

ORDINANCE

O-19-2023

BOROUGH OF NORTH CALDWELL, ESSEX COUNTY, NEW JERSEY

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF NORTH CALDWELL, COUNTY OF ESSEX, STATE OF NEW JERSEY, VARIOUS SECTIONS OF CHAPTER 96 REGARDING TREES: REMOVAL AND DESTRUCTION

WHEREAS, the Borough Administrator has recommended the Borough of North Caldwell (the "Borough") update certain aspects of the Borough Code to more accurately reflect changes within the Borough regarding Tree Removal and Destruction.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of North Caldwell, County of Essex, State of New Jersey as follows:

1. Chapter 96-2 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

Definitions:

BOARD

The Planning Board or the Zoning Board of Adjustment, as the case may be.

REPLACEMENT TREE

A healthy nursery-grown tree and as more fully described in § 96-7(G)

2. Chapter 96-3 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

A. No tree for which a tree removal permit is required shall be removed by any means unless such a permit is granted.

B. Application for a permit for tree removal shall be made by submission of the following:

3. Chapter 96-3.1 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

B. All tree removal permit applications shall be endorsed by a tree contractor registered by the Borough as defined in § 96-9. No tree removal permit shall be issued without such endorsement of a tree contractor holding a current valid registration from the Borough with the exception provided in §96-9(E)

C. The enforcement officer has 15 business days to respond to the permit application unless emergency circumstances dictate otherwise.

4. Chapter 96-3.2 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

B. Cutting down or removal of a nonviable tree, or a tree that is an immediate hazard to structures or human life or property (subject to completion of tree removal application and approval of enforcement

officer). The property owner and tree removal company shall bear full responsibility for documenting the emergency condition or conditions which exist to qualify for such exemption. For enforcement and record-keeping purposes, every person removing one or more nonviable or hazardous tree pursuant to this exemption shall file a tree removal application form with the enforcement officer on a form to be provided by him or her, to document the tree(s) removed, date of removal and associated emergency condition(s) which shall be in a form certified by a licensed tree expert and subject to the review and approval of the Enforcement Officer. All tree removal application forms shall be filed within five business days of the removal of the tree(s). Any trees removed under the false presumption of this exemption or without proper evidentiary documentation shall be subject to penalties as defined in § 96-10.

5. Chapter 96-3.3 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

A. Permit fees are required for removal of protected trees as follows:

1. One to ten trees: \$250 per tree.
2. Eleven to twenty trees: \$350 per tree.
3. Twenty-One or greater trees: \$500 per tree.

~~B. No permits are required in connection with obtaining an approved plan from the Planning Board.~~

~~C. If any tree to be saved in connection with construction as set forth above or any replacement tree planted pursuant to this chapter shall die within two years, it shall be replaced by the applicant or the property owner within six months.~~

6. Chapter 96-7 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

G. Replacement tree(s) shall meet the Required Actions in Table below, and shall be planted within twelve (12) months of the date of removal of the original tree(s). Replacement tree(s) shall be monitored by the applicant for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12) months. Trees planted in temporary containers or pots do not count towards tree replacement requirements. Failure to complete the Required Actions below or to maintain survival of replacement trees for 24 months shall be considered violations of the ordinance and may be subject to penalties as defined in § 96-10.

Category	Protected Tree Removed (DPM)	Required Action
1	Deciduous tree with DPM greater than 6" and less than 13"	Replant 1 tree utilizing native noninvasive species from the Preferred Tree List with deciduous trees

		having a DPM no less than 2 1/2" and evergreen trees no less than 8' in height for each tree removed
2	Deciduous tree with DPM 13" or greater and less than 23"	Replant 2 trees utilizing native noninvasive species from the Preferred Tree List with deciduous trees having a DPM no less than 2 1/2" and evergreen trees no less than 8' in height for each tree removed
3	Deciduous tree with DPM 23" or greater and less than 33"	Replant 3 trees utilizing native noninvasive species from the Preferred Tree List with deciduous trees having a DPM no less than 2 1/2" and evergreen trees no less than 8' in height for each tree removed
4	Deciduous tree with DPM 33" or greater	Replant 4 trees utilizing native noninvasive species from the Preferred Tree List with deciduous trees having a DPM no less than 2 1/2" and evergreen trees no less than 8' in height for each tree removed
5	Evergreen tree greater than 10' in height and less than 25' in height	Replant 1 tree utilizing native noninvasive species from the Preferred Tree List with deciduous trees having a DPM no less than 2 1/2" and evergreen trees no less than 8' in height for each tree removed
6	Evergreen tree equal to or greater than 25' in height	Replant 2 trees utilizing native noninvasive species from the Preferred Tree List with

		deciduous trees having a DPM no less than 2 1/2" and evergreen trees no less than 8' in height for each tree removed
--	--	--

- H. In lieu of providing a replacement tree, contribution(s) of \$1,000 per tree may be accepted by the Enforcement Officer which shall be paid to the Tree Fund. The Tree Replacement Fund shall be the repository of all monies paid to the Borough pursuant to this article and may also accept contributions for its purposes from private sources. The primary purpose of said fund is to provide for the replacement, planting and maintenance of trees and woody shrubs on public property within the Borough (including ground covers, grasses, ferns, vines, and forbs when they are part of an ecological project using native plants). Professional consultant fees for administrative and/or consultant costs to implement the provisions of this article, including but not limited to site inspections, processing of permits, supervision of tree replacement, and enforcement of this article, shall not exceed 30% of the fund. Appropriations from the Tree Replacement Fund shall be authorized by the Borough Administrator. In the event twenty-one (21) or more trees are removed by the applicant, the applicant shall be required to provide a replacement tree for each tree removed and a contribution of \$1,000.00 per tree to the Tree Fund.
- I. A buffer zone of trees and shrubs shall encircle three sides of an industrial or commercial area in accordance with Borough Code Chapter **107**, Zoning and Land Use. The Planning Board shall require a larger buffer zone when noise, size or height of the building or architectural design of the development requires an increase and may require a buffer of trees on all four sides.
- J. Cluster development, commercial development and industrial development shall consider the use of treeless areas, if possible, for building sites. If it is necessary to develop wooded areas or remove trees for proposed building sites in the case of such developments, the Planning Board and/or the Building Inspector may require tree planting in treeless areas if feasible.
- K. Trees in the area between the street line and the setback line of the buildings shall be preserved to the greatest extent possible.
- L. Tree removal from any slope is prohibited if it will contribute, in the opinion of the Planning Board or the Building Inspector, to extra runoff of surface water onto adjoining property and erosion and silting, unless other means approved by the Borough Engineer are provided to prevent runoff and erosion.
- M. No tree removal is permitted that will create nuisance lighting, expose vacant land, billboards, utility substations, transmission towers, warehouses, junk yards, landfill operations and other similar structures or operations, except where trees are dead or diseased and/or endanger life or property. However, vacant land may be

exposed if it is necessary to remove trees for building sites or sewerage sites and more aesthetic values are established.

N. No trees on public rights-of-way, parks or public areas are to be removed by private individuals or utilities except as approved by a board or officer designated by the Borough Council.

O. Trees may be removed to clear for soil removal or landfill, provided that the same amount of wooded area or the same number of trees are replaced. If the finished operation is planned to be used for other development, the replacement of trees shall be a part of the subdivision plan or a site plan submitted for approval by the Planning Board.

7. Chapter 96-8 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

A. Whenever trees are replaced pursuant to this chapter, the applicant shall post with the Borough Clerk a performance bond for two years in an amount to be determined by the Borough. The performance bond may be either in the form of a cashiers' check or certified check made payable to the Borough or in the form of a corporate surety performance bond issued by a New Jersey corporation. No performance bond shall be released except on certification of the Enforcing Officer that the replacement tree(s) remain healthy two years after planting. If they are found at that time by the Enforcing Officer or its agents to be healthy and capable of surviving, and other performance requirements have been met, then the Enforcement Officer shall order the bond returned. If any trees are not at that point healthy, the tree(s) shall be replaced. The Enforcement Officer shall have the authority to return 50% of the performance bond after one year if the replacement tree(s) are observed to be healthy and capable of surviving and all other performance requirements have been met.

8. Chapter 96-9 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

A. All tree contractors must register with the Borough of North Caldwell and pay a \$100 administration fee on an annual basis in order to conduct business within the Borough.

B. All tree contractors operating within the Borough shall be licensed in accordance with the NJ Tree Experts and Tree Care Operators Licensing Act; maintain the required insurance; hold valid registration with the Borough of North Caldwell; and display proof of same on each of its vehicles operating in the Borough.

C. All tree removal contractors shall carry and provide proof of at least the following minimum insurance coverage: \$2,000,000 property damage and bodily injury insurance per incident; \$300,000 automobile insurance per incident; and workers' compensation insurance in

such amounts as required by law. All tree removal contractors shall require their insurers to provide the Borough with a minimum of 30 days' advance notice of the cancellation of any required coverage. Upon the cancellation of any of the required insurance coverage, the tree removal contractor's registration shall automatically be suspended, and the tree removal contractor shall thereafter be prohibited from performing. Upon the submission of proof of satisfactory proof of insurance coverage, licensure in accordance with the New Jersey Tree Experts and Tree Care Operators Licensing Act, and a certification that the tree removal contractor has read, understands, and will comply with all requirements of this rule, then the Borough Clerk shall register the tree removal contractor as approved to do business in the Borough.

D. At the time of registration, applicant shall provide proof that they will comply with the provisions of the Borough's ordinances, including but not limited to stormwater protection, noise, quality of life and tree protection and waste disposal regulations.

E. No endorsement or registration shall be required of any owner, lessee or tenant of real property who shall personally perform activities otherwise requiring an endorsement or registration; except that all such work must otherwise comply with the Borough's ordinance.

F. Within 30 days of the adoption of this article, the Borough Clerk shall deliver a copy of this article to persons and entities known to be in the business of maintaining, cutting, or removing trees within the Borough.

G. Within 30 days thereafter, any company desiring to conduct the business of removing trees within the Borough shall register with the Borough.

H. The Borough makes no guarantee or representation regarding the fitness, knowledge or qualification of any person that is registered by the Borough as a tree contractor.

9. Chapter 96-10 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

Enforcing officer.

A. The enforcement officer shall be the person appointed or charged by the Borough Council with enforcement of this Chapter **96**.

B. The enforcement officer may, on his/her own initiative or on complaint of any individual, take action to assure compliance with this chapter.

C. The enforcement officer has approval authority as herein provided and may request expert assistance.

10. Chapter 96-11 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

Appeals of permit application denials, enforcement officer's decision.

The enforcement officer has 15 business days to respond to the permit application. Any person aggrieved by the decision of the enforcement officer and by any other officer, board or body may, pursuant to the provisions of this chapter, within 10 days of the receipt of such decision, appeal to the Planning Board. Such appeal shall be taken by filing a written notice of appeal with the Planning Board, which notice of appeal shall set forth with particularity the action appealed from. The Planning Board shall set a time for the hearing of said appeal and, after a hearing has been held thereon, may reverse, modify or affirm the decision appealed from.

11. Chapter 96-12 of the Code of the Borough of North Caldwell, Trees: Removal and Destruction, be and is hereby amended as follows:

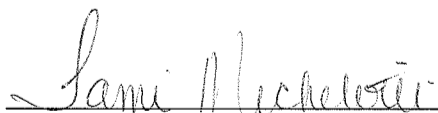
Violations and Penalties

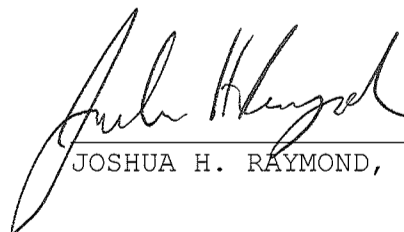
- A. Every protected tree, as defined in § 96-2, which has been cut or removed in violation of the provisions of this chapter shall constitute a separate offense.
- B. No person shall cut down or remove any protected trees (subject to exemptions) without a tree removal permit. The penalty for violation of this section shall be:
- (1) First offense: \$1,000.00
 - (2) Second and subsequent offense: \$2,000.00
 - ~~(3) Third Offense: \$600.00~~
 - ~~(4) Fourth and subsequent offense: \$1,000.00~~
- C. In addition to the penalties set forth above, any person subject to this chapter shall be subject to tree replacement considerations by the enforcement officer to replace all wrongfully removed trees.

INTRODUCED: November 28, 2023
 PUBLIC HEARING: December 19, 2023
 ADOPTED: December 19, 2023

Moved By: Councilman Weinstein
 Seconded By: Councilman Rees

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ATLAS	X				REES	X			
FLORIA-CALLORI	X				TILTON		X		
KESSLER	X				WEINSTEIN	X			


 TAMI MICHELOTTI, BOROUGH CLERK


 JOSHUA H. RAYMOND, MAYOR