

ORDINANCE 41-03

AN ORDINANCE OF THE TOWNSHIP OF JACKSON CREATING CHAPTER 100 OF THE ADMINISTRATIVE CODE ENTITLED "TREE REMOVAL" AND AMENDING CHAPTER 109, SECTION 59 ENTITLED "TREES;PENALTY"

WHEREAS, the Township Committee previously enacted an ordinance on March 12, 2001 that revised the requirements for tree removal on properties located within the Township; and

WHEREAS, a court has ruled that portions of the ordinance are invalid ; and

WHEREAS, the Township Committee desires to continue its efforts to save trees, in accordance with the restrictions set forth in the court's decision; and

WHEREAS, the indiscriminate, uncontrolled and excess destruction and removal of trees in the Township has resulted in a deterioration of conditions that affect the health, safety and well-being of the residents of the Township; and

WHEREAS, trees are important cultural, ecological, scenic and economic resources of the Township;

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Jackson, County of Ocean in the State of New Jersey, as follows:

- I. Chapter 109, Section 59; entitled "Trees;Penalty" shall be deleted in its entirety.
- II Chapter 109, Section 59 shall be retitled as "Tree Removal Requirements" and the following provisions shall be inserted:

109-159. Tree Removal Requirements.

The requirements for tree removal and replacement are set forth in Chapter 100 of this Administrative Code.

- II Chapter 100 of the Township Code shall be created and shall be entitled "Tree Removal," and shall consist of the provisions attached hereto.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed on first reading at a regular meeting of the Township Committee of the Township of Jackson, in the County of Ocean, State of New Jersey, held on December 8th, 2003, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the 22nd day of December, 2003, at 7:30 P.M. or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building in said Township, at which time all persons interested shall be given an opportunity to be heard concerning this Ordinance.

Prior to the second reading, a copy of this Ordinance shall be posted on the Bulletin Board in the Municipal Building and copies shall be made available at the Township Clerk's Office in said Municipal Building to members of the general public who shall request such copies.

ANN MARIE EDEN, TOWNSHIP CLERK

Chapter 100

TREE REMOVAL

2. Intent and purpose

- (1) The indiscriminate, uncontrolled and excess destruction, removal and cutting of trees upon lots and tracts of land within the Township has resulted in creating increased soil erosion and dust, has deteriorated property values and further rendered land unfit and unsuitable for its most appropriate use, with the result that there has been deterioration of conditions affecting the health, safety and general well-being of the inhabitants of the Township of Jackson. It is the intent, therefore, of this chapter to regulate and control the indiscriminate and excessive cutting of trees in the Township.
- (2) Trees are declared to be important cultural, ecological, scenic and economic resources. Proper management of this resource will ensure its maintenance and result in greater economic returns. A property forestry management program is intended to meet the objectives of preserving, protecting, enhancing and maintaining trees and providing opportunities for continuing uses of forest resources which are compatible with the maintenance of the environment. This will be accomplished by ensuring proper management of forest and trees through the application of sound management practices. To that end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed any trees covered by this chapter, except in accordance with the provisions of this chapter.
- (3) The enforcement of this chapter shall be the duty of the Shade Tree commission of Jackson Township and its appointees for the purpose of the regulation, planting, care and control of shade, ornamental, and evergreen trees and shrubs in the streets, highways, public places of the township, and tree removal on all lands within the Township of Jackson.

3. Applicability. The terms and provisions of this chapter shall apply to real property, as follows:

- (1) Unless specifically exempted herein, it shall be unlawful for any person to remove or cause to be removed any tree with a trunk diameter of three (3) inches or more DBH (Diameter Breast Height) without first having obtained a tree removal permit to do so as provided herein. Tree removal permits shall be issued by the Township Forester or his or her designee.
- (2) Specimen, extraordinary and historic trees. On all real property upon which specimen or historic trees are located, trees having been designated as such under the provisions of this chapter shall be maintained in a living condition, and it shall be unlawful for any person to remove such tree without an approved tree removal permit. Significant trees shall be designated as follows and shall require that their location, DBH, and type be shown on the plan:
 - (1) Living deciduous trees having a trunk of sixteen (16) inches diameter or more at breast height.
 - (2) All living coniferous trees having a trunk of twelve (12) inches diameter or more at breast height.

(3) All living flowering dogwood (*Cornus florida*) or American holly (*Ilex opaca*) trees having a trunk of three (3) inches diameter or greater at breast height.

(4) All native laurel (*Kalmia latifolia*) shrubs having a root crown of three (3) inches or greater measured at the soil or surface level.

(3) Within the Pinelands Area, the standards of N.J.A.C. 7:50-6:41 et seq. shall also apply.

C. Tree Removal Permit Applicability.

(1) Any person wishing to obtain a permit to remove one (1) or more trees or clear land as required under the provisions of this chapter shall make application to the Township Forester by filing a written application and paying such fee as set forth in § 190-11. Where an application as required by this chapter has been submitted, no permit shall be issued until a tree save plan for the lot or parcel has been reviewed and approved by the Township Forester with recommendation of the Shade Tree Commission, Township Engineer, and Environmental Commission, where appropriate, and until the filing of a written report of an on-site inspection by the Township Forester. For applications within the Pinelands Area, the requirements set forth in § 109-71D must also be met. Where an application is made in connection with the construction of a building or other improvement, no building permit shall be issued until the tree removal permit has been granted.

(2) Residential Development

1. For all existing and new residential development with a proposed lot area no more than 40,000 square feet, up to fifty (50%) percent of the lot area may be cleared of trees without replacement trees required. For residential development with a proposed lot area of 40,000 square feet or greater, up to 20,000 square feet in area of proposed trees may be removed without replacement trees required. The lot area for which tree replacement shall not be required as set forth herein shall be the "Exempt Area." The Exempt Area shall be calculated as a contiguous, circular area from a fixed point on the lot in question, which shall have an approximate radius of one hundred (100) feet. The fixed point shall be located within the footprint of the existing or proposed primary residential structure on the property.

2. For residential development where tree removal is to occur within public or private roadways/right-of-ways, drainage facilities, parking areas or proposed open space all trees are subject to replacement in accordance with this chapter of the ordinance. All required escrow and bond fees for said subdivision application, including required tree replacement shall be verified as paid prior to the issuance of the tree removal permit by the Township Forester.

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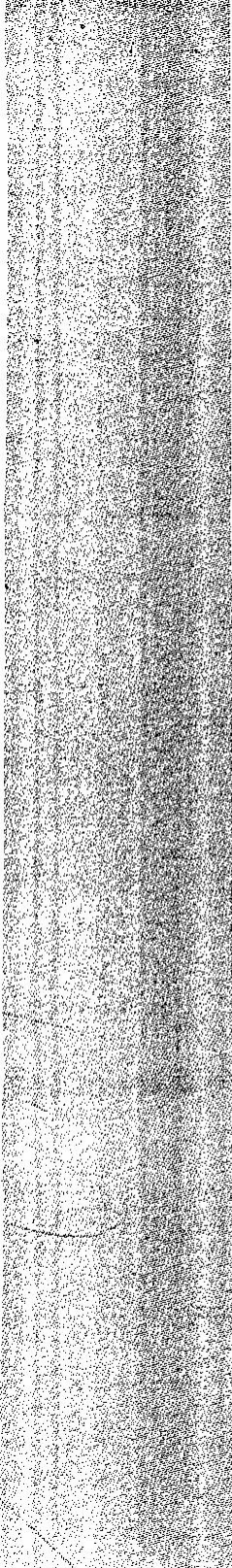
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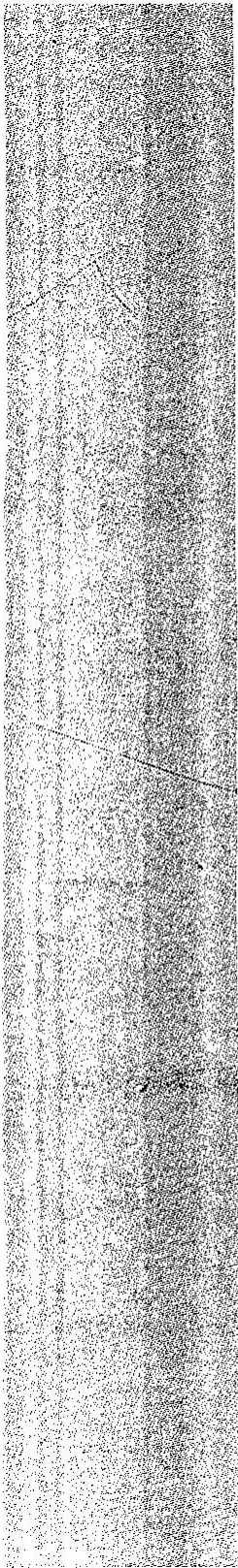
2. For residential development where tree removal is to occur within public or private roadways/right-of-ways, drainage facilities, parking areas or proposed open space all trees are subject to replacement in accordance with this chapter of the ordinance. All required escrow and bond fees for said subdivision application, including required tree replacement shall be verified as paid prior to the issuance of the tree removal permit by the Township Forester.



N. Duties of Township Forester. The Township Forester shall be a person with a bachelor's degree in forestry, arboriculture or agriculture from an accredited college or university and has three (3) years of experience in the planting, care and maintenance of trees and shrubbery and shall be appointed by the Township Committee to supervise the conservation of the trees and administer the provisions of the Ordinance. The Township Forester shall perform the duties set forth in this chapter and such additional duties as may be assigned by the governing body and shall be responsible for the enforcement of the provisions of this chapter. In this regard, the Township Forester is authorized and shall perform any necessary inspections and is further authorized and shall issue violation notices and shall sign complaints and provide professional testimony in the Municipal Court for violations of this chapter.

O. Violations and penalties. Any person, firm, partnership, corporation, association or other legal entity violating any of the provisions of this chapter shall, upon conviction of such violation, be punished by a fine no exceeding five hundred dollars (\$500) per violation or to imprisonment for a term not to exceed ninety (90) days, or both, in the discretion of the Judge before whom conviction may be had. Each illegally removed tree shall be considered a separate violation. Each violation of any of the provisions of this chapter and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

In addition to other remedies, the Building Inspector, Construction Official, or other proper municipal official may institute any appropriate legal action to prevent a continuing violation of the terms of this Chapter.



- (2) The identification and location of all tree(s) to be removed, specifically by an assigned number, species, and the DBH of each tree. The proposed limit of the clearing and all individual trees to be retained outside the limit of tree clearing shall also be identified by some method, such as painting, flagging, etc., prior to field inspection.
- (3) The installation and limits of a temporary existing tree protection fence along the limit of proposed tree removal in compliance with § 100(H).
- (4) Locations of all forest types that are subject to the provisions of this chapter shall be identified by common and botanical names of dominant species. Trees proposed to remain, to be transplanted or to be removed shall be identified.
- (5) All trees greater than eighteen (18) inches in caliper or any specimen, extraordinary or historic trees to be removed.
- (6) A proposed tree-replacement plan in accordance with this section. A tree replacement plan shall be considered the proposed landscaping plan required for all subdivision and site plan approvals.
- (7) A North arrow.
- (8) The location of existing and proposed structures and improvements, if any.

E. Time of permit. Any and all permits issued by the Township as required by this chapter shall be declared null and void if commencement of work so permitted is not started within a reasonable time, not to exceed twelve (12) months. In no case will the permit be valid for more than twelve (12) months. Permits not used within this period will become null and void, and future work will require a new application and is subject to the payment of new fees. For purposes of this subsection, a permit shall no longer be valid when the work authorized by the permit is completed.

F. Conditions for issuance of permits. Upon receiving the field inspection report and any requested recommendations concerning the application, the Township Forester shall issue a permit after the application is filed for the removal or relocation of trees, or clearing, if one (1) or more of the following criteria is met, and provided that none of the conditions set forth below in subsection F(2) exists:

- (1) Criteria for removal.
 - (1) The tree is located in an area where a structure or improvements will be placed according to an approved plan and the tree cannot be relocated on the site because of age, type or size of the tree.

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

(3) The tree is to be removed for harvesting as a useful product or for the purpose of making land available for farming or other useful or productive activity, is to be removed in furtherance of a forest management plan or soil conservation plan or to serve some other useful or beneficial purpose.

(2) Professional evaluation required: The Township Forester, with recommendation from the Shade Tree Commission and Township Engineer, may consider any negative impact in the following areas on the natural environment in granting a permit and may deny the permit if the following conditions exist: any negative effect upon ground and surface water quality, specimen trees, soil erosion, dust, reusability of land, and impact on adjacent properties.

(3) Basis for denial. The Township Forester, where appropriate, upon a determination that an application is to be denied, shall state the basis for such denial specifically and shall notify the applicant of the criteria upon which said denial is predicated.

G. Fees.

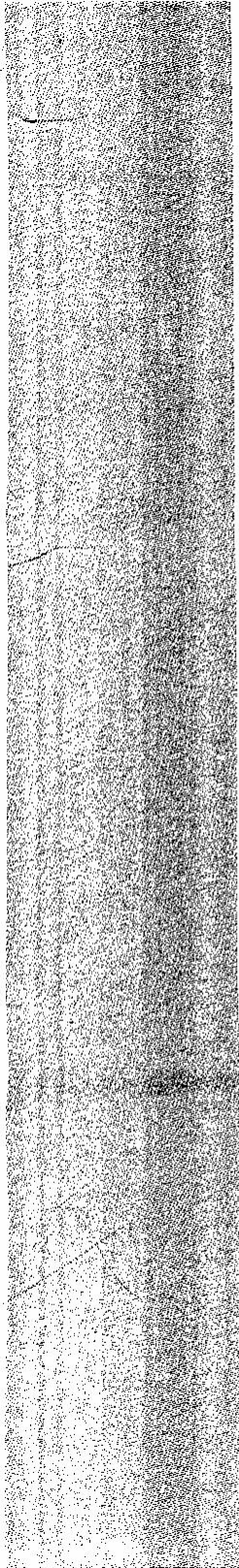
(1) Application Fee. The applicant, at the time of filing the application with the Township Forester, shall pay the application fee of ten dollars (\$10) for each new or existing lot. No application shall be considered without the payment of required fees.

(2) Tree Removal Fee.

(1) Residential Lots. If trees outside of the Exempt Area are to be removed, a fee of twenty-five dollars (\$25) for each residential lot on which trees are to be removed shall be paid by the applicant.

(2) Commercial or Industrial Lots. For all non-residential lots, the fee shall be fifteen dollars (\$15) per tree removed, up to a maximum of six hundred dollars (\$600) per acre.

(3) Tree Replacement Fee. The fee for all lots in which trees are not removed and not replaced, for which tree replacement is required, shall be calculated in accordance with the schedule set forth in Subsection I of this chapter.



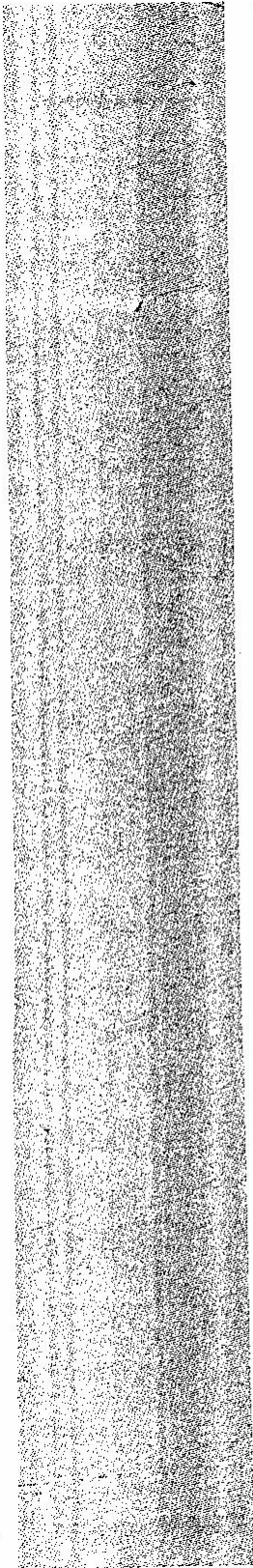
H. Existing tree protection during construction.

- (1) Before development, land clearing, filling, excavation or any land alteration, a development permit will be required. The developer shall be required to erect suitable tree protective barriers in compliance with § 109-173(A)(5) and this protection, where required shall remain until such time as the protection is authorized to be removed by the Township Forester, or after issuance of a final certificate of occupancy. Also, during construction, no attachments or wires shall be attached any of said trees so protected.
- (1) A detail of the existing tree protective barrier shall be provided on all major applications. The protective barrier shall be a minimum of four (4) feet high.
- (2) The protective barrier shall be placed at the dripline of any tree along the limit of clearing and around the entire tree dripline for trees to remain undisturbed within the limit of clearing.
- (3) It shall be unlawful for any person in the construction of any structures or other improvements to place solvents, material, construction machinery or temporary soil deposits within the dripline.
- (2) Street right-of-way and utility easements may be ribboned by placing stakes a minimum of fifty (50) feet apart and tying ribbon, plastic tape, rope, etc, from stake to stake along the outside perimeters of such areas to be cleared.
- (3) Large property areas separate from the construction or land-clearing area into which no equipment will venture may also be ribboned off as set forth above in Subsection F(2)(a) as determined by the Township Forester following a field evaluation.

I. Tree Replacement

Tree replacement shall be required in accordance with the standards set forth in Section C. Dead and fatally diseased existing trees, as determined by a Certified Tree Expert, shall not require replacement tree planting. Existing tree replacement shall comply with at least one of the following criteria:

- (1) One-to-One Tree Replacement: For each tree six (6) inches in DBH or greater that is removed, the applicant shall prepare a replanting scheme on other treeless areas of the property to compensate the clearing of the tree area. The replacement plan or landscape plan shall reflect a one-to-one tree replacement for each tree six (6) inches or greater to be removed. All proposed replacement trees shall be in accordance with § 109-173 A(2)(b)(3) and submitted for review and approval prior to the issuance of a tree removal permit.



- (2) **Tree Area Replacement/Reforestation:** For each square foot of tree area to be removed, the applicant shall prepare a reforestation scheme on other treeless open space areas of the property to compensate the clearing of the tree area. The reforestation plan shall be based on 20' x 20' grid. Of this number of trees, 10% shall be balled and burlaped 2"-2½" caliper, 20% shall be balled and burlaped 1 ¾"-2" caliper, 30% shall be bare root 1 ¼"-1 ½" caliper and 40% shall be bare root 6 to 8 foot tall whips. A mixture of trees, indigenous to the area and site shall be utilized. Proposed trees shall be planted in natural groves and may be spaced 5 feet to 20 feet on center. The ground shall be seeded with a meadow grass mixture approved by the Township Forester.
- (3) **Tree Cost Replacement:** Should the quantity of the trees to be removed be greater than the quantity of actual tree replacement as identified on the tree replacement/landscaping plan due to limited available planting area, then the outstanding balance shall be provided in accordance with the replacement tree value calculations as indicated:

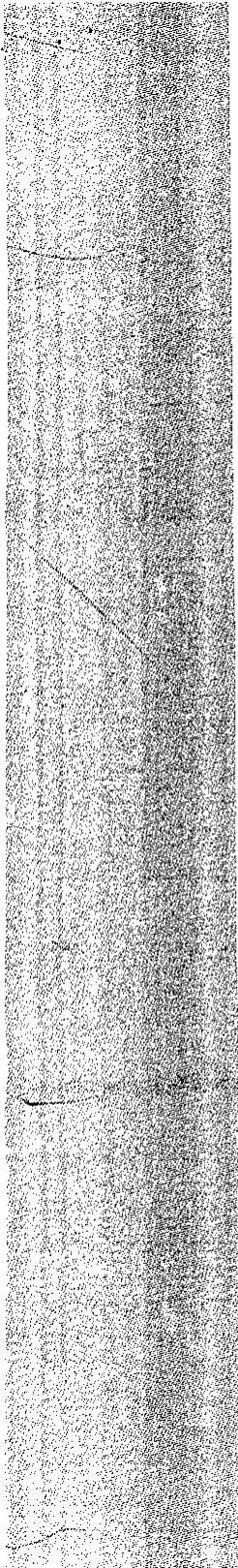
(a) **Replacement tree value calculations:**

The replacement value of all trees to be removed where replacement trees are required by this ordinance shall be calculated as follows:

| <u>Trees to be Removed</u> <u>Size/DBH</u> | <u>Replacement Trees</u> <u>\$/Tree</u> |
|---|--|
| Greater than 6" Up to 12" | \$200.00 |
| Greater than 12" Up to 18" | \$400.00 |
| Greater than 18" Up to 24" | \$600.00 |
| Greater than 24" | \$800.00 |

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

- (2) The applicant will receive a one-for-one replacement tree credit should stands of ten (10) or more trees greater than 3 inches in DBH be preserved within tree removal areas.



(3) A Tree Escrow Fund shall be established by the Township for the administration and promotion of tree and shrub planting projects on or within municipally owned properties or facilities. A separate trust account shall be established for this purpose. Appropriations from the Tree Escrow Fund shall be authorized by the governing body and shall be used for the foregoing municipal purposes through the recommendation of the Township Forester, Township Engineer or Township Planner.

(4) All tree replacement requirements and/or fees as set forth in this subsection shall be approved and/or paid prior to the issuance of the tree removal permit by the Township Forester.

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

K. Exemptions.

(1) The provisions of this chapter shall not apply to the following:

- (a) Statement of "No Tree Verification" for any required tree removal permit.
- (b) Any tree of less than three (3) inches DBH.
- (c) Any tree or trees removed or cut in accordance with a forest management plan developed by the Bureau of Forestry, provided that such plan is filed with the Township Forester, Environmental Commission, and Tax Assessor.
- (d) Any tree or trees removed or cut in accordance with an approved conservation plan prepared by the District Conservation Officer of the Soil Conservation Service, provided that such plan has been filed with the Township Forester, Environmental Commission and Tax Assessor.
- (e) Any tree or trees planted and grown for commercial purposes on property used as a commercial nursery or tree farm, including garden centers, Christmas tree plantations or tree orchards.
- (f) Any tree growing in a public right-of-way or fire trail, subject to the approval of the Jackson Township Shade Tree Commission.
- (g) Any tree removed by an owner of property for the owner's own consumption as firewood if said owner's residence is located on such property at the discretion of the Township Forester.

(h) Any tree cut or removed for the purpose of establishing a survey lien, provided that the width of said line shall not exceed:

- (1) For a boundary survey, six (6) feet in width.
- (2) For a topographical survey, eight (8) feet in width.

K. Stop-work orders; withholding of approvals. The Township Forester is hereby authorized to recommend the issuance of stop-work orders to the Township's Construction Department and the Shade Tree Commission is authorized to recommend the issuance of stop-work orders to the Township Forester in the event that there is a failure to comply with the submitted forest management plan or soil conservation plan, or if there is non-adherence to the approval granted pursuant to this chapter or non-adherence to the standards as established by this chapter. The stop-work order shall remain in effect until the Township Forester has determined that the resumption of work will not violate the conditions of the plan or approval or the terms of this chapter. Failure to comply as aforesaid shall authorize the forfeiture of any permit issued under this chapter. The Township Engineer may withhold the issuance of any required certificate of occupancy and inspections, on any development as required until the provisions of this chapter, including conditions of any permits issued under this chapter, have been fully met.

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

M. Display of permit; carrying of plan or authorization; right of entry. The applicant shall prominently display on the site the permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit and for ten (10) days thereafter. In addition, the persons or persons cutting or removing trees, if other than the applicant, shall carry with him authorization from the owner or applicant authorizing such person to cut or remove trees. In the event that the trees are being cut or removed in accordance with a forest management plan or a soil conservation plan, a copy of the plan shall be in the possession of the person cutting or removing such trees. As a condition for the issuance of the permit, the applicant shall agree in writing to the entry onto his premises by representatives of the Township and all law enforcement officers to inspect the permit at any time, and such entry shall be lawful. Failure to allow such entry shall be unlawful and shall constitute a violation of this section and shall constitute failure to display the permit as required herein. It shall be unlawful and considered a violation of this section for any person to engage in the business of plant cutting, trimming, removal, spraying or otherwise treating trees, shrubs or vines within the Township and without a certification or license for the designated work. All work to be performed shall be by or under the direction of a professional forester or "certified tree expert" and is compliance with New Jersey Board of Tree Experts pruning standards for shade trees and ANSI Section Z 133.1 "Safety Standards" unless otherwise directed by or approved by the Township Forester.

