

2016-40 AN ORDINANCE BY THE MUNICIPALITY OF PRINCETON CONCERNING TREES AND SHRUBS AND SPECIFICALLY THE INFESTATION OF THE EMERALD ASH BORER, AND AMENDING THE “CODE OF THE TOWNSHIP OF PRINCETON, NEW JERSEY, 1968.”

WHEREAS, consistent with its duties and power granted under Chapter 22 of the “Code of the Township of Princeton, New Jersey, 1968” (“Code”), the Princeton Shade Tree Commission (“STC”) has been observing, studying and researching the current and anticipated impact of the Emerald Ash Borer (“EAB”) on the Ash tree population in Princeton, which includes hundreds of trees on both public and private property; and

WHEREAS, available evidence supports that the EAB outbreak is lethal to Ash trees and is likely to kill ninety-nine (99%) percent of such trees, and that if left untreated, Ash trees will succumb within ten (10) years of the initial infestation cycle (of which Princeton is in year three (3)); and

WHEREAS, evidence further supports that EAB management on both public and private property that includes selective and staged removal, limited treatment and replanting of non-host species will help slow the spread of the infestation, and further, that the removal of *all* Ash trees may even *increase* the spread of EAB, as the insect will travel for a considerable distance to find a new food supply elsewhere; and

WHEREAS, the STC recognizes that homeowners with Ash trees on their property will be faced with significant and potentially costly decisions in connection with their Ash trees, such as whether to treat same, or even if and when to remove one or more Ash trees; and

WHEREAS, as a result of its research, the STC recommends that Princeton encourage private property owners, through Princeton's existing permitting framework, to take a proactive decision-making approach regarding treatment and/or removal of Ash trees on their property, including the staged removal of Ash trees; and

WHEREAS, the anticipated benefits and goals of the STC's recommended approach includes the following:

- Proactive decision-making allows owners to allocate the removal costs over a number of years while decreasing the immediate impact of such removal on the local environment and wildlife;
- Staged removal reduces the negative aesthetic and environmental impact to Princeton, and contributes to more harmonious neighbor relations;
- Treatment and removal of Ash trees prevents danger associated with dying and dead Ash trees, which become more brittle and thus more costly and hazardous to remove as they deteriorate;
- Requiring a permit application prior to the removal of Ash trees on private property will ensure that private owners are familiar with local, state and federal requirements for safe removal and disposal of Ash trees, and should private owners choose to hire contractors to complete removal, that their contractors are registered and familiar with local, state and federal requirements for safe removal and disposal of Ash trees; and
- Requiring a permit application prior to the removal of Ash trees on private property will encourage owners to plant replacement trees, which in turn will mitigate the negative impact of the infestation; and

WHEREAS, in light of the foregoing, the STC recommends that Chapter 22 of the Code be amended to provide for a new exception under section 22-12 to appropriately modify the permitting and replacement tree requirements for the removal of Ash trees on private property due to an actual or anticipated infestation by the Emerald Ash Borer; and

WHEREAS, the STC recommends that this proposed exception continue for a finite term of ten (10) years from its effective date, due to the anticipated initial infestation cycle of the EAB and in recognition of the ongoing research on management of the EAB; and

WHEREAS, the STC proposes this measure as an effective means of enabling private owners to manage Ash trees on their property in the existing permitting framework established under Chapter 22; and

WHEREAS, the Princeton Council wishes to adopt said Code revisions which will become a part of the new Princeton Code at a future date.

NOW, THEREFORE, BE IT ORDAINED by the Princeton Council as follows:

Section 1. Section 22-12 of Chapter 22 of the “Code of the Township of Princeton, New Jersey, 1968,” which is entitled “Exceptions” and sets forth exceptions to the tree removal permit requirements, is hereby amended as follows (additions are underlined and deletions are [bracketed]):

Sec. 22-12. Exceptions.

Excepted from the requirements of this article are the following:

- (a) Any tree that poses imminent danger to life or property or where removal is in response to an emergency. To qualify under this exception, the tree shall only be removed to the extent necessary to abate the imminent danger or emergency. If notification of the removal of said tree pursuant to this article has not been given to the enforcement officer prior to removal, then notification must be provided by the next business day or as soon as practicable thereafter. Said notification shall

include verification that the tree removal was necessary to abate the imminent danger or emergency;

- (b) Any tree that has fallen solely as a result of storm damage or other natural causes;
- (c) Any dead tree or substantially diseased tree as a result of natural causes or storm damage where:
 - (1) The tree is still standing;
 - (2) The person desiring to destroy or remove the tree is the owner of the land upon which the tree is located;
 - (3) The person notifies the enforcement officer of the desire to remove the tree; and
 - (4) The enforcement officer verifies in writing that the tree is dead or substantially diseased as a result of natural causes. The failure of the enforcement officer to approve or deny the request within fifteen days shall constitute an approval of the request;
- (d) Tree removal that is a part of any land development application subject to the jurisdiction of the planning or zoning boards, or any of their subcommittees. The shade tree commission may, however, provide its review and comment, if any, regarding the tree removal to the board of jurisdiction;
- (e) Tree removal as part of an application requiring preservation plan approval by the historic preservation commission or the commission's administrative officer for properties that are subject to the commission's jurisdiction within the historic preservation zoning districts or historic preservation buffer zoning districts; and
- (f) The removal of any trees that are a part of an approved woodland management program pursuant to the provisions of the New Jersey Farmland Assessment Act of 1964.
- (g) The removal of any Ash (*Fraxinus* spp.) tree due to actual or anticipated infestation by the Emerald Ash Borer (*Agrilus planipennis*), provided that the person desiring to remove the tree or trees complies with the following:
 - (1) The person shall file a permit application in accordance with section 22-13 below. The permit application shall specify the number of Ash trees to be removed and treated on the premises, and include all information and support required by section 22-13, except that the filing fee required by subsection 22-13(g) shall be waived; and
 - (2) There is no requirement for a permit application to include a tree replacement plan under section 22-13(d), except that there is a recommended tree replacement goal of ten percent of removed Ash trees, with a recommended goal of a minimum of one tree replanted per

application. The replanted tree(s) (if any) shall, if site conditions permit, be planted in the same or contiguous location(s) on the premises.

The exception created by this subsection (g) shall continue for ten years from the date on which it goes into effect. Upon expiration of this ten-year term, this section (g) shall automatically be null and void and of no force and effect.

Section 2. All ordinances and resolutions or parts thereof inconsistent with this Ordinance are repealed.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court 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 portion thereof.

Section 4. This Ordinance shall take effect upon its final adoption and publication as provided for by law. The provisions of this Ordinance shall be applicable within Princeton upon taking effect and shall become a part of the new Princeton Code once completed and adopted.

This ordinance updates the standards governing “Trees and Shrubs” in the municipality. It creates a new exception to the permitting requirements that is applicable to the removal of Ash trees on private property, and sets forth standards applicable to use of the exception.

I, Kathleen K. Brzezynski, Deputy Clerk of Princeton, County of Mercer, State of New Jersey, do hereby certify that the foregoing is a true copy of an ordinance adopted by the Mayor and Council of Princeton at its meeting held October 24, 2016.



Kathleen K. Brzezynski, Deputy Clerk