

BOROUGH OF WOODCLIFF LAKE
Bergen County, New Jersey

ORDINANCE 16-13

**REVISING VARIOUS CODES TO THE CODE OF THE BOROUGH OF WOODCLIFF LAKE RELATING
TO THE SHADE TREE COMMITTEE AND TO SHADE TREES WITHIN THE BOROUGH**

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF WOODCLIFF LAKE, IN THE COUNTY OF BERGEN AND STATE OF NEW JERSEY, AS FOLLOWS:

WHEREAS , the Mayor and Council of the Borough of Woodcliff Lake has recognized a need to update the rules and regulations governing the planting, maintenance, and removal of the trees within the Borough in order to protect and control the tree canopy of the Borough; and

WHEREAS, the Mayor and Council of the Borough of Woodcliff Lake also recognize a need to update the rules and regulation governing the Shade Tree Committee in order to provide for a more efficient governance to protect and control the tree canopy of the Borough.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Woodcliff Lake, County of Bergen, State of New Jersey, as follows:

Section 1: That Chapter § 70-5 entitled “Powers and Duties” subsection (g) is stricken and replaced with the following language and shall read as:

- G. Partner with the appropriate experts and advise the governing body as to the administration of treatment to, or the removal of 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 municipality and enter upon private property for that purpose.

Section 2: That Chapter § 70-10 entitled “Liability” is stricken and replaced with the following language and shall read as:

§ 70-10 Liability.

Nothing contained in this chapter shall be construed to make the Committee or any member thereof responsible for the death or injury of any person or for any injury to any property or highway, tree or shrub.

Section 3: That Chapter § 70-11 entitled “Tree planting in subdivisions, and all new construction” is stricken and replaced with the following language and shall read as:

§ 70-11 Tree planting in subdivisions, and all new construction

All shade trees required of developers as a Condition for final approval of a subdivision shall be planted pursuant to the requirements of the Shade Tree Committee by the Developer, or its agents, during regular spring and fall programs, and the cost of the same shall be charged to said developers in an amount and in the manner determined by the Shade Tree Committee.

The tree planting contractor shall supply and plant the trees in accordance with the specifications provide by the Shade Tree Committee. The developer shall provide a 2 yr guarantee of all trees and workmanship to the borough of Woodcliff Lake. The Shade Tree Committee shall determine the acceptance date for all tree planting to start and final acceptance.

Section 4: That Chapter § 355-1 entitled “Definitions” shall be amended to replace the definition of the term “Shade Tree” and shall now be read as:

SHADE TREE

Shade and ornamental trees and shrubbery now located or which may hereafter be planted in any public highway, park or parkway in the Borough

Section 5: That Chapter § 355-2 entitled “Prohibited acts; exception” is stricken and replaced with the following language and shall read as:

§ 355-2. Prohibited acts; exception.

- A. No person, firm, corporation or individual connected with such firm or corporation shall do or cause to be done by others to any tree, shrub or plant on a public highway or place, either purposely, carelessly or negligently, without the permission of the Shade Tree Committee, any of the following acts:
 - i. Cut, prune, climb with spikes, break, damage or remove.
 - ii. Cut, disturb or interfere in any way with any root.
 - iii. Spray with any chemical, including pesticides.
 - iv. Fasten any rope, wire, sign or other device.
 - v. Remove or damage any guard or device placed to protect any tree or shrub.
 - vi. Plant any tree contrary to the requirements of the Shade Tree Committee and approval of the governing body.
 - vii. Remove any living woody perennial plant having a diameter at breast height (DBH) greater than six inches without first receiving a permit in accordance with the provisions of this article.
- B. Nothing herein shall prevent any governmental agency from tying a public notice upon a tree in connection with administering governmental affairs.

Section 6: That Chapter § 355-5 entitled “Excavations” is stricken and replaced with the following language and shall read as:

§ 355-6. Excavations.

- A. In the erection, altering or repairing of any building or structure, the owner or contractor thereof shall place such guards around all nearby trees in public highways or places as will effectually prevent injury to such trees.
- B. No person, firm or corporation shall do any excavating within the drip-line of any tree or shrub without the permission of the Shade Tree Committee.
- C. Shovels and all other implements, machines and tools shall be used or operated in such a manner as not to damage or destroy any tree, shrub or plant in any public highway place.
- D. Where in authorized excavations it becomes necessary to expose or cut roots more than one inch in diameter, it shall be the duty of the contractor to protect such roots (i.e. air spade tool) under advice from the Shade Tree Committee.

Section 7: That Chapter § 355-9 entitled “Enforcement” is stricken and replaced with the following language and shall read as:

§ 355-9. Enforcement.

The Construction Code Official or duly appointed designee, are the enforcing agents for this article and shall seek inspectors as deemed necessary in connection with said enforcement. Any reference to the term “Code Official” in this or any other section of the Borough Code shall also mean the duly appointed designee where so designated

Section 8: That Chapter § 355-10 entitled “Violations and penalties” is stricken and replaced with the following language and shall read as:

§ 355-10 Violations and penalties.

- A. Any person, firm, or corporation retained or otherwise engaged to undertake any acts that are regulated by the provisions of this article shall assure that the proper permits have been secured before commencing any work. Any person, firm, or corporation that fails to do so shall be jointly and severally liable for violating the provision of this article.
- B. Any person found guilty of violating any of the provisions of this article shall, upon conviction by the Municipal Judge of the Borough of Woodcliff Lake, be subject to a fine of not more than \$1,000 or imprisonment for up to 90 days, or both, in the discretion of the court. In the event of violations involving more than one lot or more than one tree, a violation as to each such lot or tree shall be considered as a separate offense.

Section 9: That Chapter § 355-12 entitled “Definitions” shall be amended to strike the term “Heritage Tree” and its corresponding definition in its entirety.

Section 10: That Chapter § 355-12 entitled “Definitions” shall be amended to add the following terms and definitions:

TREE REMOVAL COMPANY

Every person, firm, association, partnership, corporation and individual that is engaged in the practice of removing any “tree” as defined by this article is deemed a tree removal company and must register as same with the Borough in compliance with the provisions of this article

DIAMETER AT BREAST HEIGHT (DBH)

The tree diameter measured at 4.5 feet above the ground.

DISEASED TREE

A tree with sustained and progressive impairment of the structure or function, caused by any variety of factors or agents related to non-living (abiotic) and living (biotic) sources.

HAZARDOUS TREE

Dead or dying trees, dead parts of live trees, or unstable live trees, due to structural defects or other factors, that are located within striking distance of people or property.

PROTECTED SPECIES

Any tree designated by the Shade Tree Committee due to its unique quality, including but not limited to, species, size, location, age, etc.

UNDESIRABLE SPECIES

Any tree that is not native to the area and can cause harm to the environment, can damage public and private lands, may grow quickly or reproduce abundantly, are difficult to eradicate or can negatively impact our native species.

CLEAR CUTTING

Any tree removal activity that will reduce the tree canopy to 20% or less is deemed to be clear cutting.

Section 11: That Chapter § 355-14 entitled “Restriction on Cutting Trees” is stricken and replaced with the following language and shall read as:

§ 355-14 Restriction on cutting trees.

Except as provided for herein, no person, firm, or corporation shall cut or remove trees without a first obtaining a permit. Excepted from this shall be:

- A. All land-clearing operations as authorized in accordance with a site plan approval or subdivision approval and conditions imposed with respect to tree removal and

planting, granted by the Planning Board, the Shade Tree Committee or Board of Adjustments of the Borough of Woodcliff Lake in accordance with the provisions of N.J.S.A. 40:55D-20 (exclusive authority of Planning Board and Board of Adjustment); provided, however, that all applications to the Planning Board or Board of Adjustment shall identify all heritage trees and shall specifically designate all trees to be removed on submitted plans and in the field. Under no circumstances shall clear-cutting be permitted on any property.

- B. Trees located on a commercial nursery or orchard.
- C. The cutting, pruning or trimming of trees in a manner which is not harmful to the health of the tree.
- D. Trees that represent an immediate danger to property or public safety.
- E. The cutting, removal or destruction of any tree pursuant to an order or directive of any municipal, county or state agency or court.
- F. Activities involving trees within the public highways, public rights-of-way or publicly owned properties.
- G. Cutting, pruning or trimming of trees by utility agency to keep high tension power lines clear.
- H. Protected species cannot be removed

Section 12: That Chapter § 355-15 entitled “Application for permit” is stricken and replaced with the following language and shall read as:

§ 355-15. Application for permit.

- A. Any person, firm or corporation desiring to cut or remove tree(s) shall apply to the Borough of Woodcliff Lake Shade Tree Committee for a permit to remove such tree(s). The applicant shall, on the application:
 - i. Description
 - a. Identify, by street, block and lot number, the land upon which the tree(s) is located.
 - b. Provide the name, address and telephone number of the owner or duly authorized agent of said owner, where applicable.
 - c. Identify and place on the site plan application the location of said tree(s) sought to be cut, removed or destroyed.
 - d. Mark said tree(s) on site by visible, weatherproof and reasonably tamperproof means; said tree(s) not to be sprayed with paint or chemicals or otherwise permanently marked, damaged or defaced.
- B. Permits shall be duly signed by the person or firm undertaking the tree removal work.
 - i. Contractor License, Crane Operator License
- C. In the event a tree is deemed hazardous, by a duly authorized agent of the borough, no permit is required

Section 13: That Chapter § 355-15.1 entitled “Fees” is added and shall read as:

§ 355-15.1. Fees

The permit fees established by this article are contained within the Borough Fee Ordinance.

A. Permit Fees.

- i. Applicants will submit the appropriate permit fee for a tree removal permit
- ii. No permit fees will be required for trees deemed by the Shade Tree Committee as an Undesirable, Unhealthy, Dead, Diseased, Dying, or Pest Infested.

B. Replacement trees and Replacement fees

- i. Trees removed should be replaced on the ground of the subject property with a species and type approved by the Shade Tree Committee.
- ii. The borough reserves the right to collect replacement fees when the requested tree removal is deemed by the Shade Tree Committee to create a deleterious impact to the tree canopy.
- iii. Replacement fees may be refunded to the applicant when evidence is presented that replacement trees were planted on the ground of the subject property with a species and type pre-approved by the Shade Tree Committee.
- iv. Replacement fees are forfeited after 6 months, and deposited into the borough treasury and shall thereafter be appropriated to the Shade Tree Trust Fund.
- v. Replacement fees shall be in addition to the permit fees

Section 14: That Chapter § 355-16 entitled “Permit required” is stricken and replaced with the following language and shall read as:

§ 355-16 Permit Required.

Any person firm, or corporation shall apply for and receive a permit before removing any tree, as defined as in this article. The Construction Code Official, except in accordance with the provisions of N.J.S.A. 40:55D-20 (exclusive authority of Planning Board and Board of Adjustments), shall not issue a certificate of occupancy until a tree removal permit has been issued and approved in accordance with the provisions of this article.

Section 15: That Chapter § 355-17 entitled “Protection of existing trees during construction” is stricken and replaced with the following language and shall read as:

§ 355-17. Protection of existing trees during construction

All persons subject to the provisions of this article shall comply with the following precautions.

- A. Prior to the commencement of construction, install protection at the dripline of any tree which is designated to be saved and prohibit any construction materials or other materials inside the barrier. The dripline shall not be altered in any way so as to increase the encroachment or the constructions.
- B. Prohibit excavation, grading, drainage and leveling within the driplines of the tree unless approved by the Construction Code Official, with the advice of the Shade Tree Committee.
- C. Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the dripline or in drainage channels, swales or areas that may lead to the dripline.
- D. Prohibit the nailing, screwing or other permanent attachment of wires, signs and ropes to any heritage tree or any tree in the municipal right-of-way.
- E. Design utility services (underground utilities) to be located outside of the dripline or tunnel under root line when possible to avoid trenching within driplines wherever possible.
- F. The Construction Code Official shall be notified of any damage that occurs to a tree during construction so that proper treatment may be administered by a certified Tree Expert, retained by the contractor.

Section 16: That Chapter § 355-18 entitled “Application review by Shade Tree Committee.” is stricken and replaced with the following language and shall read as:

§ 355-18. Application review by Shade Tree Committee.

Upon the Shade Tree Committee receiving the application for the cutting or removal, it shall review the site to determine whether the removal or destruction of said tree(s) shall change the drainage conditions, cause soil erosion, increase the dust, decrease the fertility of the soil or deteriorate the property value and shall further determine the overall physical conditions of the land and the deleterious effect thereon. In reviewing the aforesaid items, the Shade Tree Committee may utilize the services of the Borough Engineer, or industry expert, and request and consider a report and recommendation from him with regard to same. In addition to the aforesaid items, the Shade Tree Committee shall also consider the following in making its determination to issue or deny the permit:

- A. Whether the area where the tree is located shall be used for a building or other structure or a sewerage line, said tree located within 12 feet of any of the foregoing; whether the area where the tree is located shall be used for a patio, a driveway, a recreation area, a roadway or a drainage right-of-way, said tree located within four feet of any of the foregoing.
- B. Whether the tree or trees are likely to cause a hardship upon the applicant or place the community in danger or affect deleteriously an adjacent property owner.
- C. Whether the cutting, removal and destruction of trees shall affect the drainage conditions, cause or contribute to soil erosion, increase the dust and decrease the fertility of the soil on the land under consideration.

D. Whether the application abides by the borough ordinances as defined herein.

Section 17: That Chapters § 355-22 entitled “Enforcement” is stricken in its entirety and replaced by a new chapter entitled “Replacement and treatment of trees.” with the following language and shall read as:

§ 355-22. Replacement and treatment of trees.

- A. Any tree destroyed or removed in violation of this article shall be replaced by the owner with another four trees of the same species at least three inches in diameter measured at a point one foot above the ground. In the event that a tree which is not permitted to be removed is injured during building or other construction work, such tree(s) shall be promptly treated in an approved manner.
- B. The Construction Code Official of the Borough may order any tree work or other activity which is carried on in violation of any tree removal permit or any provision of this article to be stopped forthwith. The order shall be issued in writing and a copy served upon any person engaged in tree work upon the subject lot. If no such person is present upon the lot, then the order shall be served upon the applicant; but if no permit has been issued as to such lot, then the order shall be served upon the owner of the lot. Thereafter, except for such work as is necessary to remedy the violation, any further work shall comply with the terms and conditions of any permit and the provisions of this article.
- C. Any imposition of duties under this chapter shall be in addition to the penalties contained in § 355-23.

Section 17: That Chapters § 355-23 entitled “Replacement and treatment of trees” is stricken in its entirety and replaced by a new chapter entitled “Violations and penalties” with the following language and shall read as:

§ 355-23. Violations and penalties.

- A. Any person violating the provisions of this article shall be subject to a fine not exceeding \$1,000 or imprisonment for up to 90 days, or both, for each and every offense. In the event of violations involving more than one lot or more than one tree, a violation as to each such lot or tree shall be considered as a separate offense. The penalties herein may be levied against the property owner or any person, firm, or corporation retained or otherwise engaged to undertake any acts that are regulated by the provisions of this article. Any person, firm, or corporation that fails assure that the proper permits have been secured before commencing any work shall be jointly and severally liable from the property owner for violating the provisions of this article.
- B. If required replacement work is not completed within 30 days of written notification to do so, a municipal lien shall be placed upon all affected lots, and such lien shall not be discharged from such lots until such replacement work is completed.
- C. In addition to all other remedies set forth in this article or otherwise provided by law, the following remedies shall be available to the Borough for violation of this article:

stop work - temporary moratorium. If a violation occurs during development, the Borough in the discretion of the Construction Code Official, may issue a stop-work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection and issuance of certificated of occupancy) until a mitigation plan has been filed with, and approved by, the Construction Code Official, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security. The mitigation plan shall include measures for protection of any remaining trees on the property, and shall provide for replacement of each tree removed on the property or at locations approved by the Shade Tree Committee and Construction Code Official. The replacement shall be in accordance with the standards set forth in this article, and shall be greater than that required where tree removal is permitted pursuant to the provisions of this article.

Section 18: That Chapters § 355-24 entitled “Obligation for New and added construction” is added with the following language and shall read as:

§ 355-24 Obligation for New and added construction

All new or added construction shall be subject to the above regulations. Upon receiving a building permit, it is understood that the builder or property owners will cooperate with the Shade Tree Committee of the Borough of Woodcliff Lake. Any new structure, home, business, industry or improvement to existing structures is not complete until properly planted, that is:

- A. Where advisable, shade trees are to be planted, but not closer than 40 feet, on center, with a minimum of two per lot, within property designated as reserved to the Borough of Woodcliff Lake by easement or other reservation.
- B. With a minimum of two per lot, shade trees shall be planted within 10 feet from the edge of the street curb as permitted and approved by the Shade Tree Committee.
- C. Parking lots must have areas set aside for shade trees and/or evergreens and shrubs, or both, and planting for screening where advisable.
- D. Trees shall be two inches or more in diameter and of the species designated by the Committee.
- E. Failure to comply with the provisions of this article shall be deemed a violation as defined in 355-10 and/or 355-24 of this chapter. No certificate of Occupancy will be issued until such provisions are met.
- F. Provide Tree Coverage to specifications dictated by the Shade Tree Committee
- G. Submit a landscaping plan identifying the trees to be removed from the property, and the proposed trees to be replanted, and expected canopy coverage after 10 years.

Section 19: That Chapters § 355-25 entitled “Obligations for Major Site Renovations” is added with the following language and shall read as:

§ 355-25 Obligations for Major Site Renovations

Any property renovations impacting trees to a degree deemed significant by the Shade Tree Committee will be considered a major site renovation, and subject to the provisions outlined in 355-24.

Section 20: That Chapters § 355-26 entitled “Tree Removal Company; registration.” is added with the following language and shall read as:

§ 355-26 Tree Removal Company; registration.

Every person, firm, association, partnership, corporation and individual that is engaged in the practice of removing any “tree” as defined by this article must register annually with the Borough. Said annual registration fees re contained within the Borough Fee Ordinance.

Section 21: The terms of this ordinance shall not be deemed and are not intended to impair the provisions and enforcement of any other chapter of this Code, which shall remain in full force and effect.

Section 22: The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 23. All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

Section 24: This ordinance shall take effect upon passage and publication according to law.

Date: _____

Attest: _____

**DEBORAH DAKIN
BOROUGH CLERK**