

§ 161-1. Purpose.

- A. The Mayor and Council has determined through its experience and observations and in its consultation with the Planning Board that in the regulation and control of land development there has been indiscriminate, excessive and uncontrolled removal, cutting and destruction of trees upon tracts of lands within the Borough of Mount Arlington.
- B. The purpose of this chapter is to regulate and control this indiscriminate and excessive removal, cutting and destruction of trees to prevent conditions which cause increased surface drainage with commensurate loss of groundwater infiltration to replenish subsurface water supplies; siltation, sedimentation, soil erosion and decreased soil fertility; dust conditions and mosquito breeding places; and impairment of the stability and value of real estate; all of which conditions are now and will be in the future a detriment to the public safety, health and general welfare.

§ 161-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CUT or CUTTING — The cutting of the main trunk of a tree, so that the tree is destroyed or such cutting will lead to its destruction, but such "cutting" shall not be construed to prohibit normal pruning.

DEVELOPMENT — As defined in Land Development Ordinance of the Borough of Mount Arlington.¹

ENFORCEMENT OFFICER — A person professionally qualified to enforce the terms, conditions and penalties of this chapter and to issue permits and supervise the conservation of trees within the Borough of Mount Arlington, which position is hereby created.

LOT — ² As defined in the existing Land Development Ordinance of the Borough of Mount Arlington.

MANAGEMENT PLAN — A plan for the management of timbered or forested land development under the authority of a federal, state or municipal agency.

NURSERY, GARDEN CENTER, ORCHARD or TREE FARM — Such land which is devoted for horticultural purposes under controlled agricultural conditions.

PERMIT — A license issued by the Mount Arlington Planning Board/Land Use Board, or other designated official of the Borough of Mount Arlington, in conjunction with an application for development, for the purpose of cutting, removing or destroying trees. **[Amended 5-7-2007 by Ord. No. 08-07]**

PERSON — As defined in Land Development Ordinance of the Borough of Mount Arlington.³

1. Editor's Note: See Ch. 17, Land Development.

2. Editor's Note: See Ch. 17, Land Development.

STREET — As defined by Land Development Ordinance of the Borough of Mount Arlington.⁴

TREE — Any woody perennial plant, having a diameter greater than eight inches, measured from a point 4 1/2 feet above ground (dbh forestry method).**[Amended 12-4-2018 by Ord. No. 22-18]**

§ 161-3. Removal of trees.

Except as provided by the terms of this chapter, no person shall cut, destroy or remove any tree located within the confines of the Borough of Mount Arlington which is in excess of the size established by § 161-2.

§ 161-4. Submission of application and permits.

Except as hereinafter provided, any person desiring to remove, cut or destroy any living tree in excess of the size established by § 161-2 shall prepare and submit an application, on the forms provided by the municipality, and pay the appropriate fee prior to the issuance of any permit. The permit shall be prominently displayed in the immediate vicinity of the cutting operation.

A. Forms and filing procedures for applications. Forms and filing procedures for applications shall be as follows:

- (1) Applications without building permit. For removal, cutting or destroying of a tree or trees from a lot or parcel of land for which no building permit is required, by filing such application with the Enforcement Officer created and designated by this chapter, who shall also consider and decide upon applications and issue the appropriate permit(s); provided, however, that the provisions of this subsection shall not apply in connection with a management plan.
- (2) Applications with building permit. For removal, cutting or destroying of a tree or trees from a lot or parcel of land for which a building permit is required and for which the applicant is not required to obtain approval from the Borough of Mount Arlington Planning Board/Land Use Board as a condition precedent, by filing such application with the Enforcement Officer created and designated by this chapter at the time application is made for a building permit. The Enforcement Officer shall also consider and decide such application and issue the appropriate permit(s). **[Amended 5-7-2007 by Ord. No. 08-07]**
- (3) Application which requires approval of Planning Board or Board of Adjustment or variance. For removal, cutting or destroying of a tree from a lot for which the applicant is required to obtain approval from the Borough of Mount Arlington Planning Board/Land Use Board as a condition precedent for development, by filing such application with the appropriate Board, which

3. Editor's Note: See Ch. 17, Land Development.

4. Editor's Note: See Ch. 17, Land Development.

Board shall consider and decide said application and issue the appropriate permit(s). The Borough of Mount Arlington Planning Board/Land Use Board shall have power to grant such exceptions from the requirements of this chapter as may be reasonable and within the general purpose and intent of this chapter if the literal enforcement of one or more provisions of the chapter is impractical or will exact undue hardship upon the applicant. **[Amended 5-7-2007 by Ord. No. 08-07]**

- (4) Application for transplanting or removal of diseased or damaged trees. For removing and transplanting of trees in living condition to other locations or the removal of diseased or damaged trees, by filing such application with the Enforcement Officer created and designated by this chapter, who shall also consider such applications and issue the appropriate permit(s).
- (5) Applications for management plan. For removal, cutting or destroying of a tree or trees in connection with a Tree Management Plan, by filing such application with the appropriate state or federal agency where said agency is empowered with such jurisdiction. In addition thereto, the applicant shall also file an application with the Planning Board of Mount Arlington, which Board shall consider and decide said application and issue the appropriate permit(s). The applicant shall pay, in addition to any fees imposed by the state or federal agency, a fee to the Borough of Mount Arlington in accordance with the fee schedule of this chapter.

B. Application content.

- (1) The application form supplied by the Borough of Mount Arlington shall contain, as a minimum, the following information:
 - (a) The name and address of the applicant and status of legal entity (individual, partnership, corporation of this or any other state, etc.).
 - (b) The status of the applicant with respect to the land (owner, lessee, tenant, purchaser under contract, etc.).
 - (c) The written consent of the owner of the land, if the applicant is not the owner.
 - (d) The name of person preparing any map, drawing or diagram submitted with and as a part of application.
 - (e) The location of the property, including street number and address and block and lot number, as shown on the Official Tax Map of the Borough of Mount Arlington.
 - (f) The number of trees to be removed and the species and approximate size of each such tree.
 - (g) The purpose for tree removal (construction, street or roadway, driveway, utility easement, recreation area, patio, parking lot, etc.).

- (h) A diagram of the lot or parcel of land, specifically designating area or areas of proposed tree removal and proposed use of such area.
 - (i) A plan or diagram showing landscaping details of disturbed areas.
 - (j) Such other information as may be deemed necessary in order to effectively process and decide such application.
 - (k) The zone designation where the property is located.
- (2) The number of copies of each application form to be submitted by the applicant shall be prescribed by the appropriate decisional authority to whom such application is to be submitted.
- C. Certificate of occupancy. No certificate of occupancy shall be issued unless tree removal has been in accordance with the approved plan and all trees required to be planted in accordance with the approved plan or a bond guaranteeing that such planting has been posted with the Borough Clerk. The bond shall be in the principal sum of \$100 per tree involved.

§ 161-5. Fees.

Prior to the acceptance of an application for a permit under this chapter, the applicant shall pay to the Borough of Mount Arlington the following fees:

- A. Application without building permit: \$25 per acre or fraction thereof. **[Amended 3-15-1995 by Ord. No. 95-11]**
- B. Application with building permit: \$25 per acre or fraction thereof. **[Amended 3-15-1995 by Ord. No. 95-11]**
- C. Application with subdivision, site plan or variance. Fifty dollars per acre or fraction thereof. **[Amended 3-15-1995 by Ord. No. 95-11]**
- D. Application for management plan: \$50 per acre or fraction thereof. **[Amended 3-15-1995 by Ord. No. 95-11]**
- E. Engineer and expert cost. The owner or applicant shall reimburse the borough for all costs of the Municipal Engineer or other expert advice and technical assistance obtained in connection with the application for an approved plan in addition to the above fee schedule and shall deposit with the borough before the hearing thereon an amount estimated to cover said additional costs.
- F. Application for transplanting or removal of diseased or damaged trees: No fee shall be charged in connection therewith.
- G. Tree bank fee: the fee for trees proposed for removal that are not replaced on site per tree is \$300 per tree. **[Added 12-4-2018 by Ord. No. 22-18]**

§ 161-6. Site inspection.

- A. Prior to taking final action upon any application for tree removal, an inspection of the site shall be made as follows:
 - (1) By the Enforcement Officer in those cases where final determination is to be made by him as to the granting or denial of an application.
 - (2) By a duly designated representative or by representatives of the Borough of Mount Arlington Planning Board/Land Use Board in those cases where final determination is to be made by that Body as to the granting or denial of an application. **[Amended 5-7-2007 by Ord. No. 08-07]**
- B. 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.
- C. The person conducting such inspection shall have the right to request an opinion and report from the Borough Engineer or other duly qualified expert in those cases where the inspection reveals that tree removal poses a potential detriment to the immediate or surrounding environment. The applicant shall reimburse the borough for fees paid to the Borough Engineer or other qualified expert in connection with preparation of his opinion and/or report.

§ 161-7. Standards for considering application.

An application for tree removal shall be granted for the following reasons, and under the following terms and conditions:

- A. Areas to be occupied by buildings or other structures. 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, storm drainage, sanitary sewer or any other utility line, easement or right-of-way; or a clearance area for the placement or storage of soil, fill or construction materials or debris during tree removal and/or construction operation; or where the area of tree removal is not greater than 20 feet on either side or the perimeter of any of the foregoing, whichever is applicable.
- B. Areas to be occupied by other uses. In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in Subsection A hereinabove:
 - (1) Where the continued presence of such tree or trees is likely to cause danger to person or property for which removal is sought or upon adjoining or nearby property.
 - (2) Where the area in which such tree or trees are located had a cut, depression or fill of land or the topography of the land is of such character as to be injurious or dangerous to such tree or trees or to tree or trees located nearby.
 - (3) Where the removal of trees is for the purpose of thinning out a heavily wooded

area, but not in connection with a management plan, with some trees to be removed and other trees to remain. The planting of seedlings or other replacement trees may be made a condition of such removal.

- C. Finding of no adverse impact. Upon an express finding by the appropriate decisional authority that the proposed tree removal will not result in or cause, increase or aggravate any or all of the following conditions:
- (1) The impaired growth or development of remaining trees on the property of the applicant or upon adjacent property.
 - (2) Soil erosion, sedimentation and siltation.
 - (3) Dust conditions.
 - (4) Storm drainage or sanitary sewerage problems.
 - (5) Dangerous or hazardous conditions.
 - (6) Depression in the land value of the subject property and properties in the neighboring area.
- D. Protection of trees. Whenever an application for tree removal is granted under the terms and conditions of this chapter, the tree protection standards as set forth in the New Jersey Standards for Soil Erosion and Sediment Control, as promulgated by the New Jersey State Soil Conservation Committee, shall be observed and govern. **[Amended 12-4-2018 by Ord. No. 22-18]**
- E. Replacement and planting of trees. When trees are proposed for removal, at least one for every five trees removed shall be replaced on the site. A planting plan shall be presented to the appropriate approving agency, which agency shall have the right to have said plan reviewed by an appropriate professional consultant. The applicant shall reimburse the Borough for any fees paid to such consultant for review and preparation of opinion and/or report. The plan shall follow standards and recommendations set forth as follows: **[Amended 12-4-2018 by Ord. No. 22-18]**
- (1) Species selection shall be according to published recommendations of the New Jersey Federation of Shade Tree Commissions.
 - (2) Planting stock shall conform to published standards of the American Association of Nurserymen.
 - (3) Planting stock shall be procured from a New Jersey nursery, certified by the Division of Plant Industry, New Jersey Department of Agriculture, or equivalent. Receipt of the purchase must be available upon request by an authorized borough official.
 - (4) Standards for considering application. In the event an applicant has demonstrated an inability to replace trees on the site as may be required by a Borough ordinance, the applicant shall pay an amount per tree as specified under § 161-5G, herein.

F. Management operations.

- (1) No cutting of trees for pulp wood, saw logs or other commercial operations for profit, or operations for purposes of farm assessment, on sites of one acre or more shall be conducted unless the owner of the property in question, or his authorized agent, first obtains a permit as provided under this chapter. All cutting under this subsection shall be in accordance with a plan approved by the Planning Board and appropriate state or federal agency having concurrent jurisdiction.
- (2) Where a permit for cutting of trees is sought under the authority of the Mount Arlington Planning Board, then said plan shall show the area to be logged, existing tree species and sizes, trees to be removed and conservation methods to be followed, boundary lines of the applicable lands, a list of the property owners adjacent to and within 200 feet of said boundaries. In evaluating said application, the Planning Board shall consider the following: the impact of cutting upon fire prevention and protection; conservation and ecological considerations; site rehabilitation and that the cutting shall have no adverse impact as heretofore defined. In making such determination the Planning Board shall have the right to consult with the professional experts, and the applicant shall reimburse the borough for any fees paid to said expert for consultation and preparation of opinions or reports in connection therewith. Upon granting the permit, the Planning Board may impose such reasonable requirements deemed necessary to fulfill the above conditions. Permits issued under the authority of this subsection shall be valid only as long as the cutting conforms to the approved plan and may be voided by the Enforcement Officer, after reasonable notice, upon a violation thereof. "Reasonable notice" under this subsection shall be deemed to be 24 hours.

- G. Conditions of approval. The appropriate decisional authority shall have the power to affix reasonable conditions to the granting of the permit for the removal of trees.

§ 161-8. Exemptions.

The following lands, activities and uses shall be exempt from the permit requirements and other terms and conditions of this chapter:

- A. Any tree located on a lot of one acre or less in size on which a single-family dwelling has been erected.
- B. Any tree growing on property, actually being used as a nursery, garden center, Christmas tree plantation or orchard.⁵
- C. Any tree growing in a public right-of-way as shown on an approved preliminary subdivision map.
- D. Any dead or diseased tree that is likely to endanger life or property or an adjoining

5. Editor's Note: Former Section 15-8C, which included provisions relating to the former borough landfill, and which immediately followed this subsection, was deleted 3-15-1995 by Ord. No. 95-11.

property owner or his property.

§ 161-9. Appeals. [Amended 3-15-1995 by Ord. No. 95-11]

In addition to any rights and privileges afforded to any aggrieved party under state or federal laws, statutes or departmental rules and regulations, any aggrieved party shall have the right to appeal any aforesaid decisions, unless said appeal has been preempted by state or federal law, statute or regulation, to the Mount Arlington Council, within 10 days of receipt of the decision or violation. Said appeal shall be by written notice to the Council and appropriate agency and Enforcement Official. The Council shall proceed to hear said appeal, upon notice to the applicant, within 45 days after the filing of said notice of appeal and after hearing the testimony of the Enforcement Official, the Borough Engineer and/or other consultants, the Environmental Commission, if any, the applicant and any other interested party; the Council may refer the application to the Planning Board for review and recommendation, which review and recommendation shall be presented in the form of a resolution no later than 30 days after receipt; and thereafter the Council may reverse, modify or affirm the aforesaid decision.

§ 161-10. Enforcement.

The Mayor and Council may appoint as Enforcement Officer a person qualified by background, training and experience to enforce the terms and conditions of this chapter, and such person may be designated as the "Enforcement Officer." In the absence of such an appointment, the Construction Official of the Borough of Mount Arlington shall act as the Enforcement Officer under this chapter, with all powers and duties appendant thereto. Nothing hereunder shall prevent any member of the Police Department of the Borough of Mount Arlington, and each such member is hereby empowered, to issue summonses returnable before the Municipal Court of Mount Arlington, under those circumstances where a person is unable to produce a duly executed permit under this chapter.

§ 161-11. Duration of permit.

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:

- 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 approval is required by the Mount Arlington Planning Board/Land Use Board, until expiration of the building permit. **[Amended 5-7-2007 by Ord. No. 08-07]**
- C. If granted for a lot for which approval from the Mount Arlington Planning Board/Land Use Board is a condition precedent, then said permit shall run concurrent until the expiration of the development as approved by the Board. **[Amended 5-7-2007 by Ord. No. 08-07]**

- D. If granted for a management plan, then for a period of time as granted by the Planning Board or the state or federal agency or for a period of one year where issued under municipal authority; provided, however, that the appropriate fee shall be paid to the Borough of Mount Arlington on an annual basis regardless of the length of approval granted by either the state or federal agency.
- E. Renewals of permits shall not be unreasonably denied at the expiration of the periods herein provided.

§ 161-12. Violations and penalties. [Amended 7-8-02 by Ord. No. 02-23; 5-7-2007 by Ord. No. 08-07]

In addition to the powers conferred to the members of the Police Department of Mount Arlington, the Enforcement Officer, either on his own initiative or upon the recommendation of the Mount Arlington Planning Board/Land Use Board, shall, in the event of a violation hereunder or failure to comply with the requirements of a permit, revoke any tree removal permit or permits granted hereunder, building permit or permits, certificate or certificates of occupancy, as the case may be, or issue such stop order or stop orders, as the case may be, and seek to enjoin any such failure or violation through a court of competent jurisdiction or to take such other steps as may be authorized and permitted by law to correct such violation or enforce implementation of the terms and conditions of this chapter. Any person, firm, corporation or other legal entity in violation of any provision of this chapter shall, upon conviction thereof, be liable to the penalty provided by Chapter 1, Article III, for each such offense. Each separate act, action or conduct in violation of this chapter shall constitute a separate offense.

§ 161-13. Tree Bank. [Added 12-4-2018 by Ord. No. 22-18]

The purpose of this chapter is to provide a fund for the planting of trees within the Borough of Mount Arlington. More specifically, when an applicant for a tree removal permit has demonstrated an inability to comply with the tree replacement requirements of the chapter, then the applicant shall pay a per tree fee to the Tree Bank. Public or private entities that wish to donate to the Borough of Mount Arlington to provide for trees to be planted may donate to the Tree Bank for said purpose.

§ 161-14. Applicability of Tree Bank. [Added 12-4-2018 by Ord. No. 22-18]

The Tree Bank applies to all tree removal permits, where an applicant may be required to replace trees.

§ 161-15. Borough Tree Bank established. [Added 12-4-2018 by Ord. No. 22-18]

- A. The Borough shall establish and maintain a Tree Bank where fees collected from applicant contribution pursuant to § 161-7E(4) shall be kept. The fund shall be utilized by the Borough Administrator, or designee, for tree planting in the Borough of Mount Arlington.
- B. Funds within the Tree Bank shall be allocated to at least one tree planting event per year subject to fund availability.

- C. Trees planted by Tree Bank funds should be located as closely as possible to the areas where tree removal occurred that generated payments to the Tree Bank.
- D. The Borough Tree Bank Fund may also accept donations and/or funds from other sources for the express purpose of planting trees at locations selected by the Borough Administrator or designee.