

**BOROUGH OF MONTVALE
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO. 2018-1445**

NOTICE IS HEREBY GIVEN that the following Ordinance was introduced and passed on the first reading at the regular meeting of the Mayor and Council on the 13th day of March 2018, and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 24th day of April 2018 at 7:30 pm or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Maureen Iarossi Alwan, Municipal Clerk
Borough of Montvale

**AN ORDINANCE TO PROVIDE FOR THE PRESERVATION OF
TREES ON RESIDENTIAL PROPERTIES THROUGHOUT THE BOROUGH OF
MONTVALE AND CREATING A NEW CHAPTER 119A IN THE BOROUGH CODE
ENTITLED "TREES AND PLANTS"**

BE IT ORDAINED by the Mayor and Council of the Borough of Montvale, in the County of Bergen, State of New Jersey, as follows:

Section 1. The Code of the Borough of Montvale is hereby amended and supplemented by adding a new Chapter 119A, "Trees and Plants," as follows:

**Chapter 119A
Trees and Plants**

Article 1 Tree Removal

- § 119A-1 Findings and purpose**
- § 119A-2 Tree removal permit required**
- § 119A-3 Exemptions**
- § 119A-4 Compensatory plantings**
- § 119A-5 Violations**

Article 2 Demolition

- § 119A-6 Tree removal during demolition**
- § 119A-7 Demolition permit required**
- § 119A-8 Exemptions**
- § 119A-9 Violations**

Article 3 Bamboo

- § 119A-10 Purpose**
- § 119A-11 Prohibition of the planting, growing or cultivating of bamboo**
- § 119A-12 Exemptions**
- § 119A-13 Complaint notice; order for removal and compliance**
- § 119A-14 Violations**

Article 1 Tree Removal

§ 119A-1 Findings and purpose

The Borough Council of the Borough of Montvale does find and determine that:

- A. Indiscriminate and uncontrolled tree removal upon lots and tracts of land within the Borough contributes to drainage problems, increased soil erosion and dust conditions tending to decrease property values and adversely affects the public health, safety and general welfare of the community.
- B. The Borough desires to control and regulate tree removal and to preserve the appropriate number of trees during the course of development of lots or parcels of land.
- C. This ordinance is not intended to directly affect those property owners not involved in construction activities.

§ 119A-2 Tree removal permit required

- A. Tree removal as set forth in this Article shall be prohibited within the Tree Preservation Zone, which is defined as the area between the lot or parcel perimeter property lines and the front, side and rear building set-back lines as established in each zoning district. Notwithstanding the foregoing, the Tree Preservation Zone shall not include any area within 5 feet of the boundary of any primary or accessory structure on the property.
- B. Except as may be otherwise set forth in this Chapter, no applicant, developer, contractor or other person or entity shall cut down or remove trees of a caliper of six (6) inches or greater measured 4.5 feet above the high side of existing grade within the Tree Preservation Zone as part of a site plan, subdivision or building addition application without first obtaining a tree removal permit from the Construction Code Official or the reviewing Board, as appropriate to the application, in accordance with this Article.
- C. The Construction Code Official shall adopt a standard application form for use by applicants seeking a tree removal permit, whether such application is made to the Construction Code Official or to the reviewing Board.

- D. In the case of site plan and subdivision applications, the reviewing Board shall request recommendations from the Environmental Commission on tree removal prior to any Board decision. For applications not subject to Board review, the Construction Code Official shall request the recommendations of the Montvale Environmental Commission before issuing a tree removal permit.
- E. A site survey or other reasonably sufficient plan or drawing showing the tree removal limits shall be provided for review and approval with the tree removal application. In evaluating the application, the Environmental Commission shall consider the following;
1. Light and air flow
 2. Property screening, both from public roadways and neighboring properties
 3. Relative size and health of trees and benefits/detriments to removal
 4. Proposed distribution of tree species
 5. Potential safety hazards among existing trees
 6. Number and density of remaining trees
 7. Property circulation (walkways, driveways, etc.)
- F. The Montvale Environmental Commission shall submit a letter to the Construction Code Official, or the reviewing Board, as appropriate to the application, describing the Commission's recommendations as to permitted tree removal limits. The final determination on the tree removal permit shall be within the jurisdiction of the Construction Code Official or the reviewing Board, as appropriate to the application.
- G. Timeframe for action.
1. The Environmental Commission shall submit its review letter within five (5) days of its next regularly-scheduled meeting following the Borough's receipt of a completed application, if the application is received at least ten (10) days prior to said meeting, or within five (5) days of its second regularly-scheduled meeting following the Borough's receipt of a completed application, if the application is received fewer than ten (10) days prior to its next regularly-scheduled meeting.
 2. Nothing in this section shall prohibit the Environmental Commission from holding a special meeting for purposes of complying with the time-frames set forth this in Article, nor shall the Environmental Commission be prohibited from considering and acting upon an application received fewer than ten (10) days prior to its next regularly-scheduled meeting.
 3. If the Environmental Commission does not submit its review letter in accordance with the time-frames set forth in this section, the Construction Code Official or the reviewing Board, as appropriate to the application, shall have the authority to apply and enforce the provisions of this Article.
- H. In connection with the submission of a site plan, subdivision or building addition application, the applicant shall be required to detail any tree removal activities undertaken on the property within the past four (4) months. If any trees were removed during said four-month period that would have been impermissible under

this Article as part of such application, the Montvale Environmental Commission shall review such activities and recommend compensatory plantings consistent with this Article.

§ 119A-3 Exemptions

The following shall be exempt from the requirements of this Article:

- A. Residential lots containing an existing dwelling that are not subject of a site plan, subdivision or building addition application.
- B. Any property or planned unit development which is in a zone which requires the provision of affordable housing or any property or planned unit development which proposes the construction of affordable housing.
- C. Tree removal within the Tree Preservation Zone to allow for the following:
 - 1. Driveway or roadway access from an existing road frontage.
 - 2. Any portions of the property which may otherwise be permissibly be utilized pursuant to the Borough's zoning regulations for off-street parking and/or accessory structures.
 - 3. Land grading necessary to establish the appropriate proposed grade elevations to foster proper drainage and construction of the proposed building or buildings on a lot or parcel.
 - 4. Construction or installation of underground utilities that serve the building or buildings.
 - 5. Removal of trees that are dead, dying or diseased, or trees that have sustained significant storm damage, or trees that due to their location or physical condition render them a hazard to structures, vehicles and/or people.
 - 6. Removal of any tree with a caliper below six (6) inches measured from 4.5 feet above the highest side of existing grade.
 - 7. Any tree growing in the public right-of-way or on publicly-owned land or property.
 - 8. Tree removal as part of a Municipal, County or State agency or authority improvement project.
 - 9. Commercial nurseries, Christmas tree plantations and farming activities requiring tree removal.
 - 10. Any trees hindering sight triangles from property or impeding proper sight distances.

§ 119A-4 Compensatory plantings

In the event that preservation of existing trees within any designated Tree Preservation Zone which would otherwise have been recommended to remain is impossible or impractical based on the proposed development, compensatory plantings shall be required for each live tree within the Tree Preservation Zone being removed. Compensatory plantings shall be made on a one for one basis on the project lot or parcel with each compensatory tree being 2 inches caliper minimum. The Montvale Environmental Commission will review and recommend compensatory planting as a result of actions described in this Chapter. No compensatory plantings shall be required for trees that are being appropriately designated for removal based upon the review of the Montvale Environmental Commission.

§ 119A-5 Violations

- A. A fine of five hundred dollars (\$500) shall be imposed for each tree removed in violation of this Article.

Article 2 Demolition

§ 119A-6 Tree removal during demolition

The Borough Council of the Borough of Montvale does hereby find and determine that there is a desire to control and regulate tree removal as part of the demolition of buildings and structures, because uncontrolled demolition and clearing of land can be detrimental to the public safety, health and general welfare.

§ 119A-7 Demolition permit required

- A. Pursuant to the Borough Code, no applicant, developer, contractor or any other person or entity shall initiate or commence demolition or removal of any buildings or structures without first obtaining a demolition permit from the Construction Code Official.
- B. A site survey showing the limits of disturbance (defined as the foundation line of the structure being demolished plus an additional 20 feet in each direction) required to accomplish the demolition or removal shall be provided as part of the demolition permit application.
- C. Tree removal outside the approved limits of disturbance shall not be permitted without first obtaining a Tree Removal Permit pursuant to this Chapter, except as may be otherwise set forth herein.

§ 119A-8 Exemptions

- A. Tree removal is permitted outside the limits of disturbance as defined herein to allow for the removal of any tree with a caliper below six (6) inches measured 4.5 feet above the highest side of existing grade.
- B. Tree removal shall be permitted inside the limits of disturbance without regard to the size of the tree without obtaining a Tree Removal Permit.

§ 119A-9 Violations

- A. A fine of five hundred dollars (\$500) shall be imposed for each tree removed in violation of this Article.

Article 3 Bamboo

§ 119A-10 Purpose

The Borough Council of the Borough of Montvale does hereby find and determine that it is necessary and proper to control the planting, cultivating and/or growing of bamboo in the Borough of Montvale and to require barriers to prevent the spread of existing bamboo into other areas of the Borough.

§ 119A-11 Prohibition of the planting, growing or cultivating of bamboo

Subject to certain exemptions set forth in this Article, no persons, residents, citizens, property owners, tenants or other entities shall plant, cultivate or cause to grow, any bamboo upon any lot and/or parcel of ground anywhere within the territorial boundaries of the Borough of Montvale.

§ 119A-12 Exemptions

The following shall be exempt from the requirements of this Article:

- A. Any existing bamboo plant located on any property within the Borough limits. Notwithstanding the foregoing, no portions of such bamboo shall be allowed to grow upon, extend roots across, or extend branches, stalks or leaves past the property boundary or onto any public right-of-way. Furthermore, the general prohibitions set forth in §119A-11 shall apply with respect to any bamboo plant whose presence on property located in the Borough does not pre-date the effective date of this Article.
- B. Any bamboo plant where the root system of such bamboo plant is entirely contained within an above-ground-level planter, barrel, or other vessel of such design, material and location as to entirely prevent the spread of growth of the bamboo plant's root system beyond the container in which it is planted. Whether planted or growing in a

container as described herein, all bamboo plants shall be located, trimmed and maintained so that no part of the plant shall be closer than ten (10) feet from any property line or public right-of-way.

§ 119A-13 Complaint notice; order for removal and compliance

Whenever a complaint is received by the Borough regarding the encroachment of any bamboo plant or root, or whenever the Borough, on its own observations and inspections, determines that there is an encroachment or bamboo plants or roots onto the property of another land owner, the Borough shall cause Notice to be served on the owner of the offending property, according to the following procedure:

- A. The Notice shall specify the nature of the violation(s).
- B. The Notice shall state specifically what must be done by the responsible party to correct the violation(s).
- C. The Notice shall state that the violation(s) must be corrected within thirty (30) calendar days from the date of the Notice is received.
- D. If the violation is not remedied within the time frame set forth in the aforesaid Notice, the Borough is hereby authorized and empowered to remove or to have removed any encroaching bamboo and to take all reasonable steps to eradicate the re-growth of the bamboo on the public right-of-way, including sidewalks, and to restore such land to its normal condition, prior to such removal and eradication.
- E. The Notice shall be mailed by Certified Mail, Return Receipt Requested, properly addressed and with sufficient postage, and also by First Class mail. Notice by Certified Mail shall be deemed complete on the date of personal delivery, or the date the Certified Mail is marked refused or unclaimed or otherwise undeliverable by the United States Post Office. First Class mail shall be deemed delivered on the fifth calendar day after mailing by the Borough.

§ 119A-14 Violations

- A. Any person or entity determined by a court of competent jurisdiction to have violated any provision of this Article shall be subject to pay a fine of one hundred dollars (\$100.00). Each day of a continuing violation shall constitute a separate offense for which an additional fine may be levied.
- B. In addition to any penalty imposed as set forth above, the cost of any action taken by the Borough to remove and/or eradicate any prohibited bamboo, together with legal fees and other costs incurred by the Borough shall be recoverable from the responsible party.

Section 2. Repeal of Inconsistent Ordinances.

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3. Savings Clause.

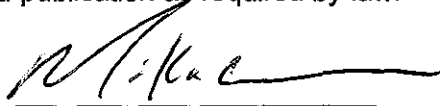
Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed pursuant to this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

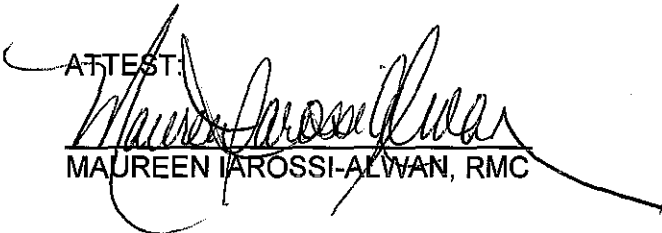
Section 4. Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 5. Effective Date.

This ordinance shall become effective upon adoption and publication as required by law.


MICHAEL GHASSALI, Mayor

ATTEST:

MAUREEN IAROSSO-ALWAN, RMC

INTRODUCED: 3/13/2018

Councilmember	Yes	No
Arendacs	✓	
Curry	✓	
Gloeggler	✓	
Koelling	✓	
Lane-absent		
Weaver-absent		

ADOPTED: 4/24/2018

Councilmember	Yes	No
Arendacs-absent		
Curry	✓	
Gloeggler	✓	
Koelling	✓	
Lane	✓	
Weaver-absent		