

## **CHAPTER XXI**

### **SHADE TREES**

#### **Article I Planting of Trees**

##### **21-1 PLANTING OF TREES.**

Shade trees of a kind and size approved by the Borough Engineer shall be planted at intervals of fifty (50) feet on both sides of the street where necessary, which planting shall be in accordance with standard requirements on file in the Engineer's office. (1973 Code § 13-12)

#### **Article II Tree Protection and Removal\***

##### **21-2 PURPOSE.**

The purpose of this Article II, Tree Protection and Removal, is to regulate the removal of trees within the Borough; to protect trees and plants within the Borough; and to provide penalties for violations. (Ord. No. 2-2006)

##### **21-3 FINDINGS AND DETERMINATION.**

a. Trees and wooded areas constitute a natural resource, contributing to the value of property throughout the Borough and promoting the general welfare of the community.

b. Mature trees require many years of growth and are not readily replaceable.

c. In connection with the development of land within the Borough, there has occurred excessive and needless destruction and removal of trees causing loss of natural beauty, decrease in property values and the associated impacts of increased surface water drainage problems, soil erosion, decreased fertility of the soil and damage to the ecology of the area.

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\* **Editor's Note:** This Article II, Tree Protection and Removal, supersedes prior 1973 Code Section 2-27A and 4-6.

d. Although many owners recognize the value of mature trees, trees on developed, undeveloped, and subdividable lands within the Borough should be protected against indiscriminate removal, damage, injury, or disease.

e. The preservation of, and planting of trees and wooded areas, will be advanced by the establishment of rules and regulations regarding the removal and/or planting of trees on developed, undeveloped and subdividable lots within the Borough.

f. By reason of the conditions and circumstances recited above, it is determined that it is necessary and proper for the protection of persons and property and for the promotion of the welfare of the Borough and its inhabitants that the Borough adopt reasonable rules and regulations to protect trees within the borough against unnecessary destruction, removal, injury and disease, and for the planting of trees.

(Ord. No. 2-2006)

#### **21-4 DEFINITIONS.**

As used in this article:

*Borough* shall mean the Borough of Roseland in the County of Essex.

*Brush out an undeveloped lot* shall mean the removal of any brush, woody plants or other vegetation from an undeveloped lot or subdividable lot in preparation for the construction of any improvement thereon, provided that this term shall not include removal of any trees. Brush out is limited to:

a. Clearing of brush for lines of sight essential to the performance of necessary survey work, or

b. Areas for the performance of tests required by municipal, State or Federal regulations to determine subsurface soil conditions for a required individual sewage disposal or water supply system.

*Developed lot* shall mean a legally established and existing parcel of land, with boundaries determinable from official records, having a building, which is occupied or capable of being occupied, located thereon.

*Drip line area* shall mean the area under a foliated tree represented by the shadow formed if the sun were directly over the tree. The drip line is the circumference of such a shadow.

*Escrow amount* shall mean the sum of the cost or value of the tree/trees and the reasonable amount for disposal and replanting. The current International Shade Tree evaluation chart may be used as a guide.

*Municipal land* shall mean any property owned by the Borough, including any lot or easement or right-of-way for streets, sidewalks, walkways or municipal utilities except for sanitary sewers and storm sewers on developed lots. For the purposes of this article, an easement or right-of-way for a street, sidewalk, walkway or municipal utility which is dedicated for public use on a subdivision plot approved by the Borough shall be deemed to be property owned by the Borough only upon and after the formal acceptance of such easement or right-of-way by the Borough.

*Person* shall mean any individual, firm, partnership, corporation, company, association or other legal entity, including any trustee, receiver, assignee or other similar representative.

*Protected tree* shall mean any woody perennial plant with a trunk exceeding eight (8) inches in diameter (over twenty-five (25) inch circumference) measured at a point four and one-half (4.5) feet above the ground level on the downhill side of such tree.

*Replacement tree* shall mean a nursery grown, balled and burlapped, twelve (12) foot tall deciduous shade tree or conifer as measured from the base of the trunk, which species is native and long lasting. The tree shall be marked with a durable label indicating the genus, species and variety. Such trees offered are subject to approval of the Tree Protection Committee. A list of replacement trees is available from the Shade Tree Commission. Sizes of replacement trees shall be determined in accordance with subsection 21-8.4.

*Subdividable lot* shall mean an undeveloped portion of a legally established and existing parcel of land, which portion meets the minimum zoning requirements in the one in which it is located (or if same does not meet such minimum zoning requirements but for which a variance has been obtained). Subdividable lot shall not include that portion of the parcel of land, which meets the minimum zoning requirements and upon which is located a building, which is occupied or is capable of being occupied.

*Tree* shall mean any woody perennial plant with a main stem or trunk exceeding five (5) inches in diameter (sixteen (16) inches in circumference) measured at a point four and one-half (4.5) feet above the ground level on the down hill side of such tree.

*Tree removal* shall mean all trees permitted to be cut down. If stumps are removed, they shall be disposed of properly and not buried.

*Tree removal permit* shall mean a permit issued pursuant to the provisions of this article authorizing the removal of a tree or trees located upon a developed, undeveloped lot or dividable lot within the Borough.

*Undeveloped lot* shall mean a legally established and existing parcel of land, with boundaries determinable from official records, which does not have a building capable of being occupied, located thereon. Whenever approval is granted by the Planning Board or Zoning Board of Adjustment to an application for preliminary major subdivision, each lot shown upon the subdivision plot, which does not have a building located thereon shall be deemed a separate undeveloped lot for the purposes of this article. None of the following shall be considered an undeveloped lot for the purposes of this article:

- a. Municipal land as defined herein;
- b. Any parcel of land owned by the United States of America, the State of New Jersey, the County of Essex, or a public utility company regulated by the New Jersey Public Utilities Commission; or
- c. Any lot upon which there is conducted an income-producing business involving the removal of trees, provided that the conduct of such business is a permitted use under applicable zoning regulations or a legally recognized nonconforming use.

*Viable tree* shall mean a tree, which shows significant signs of life, such as new leaf growth and branch growth from the end of one growing season to the next. In cases where damage has occurred to the root structure, significant signs of life should appear in the tree above the damaged roots at the end of the next growing season. In cases of scarring or heavy pruning, significant signs of life should be evident near the scar or pruned area at the end of the next growing season.  
(Ord. No. 2-2006)

## **21-5 GENERAL PROVISIONS.**

### **21-5.1 Location of Trees; Determination.**

A tree shall be considered to be located upon a lot if: (a) any part of the trunk or main stem of the tree is located upon such lot; or (b) sixty (60%) percent of the drip line area is on one lot. If the trunk is on one lot and more than forty (40%) percent of the drip line area is on the other, the tree shall be ruled to be on both lots. A tree may be considered as located upon two (2) or more lots for the purposes of this article. (Ord. No. 2-2006)

### **21-5.2 Applicability.**

Any person who proposes to remove any tree (as defined herein) on an undeveloped lot or a subdividable lot, and any person who proposes to remove any protected tree on a developed lot, must apply for a tree removal permit. (Ord. No. 2-2006)

**21-6 TREE PROTECTION COMMITTEE.****21-6.1 Established; Membership; Terms of Office.**

There is hereby established a committee to be known as the Tree Protection Committee, which shall consist of three (3) members. The three (3) members shall be members of the Roseland Shade Tree Commission and shall be appointed to the Tree Protection Committee by the Chairman of the Roseland Shade Tree Commission.

The term of office of each member of the Tree Protection Committee shall expire annually on December 31, provided that such regular or alternate member shall continue to serve until the Chairman of the Roseland Shade Tree Commission appoints a replacement. A vacancy shall be filled in the same manner as the original appointment for the unexpired term only.

The Tree Protection Committee shall have an annual organizational meeting, shall otherwise meet as needed and shall keep such records as necessary. Two (2) members of the Tree Protection Committee shall constitute a quorum to conduct a business meeting. At least two (2) members shall approve, sign and comment on the tree removal applications. At least two (2) members shall determine whether the application is approved or denied.

(Ord. No. 2-2006; Ord. No. 24-2006 § II)

**21-6.2 Chairperson; Secretary.**

At the annual organizational meeting, the members of the Tree Protection Committee shall elect a Chairperson. The secretary of the Roseland Shade Tree Commission shall serve as the secretary of the Tree Protection Committee. (Ord. No. 2-2006)

**21-6.3 Duties and Powers.**

In addition to the duties and authority given to the Tree Protection Committee by the various provisions of this article, the Committee shall have the power and authority to:

a. Require the applicant to plant replacement trees according to subsection 21-8.4. Require the applicant to deposit an escrow amount with the Borough Clerk to be retained in an interest bearing account to assure that the conditions of the tree permit are met. The escrow will be retained by the Borough if replacement trees are not viable the year following the date of planting. Failure of the applicant to replace a failed tree replacement will result in the forfeiture of the escrow amount to the Borough for the purpose of replacing the tree.

b. Require the applicant to plant replacement trees no greater than a twenty-four (24) tree per acre ratio in cases where trees are sparse. The same assurance escrow requirement applies as in paragraph a. above for each tree planted.

c. The Committee shall consult with a tree expert, certified by the State of New Jersey, when there is a question about tree removal.  
(Ord. No. 2-2006)

## **21-7 ACTIVITIES INVOLVING TREES ON MUNICIPAL LAND INCLUDING BOROUGH EASEMENTS.**

### **21-7.1 Prohibited Activities.**

No person shall do or cause to be done any of the following acts upon a tree or shrub located on a Borough property or a Borough easement:

a. Cut, trim, break, climb with spikes, disturb the roots of, or otherwise injure, or spray with any chemical, except fertilizer, or remove any living tree or shrub; or injure, misuse or remove any device placed to support or protect a tree or shrub.

b. Plant any tree or shrub.

c. Fasten any rope, wire, electric attachment, sign or other device to a tree or shrub, or to place any guard about such tree or shrub.

d. Close or obstruct any open space provided about the base of a tree or shrub to permit the access of air, water and fertilizer to the roots of such tree or shrub.

e. Pile any building material or make mortar or cement within the drip line or six (6) feet of a tree or shrub, whichever is greater.

f. Place or distribute chemicals, including but not limited to salt, deleterious to tree health.

g. Emit excessive levels of noxious fumes deleterious to tree health.

h. Construct new sidewalks and/or driveways with any material within five (5) feet of a tree.

(Ord. No. 2-2006)

**21-8 ACTIVITIES INVOLVING TREES ON DEVELOPED LOTS.****21-8.1 Prohibited Activities.**

- a. Operate, place or maintain within the drip line of any protected tree or within six (6) feet of the trunk of any protected tree, whichever is greater, any machinery, equipment, heavy object, stone, rocks, cement, earth, soil or other substance which may harmfully affect a protected tree by unduly compressing the earth or otherwise impeding or preventing the access of water or air to the roots of such tree; or
- b. Excavate around or remove earth or soil from or cause any water to flow upon the roots of any protected tree in any manner that may harmfully affect such tree.
- c. Remove any protected tree without a Tree Removal Permit.  
(Ord. No. 2-2006)

**21-8.2 Protection of Trees.**

Where clearing and/or construction on a developed lot takes place, no material or temporary soil deposit shall be placed within the drip line or within six (6) feet, whichever is greater, of any trees or shrubs determined or required to be left standing. Where grading fill may be required within the drip line area of a tree required to be left standing, such trees shall be welled and extension tiled to the drip line of the tree when such grading comes to the six-foot limit. Where grading cuts may be required within the drip line area of a tree, such tree shall be protected with a retaining wall at the boundary of such surface disturbance. (Ord. No. 2-2006)

**21-8.3 Responsibilities of Owner and Contract-Purchaser.**

An owner or contract-purchaser of a developed lot who employs any person to perform any work upon such lot shall not permit such person to violate any provision of this article. (Ord. No. 2-2006)

**21-8.4 Tree Replacement and Reforestation.**

Where clearing and/or construction on a developed lot will result in removal of, or severe damage which will result in the death of any tree other than those permitted to be removed, or exempted from regulation by this article, the developer shall replace the tree or trees in accordance with the following table:

<b>Caliper of Existing Tree Removal</b>	<b>Number of Replacement Trees (at 2.5" to 3" caliper-diameter)</b>
Less than 6 inches	1
Between 6 and 12 inches	3
Between 12 and 18 inches	4
Between 18 and 24 inches	5
Between 24 and 30 inches	7
Between 30 and 36 inches	10
36 inches or greater	The equivalent of 2.5" caliper trees or greater needed to equal the caliper of the removed trees

- a. Replacement tree(s) shall be located on site.
- b. The type of replacement tree(s) shall be as approved by the Tree Protection Committee. Native species are preferred.  
(Ord. No. 2-2006)

## **21-9 ACTIVITIES INVOLVING TREES ON UNDEVELOPED OR SUB-DIVIDABLE LOTS.**

### **21-9.1 Prohibited Activities.**

- a. Injure, deface, poison or damage any tree located on any undeveloped or subdividable lot within the Borough;
- b. Nail or otherwise attach anything to any tree upon any undeveloped or subdividable lot within the Borough;
- c. Operate, place or maintain within the drip line of any tree or within six (6) feet of the trunk of any tree, whichever is greater, located upon any undeveloped or subdividable lot within the Borough any machinery, equipment, heavy object, stone, rocks, cement, earth, soil or other substance which may harmfully affect such tree by unduly compressing the earth or otherwise impeding or preventing the access of water or air to the roots of such tree; or
- d. Excavate around or remove earth or soil from or cause any water to flow upon the roots of any tree on any undeveloped or subdividable lot within the Borough in any manner that may harmfully affect such tree.

(Ord. No. 2-2006)

### **21-9.2 Regulated Activities.**

No person shall remove any tree from or brush out an undeveloped or subdividable lot until either:



a. A tree removal permit has been approved in accordance with the provisions of Section 21-10 of this article with respect to such lot; or

b. If the improvement of the undeveloped lot or subdividable lot will not require the removal of any tree, a statement to that effect has been filed with the Borough Construction Official so that tree density requirements may be addressed.  
(Ord. No. 2-2006)

### **21-9.3 Protection of Trees.**

No material or temporary soil deposit shall be placed within the drip line or within six (6) feet, whichever is greater, of any trees or shrubs determined or required to be left standing. Where grading fill may be required within the drip line area of a tree required to be left standing, such trees shall be welled and extension tiled to the drip line of the tree when such grading comes to the six-foot limit. Where grading cuts may be required within the drip line area of a tree, such tree shall be protected with a retaining wall at the boundary of such surface disturbance. (Ord. No. 2-2006)

### **21-9.4 Responsibilities of Owner and Contract-Purchaser.**

An owner or contract-purchaser of an undeveloped or subdividable lot who employs any person to perform any work upon such lot shall not permit such person to violate any provision of this article. (Ord. No. 2-2006)

### **21-9.5 Tree Replacement and Reforestation.**

Where clearing and/or construction on an undeveloped or subdividable lot will result in removal of, or severe damage which will result in the death of any tree other than those permitted to be removed, or exempted from regulation by this article, the developer shall replace the tree(s) in accordance with the table in subsection 21-8.4. (Ord. No. 2-2006)

## **21-10 APPLICATION FOR TREE REMOVAL PERMIT.**

### **21-10.1 Application Information.**

Every application for a tree removal permit shall be filled out in full on forms obtained in the office of the Borough Clerk. Each application shall include a brief statement of the particular circumstances, conditions or reasons necessitating the removal of the tree or trees. Each application constitutes permission to inspect the subject site.

An application shall be considered as filed when it has been properly completed and delivered to the office of the Borough Clerk with the fee required by subsection 21-10.1A of this article. The trees must also be identified per subsection 21-10.2 of this article for the application to be considered complete. (Ord. No. 2-2006; Ord. No. 24-2006 § III)

**21-10.1A Application Fee.**

There is no fee for a Tree Removal Permit. (Ord. No. 24-2006 § IV)

**21-10.2 Identification of Trees; Lot Diagram Requirements.**

The application shall be accompanied by five (5) copies of a dimensional lot diagram (survey) or other type of property location document. The location, diameter and species of tree or trees involved with the permit application shall be identified on the document. The tree or trees to be removed must be clearly marked by orange or red plastic ribbon tied around the trunk. (Ord. No. 2-2006)

**21-10.3 Separate Application Required for Each Undeveloped or Subdividable Lot.**

A separate application form and a separate description, drawing or survey shall be submitted for each undeveloped lot or subdividable lot. An application shall be considered as filed when it has been properly completed and delivered to the office of the Borough Clerk with the fee required by Section 21-11 of this article. (Ord. No. 2-2006)

**21-10.4 Proof of Ownership and Proof of Property Taxes Paid.**

The Tree Protection Committee shall not act upon a tree removal permit application unless evidence of ownership of the property and proof of payment of real estate taxes is submitted. (Ord. No. 2-2006)

**21-10.5 Acceptance of Application.**

A tree permit cannot be issued by the Tree Protection Committee for any part of a subdivision or site plan until the appropriate board has given approval (preliminary or final) for such site plan or subdivision. Applications shall be made for a tree removal permit at the time of subdivision or site plan application. The survey included with this first application must include preliminary foundation location and set backs for each lot with present and proposed final grading. The boundaries for all the lots must be staked as well as the outline of the infrastructure. Trees to be removed must be clearly marked by orange or red plastic ribbon tied around the trunk. (Ord. No. 2-2006)

**21-11 ESCROWS.**

To ensure that tree removal and brush out of undeveloped or subdividable lots are accomplished in accordance with the requirements of the tree removal permit, any person proposing such activity shall deposit with the Borough Clerk, to be retained in an escrow account, an appropriate amount to be determined by the Tree Protection Committee, but in no event to exceed fifty (\$50.00) dollars per tree, except for protected trees which shall be two hundred fifty (\$250.00) dollars per protected tree. Such deposit may be applied by the Borough to complete the work or to correct conditions created by such work which is not completed or corrected by the permittee. Upon satisfactory completion or correction of the conditions created by the work, the deposit shall be refunded to the permittee, upon request. (Ord. No. 2-2006)

**21-12 REVIEW OF APPLICATION FOR PERMIT; ISSUANCE OF PERMIT.****21-12.1 Copies Provided to Members of the Tree Protection Committee.**

Upon filing of an application for a tree removal permit in the office of the Borough Clerk, office staff shall forward the application to the Tree Protection Committee Secretary, who shall forward copies to all members of the Tree Protection Committee, and in the case of subdivision or site plan, to the Planning Board or Board of Adjustment, as appropriate. (Ord. No. 2-2006)

**21-12.2 Review of Applications.**

Tree Protection Committee shall consider the following objectives in reviewing applications for tree removal permits:

- a. The removal of mature, healthy trees with desirable characteristics shall be avoided, if at all possible.
- b. Natural screening between buildings on contiguous lots shall be maintained to as great an extent as possible.
- c. Trees, which will be adversely affected by necessary changes in grade, may be removed.
- d. Trees infected with contagious diseases may be removed.
- e. Dead trees within fifty (50) feet of a proposed building foundation or between a proposed building foundation and a street shall be removed.
- f. Trees, which are likely to adversely affect other more desirable trees, may be removed.

g. If warranted, a member of Shade Tree Commission can make a pre-inspection of the tree or trees involved in the tree removal application. The objective of the pre-inspection is to determine if the Tree Protection Committee needs to review the application. Reasons for having no further review by the Committee would include but not be limited to:

- Emergency removal,
- Damaged tree,
- Dead tree,
- Undersized tree.

If the member of the Shade Tree Commission determines that no further review was needed, the member of the Shade Tree Commission is authorized to approve the application.

(Ord. No. 2-2006)

### **21-12.3 Time for Approval of Application.**

The Committee shall act upon every completed application within thirty (30) days of its being filed. Notwithstanding the foregoing, in the event that the application is made in connection with (i) an application for a construction permit, the Committee shall render a decision within twenty (20) days of the date of the application, or such other time period as may be prescribed by applicable law or, (ii) a zoning application, the Committee shall render a decision within ten (10) days of the date of the application, or such other time period as may be prescribed by applicable law. Upon failure of the Committee to act upon an application relating to a developed lot within such applicable period of time, as set forth above, the application shall be deemed to have been approved as submitted for all purposes of this article. (Ord. No. 2-2006)

### **21-12.4 Denial of Application.**

In the event that the Tree Protection Committee shall deny any application in whole or in part, the reasons for such disapproval shall be set forth upon the application. (Ord. No. 2-2006)

### **21-12.5 Conditioned Approval.**

The Tree Protection Committee may approve an application in whole or in part upon terms and conditions that shall be set forth on the application. Such terms and conditions may include requirements for the installation of a well or wells or retaining wall of specified dimensions for a particular tree or trees not to be removed. The Tree Protection Committee may require that a specific retained tree or trees be protected from

damage during building or other construction work carried on in close proximity thereto by requiring the erection and maintenance of suitable guards or barriers. The removal of diseased trees and the pruning or trimming of trees which are not to be removed may be required. (Ord. No. 2-2006)

#### **21-12.6 Issuance of Tree Removal Permit**

Whenever the Tree Protection Committee shall approve an application for a tree removal permit in whole or in part, the Tree Protection Committee Secretary shall issue the tree removal permit in accordance with the terms of the approval. In the event that the Tree Protection Committee shall disapprove an application in its entirety, the Tree Protection Committee Secretary shall issue to the applicant a copy of the application indicating the reasons for the disapproval. (Ord. No. 2-2006)

#### **21-12.7 Duration of Tree Removal Permit.**

The tree removal permit is effective for six (6) months from the date of issue. (Ord. No. 2-2006)

### **21-13 STOPPAGE OF UNLAWFUL WORK.**

#### **21-13.1 Issuance of Stop Work Order; Service of Notice.**

Any member of the Roseland Shade Tree Commission may issue a stop work order for any tree work or other activity, which is carried on in violation of any Tree Removal Permit or any provision of this article. The order shall be issued in writing and a copy served on any person engaged in tree work upon the subject lot. If no such person is present upon the lot then the order shall be served upon the applicant. If no permit has been issued for the tree work, then the order shall be served upon the owner of the lot. Thereafter, except for such work as is necessary to remedy the violation, any further work shall comply with the terms and conditions of any permit and the provisions of this article, except for that specifically authorized by the Shade Tree Commission. (Ord. No. 2-2006)

### **21-14 TREATMENT OF INJURED TREES.**

In the event that any tree which is not permitted to be removed pursuant to a Tree Removal Permit is injured during work under such a permit or during building or other construction work on any undeveloped or subdividable lot within the Borough, such tree shall be promptly treated in a manner approved by the Tree Protection Committee in

accordance with acceptable tree care practices. The Committee shall require the applicant to pay a fee to be placed in an interest bearing escrow account the Borough will use to defray the cost to replace the tree if the tree fails to survive. (Ord. No. 2-2006)

## **21-15 MUNICIPAL LIABILITY/DUTY OF CARE.**

### **21-15.1 Municipal Liability.**

Nothing contained in this article shall be deemed to impose any liability upon the Borough, its officers or employees nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant upon any area on his property or under his control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, alley or other public place within the Borough. Further, nothing in this article shall be deemed to impose any liability for damages or a duty of care and maintenance upon the Borough or any of its officers or employees. (Ord. No. 2-2006)

### **21-15.2 Duty of Care.**

A person in possession of public property or the owner of any private property shall have a duty to keep trees upon the property and under their control in a safe, healthy condition. Any person who feels a tree located on property possessed, owned or controlled by them is a danger to the safety of themselves, others or the structural improvements on-site or off-site shall have an obligation to secure the area around the tree or support the tree as appropriate to safeguard both persons and improvements from harm. It shall also be the duty of any person within the Borough owning or occupying any real property to keep all trees on that property trimmed in such a manner that they do not obstruct the view of any traffic sign or device for the control of vehicle traffic. (Ord. No. 2-2006)

### **21-15.3 Reservation of Rights.**

The Borough reserves the right, in its sole discretion, to control planting in the public right-of-way. (Ord. No. 2-2006)

**21-16 APPEAL.****21-16.1 Time for Appeal; Procedure; Time for Hearing.**

Any person aggrieved by any action of the Tree Protection Committee pursuant to any of the provision of Sections 21-11, 21-12 and 21-13, shall have the right to appeal to the Roseland Borough Council within fifteen (15) working days after the action complained of. The appeal shall be made by filing a written statement setting forth the action complained of and the grounds for the appeal with the Borough Clerk. The Borough Council shall set a time and a place for the hearing of the appeal, which hearing shall be held within sixty (60) working days after the filing of the appeal, and notice of the hearing shall be given to the appellant by the Borough Clerk. At the hearing, the appellant and his attorney may present evidence, including the testimony of witnesses. The Borough Clerk shall keep minutes of the hearing and copies of the documents or exhibits referred to, if any. (Ord. No. 2-2006)

**21-16.2 Decision on Appeal.**

Within fifteen (15) working days after the completion of the hearing, the action taken by the Tree Protection Committee shall be affirmed, modified, or reversed by the Borough Council by a recorded vote of the majority of the total members thereof. The findings and reasons for the disposition of the appeal shall be stated on the records of the Borough Council and a copy shall be given to the appellant by the Borough Clerk. (Ord. No. 2-2006)

**21-17 SERVICE OF NOTICE.****21-17.1 Notice to Persons; Notices to Borough.**

Whenever, under the provisions of this article, any notice or order is required to be given to or served upon any person, such notice or order may be given or served in person or by certified mail addressed to the person to be notified at the address set forth in the application filed by such person. Any notice to the Borough shall be served by personal service to the Borough Clerk or by certified mail addressed to the Borough Clerk at Borough Hall. (Ord. No. 2-2006)

**21-17.2 Enforcement.**

In addition to the enforcement authority granted to the agencies and officers described in this article, the Roseland Police Department shall also have the power to enforce this article. (Ord. No. 2-2006)

**21-18 VIOLATIONS AND PENALTIES.****21-18.1 Violations; Penalties.**

Any person who violates any provision of this article and any person who fails to comply with an order issued pursuant to this article or the terms and condition of any tree removal permit issued pursuant of this article shall, upon conviction in the Municipal Court, be subject to a fine of up to one thousand (\$1,000.00) dollars and not less than one hundred (\$100.00) dollars to be deposited in the Borough General Funds. Each tree cut, damaged or otherwise destroyed in violation of this article shall be deemed to be a separate and distinct violation. At the discretion of the Municipal Court Judge, the person may be subject to imprisonment for not more than ninety (90) days or community service for not more than thirty (30) days, in addition to any fine. (Ord. No. 2-2006)

**21-18.2 Injunctive Relief.**

The Borough may institute an action in the Superior Court for injunctive relief restraining the continuation of any unlawful tree removal and/or requiring any person engaged in or responsible for such removal to replace all trees removed with replacement trees in a manner which meets the requirements of this article. (Ord. No. 2-2006)

**21-18.3 Suspension of Permit.**

The Borough Clerk may suspend any tree removal permit when there has been a false or misleading application or when it appears that the terms of the permit or the plans are not being complied with. (Ord. No. 2-2006)

**21-19 EXCEPTIONS.**

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

a. Any tract of land contained within a minor or major subdivision or site plan that has received final approval from the Planning Board or Zoning Board of Adjustment prior to the passage of this article is exempt from the requirements of this article.\*

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\* **Editor's Note:** Ordinance No. 2-2006 was adopted on February 28, 2006.



b. Trees that must be removed due to a construction project ("project") for which a building permit is required and has been issued by the Borough of Roseland, such as in connection with the building of a patio, deck, shed, garage, pool, addition, etc., and the area fifteen feet (15'-0") in all directions around the project area, and the driveway providing access to the project area will require the submittal of an application ("tree application") for tree removal permit (Section 27A-10) but will be exempt from Section 27A-12, Review of Application for Permit. The tree application will be deemed automatically approved provided a building permit has been issued for the work which includes the removal of the trees detailed in the tree application. The tree removal permit shall be issued when the building permit is issued. However, if trees must be removed as part of the project, the Tree Protection Committee may require, reasonable replacement plantings based on subsection 21-8.4, Tree Replacement and Reforestation.

c. The area five feet (5'-0") on either side of an existing driveway is exempt from the requirements of this article except trees located on Municipal Land (refer to Section 21-15 of this article).

d. The area five feet (5'-0") on either side of a proposed driveway will be exempt from the requirements of this article upon issuance of a Building Permit from the Borough of Roseland for a driveway project except trees located on Municipal Land (refer to Section 21-15 of this article).

e. Pruning or removal of trees on the public right-of-way by public utility companies regulated by the New Jersey Public Utilities Commission, their agents or their contractors is exempt from the requirements of this article.

f. Pruning or removal of trees on properties owned by the United States of America, the State of New Jersey, the County of Essex, and the Borough are exempt from the requirements of this article.  
(Ord. No. 2-2006; Ord. No. 24-2006 § V)

#### **21-20 SHORT TITLE.**

This article shall be known and may be cited as the Tree Protection Ordinance of the Borough of Roseland. (Ord. No. 2-2006)

#### **21-21 ORDINANCE TRIAL PERIOD.**

(Ord. No. 2-2006; Repealed by Ord. No. 24-2006 § VI)