

**ORDINANCE NO. 845 AN ORDINANCE TO AMEND CHAPTER 186, TREE REMOVAL,
OF THE CODE OF THE BOROUGH OF KINNELON**

WHEREAS, §186 of the Code of the Borough of Kinnelon (“Borough”) provides for the removal of trees in the Borough; and

WHEREAS, the Governing Body desires to amend §186 and replace same in total.

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Kinnelon, County of Morris, State of New Jersey, as follows:

§186 shall be amended to read:

§186-1. Purpose and Intent

The purpose of this chapter is:

1. To preserve and protect trees within the Borough, which helps to preserve water quality, abate noise, and enhance the ambience and character of the community.
2. To control the indiscriminate destruction of trees which has been shown to have severe detrimental environmental, ecological and economic effects including increased soil erosion and surface drainage problems, creation of insect breeding sites, decreased oxygen production, decreased property values and increased municipal costs and thereby to eliminate a threat to the public health, welfare and safety.
3. To protect the semi-rural character and natural resources of the Borough, consistent with the goals and objectives of the Master Plan. This section is not intended to restrict homeowners from removing dead, diseased, or hazardous trees. It is not intended to restrict homeowners from conducting routine pruning of trees or other maintenance procedures.

This ordinance places special emphasis on the preservation of trees around the perimeter of a property to create conservation areas based upon set back requirements pursuant to the Kinnelon Borough Zoning Code. The ordinance will also provide a sound management structure for the removal of trees in the Borough of Kinnelon.

§186-2 Definitions

For the purpose of this chapter, the words and terms used herein are defined as follows:

1. Adjacent neighbor – The owner of record of any property adjacent to the affected property.
2. Affected Property – The lot or lots for which a tree removal permit is sought.
3. Calendar Year – January 1 through December 31.
4. Chemical Contamination – The application of a material, whether intentionally or accidentally, which has a toxic effect on a tree or trees.
5. Circumference - The line that goes round or encompasses a circular figure.
6. Clear Cutting - Removal of all the trees in a stand of timber in a certain area.

7. Commission – The Borough of Kinnelon Environmental Commission, established pursuant to Chapter 29, Environmental Commission, of the Code of the Borough of Kinnelon.
8. Conservation Area – That area created by the setback standards for a particular building zone and surrounding the perimeter of a property.
9. Dead Tree – A tree which has ceased to physiologically function. Dead trees typically are devoid of leaves and have loose bark.
10. Diameter - The length of a straight line through the center of an object from side to side; width; thickness; as, the diameter of a tree or rock.
11. Diseased Tree – A tree, which is terminally infected with a fungus or virus or terminally infested with insects.
12. Drip line – The circular area surrounding a tree, the radius of which area shall be the distance from the trunk of the tree to the outermost branches of the tree.
13. Erosion Control – The planting of vegetation on steeply sloped lands in conformation with Soil Conservation Service standards, to prevent the loss of soil from wind, rain, flooding or traffic.
14. Excessive Drainage Alterations – Grade changes which result in either a deficiency or overabundance of soil moisture within the drip line of a tree or trees.
15. Girdling – To removing or cut through a ring of bark and underlying tissue from a tree trunk in order to kill the tree.
16. Grade Cut – The removal of soil within the drip line of an existing tree. Cuts in grades damage tree roots and affect the stability of a tree.
17. Grade Fill – The placement of soil on the ground surface surrounding existing trees. The placing of fill inhibits gaseous exchange to tree roots and soil moisture.
18. Hand Operated Equipment – Manual tools, such as a pick, shovel, hoe, iron rake, or air spade, which excavates with forced air.
19. Hazardous Tree – Any defective tree or part thereof which poses a high risk of failure and with it the likelihood of causing injury and/or property damage.
20. Horticulturally Advantageous Thinning- The removal of dead, diseased, dying or undesirable trees in order to improve the quality of desirable existing trees or to create conditions where more desirable trees will be planted.
21. Horticulturally Disadvantageous Thinning - The removal of dead, diseased, dying or undesirable trees or the disturbance of an area without an approved replacement planting plan and management program thus creating a void where invasive plant material could become established.
22. Limbing – Removal of one-third (1/3) or more of the living branches of a tree.
23. Limit of Disturbance – The area in which trees have been designated for cutting, obtained by traversing the outer periphery of those trees and taking into consideration the delineation of the natural boundaries located within the property.
24. Mechanical Damage – Physical damage to the bark, branches, or roots of a tree. Such damage is usually caused by motor driven excavation or other equipment.
25. Permit – Written authorization from the Borough of Kinnelon to remove a tree or trees.

26. Placard - a poster or sign for public display, issued by the Borough Forester, fixed to a wall, tree or fence, in plain view of the public
27. Replacement Tree(s) - All replacement trees shall be of a species approved by the Borough Forester and shall be nursery grade quality, properly balled, and burlapped. Minimum measurements of replacement trees shall be as follows: evergreen trees: 7' to 8' in height; ornamental trees: 2" to 3" in caliper; and shade trees: 3" to 3' in caliper. Caliper is measured 1 inch above the root flare of a balled and burlapped nursery grown tree.
28. Screening - A tree, trees, hedge, or privacy fence, which provides a visual barrier from one property to another.
29. Set Back - All existing borough setbacks applicable to a given property as defined in the Kinnelon Borough Zoning Code 207-27 through 207-31.
30. Soil Compaction - The subsurface compression of soil by vehicles, equipment, and materials, which disrupts the movement of air and water to tree roots.
31. Stump -- The bottom part of a tree left projecting from the ground after most of the trunk has fallen or been cut down.
32. Tree - Any live or dead woody perennial plant within the confines of the Borough having a diameter of six inches or greater measured at a point of four and a half feet above grade level. On sloped terrain, such measurement shall be made on the downhill side. Measurements shall be made and/or approved by the Borough Forester or the Borough Code enforcement officer.
33. Tree Encroachment - The storage of equipment or materials, the changing of grade including cutting or filling, or compacting of soil within the drip line of a tree.
34. Tree Removal - Any activity to remove or destroy any tree, such as, but not limited to, excessive topping or limbing.
35. Tree Topping - The indiscriminate cutting back of tree branches in excess of 1/3 of total tree branches to stubs or lateral branches that are not large enough to assume the terminal role.

§186-3 Prohibitions

- A. No person shall remove or cause to be removed; any live tree(s) or engage in tree encroachment activities on any private, residential or commercial property within the Borough of Kinnelon without a permit other than as allowed by this section (see §186-8 below).
- B. No person shall engage in activities which could cause trees to die. This activity includes but is not limited to: limbing, topping, grade cut or fill, soil compaction within the drip line, chemical contamination, girdling, excessive drainage alterations, and mechanical damage.
- C. No tree removal shall be permitted on slopes 15% or greater in grade or on slopes where vegetation is presently stabilizing soils.
- D. Tree removal shall be prohibited when the trees are part of: 1) a wetland(s) 2) a wetland transition area or 3) a stream buffer.
- E. The limbing or topping of trees shall not be conducted.
- F. Clear cutting of any property in the Borough is prohibited.

§186-4 Tree Protection During Construction

The property owner and all contractors shall be required to protect any and all trees from any damage during any type of construction on any property in the Borough of Kinnelon.

§186-5 Reserved (*use to reference future Landscaper's License*)

§186-6 Exemptions from permit requirement and penalties

The following lands, activities and uses shall be exempt from the terms and conditions of this Chapter and shall also be exempt from any violations or penalties.

- A. Activities lawfully conducted on public lands or rights-of-way by or on behalf of a local, federal, state, county or other governmental agency or entity or a utility company.
- B. Tree removal in conjunction with woodland management plans filed with the NJ Forest Service.

§186-7. Responsible officials; enforcement

- A. The Borough Forester. The Mayor, upon the advice and consent of the Council, may appoint a Forester who is a qualified tree expert, certified by the State of New Jersey pursuant to N.J.S.A. 45:15C-1 et seq. In the absence of such an appointment, the Borough Construction Official shall act as the Forester.
- B. Administration. The Borough Forester and/or Code Enforcement Officer shall be responsible for administration of this chapter.
- C. Enforcement. The Borough Forester, the Construction Official, the Zoning Officer and Borough Police Officers are hereby authorized to enforce the regulations set forth within the Code of the Borough of Kinnelon regulating the destruction and removal of trees.

186-8. Permit required

Any person desiring to engage in tree removal or tree encroachment activities requiring a permit shall file an application for a tree removal or tree encroachment permit in compliance with the terms and conditions of this chapter and shall not commence the regulated activity without first having been issued a tree removal or tree encroachment permit.

The following trees may be removed in any 12 month period without a permit, but a placard is required:

Size of Lot	# of Trees per Year
Up to ½ acre	1
½ -1 acre	2
1 acre and up	2 per acre

For removal of more than permitted trees approval is required from the Borough Forester or duly appointed designee. Removal of any of the number of trees listed immediately above, which does not require a permit, requires the issuance of a placard by the Borough Forester, or his/her delegate. A placard is also required for the professional trimming, pruning of trees or removal of dead trees. Such

placard must be displayed within close proximity to the tree(s) being removed and visible from the road.

Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication, or cable television services upon any lands in which it has acquired an easement or right-of-way, shall not be subject to any penalty under this ordinance.. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions. Any such public utility or cable television company must notify the Borough of its intention to affect any tree, shrub or plant in its activities within the Borough.

§186-9. Application for tree removal or tree encroachment permit or placard; fees; procedure

A. Filing of application

1. An application for a tree removal or tree encroachment permit shall be filed in duplicate in the Construction Office or other designated recipient and forwarded to the attention of the Borough Forester. Any required New Jersey Department of Environmental Protection approvals shall be attached to the application when submitted to the Borough Forester. After reviewing said application, the Borough Forester will issue or deny a tree removal permit.
2. Upon receiving a tree removal or tree encroachment permit, or a placard, as required hereunder, the respective permit/placard shall be prominently displayed and clearly visible from the road at the site and shall remain posted during the entire tree removal process and/or tree removal period, but in no case shall the permit or placard be displayed for less than 10 days from issuance.
3. An application for a placard, as allowed under this ordinance, shall be submitted directly to the Borough Forester, and shall be approved by the Borough Forester, or his/her delegate, within 5 days of receipt by the Borough Forester.

B. Fees

1. No permit will be required and fees shall be waived for the removal of dead, diseased or hazardous trees. However, no such trees shall be removed without prior notice by the property owner to the Borough Forester and the issuance of a placard for such removal. If the property owner fails to provide such notice, the Borough Forester may require replacement trees for screening purposes as determined by the Forester, in furtherance of section 186-14.
2. There shall be submitted, simultaneously with the filing of the tree removal or tree encroachment permit application a non-refundable fee of the amount of \$50.00 to cover the costs of processing the application, including the requisite inspections of the site and the issuance of a tree removal placard.
3. Application Fee Schedule

Permit = \$10.00 per tree.
Placard = \$5.00 total.

C. Procedure

1. All tree removal and/or tree encroachment permit and placard applications shall be reviewed by the Borough Forester, or his delegate, to determine whether there is a basis for the issuance of a tree removal or tree encroachment permit or placard. The Borough Forester, or his delegate, shall consider numerous factors, including but not limited to:
 - i. Whether the activity is proposed for an area which is to be occupied by or surrounds a structure or some other improvements.
 - ii. Whether the potential effect of the proposed tree removal activity would disturb an area that is 5,000 square feet or more, thus requiring prior permission from the Morris County Soil Construction District, or would disturb an area which would require a grading permit or steep slope variance from the Borough of Kinnelon.
 - iii. Whether the purposes of this ordinance will be met by permitting the tree removal requested.
 - iv. Whether the proposed number and density of trees removed would result in any permanent reduction in screening or the subject property from the surrounding properties.
 - v. Whether the proposed activity would result in a horticulturally advantageous or disadvantageous thinning of an existing wooded or naturally screened area.
 - vi. The potential hardship that would be imposed upon the applicant if the permit is denied.
 - vii. Whether the tree(s) proposed for removal or tree encroachment is located within a conservation area, and
 - viii. Whether other trees have been removed from the property within the preceding 3 years.
- D. The filing of the tree removal or tree encroachment permit or placard application shall be deemed to constitute consent for Borough officials or agents to enter upon the subject land to inspect the designated site(s).
- E. Adjacent Neighbor notification: No permit shall be issued until 10 days after submission of the permit request pursuant to this ordinance, along with proof that all persons with property adjacent to the property at issue, from which tree removal is requested, has been notified in order to give each such property owner an opportunity to consult with the applicant, and / or given the opportunity to take such other steps that that neighbor may feel necessary to protect his/her interests as affected by the proposed tree removal. Notification to any and all such adjacent neighbors shall be by hand or certified mail and proof of delivery provided to the Borough Forester. If only a placard is issued, no notice to adjacent neighbor(s) will be required.
- F. Issuance of tree removal or tree encroachment permits or placard.
 1. A tree removal or tree encroachment permit or placard shall be granted or denied in writing by the Borough Forester or his/her delegate. Such response shall be within 10 days for a permit and 5 business days for a placard. After submittal of a deemed complete application to an enforcing officer; which complies with the terms and conditions of this chapter, or within such further time as may be consented to by the applicant. Failure of the Borough Forester, or his/her delegate, to act within the period prescribed shall constitute approval of the application.

2. When a tree removal or tree encroachment permit application is filed in conjunction with work for which an application for a construction permit or for approval(s) from the Planning Board or Board of Adjustment will be filed, the tree removal or tree encroachment permit shall be conditioned upon the receipt of the construction permit or other requisite approvals and shall not be effective until such permit or approvals have been obtained.
 3. The enforcing officer shall be enabled to require replacement plantings for screening or erosion control purposes.
- G. In reviewing any such application the Borough Forester may at his/her discretion consult the Environmental Commission, the Borough Engineer, Construction Official, Board of Health, or other individual or municipal entity, as he/she may deem necessary or advisable. Any application approved, in whole or in part, shall automatically become a tree removal permit in accordance with any conditions required by the Borough Forester.

§ 186-10 Duration of permit/placard

Permits or placards granted 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:

- A. When no other permits or approvals are involved, six months from the date of issuance.
- B. When issued in conjunction with a construction permit, six months from the date of issuance.
- C. When issued in conjunction with Borough Planning Board or Board of Adjustment approval, until the later of the six months from issuance or the expiration of construction permits issued thereunder.

§ 186-11 Non-liability of Borough

Nothing in this chapter shall be deemed to impose any liability upon the Borough or its officers or employees or agents or upon the Commission or any of the Commissioners.

Nothing in this chapter shall be deemed to relieve the owner and/or occupant of any private property from the duty to keep trees and shrubs thereon in a safe condition.

§ 186-12 Appeals

Any person aggrieved by a determination to grant or deny a tree removal permit shall have the right to appeal such decision to the Mayor and Council. Such appeal shall be by written notice stating the reasons upon which the appeal is based, filed with the Borough Clerk and forwarded to the applicant, if appropriate, within 10 days of receipt of the appeal. The Mayor and Council shall hear the matter, upon notice to the applicant and/or petitioner, at the first regularly scheduled public meeting of the Mayor and Council held no less than 20 business days after receipt of the notice of appeal. The Mayor and Council may, in its discretion and upon complete review of the application and after hearing the testimony of the Borough Forester and the Applicant and any other interested parties, reverse, modify or affirm the prior decision in the matter.

§ 186-13. Violations and penalties

- A. The illegal removal of trees will invoke an automatic suspension of any existing tree removal or tree encroachment permits associated with a property, and freeze the issuance of any future permits until the case is adjudicated and unwanted effects of the removal mitigated.
- B. Any person violating any provision of this Chapter shall, upon conviction, be subject to a minimum fine of one hundred (\$100.00) dollars up to one thousand (\$1,000.00) dollars per tree.
- C. Each tree cut or removed in violation of this chapter shall be considered a separate violation.

186-14. Replacement of Trees

- A. In addition to the penalties set forth in 186-13, each person who removes or otherwise destroys a tree(s) in violation of the Borough ordinances will be required to replace the tree(s) with another of like or superior species as defined herein under definition Replacement Tree(s), on the property from which they were removed, at his/her/their own expense.
- B. Replacement trees must be guaranteed for two full growing seasons.

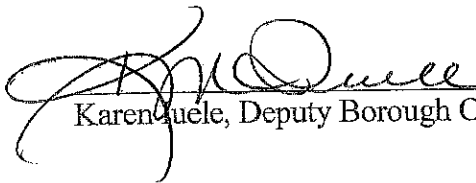
SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

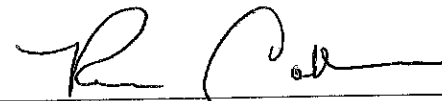
INCONSISTENT ORDINANCES. Ordinances, resolutions, and regulations or parts of ordinances, resolutions, and regulations inconsistent herewith, are hereby repealed to the extent of such inconsistency.

EFFECTIVE DATE. This Ordinance shall take effect upon passage and publication according to law.

ATTEST:

BOROUGH OF KINNELON


 Karen Iuele, Deputy Borough Clerk


 Robert Collins, Mayor

CERTIFICATION

I, Karen Iuele, Deputy Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at a regular meeting of the Borough held on September 17, 2015 and adopted by the Governing Body at a regular meeting of the Borough held on October 15, 2015.


 Karen Iuele, Deputy Borough Clerk