

# ORDINANCE

O-6-2020

BOROUGH OF NORTH CALDWELL, ESSEX COUNTY, NEW JERSEY

## AN ORDINANCE AMENDING CHAPTER 96 OF THE CODE OF THE BOROUGH OF NORTH CALDWELL REGARDING TREES: REMOVAL AND DESTRUCTION

**WHEREAS**, from time to time the Mayor and Council deem it appropriate to review, revise and improve ordinances for the welfare of the citizens of the Borough of North Caldwell; and

**WHEREAS**, the Mayor and Council determined that it would review Chapter 96 of the Code of the Borough of North Caldwell to determine whether modifications would be advisable; and

**WHEREAS**, such a review was conducted by and through the Legal and Ordinance Committee of the Borough Council and members of the Planning Board and Zoning Board of Adjustment; and

**WHEREAS**, such review resulted in recommendations for certain modifications to Chapter 96; and

**WHEREAS**, the Mayor and Council have reviewed said recommended modifications and have incorporated certain recommendations by way of amendment to certain portions of Chapter 96;

**NOW, THEREFORE, BE IT ORDAINED** By the Mayor and Council of the Borough of North Caldwell, County of Essex, State of New Jersey as follows:

1. Chapter 96 Trees: Removal and Destruction of the Code of the Borough of North Caldwell be and is hereby amended to provide the following:

**§ 96-1. Purpose.**

- A. The Borough Council of the Borough of North Caldwell does hereby decide and find that the indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon lots and tracts of land within the borough results in creating increased municipal costs to control drainage and further causes increased soil erosion, decreased fertility of soil and increased dust, all of which deteriorate property values and further render land unfit and unsuitable for its most appropriate use, with the result that there has been and will continue to be deterioration of conditions affecting the health, safety and general well-being of the inhabitants of the Borough of North Caldwell. It is the further finding of the Council that the preservation, protection and planting of trees are in the stabilization of sod and prevents erosion and sedimentation; provides a buffer and screen against noise and pollution and otherwise enhance the environment; protects and enhances the environment; increase property values and enhances the Borough's physical and aesthetic appearance.
- B. It is the purpose of this chapter to control soil erosion and sediment damages and related environmental damage by requiring adequate provisions for surface water retention and drainage and for the protection of exposed soil surfaces in order to promote the safety, public health, convenience and general welfare of the community. The standards and procedures established in this chapter are intended to regulate and require tree removal permits for removal of trees on Improved Lots as defined herein and are further intended to furnish guidelines for the use of borough boards, committees and commissions in evaluating tree removal and planting plans prior to issuing approval for subdivision and other land development.
- C. No person shall cut or remove any tree upon any land within the Borough of North Caldwell, New Jersey, in the County of Essex, unless such removal accomplishes a useful purpose and is done in accordance with regulations and provisions of this chapter.

**§ 96-2. Definitions.**

As used in this chapter:

**APPROVED PLAN** — A plan of tree removal and/or planting approved by the Planning Board or as required by the Enforcement Officer, or other borough agency as provided for in this chapter.

**COMMUNITY BUILDINGS** — Schools, churches, clubs, lodges or any such building used by any organized group or by the public generally.

**DEAD TREE** – A tree that has ceased to function physiologically as determined by the Enforcement Officer. Said tree is typically devoid of leaves and may have lost bark.

**DIAMETER AT POINT OF MEASUREMENT (DPM)** - The diameter of a tree at 4.5 feet (forestry method) above the ground level on the downhill side for existing trees. Trees utilized in the replacement of existing trees or proposed as part of a landscape plan shall be measured 12 inches above ground level for trees over a 4 inch diameter (nursery method).

**DISEASED TREE** – A tree that is terminally infested with fungus, virus or insects.

**ENFORCEMENT OFFICER** – The person designated from year to year by the Borough Council to enforce the provisions of this Chapter 96.

**IMPROVED LOT** – A single residential or commercial lot upon which is a residential or commercial structure.

**PERSON** – Shall mean any individual, firm, partnership, corporation or other legal entity.

**PREFERRED TREE LIST** — A list of trees recommended by tree specialists as best adapted to the climate, soil and topography of the Borough of North Caldwell. This list shall be kept on file by the Enforcement Officer for his/her use in connection with any required planting plan or tree replacement requirements and shall be available for the use and guidance of persons presenting plans for tree planting and replacement.

**PROTECTED TREE** — Any woody perennial plant having a diameter greater than six (6) inches, measured at a point four and one-half (4 1/2) feet above the ground.

**VACANT LOT** – A single, approved lot which has no structure or other improvements. Such lot shall be subject to the same conditions and restrictions as an Improved Lot. Any reference in this Chapter 96 to an Improved Lot, includes, by definition, a Vacant Lot.

**WOODED AREA** — Any area larger than one-half (1/2) acre supporting sufficient trees to cause seventy-five percent (75%) of the ground to be directly under canopies of trees.

**§ 96-3A. Tree Removal on Improved Lots; Permit; Application Procedure.**

- A. Application for a permit for tree removal on an Improved Lot shall be made by submission of the following:
  - 1. A completed application form provided by the Borough containing the following information: the name and address of the applicant; the street address and tax lot and block of the property in question; the number of Protected Trees to be removed;
  - 2. The reason(s) for removing the Protected Trees;
  - 3. A tree removal plan (if four or more trees are being removed) consisting of a diagram showing the location of all Protected Trees to be removed, the species of such trees and their diameter, the location of all trees of a

size described in §96-2 within the drip line of the trees to be removed, and location of all existing and proposed structures on the property, together with the distance that the trees proposed to be removed are located from such structures and from property lines. A reproduction of the Tax Map or an existing survey modified to provide this information would be acceptable.

4. A tree replacement plan (if replacement is required pursuant to this Chapter 96) to be reviewed and approved by the Enforcement Officer. The plan shall consist of a diagram (as described above), showing the location of all trees to be planted, the species of such trees and their diameter or size as required.
  5. A fee of \$25.00 for processing a live tree removal permit. No fee will be required for the removal of a dead, diseased or damaged tree.
- B. The applicant shall place a one-inch wide yellow ribbon to be provided by the Borough around the trunk of each tree to be removed at a height of 4.5 feet (or three feet for ornamental trees) above the ground so that the proposed tree removal may be inspected in the field.

**§ 96-3B. Standards for Permit Application Review.**

- A. Upon receipt of a permit for cutting or removal of trees on an Improved Lot, the Enforcement Officer shall inspect the site on which the trees sought to be cut or removed are located and shall evaluate the drainage and other physical conditions existing on the subject property and adjoining properties. The Enforcement Officer shall also consider the following factors in deciding whether to issue such permit:
1. Whether the proposed cutting or removal would impair the growth and redevelopment of the remaining trees on the applicant's property or adjacent property;
  2. Whether the proposed cutting or removal would change existing drainage patterns;
  3. Whether the proposed removal would allow soil erosion or increase dust;
  4. Whether the proposed removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or the wooded aspect of the lot as viewed from the adjacent public road;
  5. Whether the proposed removal would constitute a horticulturally advantageous thinning of an existing overgrown area or the removal of dead or diseased trees;
  6. The overall effect of removal of such tree(s) on the physical and aesthetic value of the property and the neighborhood;
  7. Whether the area where such tree(s) is (are) located is or will be occupied by a structure, a driveway, a roadway, or a sewer line, or whether such area is within 15 feet of any of the foregoing;
  8. Whether proposed changes in the topography of the area where such tree(s) is (are) located will have depressed land configuration or fill of land which shall be deemed injurious to the trees or other trees located nearby so as to require welling, construction of an aeration system, or tree removal or replacement;

9. Whether the proposed removal would remediate a safety hazard to persons or structures.
- B. The Enforcement Officer has 15 business days to respond to the permit application unless emergency circumstances dictate otherwise.

**§ 96-3C. Exemptions.**

1. For purposes of administrative convenience, up to three (3) Protected Trees may be removed on an Improved Lot within any three hundred sixty-five (365) day period but no single Protected Tree greater than twelve (12) inches in diameter may be removed without a Tree Removal Permit or an Approved Plan to be determined by the Enforcement Officer. For enforcement and record-keeping purposes, every person removing one or more Protected Trees pursuant to this exemption shall file a tree removal application form with the Enforcement Officer on a form to be provided by him or her, to document the tree(s) removed and date of removal. The tree removal application form shall be filed within five (5) days of removal of the tree(s).
2. Cutting down or removal of a nonviable tree, or a tree that is an immediate hazard to structures or human life or property (subject to completion of Tree Removal Application and approval of Enforcement Officer).
3. Activities lawfully conducted on public lands or rights-of-way by public entity.
4. Tree removal in conjunction with a Woodland Management Plan(s).

**§ 96-3D. Protection of Existing Trees.**

- A. In connection with any construction, subsequent to tree clearing but prior to the issuance of a building permit or start of construction, snow fencing or other protective barrier acceptable to the official charged with the administration and enforcement of this chapter shall be placed around trees that are not to be removed. The protective barriers shall be placed at least five (5) feet from the trunk of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
- B. No person shall:
1. Cut down or remove any tree except as permitted by this chapter or allow or cause such cutting or removal;
  2. Cause or allow any willful damage, injury or disfigurement of any tree growing within the Borough. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as the result of but not limited to the following: cutting, gashing or slitting of any tree; or on the nearby ground; the construction or placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placement or removal of any soil from within five (5) feet of any tree or ornamental tree as defined.
  3. Store or pile building material or debris or place construction equipment within five (5) feet of any Protected Tree.

**§ 96-3E. Fees and Costs for Removal of Protected Trees on Improved Lots.**

- A. Permit Fees are required for removal of Protected Trees on Improved Lots as follows:
  - a) 1-10 trees: \$25.00 per tree.
  - b) 11-20 trees: \$35.00 per tree.
  - c) 21 or greater trees: \$50.00 per tree.
  - d) Dead tree: No permit or fee for dead, diseased or damaged trees - Certification from tree company and/or a determination by the Enforcement Officer is required.
  - e) Exempt tree: No permit or fee for exempt trees (See Chapter 96-3C and select applicable exemption)
- B. No permits are required in connection with obtaining an Approved Plan from the Planning Board.
- C. If any tree to be saved in connection with construction as set forth above or any replacement tree planted pursuant to this Chapter shall die within two (2) years, it shall be replaced by the applicant or the property owner within six (6) months.

**§ 96-4. When Tree Removal Plan and Planting Plans are Required.**

- A. A tree removal and planting plan shall be filed with the Planning Board with every application for a minor or major subdivision, application for re-subdivision, site plan review and approval, or prior to any other development requiring tree removal or planting, including special exception and use variances, except as otherwise provided in § 96-4 or Subsection B of this section. Where no tree removal or planting is planned, this information shall be submitted. No trees shall be removed by an applicant for a subdivision or its representative until final subdivision approval by the Planning Board and the signing of the developer's agreement covering a major subdivision.
- B. Where a lot or tract is proposed to be developed for use as a single-family residence and the owner has not received an approved plan or the approved plan has been revised, a plan shall be submitted to and approved by the Building Inspector.
- C. A plan for tree removal and replanting must be approved as part of every soil removal and landfill operation application under the Code of the Borough of North Caldwell.
- D. No building permit shall be issued for the construction of any residential, commercial, industrial, recreational or community buildings or accessory buildings unless and until the developer, builder or owner files with the Building Inspector a tree removal and/or planting plan and obtains approval thereof or submits a plan previously approved by the Planning Board.
- E. If building permits are sought on land which has been cleared for agricultural purposes in accordance with applicable law, a planting plan must be submitted to and approved by the Planning Board.
- F. No occupancy permit shall be issued unless tree removal has been in accordance with the Approved Plan and all trees required to be planted have been 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 one hundred dollars (\$100.) per tree involved.

- G. No tree removal plan and planting plan are required to be filed in connection with the removal of less than four (4) trees on an Improved Lot as set forth below, but removal of any tree on such a lot requires the filing of a permit application.

**§ 96-5. Exceptions to Planting Plan.**

Under this section, the following trees may be removed without filing a planting plan as required under §96-4:

- A. Any Protected Tree located on an Improved Lot ,so long as a tree removal permit has been obtained, or such tree has been removed in accordance with an Exemption under Chapter 96-3C, and an application has been duly filed, and further provided that the tree removal is authorized in writing by the owners of such property.
- B. Any tree as a part of a nursery, garden, orchard or tree farm, provided that the subject area is being actively used commercially and is not a component part of a subdivision or development for building purposes.
- C. Trees directed to be moved by municipal, county or state authority pursuant to law.
- D. Any dead, diseased or damaged tree or any tree that endangers life or property so long as a tree application permit form is filed to which is attached a tree company certification of the non-viability of the tree or such removal is authorized by the Enforcement Officer.
- E. Trees cut according to a plan developed by the State or Federal Forestry Departments, designed for weeding, thinning, planting or other tree culture and betterment of wooded areas, provided that a letter so stating is filed with the Building Inspector and is signed by the forestry specialist developing the plan.
- F. Trees removed in the development of ponds or lakes when supervised by the Soil Conservation Service and/or the Federal or State Forestry Service, provided that a letter so stating is filed with the Building Inspector and signed by the appropriate supervising agency.
- G. Trees removed for farmland or horticultural development, provided that a letter is filed with the Building Inspector stating that the land involved is suited for the aforementioned use and is signed by the Essex County Agricultural Agent.

**§ 96-6. Data required.**

If a planting plan is required under §96-4, every such plan submitted for approval shall be in the form of a map and exhibits showing:

- A. Tax map, lot and block number.
- B. Area of tract.
- C. Location of trees or wooded area.
- D. Number of trees or percent of wooded area.
- E. Species involved.
- F. General slope and topography, taken from a recognized map of such features.

- G. Location of streams and wetlands.
- H. Map of locations and surrounding properties showing wooded areas.
- I. A list of trees to be planted, preferably of the species shown on the preferred tree list.
- J. Tree removal plan and tree planting plan in relation to principal and accessory buildings, roads and driveways, parking lots, garden areas, etc., showing also the relation to survey stakes.
- K. Location of buildings.
- L. Location of roads, driveways, parking lots, recreation areas and garden areas.
- M. Grading plan.

**§ 96-7. Criteria for approval of tree plan:**

- A. Trees may be removed where the proposed paved portion of a parking area is planned. In off-street parking areas, other than for a single residential dwelling, islands of trees must be left in such a manner that there is a tree every two hundred (200) feet or less in any direction. No paving of any impervious nature shall be placed around the base of the trunk of the tree within ten (10) feet, and the grade shall be such that drainage of rainwater will keep the roof area watered without pooling or exceeding the requirements of the species. Excess water shall be admitted to dry wells or storm sewers on the parking lot or drained by acceptable means.
- B. Trees may be removed on private rights-of-way and driveways within ten (10) feet of each side of the planned paved area. Alignment of the driveways should be planned to save as many trees as possible.
- C. If no area other than a wooded area or area with trees can be found to accommodate the sewage system and field meeting the approval of the Borough Engineer, necessary tree removal shall be permitted.
- D. Where fill is required around trees, the tree must be protected by an air well six (6) feet in diameter or as needed around the trunk which will prevent the intrusion of soil. The top of the well must extend six (6) inches above the graded level. If the tree is of a species that will eventually die due to root disturbance or change in drainage or the owner prefers to remove the tree, it may be removed and replaced with another tree from the preferred list in another or the same area after the fill has stabilized.
- E. Any grading plan must protect standing trees from machine operation, soil storage or material storage by distance or proper barrier. Any tree damaged by construction activities must be replaced.
- F. Unless otherwise specified by the Enforcement Officer or by the Planning Board any tree used in a required planting or to replace a damaged tree must be, at a minimum, two and one-half (2 1/2) inches in diameter, measured four and one-half (4 1/2) feet from the top of root level and should be selected from the preferred list. Other planned plantings require no specifications other than that good silviculture should be considered.
- G. A buffer zone of trees and shrubs shall encircle three (3) sides of an industrial or commercial area in accordance with Borough Code Chapter 107, Zoning and Land Use. The Planning Board shall require a larger buffer zone when noise, size or height of the building or architectural design of the development requires an increase and may require a buffer of trees on all four (4) sides.

- H. Cluster development, commercial development and industrial development shall consider the use of treeless areas, if possible, for building sites. If it is necessary to develop wooded areas or remove trees for proposed building sites in the case of such developments, the Planning Board and/or the Building Inspector may require tree planting in treeless areas if feasible.
- I. Trees in the area between the street line and the setback line of the buildings shall be preserved to the greatest extent possible.
- J. Tree removal from any slope is prohibited if it will contribute, in the opinion of the Planning Board or the Building Inspector, to extra runoff of surface water onto adjoining property and erosion and silting, unless other means approved by the Borough Engineer are provided to prevent runoff and erosion.
- K. No tree removal is permitted that will create nuisance lighting, expose vacant land, billboards, utility substations, transmission towers, warehouses, junk yards, landfill operations and other similar structures or operations, except where trees are dead or diseased and/or endanger life or property. However, vacant land may be exposed if it is necessary to remove trees for building sites or sewerage sites and more aesthetic values are established.
- L. No trees on public rights-of-way, parks or public areas are to be removed by private individuals or utilities except as approved by a board or officer designated by the Borough Council.
- M. Trees may be removed to clear for soil removal or landfill, provided that the same amount of wooded area or the same number of trees are replaced. If the finished operation is planned to be used for other development, the replacement of trees shall be a part of the subdivision plan or a site plan submitted for approval by the Planning Board.

**§ 96-8. Enforcing officer.**

- A. The Enforcement Officer shall be the person appointed or charged by the Borough Council with enforcement of this Chapter 96.
- B. The Enforcement Officer may, on his/her own initiative or on complaint of any individual, take action to assure compliance with this chapter.
- C. The Enforcement Officer has approval authority as herein provided and may request expert assistance.

**§ 96-9. Appeals of Permit Application Denials/Appeal of Enforcement Officer's Decision.**

The Enforcement officer has 15 business days to respond to the permit application. Any person aggrieved by the decision of the Enforcement Officer and by any other officer, board or body may, pursuant to the provisions of this chapter, within ten (10) days of the receipt of such decision, appeal to the Planning Board. Such appeal shall be taken by filing a written notice of appeal with the Planning Board, which notice of appeal shall set forth with particularity the action appealed from. The Planning Board shall set a time for the hearing of said appeal and, after a hearing has been held thereon, may reverse, modify or affirm the decision appealed from.



**§ 96-10. Violations and Penalties.**

Every Protected Tree, as defined in § 96-2, which has been cut or removed in violation of the provisions of this chapter shall constitute a separate offense.

No person shall cut down or remove any Protected Trees (subject to exemptions) on an Improved Lot without a tree removal permit. The penalty for violation of this section shall be:

- A. First offense: \$ 200.00
- B. Second offense: \$ 400.00
- C. Third offense: \$ 600.00
- D. Fourth and subsequent offense: \$1,000.00

In addition to the penalties set forth above, any person subject to this chapter may also be required by the Enforcement Officer to replace all wrongfully removed trees.

2. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
3. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to that section, paragraph, subdivision, clause or provision so adjudged, and the remainder of this ordinance shall be deemed to be valid and effective.
4. This Ordinance shall take effect immediately upon passage and publication in accordance with law.

**INTRODUCED:** February 25, 2020

Moved By: Council President Santomauro  
 Seconded By: Councilman Chiaia

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ASTORINO				X	REES	X			
CHIAIA	X				SANTOMAURO	X			
KESSLER	X				TILTON	X			

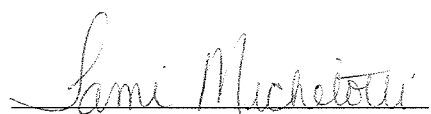
**PUBLIC HEARING:** April 14, 2020

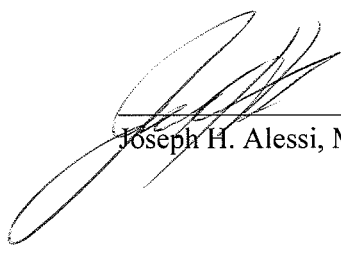
**ADOPTED:** April 14, 2020

Moved By: Council President Santomauro  
 Seconded By: Councilman Chiaia

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ASTORINO	X				REES	X			
CHIAIA	X				SANTOMAURO	X			
KESSLER	X				TILTON		X		

**ATTEST:**

  
 Tami Michelotti, Borough Clerk

  
 Joseph H. Alessi, Mayor