 days from the date of the forum. No more than 60 days after the comment period has closed, the State entity shall provide written responses to the comments presented.

Whenever a public process is already required by any other State or federal law, or any rule or regulation adopted pursuant thereto, for a project that includes forested land scheduled for deforestation, the State entity shall not be required to conduct a separate public forum to comply with the provisions of this section, provided that the public forum requirements established herein are also met at the public forum or hearing conducted pursuant to any other State or federal law. The State entity shall clearly advise the public in its agenda for the public forum that a reforestation plan will be presented. Copies of written responses to the public comments shall be provided by the State entity to the division at the close of the comment period.

L.2001,c.10,s.2.

TREE EXPERTS AND TREE CARE OPERATORS LICENSING ACT INTRODUCTION

By Dave Johnson, LTE, NJ Community Forestry

The Tree Expert Act, P.L.1940, c.100 (C.45:15C-1 et seq.) was passed in 1940 and established a state certification program for those working in the tree care industry. The legislation came about as a result of many unscrupulous “tree surgeons” (as arborists were called decades ago) taking advantage of shade tree owners during the years of chestnut blight, Dutch elm disease and gypsy moth outbreaks. In 1996, the law was updated to allow out-of-state residents to take the exam and to eliminate the \$5 maximum fee for certification renewal.

Throughout the decades, the Certified Tree Expert credential has been held in high esteem by the industry, the state’s shade tree commissions and the public. The examination covers all aspects of modern tree care, including topics like tree identification, tree physiology, proper tree planting techniques, tree maintenance procedures, insect and disease identification and diagnoses of tree problems. Each individual who passes this examination receives a certificate, becomes a Certified Tree Expert and is duty-bound to follow a code of ethics overseen by the Board of Tree Experts.

As positive and helpful as the Tree Expert Act has been since its 1940 inception, it is a voluntary credential only and many individuals in the tree care industry never obtain it. In the 1980’s and 1990’s, there was an upsurge in the number of injuries and fatalities in the industry, as well as consumer complaints regarding business practices. Many of these accidents were the result of individuals working for companies not directly involved in the tree care business or companies whose employees were doing tree work “on the side”. The majority of complaints appeared to be against these types of companies and individuals. Such accidents were unfortunately directly attributed to the tree care industry as a whole. The industry saw their image tarnished and their workman compensation rates increase as a result.

After several years of industry input and support, January 2010 marked the passage of the Tree Expert and Tree Care Operator Licensing Act. This legislation establishes a licensing program that will ensure tree care personnel are well trained and perform their work in a safe manner. It will also address consumer issues and ensure they are dealt with fairly and quickly. There will be two levels of licensing. Individuals of each level will be tested to ensure they are knowledgeable in the tree care services they offer.

This innovative legislation makes significant changes to the Tree Expert Act. Any business that advertises to the public that they perform tree care services will be required to register with the board and have at least one licensed individual working for them. Companies with multiple locations are required to have one licensed individual at each location. Tree care businesses are required to train their employees in the proper use of equipment and have ongoing safety training sessions throughout the year. Licensed individuals must stay abreast of industry changes by attending required continuing education courses. It is the hope of the industry that this legislation ushers in a new century of quality tree care.

TREE EXPERTS AND TREE CARE OPERATORS LICENSING ACT

1. This act shall be known and may be cited as the "Tree Experts and Tree Care Operators Licensing Act."

L.2009, c.237, s.1.

45:15C-12 Definitions relative to licensing of tree experts, care operators.

2. For the purposes of this act:

"Board" means the New Jersey Board of Tree Experts established pursuant to section 3 of this act.

"Licensed tree care operator" means a person licensed to provide tree care operator services in the State pursuant to subsection b. of section 7 of this act.

"Licensed tree expert" means a person licensed to provide tree expert services in this State pursuant to subsection a. of section 7 of this act.

"Tree care operator services" means and includes tree pruning, repairing, brush cutting or removal, tree removal, and stump grinding or removal.

"Tree care services" means tree care operator services and tree expert services as established by this act.

"Tree expert services" means and includes tree pruning, repairing, brush cutting or removal, tree removal, stump grinding or removal, tree establishment, fertilization, cabling and bracing, lightning protection, consulting, diagnosis, and treatment of tree problems or diseases, tree management during site planning and development, tree assessment and risk management, and application of pesticides or any other form of tree maintenance.

L.2009, c.237, s.2.

45:15C-13 New Jersey Board of Tree Experts.

3. There is established in the Department of Environmental Protection the New Jersey Board of Tree Experts. The board shall consist of nine members, including the Commissioner of the Department of Environmental Protection or the commissioner's designee, who shall serve ex officio, and eight members, appointed by the Governor with the advise and consent of the Senate as follows: five shall be licensed tree experts, two shall be licensed tree care operators, and one shall possess knowledge of arboriculture or forestry, including urban forestry. However, of the public members first appointed, three of the five licensed tree expert memberships shall be appointed from the members of the board of tree experts established by P.L.1940, c.100 (C.45:15-1 et seq.), participating on the board on the date of enactment of this act, and the remaining tree experts first appointed shall be certified, on or before the date of enactment of this act, pursuant to the provisions of P.L.1940, c.100 (C.45:15C-1 et seq.). The initial members of the board, including the tree care operators first appointed, need not be licensed until 180 days following the promulgation of initial regulations by the board to carry out the provisions of this act. Thereafter, the members of the board subsequently appointed shall be licensed before appointment. The three members of the board of tree experts shall be appointed for a term of three years, and one of the initial tree care operators shall be appointed for a term of three years; the remaining two initial tree experts and the remaining initial tree care operator shall be appointed for a term of two years; and the initial member possessing knowledge of arboriculture or forestry shall be appointed for a term of one year. Thereafter, all members appointed shall serve for terms of three years or until their successors are appointed and qualified. Vacancies shall be filled for the unexpired terms only.

L.2009, c.237, s.3.

45:15C-14 Board, officers, meetings, compensation.

4. The board shall annually elect from among its members a chairman and a vice-chairman. The board shall meet at least four times per year and may hold additional meetings as necessary to discharge its duties. A majority of the total authorized membership of the board may exercise any of the powers of the board at any meeting. The members of the board shall serve without compensation, but the board may, within the limits of funds appropriated or otherwise made available to it, reimburse members for actual expenses necessarily incurred in the discharge of their official duties, according to rules and regulations promulgated by the Commissioner of the Department of Environmental Protection.

L.2009, c.237, s.4.

45:15C-15 Duties of board.

5. The board shall:

- a. Review the qualifications of an applicant for licensure under the act;
- b. Establish standards for examinations for licensure;
- c. Issue and renew licenses and assess fees therefore;
- d. Establish standards by regulation, which shall include, but not be limited to, the appropriate standards of the American National Standards Institute (ANSI), and any related standards and best management practices;
- e. Suspend or revoke licenses or registrations for violations of the act;
- f. Maintain a registry of licensees;
- g. Adopt a canon of professional ethics;
- h. Adopt such regulations as may be necessary to effectuate the purposes of the act;
- i. Establish fees by regulation for examinations, applications for licensure, and license renewals. The fees shall be sufficient to defray expenses incurred by the board in the performance of its duties under the act;
- j. Conduct such worksite inspections as may be necessary to enforce the provisions of this act; and
- k. Maintain a registry of businesses engaged in tree care services, and charge a fee therefor.

L.2009, c.237, s.5.

45:15C-16 Development, designation of examinations to determine qualification.

6. The board shall develop an examination or designate examinations to evaluate the knowledge, ability, and fitness of applicants to perform as tree experts or tree care operators, respectively, and shall administer the examinations at least semi-annually at times and places to be determined by the board. The board shall provide for adequate written notice of the time and place of the examinations. An applicant who fails an examination may not retake the examination earlier than three months following the initial examination. There shall be no limitation on the number of times an examination may be taken. All licenses shall be issued on a biennial basis.

A person may seek renewal of a license upon submission of a renewal application and the payment of a renewal fee established by the board. If a license expires without being renewed, the license may be renewed within one year of expiration upon the payment of a prorated fee. The determination of the board as to an applicant's qualifications for any examination shall constitute final agency action.

L.2009, c.237, s.6.

45:15C-17 Licensure required for tree expert, tree care operator.

7 a. No person shall present himself to the public as a licensed tree expert or use the designation "L.T.E.," without licensure by the board. A person shall not be eligible for licensure pursuant to this subsection until the final promulgation of initial regulations by the board to carry out the provisions of this act. A candidate for licensure shall:

(1) be at least 18 years of age;

(2) be of good moral character;

(3) (a) be a graduate from a four year college with a degree in forestry, arboriculture, ornamental horticulture, natural resources, or any other curriculum approved by the board; or

(b) have completed two years of college and passed courses approved by the board, and have been continuously employed in the practice of arboriculture for a period of at least three years preceding the date of his application for licensure; or

(c) be continuously employed in the practice of arboriculture for at least five years immediately preceding the date of application for licensure; and

(4) except as provided in subsection c. of this section, have passed an examination established or designated by the board.

b. No person shall present himself to the public as a licensed tree care operator or use the designation "L.T.C.O.," without licensure by the board. A person shall not be eligible for licensure pursuant to this subsection until the final promulgation of initial regulations by the board to carry out the provisions of this act. A candidate for licensure shall:

(1) be at least 18 years of age;

(2) be of good moral character;

(3) (a) be a graduate from a four year college with a degree in arboriculture or an equivalent major field of study, and have been continuously employed in the practice of arboriculture for a period of at least one year preceding the date of his application for licensure; or

(b) be a graduate from a two year college with a degree in arboriculture or an equivalent major field of study, and have been continuously employed in the practice of arboriculture for a period of at least two years preceding the date of his application for licensure; or

(c) be continuously employed in the practice of arboriculture for at least three years preceding the date of his application for licensure; and

(4) except as provided in subsection c. of this section, have passed an examination established by the board.

c. Notwithstanding the provisions of subsections a. and b., for 360 days after the date regulations are promulgated pursuant to the provisions of this act:

(1) any person of good moral character who has received certification as a tree expert pursuant to P.L.1940, c.100 (C.45:15C-1 et seq.) before the date of its repeal may, if in good standing with the board, acquire a license as a tree expert without sitting for an examination pursuant to subsection a. of this section pursuant to regulations established by the board; and

(2) any person of good moral character who has documented to the satisfaction of the board that he has been engaged in the practice of arboriculture for seven years preceding the effective date of this act may acquire a license as a tree care operator without sitting for an examination pursuant to subsection b. of this section, pursuant to regulations established by the board.

Licenses issued pursuant to this subsection shall be renewed biennially.

d. Persons licensed under this act shall receive a certificate evidencing their licensure.

e. Any person licensed as a tree care operator may subsequently apply for licensure as a tree expert upon meeting the qualifications for licensure.

L.2009, c.237, s.7.

45:15C-18 Form for application; maintenance of records.

8. a. Applications for licenses as a tree expert or a tree care operator shall be on forms prescribed and furnished by the board and shall contain statements under oath showing the applicant's education or other qualification for licensure. The application shall be accompanied by an application fee as established by the board by regulation. No license shall be issued in the name of a corporation, firm, partnership, or other form of business organization.

b. The board shall maintain a record of all individual applicants for licensure and all licensees, including the person's name, age, education, and other qualifications, the person's place of residence, the location in which the person is employed, and a record of the person's fulfillment of any continuing education requirements established by this act.

c. The board may, in its discretion, grant a tree expert license or a tree care operator license to any person who is not a resident of this State and who is the lawful holder of a substantially equivalent license or certification issued by another jurisdiction, as determined by the board.

L.2009, c.237, s.8.

45:15C-19 Continuing education requirement.

9. a. Every licensed tree expert and licensed tree care operator shall complete, as a condition for biennial license renewal, no less than 32 credits of continuing education in courses of study approved by the board. Each hour of instruction shall be equivalent to one credit. The board may waive requirements for continuing education on an individual basis for reasons of hardship such as illness or disability or other good cause. Evidence of the fulfillment of this requirement shall be submitted to the board in a form and manner established by the board.

b. The board shall review the content of courses of study offered by colleges, universities, and other institutions or organizations for the awarding of degrees or credits in subjects related to arboriculture and make

the list available to the public. The board shall establish and maintain minimum requirements for courses to meet continuing education requirements by establishing a list of approved subjects and courses of study.

L.2009, c.237, s.9.

45:15C-20 Compliance with laws and regulations in rendering professional services.

10. In rendering professional services, a licensed tree expert or licensed tree care operator shall comply in all respects with the applicable laws and regulations pertaining to tree expert or tree care operator services and shall have the duty to make every reasonable effort to protect the safety, health, property, and welfare of the public. This shall include ensuring the safe operation of all equipment used in the performance of tree expert or tree care operator services, under guidelines established by the Department of Environmental Protection or by the board.

L.2009, c.237, s.10.

45:15C-21 Refusal to issue, renew, suspension, revocation of license.

11. The board may refuse to issue or renew or may suspend or revoke a license or may refuse to admit a person to an examination for licensure, after notice and hearing, upon a finding that an applicant or licensee:

- a. Has obtained a license or authorization to sit for an examination through fraud, deception, or misrepresentation;
- b. Has conducted work, or allowed work to be conducted under his supervision, in a manner not in compliance with standards approved by the board;
- c. Has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his business;
- d. Has engaged in gross negligence or gross incompetence;
- e. Has engaged in repeated acts of negligence or incompetence;
- f. Has engaged in occupational misconduct, as determined by the board;
- g. Has been convicted of any crime involving moral turpitude, any crime relating adversely to the activities regulated by the board, or any crime of the first, second, third, or fourth degree;
- h. Has had his authority to engage in the activities regulated by the board revoked or suspended by any other state, agency, or authority;
- i. Has failed to comply with the provisions of this act or any regulation promulgated pursuant thereto, including canons of ethics established by the board;
- j. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the health, safety, and welfare of the public;
- k. Has engaged in any form of false or misleading advertising or promotional activities, including, but not limited to, holding himself out to be a licensed tree expert, an arborist, licensed tree care operator, a tree surgeon, a tree care business, or any similar designation, or using the abbreviation "L.T.E." or "L.T.C.O." without being licensed as a tree expert or a tree care operator as provided for in this act; or

1. Has failed to maintain records required by the board.

L.2009, c.237, s.11.

45:15C-22 Biennial registration; required information.

12. Every business engaged in providing tree expert or tree care operator services shall register biennially with the board as a condition of doing business in this State and shall provide the following information:

- a. The name and residence of the owner or owners of the tree care business;
- b. The principal address of the tree care business, and any branch office or subsidiary of the business;
- c. The names and addresses of every licensed tree expert or licensed tree care operator employed by the business and the location of each such licensee, if at a branch office other than the business' main office;
- d. Proof of general liability insurance or a letter of credit of a type and amount required by the board by regulation;
- e. Proof of workers' compensation insurance coverage required pursuant to chapter 15 of Title 34 of the Revised Statutes;
- f. Proof that at least one employee of the tree care business, located at the principal office of the tree care business shall be licensed either as a tree expert or tree care operator, and at least one employee of the tree care business, located at each branch office of the tree care business shall be licensed either as a tree expert or tree care operator; and
- g. Any other information required by the board.

L.2009, c.237, s.12.

45:15C-23 Instruction, training for employees.

13. Every tree care business shall provide instruction and training for its employees in the proper use, inspection and maintenance of tools and equipment and shall require that safe working practices are observed in accordance with the appropriate standards of the American National Standards Institute (ANSI), as well as any additional standards designated by the board by regulation. Every tree care business shall submit documentation of its training program for employees to the board annually, which shall include a model tree safety program checklist, proof of general liability insurance coverage or a letter of credit in an amount established by the board, and proof of workers' compensation insurance.

L.2009, c.237, s.13.

45:15C-24 Revocation, suspension of registration.

14. The board may revoke or suspend a registration of any tree care business, after notice and hearing, that the business:

- a. Has failed to demonstrate that the employer, or at least one employee in each principal office and branch location who is responsible for the supervision of workers in the performance of tree expert or tree care operator services, is in possession of a tree expert license or a tree care operator license;
- b. Has failed to ensure the safe operation of all equipment used in the performance of tree expert or tree

care operator services;

- c. Has allowed work to be conducted in a manner not in compliance with standards approved by the board;
- d. Has failed to provide instruction and training for its employees, as required by this act;
- e. Has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his business;
- f. Has been found guilty of gross negligence or incompetence;
- g. Has had the authority to engage in tree expert or tree care operator services revoked or suspended by any other state, agency, or authority;
- h. Has failed to comply with the provisions of this act or any regulation promulgated pursuant thereto;
- i. Has engaged in any form of false or misleading advertising or promotional activities; or
- j. Has failed to maintain records required by the board.

L.2009, c.237, s.14.

45:15C-25 Cooperation with DEP, board.

15. In the performance of tree expert or tree care operator services, a licensed tree expert or licensed tree care operator and every tree care business shall cooperate fully with the Department of Environmental Protection and the board in an investigation or adjudication of an alleged violation of this law or any regulations promulgated pursuant thereto, and upon request, shall provide copies of any documents that shall be requested in connection therewith.

L.2009, c.237, s.15.

45:15C-26 Investigation of unlawful activity.

16. Whenever it shall appear to the board or the Department of Environmental Protection that a person has engaged in, or is engaging in, any unlawful activity under the provisions of this act, the person may be required to file, on a form prescribed by regulation, a statement in writing under oath as to the facts and circumstances concerning the rendering of any service or other violation of this act. The board or the department may examine any person in connection with any act or practice subject to the act, inspect any premises upon which any violation is alleged to have taken place or premises that constitute the licensee's place of business, and examine any record, book, document, account or paper maintained by or for any licensee in the conduct of his business.

L.2009, c.237, s.16.

45:15C-27 Notice, hearing prior to suspension, revocation of license.

17. Suspension or revocation of a license by the board shall take place only following notice and a hearing, sent to the licensee at least 20 days prior to the hearing. No license shall be revoked or suspended until the conclusion of any hearing. The board shall render its judgment no later than 20 days following the conclusion of the hearing.

L.2009, c.237, s.17.

45:15C-28 Additional fines.

18. In addition to suspension or revocation of a license, the board may levy a fine, not to exceed \$1,000 for a first violation and not to exceed \$2,500 for a second or subsequent violation of this act. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. The civil penalty shall be issued for and recovered by and in the name of the board, and shall be collected by summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), including reimbursement for the cost of investigation.

L.2009, c.237, s.18.

45:15C-29 Injunction prohibiting act, practice.

19. Whenever it shall appear to the board or the Department of Environmental Protection that a violation of this act has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting the act or practice. The court may assess a civil penalty in accordance with the provisions of this act, but the court shall not suspend or revoke any license issued by the board.

L.2009, c.237, s.19.

45:15C-30 Appeal.

20. Any person aggrieved by an order or finding by the board or the commissioner may appeal the order or finding to the Superior Court.

L.2009, c.237, s.20.

45:15C-31 Inapplicability of act.

21. The provisions of this act shall not apply to:

a. Any public utility or any employee of a public utility while engaged in the actual performance of his duties as an employee;

b. Any employer under contract with a public utility who is engaged in tree trimming or any other utility vegetation management practice for purpose of line clearance, or any employee of the employer while engaged in the actual performance of duties in regard to tree trimming or other utility vegetation management practice or for the installation of underground facilities or associated site construction;

c. Any forestry activities that are conducted under the forest management and stewardship programs approved by the State Forester, provided that tree climbing is not performed, nor are aerial lifts, cranes, or rope and rigging operations used;

d. Landscape construction activities, including those performed by, or under the direction of, a landscape architect, or ground based landscape maintenance activities such as pruning, fertilization, insect and disease control, planting, transplanting and all other forms of ground based landscape maintenance, in compliance with the sections of the American National Standards Institute practice standards set forth by the board by regulation, with applicable safety standards and regulations promulgated by the federal Occupational Safety and Health Administration, and with any pesticide regulations promulgated by the Department of Environmental

Protection. For the purposes of this subsection, ground based landscape maintenance means operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over 6 inch D.B.H;

e. Any person or employer that does not offer tree care services for hire;

f. Any trees being removed pursuant to an approved site plan or subdivision approval, provided that the tree removal activities are performed in compliance with the sections of the American National Standards Institute practice standards set forth by the board by regulation, with applicable safety standards and regulations promulgated by the federal Occupational Safety and Health Administration, and with applicable safety standards of the American National Standards Institute as designated by the board by regulation; and

g. Any employee of a municipality or county while engaged in the actual performance of his duties as an employee.

L.2009, c.237, s.21.

45:15C-32 Deposit, use of fees and penalties.

22. All fees and penalties collected pursuant to this act shall be deposited with the board, and their use shall be authorized by the board for the purposes of carrying out the provisions of this act.

L.2009, c.237, s.22.