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**TOWNSHIP OF WEST CALDWELL, NEW JERSEY**

**ORDINANCE NO. 1882**

**Councilman Cecere**

**AN ORDINANCE BY THE MAYOR AND COUNCIL AMENDING THE  
TOWNSHIP OF WEST CALDWELL CODE TO INCLUDE CHAPTER 24  
ENTITLED "TREE PROTECTION AND REMOVAL STANDARDS"**

**WHEREAS**, the New Jersey Department of Environmental Protection requires that all Tier A municipalities take measures to control the removal of trees in order to reduce stormwater runoff and to promote infiltration of rainwater into the soil; and

**WHEREAS**, in order to be in compliance with regulations set forth from the New Jersey Department of Environmental Protection, the Township of West Caldwell herewith adopts regulations on tree removal and replacement; and

**WHEREAS**, through N.J.S.A 40-48:2, the Governing Body is authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety, and welfare and it may be necessary to carry into effect the powers and duties conferred and imposed by the Township by law.

**NOW THEREFORE BE IT ORDAINED**, by the Mayor & Council of the Township of West Caldwell, County of Essex, State of New Jersey that the Code of the Township of West Caldwell is hereby amended, revised and/or supplemented as follows;

**Section 1.** There is hereby added a new Chapter 24 entitled "Tree Protection and Removal Standards" which reads as follows:

**§ 24-1. Purpose.**

The purpose of this chapter is to establish requirements for tree removal and replacement to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare.

**§ 24-2. Definitions.**

The following terms when used in this chapter shall have the meanings given in this section:

**BOARD** — The municipal agency, either Planning Board or Zoning Board of Adjustment, to which the application for tree removal permit is submitted.

**CALIPER** — Standard measure of tree size for trees to be newly planted. The measurement is taken six inches above the ground for trees four inches in diameter or less and 12 inches above the ground for trees over four inches in diameter.

**DEAD AND DISEASED TREE** — A tree which has been verified as dead or that has been determined to be damaged beyond salvaging or is in an advanced state of decline where an insufficient amount of live tissue, green leaves, limbs, or branches exist to sustain life. Said determination shall be made by the Superintendent of the Department of Public Works.

**DIAMETER AT BREAST HEIGHT (DBH)** — Diameter of a tree measured 4 1/2 feet (forestry method) above the ground level on the downhill side for existing trees. Diameter at breast height may appear as the abbreviation "DBH" (diameter breast height).

**DRIPLINE** — A limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than six feet from the trunk, whichever is greater; and within which no construction or disturbance shall occur.

**REPLACEMENT TREE** — A nursery-grown certified tree, properly balled, marked with a durable label indicating genus, species, and variety, and satisfying the standards established for nursery stock and installation thereof set forth by the American Association of Nurseryman.

**THINNING** — The removal of undesirable, competitive, diseased, or damaged trees so as to cultivate and improve the development of remaining trees on the lot.

**TOWN TREE** — Trees, shrubs, bushes and all other woody vegetation located on land owned by the Township, the Board of Education or any other municipal or governmental

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entity, or which is lying between the property lines (within the right-of-way) on either side of all streets, avenues, roadways or highways within the Township.

TREE — Any self-supporting woody plant which reaches a typical mature height of 12 feet or more at maturity and has a typical DBH of four inches or greater.

TREE CANOPY — The top layer or crown of mature trees.

TREE, EVERGREEN — A tree that has leaves throughout the year, which is always green. When planted, the tree shall have a minimum height of six feet.

TREE, SHADE — When planted, the tree shall have a caliper of at least three inches and an approximate height of 16 to 18 feet. A Shade Tree is normally planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.

### **§ 24-3. Applicability.**

- A. With the exception of the exemptions hereinafter set forth, no tree with a six-inch DBH shall be cut or otherwise removed from any lands in the Township of West Caldwell without a tree removal permit.
- B. All applications to the Planning Board or Zoning Board of Adjustment for approval of a major subdivision, minor subdivision or site plan requiring tree removal shall include detailed information regarding the proposed tree removal. All applications for grading permits or zoning permits involving construction requiring tree removal shall include a completed Tree Removal Questionnaire, listing the trees on the property with a DBH equal to or greater than six (6) inches identified by size and species, including total number of each, and whether the tree is to be removed and for what purpose, along with a sketch of the approximate location of the trees to be removed.
- C. Any residential, commercial, business, or industrial property owner wishing to remove trees upon said lot must comply with the provisions of this chapter. The application shall be submitted to the Township Engineer for review and approval.
- D. No tree that was planted or preserved as part of any landscape plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be removed, except for such trees directed to be removed pursuant to Subsection 24-4, paragraphs F, G and H. No other exemptions shall apply.

### **§ 24-4. Exemptions.**

The following shall be exempt from this chapter:

- A. Trees less than six-inch diameter at breast height (DBH).
- B. Christmas tree farms.
- C. Commercial nurseries and fruit orchards.
- D. Any tree which is part of a cemetery; provided, however, that whenever a single project area from which a majority of the trees within such project area are to be removed shall total two acres or more, the cemetery shall notify the Township of its intentions and the reasons therefor.
- E. Trees directed to be removed by municipal, county, state, or federal authority pursuant to law.
- F. Removal of trees which are dead, dying, or diseased, or trees which have suffered damage, or any tree whose angle of growth makes it a hazard to structures, roads, or human life.
- G. Removal of trees which appear to cause structural damage to buildings or foundations.
- H. Pruning or removal of trees within the right-of-way by utility companies for maintenance of utility wires or pipelines and the pruning of trees within sight easements.
- I. Those projects which have received major subdivision or site plan approval prior to

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the effective date of this chapter and amended major subdivision and site plans.

- J. Removal of any tree considered invasive or undesirable by Rutgers University Cooperative Extension Service or other qualified entity (See Section 24-19).
- K. Removal of a tree located in a proposed building footprint, driveway, deck, patio, or pool area. No replacement shall be required when a tree is located in any of the aforementioned areas.

**§ 24-5. Township tree care.**

- A. The Township shall have the right to plant, prune, maintain and remove trees within the right-of-way of any street, alley, avenue, lane, roadway, or public grounds as may be necessary to ensure public safety or to preserve or enhance the symmetry or beauty of such public grounds.
- B. The Township may remove or cause to be removed any tree or part thereof which is in an unsafe condition or which, by reason of its nature, can cause damage to sewers, electric power lines, gas lines, water lines or other public improvements or is affected with any injurious fungus, insect or other pest.
- C. It shall be unlawful for any person other than the Township or its employees to remove any town tree for any reason.
- D. It shall be unlawful, as a normal practice, for any person, firm, or Township department, with the exception of a regulated public utility company, to top any shade tree, park tree or other tree on public property. Trees severely damaged by storms or other causes shall also be excepted from this provision in cases where other pruning practices are impractical.
- E. Every owner of a tree overhanging any street or right-of-way within the Township shall prune the branches so that said branches shall not obstruct the light from any streetlamp or obstruct the view of any street intersection. Such trees shall be cleared to provide a clear space of eight feet above the surface of the street or sidewalk. The Township shall have the right to prune any tree on private property when it interferes with the proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign or obstructs the view of any intersection.
- F. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

**§ 24-6. Tree removal requirements for major and minor subdivisions and site plans.**

Each application to the Planning Board or Zoning Board of Adjustment for approval of a major or minor subdivision or a site plan that requires the removal of trees shall include the following information:

- A. A list of all trees to be removed with a DBH equal to or greater than six inches identified by size.
- B. Purpose for tree removal. Only those trees necessary to permit the construction of buildings, structures, streets, driveways, infrastructure, and other authorized improvements shall be removed. Existing vegetation shall be preserved to the greatest extent feasible.
- C. In addition to complying with the requirements of §§ 95-36 and 95-37, the application shall include the following:
  - +4, Location of existing tree canopy within the property boundaries. No more than 60% of the existing tree canopy within the property boundaries shall be removed. The location of the remaining 40% of the tree canopy to be preserved shall be noted on the landscape plan.
  - +5, Location of individual trees with a DBH equal to or greater than six inches identified by size within the area of development/limit of disturbance.
  - +6, Location of individual trees with a DBH equal to or greater than six inches identified by size beyond the area of development/limit of disturbance.
  - +7, Location of individual existing trees and their driplines noted for preservation within the area of development/limit of disturbance identified by size. Where clusters of

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trees exist on the site or are contiguous with adjacent sites, fragmentation of the cluster shall be avoided where possible.

†8, Location of all required replacement trees.

†9, Clear labeling of the area(s) intended for tree/vegetation removal.

**§ 24-7. Tree replacement and reforestation requirements for major and minor subdivisions and site plans.**

A. The replacement of trees shall occur as prescribed in the following table for major and minor subdivisions and site plans.

<b><u>DBH of Existing Tree Removed</u></b>	<b><u>Number of Replacement Trees</u></b>
Between 6 and 12 inches	1 replacement tree for every 2 removed
Between 12.1 and 24 inches	2
Between 24.1 and 36 inches	3
Greater than 36 inches	5

B. Replacement trees may include shade trees and evergreen trees. Replacement shade trees shall be a minimum three-inch caliper at installation and replacement evergreens shall be a minimum six feet tall at installation.

C. Replacement tree(s) shall be of nursery-grade quality, balled and burlapped and installed on site. If the applicant cannot locate all the required replacement trees on their lot, than the applicant shall be required to deposit a nonrefundable \$200 per required replacement tree into the West Caldwell Tree Fund, which shall be used to plant trees in the Township's parks, along the Township's streets and on other Township-owned properties.

D. The type of replacement tree(s) shall be as approved by the Township or as recommended by the Rutgers University Cooperative Extension Service or other qualified entity (See Section 24-19).

E. Newly planted replacement trees shall be monitored for a period of one year to ensure the health of the trees. If the replacement trees die within the one-year period, the developer/applicant shall replace the dead tree.

**24-8. Tree removal and protection on private property where no site plan or subdivision is required.**

A. This section applies to individual lot applications for detached one- or two-unit buildings, which are not required to submit a site plan application under the Municipal Land Use Law, specifically, N.J.S.A. 40:55D-37 (Article 6, Subdivision and Site Plan Review and Approval).

B. The owner of any lot who intends to remove trees with a DBH of six inches or greater shall first secure a permit from the Township Engineer. The application for such permit shall contain the name and address of the property owner, the name and address of the applicant (if not the owner), the street location and block and lot number of the site, all of the information required in § 24-13 and a sketch showing the location of the tree(s) to be removed with a DBH of six inches or greater.

C. Any person applying for a grading permit or a zoning permit shall provide with said application a completed tree removal questionnaire. Upon review of the questionnaire, the Township Engineer may determine that there is a need for a tree removal permit, in which case the applicant shall complete and submit such application prior to receiving either a grading or zoning permit. Such application shall contain the information required in paragraph B, above.

**§ 24-9. Tree replacement requirements for individual lot applications for detached one- or two-unit buildings.**

A. The replacement of trees shall occur as prescribed in the following table for individual lot applications for detached one- or two-unit buildings.

<b>DBH of Existing Tree Removed</b>	<b>Number of Replacement Trees</b>
Between 6 and 12 inches	1 replacement tree for every 2 removed
Between 12.1 and 24 inches	1
Between 24.1 and 36 inches	2
Greater than 36 inches	3

- B. Replacement trees may include shade trees and evergreen trees. Replacement shade trees shall be a minimum three-inch caliper at installation and replacement evergreens shall be a minimum six feet tall at installation.
- C. Replacement tree(s) shall be of nursery-grade quality, balled and burlapped and installed on site. If the applicant cannot locate all the required replacement trees on their lot, then the applicant shall be required to deposit \$200 per required replacement tree into the West Caldwell Tree Fund, which shall be used to plant trees in the Township's parks, along the Township's streets and on other Township-owned properties. If the Township does not utilize such funds within one year after posting, the funds will revert to the applicant.
- D. The type of replacement tree(s) shall be as approved by the Township or as recommended by the Rutgers University Cooperative Extension Service or other qualified entity (See Section 24-19).
- E. Newly planted replacement trees shall be monitored for a period of one year to ensure the health of the trees. If the replacement trees die within the one-year period, the applicant shall replace the dead tree.

#### **§ 24-10. Review standards.**

In accordance with the design requirements provided in this chapter, unless otherwise indicated herein, a tree removal permit may only be granted for the following reasons and under the following terms and conditions:

- A. Where the area proposed for tree removal is to be occupied by: a building or other structure; a street or roadway; a driveway; a parking area; a patio; a swimming pool; a recreation area; a power, drainage, sewerage or any other utility line, easement or right-of-way; or where the area of tree removal is 20 feet or less from either side of or around the perimeter of any of the foregoing, whichever is applicable.
- B. In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in Subsection A of this section:
- +4, Where the continued presence of such tree or trees is likely to cause danger to persons or property upon the property for which removal is sought, or upon adjoining or nearby property.
  - +5, Where the location of such tree or trees has a cut, depression or fill of land, or the topography of the land is of such a character as to be injurious or dangerous to such tree or trees or to tree or trees located nearby.
  - +6, Where removal of trees is for the purpose of conducting forestry activities, which activities include, but are not limited to, the harvesting of trees in accordance with a forest management plan and the thinning out of a heavily wooded area, with some trees to be removed and other trees to be saved.
- C. In addition to the foregoing requirements stated above, the Township Engineer may grant a tree removal permit based upon one or more of the following circumstances:
- +4, Where the location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks.
  - +5, Where no other alternative exists for the placement of a building, building addition, structure, septic field, driveway, deck, patio, or lawn area for the recreational use by the inhabitants of the building or dwelling, or any other authorized improvements, but in the vicinity of an existing tree.
  - +6, Where the location or growth of a tree inhibits the enjoyment of any outdoor pool, patio, or deck.

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7, Where the location, angle or growth of an existing tree makes it a hazard to structures or human life.

#### **§ 24-11. Appeal process.**

Any applicant aggrieved by the decision of the Township Engineer may appeal such decision to the Zoning Board of Adjustment in accordance with N.J.S.A. 40:55D-72.

#### **§ 24-12. Protection of trees.**

Whenever an application for tree removal is granted under the terms and conditions of this chapter, the following protective measures shall be observed:

- A. No material or temporary soil deposits shall be placed within the dripline of any existing tree to be preserved.
- B. Except while engaged in tree removal, no equipment shall be operated within six feet of any tree protected by this chapter, nor shall such equipment be operated at any time in such a manner as to break, tear, bruise, decorticate or otherwise injure any living or dormant tree. Except while engaged in tree removal, all requirements of this section shall be observed.

#### **§ 24-13. Permit approval.**

Time limits for approval:

- A. Where the permit application is submitted as a part of an application for major subdivision, minor subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to major subdivision, minor subdivision, or site plans.
- B. Where the application is made in connection with a residential, commercial, business or industrial lot that is not part of a major or minor subdivision or site plan, the Township Engineer shall act on the application within 15 business days of its receipt or within such additional time as is consented to by the applicant. Failure to act within 15 business days, or any extension thereof, shall be deemed to be an approval of the application and, thereafter, a tree removal permit shall be issued.
- C. Approval by default with regard to major subdivision, minor subdivision and site plan applications shall not be deemed to be a waiver of a tree removal permit.

#### **§ 24-14. Duration of permits.**

Permits granted for the removal of trees under the terms and conditions of this chapter shall run with the land and shall remain in force and effect for the following periods of time, and not thereafter. Once the permit has expired, a new application must be submitted for review and a new permit issued.

- A. If granted for a lot or parcel of land for which no building permit is required: one year from the date of issuance.
- B. If granted for a lot or parcel of land for which a building permit is required, but for which no site plan approval is required by the Planning Board: until expiration of the building permit granted with such tree removal permit.
- C. If granted for a lot or parcel of land for which site plan or subdivision approval from the Planning Board or Zoning Board of Adjustment is required as a condition precedent to obtaining a building permit: until expiration of the site plan or subdivision approval or expiration of the building permit issued after such site plan or subdivision approval.

#### **§ 24-15. Inspection.**

- A. Prior to taking final action upon any application for tree removal, an inspection of the site shall be made by the Township Engineer or his designee and, if final determination is to be made by a Board, the Township Engineer shall submit a report to that body for its consideration as to the granting or denial of an application.
- B. Prior to any tree removal, all trees must be marked and areas to be cleared identified for inspection by the Township Engineer or his designee.
- C. The Township Engineer or his designee shall periodically inspect the site throughout

the duration of construction in order to ensure compliance with this chapter. Such inspection shall be made of the site referred to in the application and of contiguous and adjoining lands, as well as of lands in the vicinity of the application, for the purpose of determining drainage conditions and physical conditions existing thereon.

**§ 24-16. Notice of commencement of tree removal.**

- A. The holder of a tree removal permit shall notify the Township Engineer in writing at least four business days in advance of when the tree removal activity will commence.
- B. The notice shall also include information as to the manner of disposal of the removed trees.
- C. In the case of the removal of dead or diseased trees, the dead or diseased trees shall not be turned into mulch and applied to the site, but shall be removed from the site and legally disposed of in a manner so as to not disease other trees on site.

**§ 24-17. Fees.**

A review fee of \$50 shall accompany the application for tree removal; provided, however, that no additional fee shall be required when the application for tree removal is submitted as part of a site plan or subdivision application.

**§ 24-18. Violations and penalties.**

- A. When regulated trees are removed without a tree removal permit, the affected areas shall be replanted to the satisfaction of the appropriate municipal authority in accordance with applicable the replacement schedule.
- B. In addition to the requirements of Subsection A of this section, violation of this chapter shall also be punishable by a fine of not less than \$500 per tree illegally removed, 90 days in jail, or both, and a separate offense shall be deemed committed for each separate violation of the provisions of this chapter and for each day during or on which the said violation occurs or continues.

**§ 24-19. Approved Tree List.**

The following list of approved trees are based upon species native to New Jersey and are subject to seasonal availability and commercial grower’s inventory.

The list is divided into Shade / Street Trees and Smaller and Understory Trees. All trees along streets and public rights-of-way will be Shade Trees of 3” minimum caliper balled and burlapped with minimum lower branch height of 5 feet.

Smaller and Understory Trees and Evergreens will only be used along edges of existing wooded areas or in approved situations.

Shade / Street Trees

<u>Scientific Name</u>	<u>Common Name</u>
Acer Pensylvanicum	Striped Maple
Acer Rubrum	Red Maple
Acer Saccharum	Sugar Maple
Carpinus Caroliniana	American Hornbeam
Carya Alba	Mockernut Hickory
Carya Cordiformis	Bitternut Hickory
Carya Glabra	Pignut Hickory
Carya Ovalis	Red Hickory
Carya Ovata	Shagbark Hickory
Celtis Occidentalis	Common Hackberry
Fagus Grandifolia	American Beech
Fraxinus Americana	White Ash

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Fraxinus Pennsylvanica	Green Ash
Gleditsia Triacanthos	Honeylocust
Liquidambar Styraciflua	Sweetgum
Liriodendron Tulipifera	Tuliptree
Nyssa Sylvatica	Blackgum
Ostrya Virginiana	Hophornbeam
Platanus Acerfolia	American Sycamore
Quercus Alba	White Oak
Quercus Bicolor	Swamp White Oak
Quercus Coccinea	Scarlet Oak
Quercus Palustris	Pin Oak
Quercus phellos	Willow Oak
Quercus Prinoidea	Dwarf Chinkapin Oak
Quercus Prinus	Chestnut Oak
Staphylea Trifolia	American Bladdernut
Tilia Americana	American Basswood
Ulmus Americana	American Elm

#### Smaller and Understory Trees

<u>Scientific Name</u>	<u>Common Name</u>
Amelanchier Arborea	Common Serviceberry
Amelanchier Canadensis	Canadian Serviceberry
Asimina Triloba	Pawpaw
Betula Alleghaniensis	Yellow Birch
Betula Nigra	River Birch
Betula Papyrifera	Paper Birch
Betula Populifolia	Gray Birch
Cercis Canadensis	Eastern Redbud
Cornus Florida	Flowering Dogwood
Crataegus Flabellata	Fanleaf Hawthorn
Crataegus Holmesiana	Holmes' Hawthorn
Crataegus Phaenopyrum	Washington Hawthorn

#### Evergreen Species

<u>Scientific Name</u>	<u>Common Name</u>
Juniperus Virginiana	Eastern Redcedar
Picea Mariana	Black Spruce
Pinus Rigida	Pitch Pine
Pinus Strobus	Eastern White Pine
Tsuga Canadensis	Eastern Hemlock

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**Section 2.** Any or all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

**Section 3.** Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase, and finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause or reason shall not affect any other portion of this Ordinance.

**Section 4.** This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

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