

**Ordinance #2020-26**

**AN ORDINANCE BY THE MUNICIPALITY OF PRINCETON CONCERNING TREE PROTECTION ZONES, TREE REPLACEMENT FEES AND CONTRACTOR REGISTRATION, AND AMENDING THE “CODE OF THE BOROUGH OF PRINCETON, NEW JERSEY, 1974” AND “CODE OF THE TOWNSHIP OF PRINCETON, NEW JERSEY, 1968.”**

BE IT ORDAINED by the Princeton Council as follows:

Section 1. Section 22-2, “Definitions,” of Chapter 22 of the “Code of the Township of Princeton, New Jersey, 1968” (“Township Code”), entitled “Trees and Shrubs,” is hereby amended as follows (additions are underlined and deletions are [bracketed]):

**Sec. 22-2. Definitions.**

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

- (a) *Caliper* shall mean the diameter of the trunk of a tree measured at a point six inches above ground level.
- (b) *Canopy* shall mean the upper and outermost part of a tree created by the tree’s crown and shall mean, in the case of contiguous trees, the upper and outermost parts of the trees’ crowns.
- (c) *Critical root zone* shall mean the area of ground and subsurface surrounding and beneath a tree that contains the minimum volume of roots necessary for the tree’s survival, health and stability.
- ~~(d)~~~~(c)~~ *Crown* shall mean the upper mass or head of a tree created by its branches and leaves.
- ~~(e)~~~~(d)~~ *Deciduous tree* shall mean any woody plant with a main stem or multiple stems with branches protruding above the root flare and that seasonally loses its leaves.
- ~~(f)~~~~(e)~~ *Destroy* shall mean to kill or damage irreparably, which shall be deemed to include, but not be limited to: damage inflicted to the root system by

machinery, storage of materials, soil compaction or change of natural grade above or below the root system or around the trunk; damage inflicted on the tree permitting fungus, pests or other infestation; excessive pruning or thinning not in conformance with American National Standards Institute (ANSI) standards, leading to a failure to thrive; paving over the root system with any impervious materials within such proximity as to be fatally harmful to the tree; or application of any substance toxic to the tree or causing the tree to be exposed to any such substance.

(g)[(f)] *Diameter Breast Height* or *DBH* shall mean the diameter of the trunk of a tree measured at a point four and one-half feet [about]above ground level on the downhill side of the tree.

(h)[(g)] *Drip line* shall mean an imaginary line on the surface [and subsurface] of the ground delineated by the outermost tips [limits] of the branches of a tree and measured plumb from the branches to the ground. [When the outer limits of the branches are indistinct or otherwise unclear, the drip line shall be presumed to be located one and one-half feet from the center of the trunk of a tree for each inch of the trunk DBH.] In the case of trees with multiple trunks, the drip line of each trunk shall be measured separately.

(i)[(h)] *Enforcement officer* shall mean a certified arborist appointed by the administrator upon consultation with the shade tree commission for the purpose of enforcing the terms of this chapter.

(j)[(i)] *Evergreen tree* shall mean a tree with foliage that remains green and functional throughout the year.

(k)[(j)] *Ornamental tree* shall mean a tree that can be single or multiple stemmed and that grows to a maximum height of twenty-five feet.

(l)[(k)] *Princeton Shade Tree Trust Reserve* shall mean a fund established and maintained by Princeton for purposes of planting and maintaining trees and shrubs on public property.

(m)[(l)] *Replacement tree* shall mean, in the case of a deciduous tree, a tree which measures at least two and one-half inches in caliper, and in the case of an evergreen tree, a tree which measures at least six feet in height measured from grade. In all cases, the replacement tree shall be of a species and size appropriate for the premises on which it will be planted. Replacement nursery stock shall adhere to the American National Standards Institute [for Nursery Stock] (ANSI Z60.1).

(n) *Root zone shall mean the volume of soil containing the roots of a tree.*

(o) Shrub shall mean any woody plant with persistent stems protruding from grade level.

(p)[(m)] Significant tree shall mean a tree or grove of trees recognized as significant by the shade tree commission or enforcement officer on the basis of specimen, quality, historical significance, location, size or other unique characteristics.

(q)[(n)] Specimen tree shall mean any tree equal to at least eighty percent of the size of those listed on the “Champion Big Tree Register” of the New Jersey Community Forestry Program in the Department of Environmental Protection’s Division of Parks and Forestry, or any tree actually listed on the “Champion Big Tree Register.”

[(o) Shrub shall mean any woody plant with persistent stems protruding from grade level.]

(r)[(p)] Tree shall mean any woody plant with a main stem or multiple stems with branches protruding above the root flare, which includes all deciduous, ornamental and evergreen trees.

(s)[(q)] Tree protection zone or TPZ shall mean a space surrounding a tree, including its root zone and crown, established as a zone of protection for a tree. Except as provided immediately below in subsections (s)(1), (2) and/or (3), the TPZ shall be the area within the “drip line” of the tree, as that term is defined in section 22-2[(g)](h) above. Note that the enforcement officer’s consideration of factors under the exceptions below in subsections (s)(1), (2) and/or (3) shall be in accordance with the applicable provisions of the American National Standards Institute (ANSI 52.15).

(1) If the enforcement officer determines that the tree has a small, suppressed or asymmetric crown; branches whose outer limits are indistinct or otherwise unclear; or an irregular rooting area sufficient to render the drip line an inadequate basis for determining a TPZ, the TPZ shall be within the area that is one and one-half feet from the center of the trunk of the tree for each inch of the trunk DBH.

(2) Taking into consideration the significance, species, age, structure, stability, health and root zone of the tree, as well as soil conditions and proposed or ongoing construction activities, the enforcement officer, on inspection, may increase the extent of any TPZ to provide the protection reasonably necessary to ensure the tree’s survival, health and stability.

(3) If a TPZ interferes with any existing structure or improvement, or any portion of a proposed construction site that is determined to be

essential and cannot reasonably be relocated, the enforcement officer shall modify the TPZ to reconcile the conflict, provided that the modified TPZ continues to protect the “critical root zone” as defined in section 22-2(c) above.

Section 2. Section 22-13, “Application for tree removal permit, of Chapter 22 of the Township Code is hereby amended as follows (additions are underlined and deletions are [bracketed]):

**Sec. 22-13. Application for tree removal permit.**

- (a) General Application Requirements. A person desiring to remove or otherwise destroy a tree or trees as provided for in section 22-11 above shall first apply to the enforcement officer for a permit, on forms provided by the municipality and containing the information required in subsections (b), (c) and (d) of this section.
- (b) Narrative. The application required by subsection (a) above shall include a narrative specifying:
  - (1) The location of the premises where the tree removal or destruction is to take place, by both street address and lot and block number;
  - (2) The name and address of the owner of the premises;
  - (3) The name and address of the applicant for the permit, if other than the owner, accompanied by the owner's consent to said application;
  - (4) A list providing the species, DBH and number of trees to be destroyed or removed;
  - (5) The reason or purpose for the destruction or removal of trees; and
  - (6) A description of the applicant’s tree replacement plan, in accordance with subsection (d) below.
- (c) Sketch/Printed Plan. The application required by subsection (a) above shall be accompanied by a sketch and/or printed plan showing the following:
  - (1) The size of the lot;
  - (2) All structures and their appurtenances, including but not limited to any building, garage, shed, deck, pool, driveway, walkway, patio or other impervious surface;
  - (3) The location upon the lot where the destruction or removal of the tree or trees is proposed to take place;
  - (4) The identity and location of trees to be destroyed or removed;
  - (5) The location of all streams and wetlands on the lot; and
  - (6) The proposed location(s) for planting of replacement tree(s), as well as their species and DBH.

(d) Tree Replacement Plan. The application required by subsection (a) above shall be accompanied by a narrative and/or sketch or printed plan showing a tree replacement plan, to include and comply with the following:

(1) The tree replacement plan shall provide for replacing the removed or destroyed tree(s) in the same or contiguous location(s) on the premises, and in accordance with the following specific requirements. The tree replacement plan shall require that the applicant replace each removed or destroyed tree with one or more trees depending upon the DBH of the removed or destroyed tree, and in accordance with Schedule A immediately below, the “Tree Replacement Schedule.”

**SCHEDULE A – TREE REPLACEMENT SCHEDULE**

<b>Tree Removed/Destroyed</b>	<b>Required Replacement Tree</b>	<b>Tree Replacement Fee</b>
Tree with DBH of 8” to 16.99”	One (1) Replacement Tree	\$ <del>[400.00]</del> <u>550.00</u>
Tree with DBH of 17” to 30.99”	Two (2) Replacement Trees	\$ <del>[800.00]</del> <u>1,100.00</u>
Tree with DBH 31” to 38.99”	Three (3) Replacement Trees	\$ <del>[1,200.00]</del> <u>1,650.00</u>
Tree with DBH of 39” or greater	Four (4) Replacement Trees	\$ <del>[1,600.00]</del> <u>2,200.00</u>

(2) Based on industry standards and site conditions on the premises, and in consultation with the enforcement officer, the applicant may, in lieu of on-premises planting of the required replacement tree(s), be permitted to plant the replacement tree(s) on one or more appropriate off-premises locations, or pay a tree replacement fee into the Princeton Shade Tree Trust Reserve for each tree removed based on the foregoing Tree Replacement Schedule. The tree replacement fee shall represent the cost to replace the removed or destroyed tree(s), including administration and labor costs, and shall be maintained and utilized by Princeton for purposes of planting and maintaining trees and shrubs on public property. At least fifty percent of the required replacement trees shall be planted either on the premises or in an appropriate off-premises location(s). As used hereafter, the phrase “tree replacement plan” shall be deemed to include reference to the payment of a tree replacement fee.

(3) The tree replacement plan shall identify the applicant’s proposal for compliance with this subsection (d), including specifying the species, size and quantity of replacement trees, the proposed location(s) for planting of replacement trees on and off the premises

and the applicant's acknowledgment of the required tree replacement fees. In order to maintain the existing canopy, preference shall be for the replacement of deciduous trees with deciduous trees and evergreen trees with evergreen trees.

- (e) Marking. The applicant shall conspicuously mark each tree to be removed or destroyed with a material which can be wrapped around the trunk of each tree, such as ribbon or string.
- (f) Notice. Prior to filing the application, the applicant shall mail or hand deliver a copy of the application to the owners of the properties contiguous to the premises where the proposed tree destruction or removal is to take place. The applicant shall confirm compliance with this requirement on the application.
- (g) The fee for each application shall be forty dollars.

Section 3. Section 22-19, "Registration Requirements," of Chapter 22 of the Township

Code is hereby amended as follows (additions are underlined and deletions are [bracketed]):

**Sec. 22-19. Registration requirements.**

Any person engaging in tree pruning, removal and/or repair in the municipality shall be registered with the New Jersey State Board of Tree Experts to provide "Tree Care Services" in New Jersey and under the applicable regulations, N.J.A.C. 7:3A et seq.

- [(a) No person shall engage in tree pruning, removal and/or repair in the municipality for hire without first registering with the enforcement officer, on forms to be supplied by said enforcement officer. Completed registration forms shall become public records.
- (b) The purpose of this registration requirement is to ensure that persons engaged in tree pruning, removal and/or repair in the municipality for hire are cognizant of the municipality's tree ordinances and other applicable ordinances, laws and regulations.
- (c) At the time of registration, applicants shall certify that they have received a copy of and will comply with the municipality's tree ordinances.
- (d) The municipality makes no guarantee or representation regarding the fitness, knowledge or qualification of any person that is registered by the municipality to engage in tree pruning, removal and/or repair for hire.

- (e) Every registration shall be issued and renewed on an annual basis, effective January 1 of each year, upon payment of an annual fee to the enforcement officer in the amount of fifty dollars.
- (f) No registration shall be required of any owner of real property in the municipality who shall personally perform activities otherwise requiring a registration; except that all such work must otherwise comply with the municipality's tree ordinances.
- (g) The mayor and council may, upon recommendation of the director of infrastructure and operations, or his or her designee, after notice and an opportunity for a hearing, suspend or revoke any registration for violation of law (including but not limited to wage theft laws) or related municipal ordinances, or for good cause, which is shown to be prejudicial to the public health, safety or welfare. When the director of infrastructure and operations, or his or her designee, has reasonable cause or belief that an emergency affecting the public health, safety or welfare so requires, said director (or designee) may temporarily suspend any registration for a period not to exceed one week, until the mayor and council can be convened to consider said suspension.
- (h) Applicants shall be advised at the time of registration that they are required to dispose of all trees for which a permit of removal is granted pursuant to section 22-14 in accordance with then current industry standards of proper disposal for said trees.
- (i) Any person who violates this section shall be subject to the penalties set forth in section 22-16 above.
- (j) As used in this article, "wage theft" shall mean having been found guilty, liable or responsible in any judicial or administrative proceeding of committing a violation of the Federal Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201 *et seq.*, the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a. *et seq.*, the New Jersey State Wage Payment Law, N.J.S.A. 34:11-4.1 *et seq.* or N.J.S.A. 2C:40A-2 (violation of contract to pay employees).]

Section 4. Section 22-20, "Tree Protection and tree protection zones on construction sites," of Chapter 22 of the Township Code, is hereby amended as follows (additions are underlined and deletions are [bracketed]):

**Sec. 22-20. Tree protection and tree protection zones on construction sites.**

- (a) As used in this article, reference to “construction site” or “site” shall refer to any real property upon which any person (referred to herein as a “contractor”) proposes to or does engage in the construction, reconstruction, renovation, expansion, repair, maintenance or demolition of any building, structure, infrastructure or other improvement including landscaping located upon said real property.
- (b) Contractors shall comply with the provisions of this chapter on site during construction.
- (c) Contractors shall safeguard areas referred to herein as TPZs [“tree protection zones”] for each of the trees on the site, the removal or destruction of which is regulated under section 22-11 of this chapter, and for which the contractor has not received a permit allowing its removal or destruction [during construction]. [The phrase “tree protection zone” is defined in section 22-2 above.] In addition, contractors shall safeguard the TPZ of any tree on contiguous property or in the municipal right-of-way, the removal or destruction of which is regulated under section 22-11. However, the authority and requirement under this chapter to safeguard trees on contiguous properties or in the municipal right-of-way shall be limited to that portion of the TPZ that is on the site. Contractors shall not be permitted to safeguard a TPZ on contiguous property or in the municipal right-of-way without the express written consent of the owner(s) of such adjacent property.
  - (1) No contractor shall be permitted, for any length of time, to place or maintain, or cause to be placed or maintained, in or upon a TPZ[tree protection zone], any stone, cement, [sidewalk,] mortar, building material, impervious material, dumpster or roll-off container, construction or storage trailer, portable toilet or other material, item or substance that shall impede or prevent the free access of water, air or fertilizer to the roots of any tree. No contractor shall disturb the soil within a tree protection zone. No contractor shall be permitted to conduct any excavation or other construction-related activities within a TPZ.
  - (2) A contractor shall be required to use fencing to protect areas identified as TPZs[tree protection zones] for every tree on site, the removal or destruction of which is regulated under this chapter and for which the contractor has not received a permit allowing its removal or destruction. Fencing shall also be required to protect areas on site identified as TPZs for trees on contiguous properties or in the municipal right-of-way, in accordance with the first paragraph of section 22-20(c).

- (3) The fence required by this section shall be a four-foot tall wooden-slat snow fence with five-strand metal wire installed with metal posts at intervals of six feet.
- (4) Notwithstanding the above, a contractor may request permission to carry out work within a TPZ by submitting a written plan that demonstrates (a) the need for such work within the TPZ and (b) the manner in which the contractor will protect the critical root zone of the tree(s) in the TPZ. The enforcement officer shall review and approve or disapprove such request. No work may take place within a TPZ without the written approval of the enforcement officer. The enforcement officer will have the authority to monitor and inspect all work authorized under this subsection.
- (5) In the event a contractor seeks to carry out work within a TPZ and is unable to protect the critical root zone of the tree(s) in the TPZ, the contractor shall make application pursuant to section 22-11 for a tree removal permit.

Section 5. Section 10A-3(a), “General Site Standards,” of Chapter 10A of the “Code of the Borough of Princeton, New Jersey, 1974” (“Borough Code”), entitled “Construction Site Maintenance,” is hereby amended as follows (additions are underlined and deletions are [bracketed]):

**Sec. 10A-3. General Site Standards.**

- (a) As used in this chapter, “construction site” and “site” shall refer to any real property upon which any person proposes to or does engage in the construction, reconstruction, renovation, expansion, repair, maintenance or demolition of any building, structure, infrastructure or other improvement including landscaping located upon said real property. A construction permit may or may not be required for such work upon said property.

Section 6. Section 10A-7A, “Tree protection and tree protection zones,” of Chapter 10A of the Borough Code is hereby amended as follows (additions are underlined and deletions are [bracketed]):

**Sec. 10A-7A. Tree protection and tree protection zones.**

- (a) The contractor shall ensure compliance with Chapter 22 of the Princeton Township Code, entitled “Trees and Shrubs,” on the site during construction.
- (b) In addition, the contractor shall be responsible for safeguarding areas referred to in this section as “tree protection zones” for each of the trees on the site, the removal or destruction of which is regulated under section 22-11 of Chapter 22 of the Princeton Township Code, entitled “Trees and Shrubs,” and for which the contractor has not received a permit allowing its removal or destruction. [during construction.] The phrase “tree protection zone” is defined in section 22-2 of Chapter 22 of the Princeton Township Code[, entitled “Trees and Shrubs”]. In addition, contractors shall safeguard the tree protection zone of any tree on contiguous property or in the municipal right-of-way, the removal or destruction of which is regulated under section 22-11. However, the authority and requirement under this section to safeguard trees on contiguous properties or in the municipal right-of-way shall be limited to that portion of the tree protection zone that is on the site. Contractors shall not be permitted to safeguard a tree protection zone on contiguous property or in the municipal right-of-way without the express written consent of the owner(s) of such adjacent property.
- (1)[(c)]No contractor shall be permitted, for any length of time, to place or maintain, or cause to be placed or maintained, in or upon a tree protection zone, any stone, cement, [sidewalk,] mortar, building material, impervious material, dumpster or roll-off container, construction or storage trailer, portable toilet or other material, item or substance that shall impede or prevent the free access of water, air or fertilizer to the roots of any tree. No contractor shall disturb the soil within a tree protection zone. No contractor shall be permitted to conduct any excavation or other construction-related activities within a tree protection zone.
- (2)[(d)]A contractor shall be required to use fencing to protect areas identified as tree protection zones for every tree on site, the removal or destruction of which is regulated under Chapter 22 of the Princeton Township Code and for which the contractor has not received a permit allowing its removal or destruction. Fencing shall also be required to protect areas on site identified as tree protection zones for trees on contiguous properties or in the municipal right-of-way, in accordance with the first paragraph of section 10A-7A(b).
- (3)[(e)]The fence required by this section shall be a four-foot tall wooden-slat snow fence with five-strand metal wire installed with metal posts at intervals of six feet.

- (4) Notwithstanding the above, a contractor may request permission to carry out work within a tree protection zone by submitting a written plan that demonstrates (a) the need for such work within the tree protection zone and (b) the manner in which the contractor will protect the critical root zone of the tree(s) in the tree protection zone. The enforcement officer shall review and approve or disapprove such request. No work may take place within a tree protection zone without the written approval of the enforcement officer. The enforcement officer will have the authority to monitor and inspect all work authorized under this subsection.
- (5) In the event a contractor seeks to carry out work within a tree protection zone and is unable to protect the critical root zone of the tree(s) in the tree protection zone, the contractor shall make application pursuant to section 22-11 for a tree removal permit.

Section 7. All ordinances and resolutions or parts thereof inconsistent with this ordinance are repealed.

Section 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any 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 portion thereof.

Section 9. This ordinance shall take effect upon its final adoption and publication as provided for by law. The provisions of this ordinance shall be applicable within Princeton upon taking effect and shall become a part of the new Princeton Code once completed and adopted.

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Delores Williams, Clerk

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Liz Lempert, Mayor

Ordinance Introduced:

Ordinance Adopted:

The purpose of this ordinance is to update and strengthen the existing standards and regulations affecting trees and shrubs on public and private property in Princeton, with particular attention to “tree protection zones.”