

BOROUGH OF DEMAREST
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO. 1164-25
AMENDING CHAPTER 163 – TREES

Section 1. Purpose & Authority. The purpose of this ordinance is to amend Chapter 163-Article 2 of the Demarest Code to establish the requirements and procedure for tree removal and replacement in the Borough of Demarest.

Section 2. Amendment. Chapter 163-Article 2 is hereby amended to read in its entirety as set forth in the attachment to this ordinance.

Section 3. Repealer. Ordinance Nos. 1121-23 and 1127-23 – Amending Chapter 163 – Trees are hereby repealed.


Section 4. Savings and Construction. This ordinance shall be construed consistent with the purpose stated in Section 1 hereof. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent possible. This ordinance repeals provisions of the Demarest Code only where stated herein; otherwise, this ordinance is amendatory and supplementary to existing provisions of the Demarest Code; provided, however, that this ordinance shall in no way impair or affect any provisions of Chapter 163-Article 1.

Section 5. Codification. This ordinance shall be codified as amendments to the chapters set forth herein.


Section 6. Effective Date. This ordinance shall take effect immediately upon approval and publication of notice of adoption as provided by law.

Attest:

Approved:



Julie Falkenstern
Acting Municipal Clerk



Brian Bernstein
Mayor

Chapter 163-Article 2 TREE REMOVAL AND PROTECTION

Chapter 163-Section 14 Short Title; Purpose; Scope.

a. This Article shall be known as the "*Tree Removal and Protection Regulations of the Borough of Demarest.*"

b. *Findings and Purpose.* The Mayor and Council of the Borough of Demarest finds that: (a) residents may have the need to remove trees on their Property and the Borough should provide guidelines to follow with respect to tree removal, (b) despite the need to remove trees, as set forth herein, the preservation, protection and planting of trees generally aids in the stabilization of soil by the prevention of erosion and sedimentation; helps to decrease the amount and rate of storm water runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; helps to replenish ground water supplies; acts to moderate extremes of temperature and to provide shade; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; protects and increases property values; conserves and enhances the Borough's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare, and (c) except as permitted herein, clear-cutting of trees should be prohibited or otherwise regulated.

c. *Scope.* This Article applies to trees located on private property in the Borough of Demarest. It does not apply to any tree or shrubbery upon and in the streets, highways, public places, parks and parkways of the Borough of Demarest with respect to which the Commission has authority under N.J.S.A. 40:64-1, *et seq.*, and/or Chapter 163-Article 1 of the Demarest Code.

Chapter 163-Section 15 Definitions. For the purpose of this Article, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this Article clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number (and vice versa), and the use of the word "shall" means the requirement is mandatory and not merely directory.

APPLICANT means the owner of the private property on which the Covered Tree sought to be removed is located, or such owner's authorized agent, who applies for a permit to remove such Covered Tree under this Article.

BUILDING FOOTPRINT means the area encompassed by the principal building's outerwall and driveway at ground level plus a perimeter of 10 feet immediately contiguous to the outer wall plus the area of the driveway.

CALIPER means the standard measure of tree size for trees to be newly planted. With respect to a Replacement Tree, 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.

CLEAR-CUTTING means the removal or Constructive Removal in any two contiguous calendar years of 25% of the Covered Trees on any lot(s) in the Borough (and not in the Borough right-of-way) as depicted on the Borough's tax map or on or in any approved subdivision plat or deed.

COMMISSION means the Borough of Demarest Shade Tree Commission. Contacts with the Commission with respect to this Article shall be made through the Shade Tree Commission Secretary.

CONSTRUCTIVE REMOVAL means killing or irreparably leading to the death of a Tree by any means such as resulting from construction, digging, cutting, gashing or slitting the Tree; pouring any toxic liquid or other material on the Tree or on the nearby ground; constructing or placing any nonporous material on the ground around the Tree so as to cut off air, light or water from its roots; or placing or removing any significant amount of soil within ten (10) feet from the Tree. Constructive Removal shall also include damaging the zone around the base of a tree where the majority of a root system is found. In the event of a question as to whether there was Constructive Removal of a Covered Tree, the final determination shall be made by the Borough's Tree Expert.

COVERED TREE means any existing Tree with a Diameter at Breast Height ("DBH") of six (6) inches or more.

DIAMETER AT BREAST HEIGHT (DBH) means, with respect to an existing tree, the diameter of the trunk measured at four and one-half (4-1/2) feet above ground level on the uphill side of the tree. For species of Trees where the main trunk divides below the 4-1/2 foot height, the diameter shall be measured at the highest point before any division. For a Tree with multiple trunks, the diameter shall be calculated by multiplying the diameter of the largest trunk by 1.5 times.

HAZARD TREE means an existing Tree or limbs thereof that meet one or more of the following criteria: (a) has an infectious disease or insect infestation; (b) is dead or dying; (c) obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective; (d) is causing damage to a permitted structure (such as a building foundation, sidewalk, etc.); or (e) is determined to be a threat to public health safety and/or welfare. The final determination of whether a tree or limb has an infectious disease or insect infestation, or is dead or dying shall be made by a Tree Expert engaged by the Borough. The final determination if a Tree or limbs obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective, is causing damage to structures (such as building foundations, sidewalks, etc.) or is a threat to public health safety and/or welfare, shall be made by the Demarest Police Department, Code Enforcement Officer, DPW Manager or Borough Administrator.

LANDMARK TREE means any Tree designated as such by the Mayor and Council pursuant to the standards set forth in this Article.

MAJOR TREE means a deciduous woody Tree with a Caliper of at least two (2) inches and an approximate height of ten (10) to twelve (12) feet when planted, and a height of at least fifty (50) feet at maturity.

MINOR TREE means a deciduous woody Tree with a Caliper of at least two (2) inches and an approximate height of ten (10) to twelve (12) feet when planted, and a height of at least twenty (20) feet at maturity.

REPLACEMENT TREE means a Tree which is required to be planted to replace a Covered Tree that is being removed, and which is of a type and as required in the applicable section of this Article 2 of Chapter 163.

TREE means any deciduous or evergreen woody perennial, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground, and its root system.

TREE EXPERT means an ISA Certified Arborist or NJ Licensed Tree Expert.

Chapter 163-Section 16 Tree Removal Permit Required. No person shall remove a Covered Tree located on private property in the Borough of Demarest unless and until a Tree Removal Permit has been obtained pursuant to this Article 2 of Chapter 163.

Chapter 163-Section 17 Clear-Cutting. Clear-Cutting is prohibited unless one of the following exemptions applies:

- a. Removal of one or more Tree(s) directed to be removed by municipal, county, state or federal authority pursuant to law.
- b. Removal of one or more Hazard Tree(s).
- c. Removal of one or more Tree(s) which appear to cause structural damage to buildings or foundations, as determined by the Borough Code Enforcement Official or his/ designee.
- d. Removal one or more Tree(s) within the right-of-way by utility companies for maintenance of utility wires or pipelines, or within sight easements/
- e. Removal of one or more Tree(s) pursuant to major subdivision or site plan approval obtained prior to the effective date of this article, and approved amendments thereto.
- f. Removal of one or more Tree(s) considered invasive or undesirable by the Borough's Tree Expert, or declared as such by the state or county, or any agency thereof.
- g. Removal of one or more Tree(s) located in a Building Footprint for which a valid zoning permit has been issued (exclusive of accessory structures, uses and buildings as defined in Chapter 175)

Clear-Cutting exempted per (e) and (g) hereinabove shall require tree replacement in accordance with Section 2(b)(2).

Chapter 163-Section 18 Application Procedure.

a. Application for a Tree Removal Permit shall be made by submitting to the Borough a completed, signed Tree Removal Permit application on forms provided by the Borough, together with the items listed below, as applicable, and payment to the Borough of the application fee required under Section 19 (*see also* Section 23 for special and/or additional requirements when the proposed Covered Tree removal is in connection with an application for site plan approval or a construction permit):

1. *For permission to remove a Hazard Tree:* Provide a survey or map, preferably drawn to scale, showing the location of the Hazard Tree marked with an "X," and identify its species, if known, and indicate which section of the definition of a Hazard Tree applies to it; and

2. *If no Tree Replacement is required according to Section 20(b)(1) (other than for removal of a Hazard Tree):* Provide a survey or map, preferably drawn to scale, showing the location of each Covered Tree proposed to be removed marked with an "X," and identify its species, if known, and indicate why no Tree Replacement is required; and

3. *If Tree Replacement is required according to Section 20(b)(2), provide:*

(i) A Tree Removal Plan consisting of a survey or map, preferably drawn to scale, showing the location of all Structures (as defined in Demarest Code Section 175-27B) and the number of Covered Trees on the property, with each Covered Tree proposed to be removed marked with an "X," and identify its species, if known; and

(ii) A Tree Replacement Plan consisting of the same survey or map, preferably drawn to scale, showing the location of each Replacement Tree proposed to be planted, with its species and size as required.

4. If a permit is sought for Clear-Cutting based on satisfaction of one of the exemptions listed in Section 17, provide:

(i) A Tree Removal Plan consisting of a survey or map, preferably drawn to scale, showing the location of all Structures (as defined in Demarest Code Section 175-27B) and the number of Trees proposed to be removed marked with an "X," and identify its species, if known; and

(ii) A Tree Replacement Plan consisting of the same survey or map, preferably drawn to scale, showing the location of each Replacement Tree proposed to be planted, with its species and size as required.

b. To permit field inspection, the Applicant shall place a one-inch-wide red ribbon at a height of four and one-half (4-1/2) feet above ground level around the trunk of each Covered Tree proposed to be removed.

Chapter 163-Section 19 Application Fee.

a. The application fee for a Tree Removal Permit

<i>Number of Covered Trees</i>	<i>Application Fee</i>
1 to 3	\$100.00
4 to 6	\$125.00
7 or more but excluding Clear-Cutting	\$250.00
Clear-Cutting that qualifies for an exemption	\$2,500.00

Chapter 163-Section 20 Standards for Application Review. An application for a Tree Removal Permit shall be reviewed and processed in accordance with the following standards (*see also* Section 23 for special and/or additional requirements when the proposed Tree removal is in connection with an application for site plan approval or certain construction permits):

a. *Permitted Removal.* A Tree Removal Permit shall be granted as of right, subject to the provisions of this Ordinance and any applicable Tree Replacement requirements, for removal of each Covered Tree proposed to be removed where the entire trunk is on the private property of the Applicant and it is:

1. A Hazard Tree (*no Tree replacement is required unless Section 20(b)(1)(i) so requires*), or
2. Not on the property line. If a Tree proposed to be removed is on the property line, consent to removal shall be obtained from all property owners who share the property line on which the Tree to be removed is situated.
3. When an exemption to the prohibition against Clear-Cutting has been met.

b. *Tree Replacement Requirements.*

1. *Tree Replacement Not Required.* No tree replacement shall be required:

(i) In connection with removal of a Hazard Tree; provided, however, that Tree Replacement shall be required if the Hazard Tree's condition is the result of Constructive Removal.

(ii) For removal from the property in question of up to three (3) Covered Trees each with a DBH of less than ten (10) inches within a rolling thirty-six (36) month period, provided the Applicant satisfies all other requirements of this Article (i.e., applying for and awaiting issuance of a permit).

2. *Tree Replacement Required.* Tree replacement shall be required in all cases other than those described in Section 20(b)(1) as not requiring Tree replacement. Tree replacement shall be accomplished by planting on the property in question a Replacement Tree that meets the requirements specified below:

DBH of Covered Tree Being Removed	Replacement Tree(s) Required*
Less than 6"	None
6" to less than 13"	1 Replacement Tree for every 1 Covered Tree
13" to less than 23"	2 Replacement Trees for every 1 Covered Tree
23" to less than 33"	3 Replacement Trees for every 1 Covered Tree
33" or greater	4 Replacement Trees for every 1 Covered Tree
Landmark Tree	See Section 24

*Required Replacement Trees: Each Major Trees shall be replaced with at least one Major Tree with a Caliper of at least two (2) inches. Minor Trees shall be replaced with Major Trees or Minor Trees with a Caliper of at least two (2) inches. Evergreen Trees shall be replaced with Trees with a Caliper of at least two (2) inches; they may be deciduous or evergreen unless another section of this Article specifically requires one or the other.

3. *Tree Replacement Fee Option.* In lieu of planting up to fifty percent (50%) of the required Replacement Trees, the Applicant may elect to pay to the Shade Tree Commission Trust a Tree Replacement Fee of five hundred dollars (\$500.00) for each required Replacement Tree not being planted; provided, however, that the Tree Replacement Plan provides for there to be, after the proposed removals of Covered Trees and the planned planting of all Replacement Trees, at least one Covered Tree or Replacement Tree per 2,500 square feet of lot area (including improved and unimproved area) (*see also* Section 23 for special and/or additional requirements when the proposed Covered Tree removal is in connection with an application for site plan approval or certain construction permits). This option shall only be available as part of the Tree Removal Permit application process (i.e., prior to any removal of Covered Trees without a Tree Removal Permit). Notwithstanding the foregoing, if the number of Replacement Trees is equal to or greater than the number of Covered Trees being removed and the Applicant claims a hardship in being required to plant all of the required Replacement Trees on the property, the Applicant may submit a hardship request for an increase in the permitted fee option in lieu of planting. For purposes of this section, a hardship shall be determined by the Borough Code Enforcement Official or his/her designee on a case-by-case basis, considering, for example, whether the property or health of Trees will not withstand the replacement plantings, or input sought from the Borough's Tree Expert.

4. *Purpose of Tree Replacement.* The requirement for Tree Replacement in any instance is to be considered implementation of the purposes of this Article, and not a penalty. Tree Replacement shall not be a substitute for, but shall be in addition to, any penalty imposed for violation of the provisions of this Article.

Chapter 163-Section 21 Time of Completion.

a. All Replacement Trees required under Section 20(b) shall be planted within six (6) months after the issuance of the Tree Removal Permit, or as otherwise permitted by the Borough Code Enforcement Official or his/her designee, and their determination must take into consideration the completion of any construction on the Property, the type of trees to be planted and the season or weather that may affect the plantings.

b. The Applicant may submit a written request to the Borough Code Enforcement Official or his/her designee for an extension of up to six (6) months of the time within which Replacement Trees must

be planted or replanted due to unforeseen circumstances or weather conditions, which request shall not be unreasonably denied.

c. The Applicant shall contact the Borough Code Enforcement Official or his/her designee within fourteen (14) calendar days of the removal of the Covered Trees and within fourteen (14) calendar days after the completion of required planting to schedule a date and time for inspection to determine whether the required removal and planting have been completed in accordance with this Ordinance; in making such determination, the Code Enforcement Official may seek and consider input from the Borough's Tree Expert, the Shade Tree Commission, the applicant's tree expert or an itemized receipt from a licensed landscaper identifying the Replacement Tree(s) planted by such landscaper.

Chapter 163-Section 22 Death of a Replacement Tree. In the event that a Replacement Tree dies within twelve (12) months after planting, it shall be replaced by the Applicant or property owner within six (6) months or any granted extension as provided for in Section 163-21(b) herein.

Chapter 163-Section 23 Requirements in Connection With Site Plan Approval or Construction Permits.

a. Neither site plan approval nor a construction permit may be issued unless and until a Tree Removal Permit has been issued with respect to every Covered Tree proposed to be removed according to the site plan or construction documents.

b. With respect to all construction:

(1) Existing trees shall be preserved to the greatest extent feasible. Removal is permitted as of right for only those Covered Trees that are within the Building Footprint, subject to the Clear-Cutting restrictions.

(2) Subsequent to permitted removal of Covered Trees but prior to the start of construction, snow fencing or other protective barrier acceptable to the Construction Official shall be placed around all Covered Trees that are not to be removed. The protection barriers shall remain in place until all construction activity on the property has terminated.

(3) No equipment, chemicals, soil deposits, construction materials, debris or construction equipment shall be placed within any area protected by barriers or within fifteen (15) feet from any Covered Tree. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

(4) All Replacement Trees required under Section 20b shall be planted within six (6) months after completion of the project, issuance of a certificate of occupancy or issuance of a certificate of approval, whichever shall be sooner.

c. In the event of any inconsistency between a requirement in this Section 23 and a requirement in another section of this Article, the more restrictive requirement shall apply.

Chapter 163-Section 24 Protection of Landmark Trees.

a. Notwithstanding any other provision of this Article, no person shall remove any Landmark Tree without the prior approval of the Mayor and Council.

b. The Mayor and Council shall determine whether to designate a Tree as a Landmark Tree using the following criteria: (i) the Tree species is rare; (ii) the Tree is more than one hundred (100) years old; (iii) the Tree is of an abnormal height or has an abnormal DBH for a Tree of its species; or (iv) the location,

shade value, fragrance, erosion control, aesthetic features, or scenic enhancement of the Tree is of special importance to the Borough of Demarest. With respect to these criteria, the Mayor and Council may rely upon the written finding of the Shade Tree Commission or the written opinion of the Borough's Tree Expert, and may consider a written request for such designation or a written objection to such designation submitted by the owner of the property on which the proposed Landmark Tree is located. The burden to demonstrate that a tree should be designated a Landmark Tree shall be solely on the person or entity seeking such designation, whether that be the Shade Tree Commission, a resident, or any other person or entity.

c. Trees designated as Landmark Trees by the Mayor and Council shall be shown on an official Borough Map with appropriate code marks signifying each tree's designation, number, species, age, size and other distinguishing characteristics for ready reference and periodic monitoring.

d. If the owner of the property on which a Landmark Tree is located consents thereto, the Borough may identify such tree as a Landmark Tree by the placement of a suitable marker thereon.

e. Tree Replacement shall be required for each Landmark Tree permitted to be removed by the Mayor and Council by planting on the property five (5) Replacement Trees of a species and Caliper determined by the Mayor and Council considering the species and location of the Landmark Tree being removed.

f. If and when any Landmark Tree is removed, the Mayor and Council shall arrange for the necessary changes to be made to the official Landmark Tree inventory records and Borough Map.

Chapter 163-Section 25 Enforcement. This Article shall be enforced by the Borough of Demarest Police Department, the Demarest Construction Official and/or the Demarest Code Enforcement Official during the course of ordinary enforcement duties.

Chapter 163-Section 26 Appeals. An Applicant may appeal the denial or conditions of a Tree Removal Permit to the Mayor and Council. Such appeal shall be made within fourteen (14) calendar days after the issuance of the decision being appealed by submitting a written statement of the basis of the appeal to the Borough Clerk. The Mayor and Council shall endeavor in good faith to render a decision on the appeal within thirty (30) calendar days after the submission of the appeal request, plus any extensions consented to by the appealing party, and may reverse, modify or affirm the decision at issue. The Tree Removal Permit being appealed shall be held in abeyance until the Mayor and Council has issued its decision, and such decision shall be final.

Chapter 163-Section 27 Violations and Penalties.

a. It is the responsibility of the property owner and any other person who removes a Tree in the Borough of Demarest to know and comply with the provisions of this Article. Violation of this Article may result in issuance of a Notice of Violation to either or both parties. An Enforcement Officer identified in Section 25 may issue a Notice of Violation for any violation of this Ordinance. Failure to timely, voluntarily resolve the violation pursuant to Section 27(b) shall result in the issuance of a Summons, which will require an appearance and disposition in the Municipal Court.

b. Notice of Violation–Voluntary Resolution: The property owner or person violating this ordinance shall have thirty (30) days from the issuance of the Notice of Violation ("Permitted Window") to voluntarily and unconditionally resolve the violation by submitting to the Code Enforcement Official or his/her designee within the Permitted Window: (1) a payment to the Borough in the amount which is equal to 80% of what would otherwise have been the total fines for the violation under Section 27(1) and 27(c)(3), and (2) a voluntary contribution to the Shade Tree Commission Trust Account in the amount which is equal to 80% of what would otherwise have been the Tree Replacement Fee under Section

27(c)(2), if any. Payments made for the Tree Replacement Fee portion of a voluntarily resolution shall be paid over to the Shade Tree Commission Trust.

c. Penalties. If a Notice of Violation is not timely voluntarily resolved pursuant to Section 27(b):

1. The penalty for removing one or more Covered Trees (including for Clear-Cutting where an exemption would have been available under Section 17) without applying for and awaiting issuance of a Tree Removal Permit shall be a fine of one thousand two hundred fifty dollars (\$1,250.00) for the violation; and there shall be paid to the Shade Tree Commission Trust a Tree Replacement Fee equal to six hundred twenty-five dollars (\$625.00) dollars for each required Replacement Tree that was not timely planted.

2. The penalty for Clear-Cutting one or more Covered Trees where no exemption would have been available under Section 17 without applying for and awaiting a Tree Removal Permit shall be a fine of two thousand dollars (\$2,000.00) per Covered Tree removed, 90 days in jail, or both, and the requirement to pay to the Shade Tree Commission Trust Account an amount equal to the contribution for three (3) Replacement Trees for each Covered Tree wrongfully removed.

3. There shall be an additional fine of one thousand two hundred fifty dollars (\$1,250.00) for each thirty (30) calendar days subsequent to the date by which one or more Replacement Trees were required to have been planted but were not planted. For example, failure to plant a Replacement Tree for 61 days after the date by which it was required to be planted will result in an additional fine of two thousand five hundred dollars (\$2,500.00).

d. All fines must be paid within thirty (30) days. Failure to timely pay fines shall result in the imposition of an additional fine of one hundred dollars (\$100.00) per day for each day that the aggregate fines have not been timely paid.

e. Fines and Tree Replacement Fees may, upon a written plea of or finding of guilty, be paid and satisfied through the Violations Bureau of the Municipal Court. Fines shall be paid over to the Borough of Demarest; Tree Replacement Fees shall be paid over to the Shade Tree Commission Trust.

e. Fines for violations of this Article and Tree Replacement Fees are not subject to a limit.

Chapter 163-Section 28 Shade Tree Commission Trust Account.

a. All Tree Replacement Fees and all voluntary contributions in lieu of Tree Replacement Fees shall be deposited to the Shade Tree Commission Trust and used by the Commission solely for the purpose of planting and maintaining Trees in the Borough of Demarest.

b. All funds payable pursuant to Chapter 53 or Article 1 of Chapter 163 of the Demarest Code (excluding fees paid to the Borough to resolve a Notice of Violation, and any fines or penalties) shall be deposited to the Shade Tree Commission Trust Account and used by the Commission solely to carry out its duties under Article 1, including the removal, regulation, planting, care and control of shade trees and shrubbery on public property or in street rights-of-way in the Borough of Demarest.

Introduced: June 23, 2025

Adopted: 7/14/25

ATTEST: 
Borough Clerk

Approved: 
Mayor Brian Bornstein