BOROUGH OF CRESSKILL

ORDINANCE NO. 24-05-1641

AN ORDINANCE AMENDING CHAPTER 275 ZONING SPECIFICALLY, ARTICLE XV, §275-66.1 TREE REMOVAL

WHEREAS, the Borough has received notice from the New Jersey Department of Environmental Protection (hereinafter "NJDEP") in regard to modifications to the NJDEP MS4 Tier; and

WHEREAS, the NJDEP has advised the Borough that it's Tree Removal Ordinance must be amended to comply with the modified MS4 Tier; and

WHEREAS, the Council has reviewed the Ordinance and agrees it must be amended to comply with current New Jersey Code.

NOW, THEREFORE, BE IT ORDAINED, that the Council does hereby rescind Chapter 275, Article XV, Section §275-66.1 in its entirety, and replaces it with the following:

§275-66.1 TREE REMOVAL

A. General Provisions. The following shall apply to the removal of all trees within the boarders of the Borough of Cresskill and is hereby incorporated into all sections and sub-sections of this Ordinance.

B. Definitions. The following terms used in this Section shall have the meanings indicated:

APPLICANT
any "person", as defined below, who applies for approval to remove tree regulated under this Ordinance.

BUFFER ZONE
The outer ten (10) feet of the rear yard setback and the outer five (5) feet of each side yard setback.

CLEAR CUTTING
The removal of five or more trees within a three hundred sixty five (365) day period, with a diameter of greater than ten (10) inches as measured four (4) feet in height.

CRITICAL ROOT RADIUS (CRR)
The zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6" DBH would have a CRR – 6" x 1.5' = 9'.

DANGEROUS
Such a condition of any tree which may cause a substantial risk of foreseeable injury.

DEAD
The cessation of the tree's life as certified by a licensed Tree Care Operator (See N.J.S.A. 45:15 C-12 et seq. and N.J.A.C. 7:3A-3.6 et seq.)

DIAMETER AT BREAST HEIGHT (DBH)

The diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.

HAZARDOUS/HAZARDOUS TREE
Condition of the tree whose existence exposes injury to person or damage to the property. A Tree or limbs thereof that meet one or more of the criteria below. Tree that do not meet any of the criteria below are proposed to be removed solely for development purposes are not hazard trees:

1. Has an infectious disease or inset infestation;
2. Is dead or dying;
3. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
4. Is causing obvious damage to structures (such as building foundations, sidewalks, etc); or
5. Is determined to be a threat to public health, safety, and/or welfare by a Certified Arborist or Licensed Tree Expert (LTE).

MAJOR TREE(s)
A deciduous tree with a mature height of at least fifty (50) feet which should be a caliper of at least three (3) to three and one half (3 ½) inches measured at size inches above the ground when planted.

MINOR TREE(s)
An evergreen tree, ornamental tree or other small tree at least eight (8) feet in heigh at the time of planting.

PERSON
Any individual, resident, corporation, utility, company, partnership, firm or association.

PLANTING STRIP
The part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

RESIDENT
An individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this Ordinance is removed or proposed to be removed.

SICK OR DECEASED
A tree shall be categorized as “sick or diseased” upon certification of a licensed Tree Care Operator (N.J.S.A. 45:15 (c-12 et seq) and N.J.A.C. 7:

STREET TREE
A tree 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, pedestrians’ refuges.

TREE
A wood perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

TREE CALIPER

The diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.

TREE REMOVAL
To kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, over mulching or improper mulching, and improper grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

C. Permits.

1. No tree with a diameter of greater than two and one half (2.5) inches as measured at four (4) feet of height may be removed without a Permit issued by the Building Department.

2. The permit fees for tree removal shall be as follows for each tree (diameter at four feet height):
   a. Under sixteen (16) inch diameter: no fee;
   b. Sixteen (16) inches and greater than sixteen-inch diameter: $125.

3. In addition to Permit Fees, each Applicant for tree removal shall be responsible for Administrative Fees as follows:
   a. New Construction: Three Hundred Dollars ($300.00);
   b. Existing Structures: Thirty-Five Dollars ($35.00);
   c. Vacant Lots: Thirty-Five Dollars ($35.00);
   d. Administrative and Permit Fees may be amended as needed by Resolution.
   e. All fees noted herein may be amended by Resolution.

D. Tree Replacement Requirements.

1.

Tree Removed (DBH)	Tree Replacement Criteria
DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99”	Replant 2 trees with a minimum tree caliper of 2.5” for each tree removed
DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 2.5” for each tree removed
DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 2.5” for each tree removed
DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 2.5” for each tree removed

ment Alternatives

If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:
   a. Plant replacement trees in a separate area(s) approved by the municipality;
   b. Pay a fee of Five Hundred Dollars ($500.00) per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

3. Only trees from the approved tree list, attached hereto as exhibit A, which is incorporated herein as if set forth in its entirety, are permitted to be planted in the Borough.

E. Exemptions

1. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
2. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality;
3. Any trees removed as part of a municipal or State decommissioning plan. This exception only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan.
4. Any trees removed pursuant to New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up or NJDEP approved habitat enhancement plan.
5. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.

F. Inspections.

1. All tree inspections (excepting trees located on Borough property or within the Borough's right of way) shall be conducted by the Building Department which shall inspect every tree on the petitioned site and confirm every tree petitioned for removal.

2. All the inspections for trees located on Borough Property or within the Borough's right of way shall be conducted by the Department of Public Works.

3. All trees to be removed must be prominently marked at the time of Permit Application with orange spray paint.

G. New Construction.

1. In addition to the provisions contained herein as set forth above, the following shall apply to all trees within the borders of the Borough of Cresskill that are affected by new construction.
2. Clearcutting.
   a. There shall be no Clearcutting of trees during any phase of new construction except:
      i. Clearcutting of trees within the building's footprint may be Permitted during any phase of new construction without payment of the Permit Fee (but Applicant would still be required to pay the Administrative Fees).

      ii. Within fifteen (15) feet of the building foot print as Permitted by either the Zoning Board of Adjustment or Planning Board.

   b. If an Applicant applies for a New Construction Building Permit within 6 months of applying for a Tree Removal Permit for the same lot, there shall be an additional Administrative Fee of three hundred ($300.00) dollars.

3. Additional Site Plan or Building Permit Requirements for Nonresidential Use.
   a. Whenever a nonresidential use is adjacent to the side or rear lot line of a lot in a Residential or a Professional Office Zone, there shall be planted along such lot line or buffer area evergreen trees or thick bushes or hedges of such type and spacing as required by the Planning Board and/or the Zoning Board of Adjustment, of an initial height of not less than four (4) feet, except as provided for in § 275-70, which will adequately screen all operations on such

nonresidential lot. All of the foregoing planting shall be properly maintained throughout the life of any use on all lots.

b. Upon good cause shown, Planning Board and/or Zoning Board of Adjustment may waive the requirement that removed trees be replanted in the Buffer Zones;

c. All trees proposed to be removed in excess of ten (10) feet in height shall be delineated on a topographical survey;

d. Applicant shall be required to pay the Borough Engineer's inspection fee in an amount not to exceed five hundred ($500.00) dollars.

H. Existing Commercial Structures.

1. In addition to the provisions noted herein, the following shall apply to all trees within the borders of the Borough of Cresskill that are located on lots with existing commercial structures;

2. Requirements:

a. The Building Department shall have the Jurisdiction to waive the Permit Fee associated for trees sanctioned for removal within ten (10) feet in any direction of the main structure, excepting trees located in Buffer Zones. The Applicant shall be subject to all other required Fees;

b. No trees may be removed in Buffer Zones without a Permit;

c. Buffer Zones adjacent to R-10,R-15,R-40, and R-SC Zones. All lots in C and P Zones which are adjacent to a rear or side lot line or are across the street from an R-10, R-15, R-40, or R-SC Zones shall have Buffer Zones, which shall be fully landscaped areas without any buildings, signs, parking or loading spaces or any other primary or accessory structures or uses, except driveways or an open fence of not more than six (6) feet in height. The Buffer Zones shall have the widths along such lot lines as set forth herein.

I. Existing Residential Structures.

1. In addition to the provisions contained herein as set forth above, the following shall apply to all trees within the borders of the Borough of Cresskill that are located on lots with existing residential structures.

a. For good cause shown, the Building Department shall have the Jurisdiction to waive the Permit Fee associated for trees Permitted to be removed within ten (10) feet of any direction of the Residential Structure, excepting trees located in the Buffer Zones. The Applicant shall be subject to all other required Fees;

b. No trees with a diameter greater than ten (10) inches as measured at four (4) feet of height may be removed in Buffer Zones without a Permit.

J. Vacant Lots.

In addition to the provisions contained herein as set forth above, no tree located on a vacant lot with a diameter greater than ten (10) inches as measured at four (4) feet of height may be removed without a Permit.

K. Tree(s) located within a Right of Way ("ROW")

1. The Borough is not responsible for any evergreen trees planted within the ROW;

2. Responsibility of Shade Tree located within the ROW
   a. All Shade Trees located in excess of ten (10) feet from the face of the curb to the center of the tree, shall be the reasonability of the Property Owner.

L. Emergency Situations.
1. In addition to the provisions contained herein as set forth above, any tree within the borders of the Borough of Cresskill may be removed without a Permit if an emergency exists such that a licensed Tree Care Operator, as soon as practical, but in any event, not more than three (3) Business Days, after removal, certifies that the condition of the tree was either "Dead", "Dangerous", "Hazardous", or "Sick or Deceased" that there was not enough time to obtain a Permit, that the tree was an imminent danger to public safety or to property and provides photographic proof of same. Application for a retroactive Permit must be made in conjunction with the submitted certification.

2. a. In the event the Borough has been given notice, and after issued confirmation that a tree is dying dead or diseased and deemed a hazardous tree, as defined herein, the Building Department and/or Construction Code Official may issue a Notice of Violation and Order to Abate the Hazardous Situation.

   b. The Construction Code Official is authorized to proceed, based on the authority conferred by the Cresskill Property Maintenance Ordnance§ 202-10(I) (property to be kept free of nuisance conditions) and pursuant to §202-3 any physical condition on a property which is potentially dangerous or detrimental to the life, healthy or safety of persons on or near property containing the nuisance.

3. Enforcement Authority
   Pursuant to the Borough Ordinance §202-12, the Construction Code Official or his designee is designated with the enforcement of this Ordinance.

4. Enforcement Procedure
   a. The Construction Code Official or his designee can issue a Notice of Violation and Order to Abate the nuisance with hazard per Borough Ordinance §202-4(B) and §202-7.

      i. This Order shall direct the property owner and/or tenant (if applicable) to remove the tree within ten (10) days or sooner if it is determined that an Emergency Condition exists, pursuant to this Section and/or Ordinance §202-4.

      ii. If the Order is not met with compliance:
         (1) Construction Code Official or his designee may issue summons for violation of Borough Ordinance §202-10(I) every day noncompliance continues; and/or

         (2) The Construction Code Official or his designee can engage a qualified private contractor to remove the tree (provided the cost does not exceed the bid threshold) and submit a Certification of Costs

incurred to the governing body. By Resolution, the governing body may authorize the Tax Collector to lien the property, including the cost incurred in the property's next tax assessment, and collect the tax due in the ordinary manner. Such action is authorized by Borough Ordinance §202-13(e) and §202-16, and pursuant to N.J.S.A. 40:48-2.12(f) and N.J.S.A. 40:48-2.14.

5. Service of Notice
The Notice of Violation and Order to Abate shall be served by:
   a. Leaving a copy at the property address;
   b. Certified Mail, Return Receipt Requested; and
   c. First Class US Mail.

M. Appeals from Denial of Permits.
The Applicant may only appeal the decisions of the Building Department pursuant to N.J.S.A. 40:55D-70 (A):

> "Appeals to the Board of Adjustment may be taken by any interested party affected by any decision of an Administrative Officer of the Municipality based on or made in the enforcement of the Zoning Ordinance or Official Map."

N. Municipal Court.
1. All summons issued shall be presented before the Borough's municipal court Judge.

2. Fines
   a. On the finding of guilt, the Judge shall levy the following fine(s) plus Court costs on any liable person or entity.

3. Failure to obtain a Permit:

   a. First Offense: Not less than two (2) nor more than ten (10) times the combined amount of the Permit, plus Court costs and Administrative Fees;

   b. Second Offense: Not less than five (5) times nor more than fifteen (15) time the amount of the Permit, plus Court costs and Administrative Fees;

   c. Third Offense: Five thousand ($5,000.00) dollars per day starting on the day of the offense until the earlier of

      i. the liable party replants a tree of equal diameter and height as the removed tree, or
      ii. the liable party is adjudicated guilty or enters a guilty plea at which time the Court will assess the fine per this Ordinance, as of the date of entry of the guilty plea.

   d. Fourth Offense: Mandatory ten (10) days incarceration in the Bergen County Jail plus the fines enumerated for a Third Offense.

BE IT FURTHER ORDAINED If any provision or portion of a provision of this Ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalidated by any court of competent jurisdiction, the remaining provisions of the Ordinance shall not be invalidated.

SEVERABILITY. If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this ordinance shall be judged invalid in whole or in part or as applied to any particular circumstance or individual by a court of competent jurisdiction, such order of judgment shall not effect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this ordinance.

REPEALER. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistencies only.

EFFECTIVE DATE. This ordinance shall take effect immediately upon final passage and publication as required by law.

EXHIBIT A

Major Trees

Common Name/Scientific Name
Red maple/Acer rubrum
Sugar maple/Acer saccharum
Sweet gum/Liquidambar styraciflua
London plane/Platanus x acerifolia
American sycamore/Platanus occidentalis
White oak/Quercus alba
Pin oak/Quercus palustris
Red oak/Quercus rubra
American elm/Ulmus americana
Copper beech/Fagus sylvatica v. purpurea;
Or other major tree approved by the Borough or any of a group of conifer trees of 6 inches or greater at time of removal as defined herein below.

Minor Trees

Dogwood/Cornus
Japanese maple/Acer palmatum
Cherry/Prunus
Crabapple/Malus
Magnolia/Magnolia
Ornamental Pear/Pyrus calleryana "Chantcleer" or "Redspire"
Or any of a group of conifers such as:
Cedar/Cedrus
Cypress/Cupressus
Arborvitae/Thuja
Cryptomeria/Cryptomeria
Dawn redwood/Metasequoia glyptostroboides
Fir/Abies
Spruce/Picea
Larch/Larix
Pine/Pinus
Or other minor tree approved by the Borough.