

Ordinance #13-1390

AN ORDINANCE TO AMEND CHAPTER II, ADMINISTRATION, SECTION 4, CREATION OF DEPARTMENTS; OFFICES AND BOARDS; REPEAL CHAPTER II, ADMINISTRATION, SECTION 55, SHADE TREE COMMISSION; ADOPT CHAPTER II, ADMINISTRATION, SECTION 55, SHADE TREE COMMITTEE AND AMEND CHAPTER XIX PROTECTION OF TREES OF REVISED GENERAL ORDINANCES OF THE BOROUGH OF MILLTOWN, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY.

BE IT ORDAINED by the Borough of Milltown of the County of Middlesex and State of New Jersey that the Revised General Ordinances of the Borough of Milltown be amended as follows:

Section 1. Chapter II, Administration, Subsection 2, Creation of Departments; Offices and Boards of the Revised General Ordinances of the Borough of Milltown is hereby amended as follows:

2-4 CREATION OF DEPARTMENTS; OFFICES AND BOARDS.

2-4.1 Departments, Offices, Boards and Commissions Enumerated.

There shall be the following departments, offices, boards and commissions in the Borough of Milltown:

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d. *Boards, Commissions and Committees.*

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7. *Shade Tree Committee.*

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Section 2. Chapter II, Administration, Subsection 55, Shade Tree Commission of the Revised General Ordinances of the Borough of Milltown is hereby deleted and the following adopted in its place and stead:

2-55 SHADE TREE COMMITTEE.

2-55.1 Creation. There is hereby established and created in the Borough of Milltown a Shade Tree Committee which shall be known as the "Milltown Shade Tree Committee."

2-55.2 Authority. The Milltown Shade Tree Committee shall have the authority to advise the governing body on all matters concerning the regulation, planting, removal, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways, public places and parkways.

2-55.3 Membership. The Milltown Shade Tree Committee shall consist of five (5) members and no more than two (2) alternate members. Alternate members shall be designated at the time of appointment as "Alternate Number 1" and "Alternate Number 2." An alternate member may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular member, nor shall any vote be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate Number 1 shall vote. All members of the Milltown Shade Tree Committee shall be residents of the Borough of Milltown and shall serve without compensation.

2-55.4 Appointment; Terms; Vacancies; Meetings. All members of the Milltown Shade Tree Committee shall be appointed by the Mayor and shall serve for terms of one (1) year, commencing on January 1 and expiring on December 31 or the date their successor is appointed, whichever is later. All existing members of the entity known as the "Milltown Shade Tree Commission" shall be the initial members of the Milltown Shade Tree Committee. The terms of the initial members of the Milltown Shade Tree Committee shall commence upon the effective date of this ordinance and shall expire on December 31 of the year in which this ordinance is adopted or the date their successor is appointed, whichever is later. Any vacancy in the membership of the Milltown Shade Tree Committee, occurring for any reason, shall be promptly filled for the unexpired term by the Mayor. The Milltown Shade Tree Commission shall meet regularly, and shall at its first meeting each calendar year elect one of its members as a Chairperson who shall preside over all meetings.

2-55.5 Powers and Duties. The Milltown Shade Tree Committee shall have the authority to offer advice to the governing body concerning the following matters:

- a. The regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may be hereafter planted, in any public highway, public park, parkway or municipal property of the Borough, including the planting, spraying, care and protection thereof;
- b. The regulation of the ground surrounding such trees and shrubbery, so far as may be necessary for their proper growth, care and protection;
- c. The removal of any tree, or part thereof, dangerous to the public safety or public utilities, including any dead or damaged tree on private property and enter upon private property for that purpose, upon advance written notice to and with the consent of the property owner;
- d. Recommend that trees are necessary in particular areas and, with the consent of the Mayor and Council, that the cost of planting such trees shall be borne by the Borough;
- e. Recommend alteration, amendment or repeal to the governing body of ordinances, rules and regulations of the Borough necessary for carrying out the provisions of this section;
- f. Advise the governing body concerning the administration of treatment to, or the removal of any tree situated upon public property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the Borough and enter upon private property for that purpose, upon advance written notice to and with the consent of the property owner;
- g. Encourage arboriculture;
- h. Advise the governing body on the maintenance and execution of the Milltown Community Forestry Plan, as required by State law;
- i. Advise the governing body on the retention of independent contractors to assist the Borough in carrying out the provision of this section;
- j. Organize and conduct the Arbor Day planting and ceremony within the Borough;

- k. Advise the governing body concerning the budget for shade trees, maintenance of shade trees and continuing education;
- l. Provide an annual report to the Borough Council setting forth therein and detailing the activities of the Shade Tree Committee during the preceding twelve (12) months; and
- m. To review applications pending before the Planning Board or Zoning Board of Adjustment and make comments and recommendations to the Boards concerning such applications.

2-55.6 Costs of Planting or Removal of Trees. Except as hereinafter provided, the initial cost of trees planted by the Borough at the recommendation of the Milltown Shade Tree Committee, the cost of planting them, the cost of posts, boxes or guards used for the protection thereof and the cost of removal of any trees dangerous to public safety shall be the responsibility of the Borough of Milltown.

2-55.7 Notice of Removal. The Milltown Shade Tree Committee shall provide reasonable notice of its intention to remove, or cause the removal of a shade tree, or part thereof, which is dangerous to public safety. However, where public safety requires the immediate removal of a shade tree, or part thereof, no notice shall be necessary.

2-55.8 Appeals from the Shade Tree Committee. Any person aggrieved or affected by any decision of the Milltown Shade Tree Committee may file an appeal to the Mayor and Borough Council. Such appeal shall be taken within ten (10) days of the decision by filing a notice of appeal with the Milltown Shade Tree Committee and the Mayor and Borough Council. The notice of appeal shall set forth the grounds for the appeal. The appeal shall be considered within thirty (30) days by the Mayor and Borough Council at a regularly scheduled meeting of the Borough Council. In the event no regularly scheduled meeting of the Mayor and Borough Council is scheduled to occur within thirty (30) days of the filing of the notice of appeal, then the appeal shall be heard at the next regularly scheduled meeting of the Mayor and Borough Council. In considering the appeal, the Mayor and Council may reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination of the Milltown Shade Tree Committee, and make such order, requirement, decision or determination as the Mayor and Borough Council deem appropriate. In making their decision, the Mayor and Borough Council shall have, and be free to exercise, all of the powers of the Milltown Shade Tree Committee.

2-55.9 Annual Appropriation. During the month of December in each year, the Milltown Shade Tree Committee shall certify to the governing body of the Borough the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year. The Mayor and Borough Council shall annually appropriate such sum as the Mayor and Borough Council may deem necessary for said purposes.

2-55.10 Liability. Nothing contained in this chapter shall be construed to make the Milltown Shade Tree Committee or any member thereof liable for the death or injury of any person or for any injury to any property or highway, tree or shrub.

Section 2. Chapter XIX, Protection of Trees, of the Revised General Ordinances of the Borough of Milltown, is hereby amended as follows:

19-1.1 Definitions. As used in this section:

Community Forestry Management Plan shall mean the planning, implementation, and management plan that has been developed by the Borough of Milltown submitted to, and approved by, the State of New Jersey which contains specific implementation guidelines for the care and maintenance of Borough shade trees.

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Shade Tree Committee shall mean the Shade Tree Committee of the Borough of Milltown.

Shade Tree Permit shall mean the written permission of the Shade Tree Committee of the Borough of Milltown as provided for in this section.

Shade Tree shall mean a shade and ornamental trees and shrubbery now located or which may hereafter be planted in any public highway, park or parkway within the Borough of Milltown, except those located or planted on county highways, parks and state highways.

19-1.2 Reserved.

19-1.3 Reserved.

19-1.4 Reserved.

19-1.5 Reserved.

19-1.6 Penalties; Fines; Restitution; Jurisdiction of Courts.

a. The penalties for violations of this section are set forth in Appendix A. Each day any violation of this section shall continue shall constitute a separate offense. Damage to any single or individual tree constitutes a separate offense. The Municipal Court of the Borough of Milltown shall have jurisdiction over violations of this section. The Zoning Officer shall have the authority to serve and execute any process issued out of the Municipal Court of the Borough of Milltown for violations of this section.

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c. Any public utility company, cable television company, wireless service provider or satellite service company that clears, moves, cuts, or destroys any shade trees 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 television services upon any lands in which it has acquired shall be subject to a penalty imposed by subsection a or b. This subsection shall not exempt any public utility company, communication or television service company from any penalty or replacement assessment imposed for negligent actions unless it has acquired an easement or right-of-way from the Borough of Milltown.

19-1.7 Disposition of Penalties. Any monies collected, either as fines or penalties, for any violation of a rule or regulation of the Shade Tree Committee or of any provision of this section shall be paid forthwith to the custodian of municipal funds and placed in a dedicated Shade Tree Account to be used solely for the planting, replacement, and maintenance of shade trees.

19-1.8 Rules, Regulations and Ordinances by the Shade Tree Committee.

a. The Milltown Shade Tree Committee is hereby authorized to promulgate rules and regulations for the effective administration of this section by it. Any rules or regulations promulgated by the Milltown Shade Tree Committee shall not be effective until such time as they are reviewed and approved by resolution of the Mayor and Borough Council.

b. The Milltown Shade Tree Committee shall also advise the Mayor and Borough Council of any and all appropriate revisions to this section or any other ordinance concerning trees within the Borough of Milltown.

19-1.9 Public Notice. All rules and regulations adopted by the Milltown Shade Tree Committee shall be filed with the Borough Clerk.

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19-1.11 Required Permits for Non-Utility Operations.

a. No person shall do any of the following acts to any Shade Tree without a prior written permit issued by the Shade Tree Committee:

1. Cut, prune, girdle, climb with spikes, break, damage or remove or kill.

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3. Place or maintain in any street or park any stone, concrete, excessive mulch or other substance which impedes the free access of air and water to the roots of any shade tree.

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5. Build a fire or station any tar kettle, road roller, fuel oil dispensing truck, or other engine in any street or any other place in such a manner that the heat, vapors, fuel or fumes therefrom may injure any shade tree.

6. Fasten any rope, wire, hardware, sign or other device. Nothing herein shall prevent any governmental agency from affixing in a manner approved by the Shade Tree Committee a public notice upon a tree in connection with administering governmental affairs).

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8. Conduct razing, removal or renovation of any structure if deemed by the Milltown Shade Tree Committee to be damaging to neighboring shade trees.

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10. Repair, replace or construct any sidewalks, driveways, curbing, roadway and/or aprons with any material whatsoever within five (5) feet of a tree.

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19-1.12 Required Permits; Exceptions for Utility Operations.

a. The Shade Tree Committee may grant to Public Utility Companies a blanket permit for:

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2. The installation and maintenance of sub-surface and above ground plant construction if there is interference with, or endangerment to, shade trees.

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c. Each Public Utility Company shall exercise reasonable diligence in the maintenance of its plant construction so as to avoid damage to shade trees.

19-1.13 Issuance of Permits and Fees.

a. Requests for permits required by the provisions of this section for the performance of such work shall be directed to the Milltown Shade Tree Committee.

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f. The Shade Tree Committee shall dispose of a permit request within forty-five (45) days of the filing of the permit request. In the event the Shade Tree Committee fails to dispose of a permit request within forty-five (45) days of the filing of a permit request, it shall be deemed a denial of the request.

g. Any party aggrieved or affected by a decision of the Milltown Shade Tree Committee shall be entitled to file an appeal of the decision as provided for in Chapter II, Section 55.

h. Any member of the governing body, including the Mayor and any Councilmember, shall be entitled to appeal any decision of the Milltown Shade Tree Committee as provided for in Chapter II, Section 55.

19-1.14 Hindrance. No person shall prevent, delay, harass or in any manner interfere with the Committee, or its authorized agents in the performance of their lawful duty.

19-1.15 Shade Tree Plantings and Replacements.

a. No person shall plant any shade tree on any street within the Borough of Milltown right-of-way; the Borough of Milltown parks or the Borough of Milltown planting easements without a permit from the Milltown Shade Tree Committee.

b. Only tree varieties or species recommended and approved by the Milltown Shade Tree Committee may be planted as shade trees. A list of currently recommended shade trees may be obtained from the Borough Clerk's Office.

c. The selection and location of the shade tree to be planted shall take into account the following factors:

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d. Root barriers such as DeepRoot, or other equivalent root barriers, must be installed along sidewalks and curbs for any new or replacement shade tree to be planted in accordance with the Borough of Milltown Shade Tree Committee specifications. A copy of these specifications may be obtained from the Borough Clerk's office.

- e. All newly planted shade trees must be planted in accordance with the Borough of Milltown Shade Tree Committee Tree Planting Specifications. A copy of these specifications may be obtained from the Borough Clerk's office.
- f. Planting of shade trees shall be in accordance with the quantity and schedule contained in the Community Forestry Management Plan.
- g. Any shade tree removed either by any agency of the Borough of Milltown, individual or contractor for road, curb, sidewalk, or utility improvements must be replaced in like quantity with a Milltown Shade Tree Committee approved tree. The cost of obtaining and planting these trees shall be included in the improvement contract. In the event it is impractical to replace trees on a like quantity basis at the site under contract, any excess trees shall be provided to the Milltown Shade Tree Committee for planting at other shade tree site locations.
- h. Priority for trees to be planted will be given to property owners who participate in the Milltown Shade Tree Committee's Front Yard Program. A copy of the specifications for this program may be obtained from the Borough Clerk's office.

19-1.16 Tree Pruning.

- a. No person shall prune any shade tree without a written permit from the Milltown Shade Tree Committee. Shade trees which are severely damaged by wind storms, or similar weather events, and requiring emergency pruning are exempted.
- b. It shall be unlawful to "top" any shade tree. "Topping" is defined as the severe cutting back of the tree crown, which removed the normal canopy and disfigures the tree. A copy of further specifications regarding topping may be obtained from the Borough Clerk's office.
- c. All shade tree pruning shall be done in accordance with the current standards contained in the New Jersey Board of Tree Experts "Pruning Standards for Shade Trees" and the American National Standards Institute (ANSI) Standard A300 and any subsequent revisions thereto.
- d. Municipal employees or independent contractors shall prune shade trees in accordance with the annual pruning scheduled established in the Borough of Milltown Community Forestry Management Plan. All contracts for shade tree pruning shall include the class or level of pruning to be performed.
- e. The Shade Tree Committee shall recommend the pruning of any tree or shrub on private property to the Borough Zoning Officer when the tree or shrub has dead, diseased or dangerous limbs or branches, which constitute a threat to public health, safety or welfare. Obstruction of traffic visibility at street corners, as well as sidewalk and road clearance shall be considered a threat to public health, safety or welfare. The Shade Tree Commission shall be permitted to enter upon private property to effectuate the purposes of this subsection, upon advance written notice to and with the consent of the property owner. The Borough Zoning Officer shall review the recommendation and take appropriate action under as permitted under the Borough Ordinances.

f. All newly planted shade trees shall be trained to a single trunk a minimum of eight (8) feet above public sidewalks and twelve (12) feet above roadways unless otherwise specified by a majority vote of the members of the Shade Tree Committee. Pruning shall be done at the appropriate time for particular tree specified; beginning the third year after planting; and shall continue periodically until the specified heights are attained.

19-1.17 Tree and Stump Removal.

a. No person shall remove any shade tree without a written permit from the Milltown Shade Tree Committee. Shade trees which are severely damaged by wind storms, or similar weather events, and requiring emergency removal are exempted.

b. The criteria utilized for shade tree removal are as follows:

1. The tree is determined to be hazardous and constitutes a threat to public safety or utilities.
2. The tree contains major structural deficiencies.
3. The tree is dead or in decline.
4. Sidewalk, curb or driveway apron improvements necessitate the removal of an excessive amount of roots rendering the tree unstable.
5. Excessive disease or insect infestation undermines the integrity of the tree and removal is necessary to prevent the spread of the disease or insect infestation.
6. Shade trees in Zone I in the Community Forestry Master Plan are assigned the highest priority for removal.
7. Decay undermines the integrity of the tree.

c. Stumps and visible roots of shade trees which have been removed shall be ground to a minimum of six (6) inches below the surrounding soil surface located beyond the root crown of the removed tree.

d. Sewer lines blocked by roots of shade trees do not constitute a reason for tree removal. Tree root inhibitors, such as Root X (or its equivalent), should be utilized in lieu of removal. Additional solutions other than removal should be considered prior to removal of the tree. Receipts from a licensed plumber documenting a history of root blockage of a sewer line shall be considered by the Shade Tree Committee in determining whether to issue a permit for the removal of the shade tree.

e. The Shade Tree Committee shall recommend the removal of any tree or shrub on private property to the Borough Zoning Officer when the tree or shrub has dead, diseased or dangerous limbs or branches, which constitute a threat to public health, safety or welfare. Obstruction of traffic visibility at street corners, as well as sidewalk and road clearance shall be considered a threat to public health, safety or welfare. The Shade Tree Commission shall be permitted to enter upon private property to effectuate the purposes of this subsection, upon advance written notice to and with the consent of the property owner. The Borough Zoning Officer shall review the recommendation and take appropriate action under as permitted under the Borough Ordinances.

19-1.18 Trees Removed for Sidewalk Repairs – Property Owner Responsibilities.

- a. Any shade tree which has been removed at the request of the property owner for sidewalk replacement or in the case of lack of insurability due to sidewalk rising shall have the sidewalk replaced within sixty (60) days of the tree stump removal.
- b. If the sidewalk has not been replaced within sixty (60) days of the tree stump removal, the Shade Tree Committee shall notify the Borough Zoning Officer. The Borough may thereafter take the appropriate action as permitted under Chapter XXIII of these Ordinances.

19-1.19 Monthly Reports of Tree Maintenance and Removal Activities by Department of Public Works and Utilities. The Milltown Borough Public Works and Utility Departments will each prepare and submit a monthly report to the Milltown Shade Tree Committee identifying all trees and stumps removed and all trees pruned or planted during the preceding month. Each report will be submitted to the Chairman of the Shade Tree Committee and the Council Liaison to the Committee. The report will include the street address; tree positions; work performed; and man-hours of work expended. Each November, the Milltown Borough Public Works and Utility Departments will prepare and submit an itemized annual cost estimate for planting, pruning and removing trees and stumps within the Borough of Milltown.

19-1.20 Legal Representation. The Borough Attorney of the Borough of Milltown will represent the Milltown Shade Tree Committee in all legal matters, upon adoption of a resolution by the Mayor and Borough Council authorizing same.

19-1.21 Tree Maintenance Training for Municipal Employees In the Department of Public Works and Utilities.

- a. All new employees of the Milltown Borough Public Works and Utility Departments are encouraged to take a tree pruning course at Rutgers University – Cook College within one (1) year of their employment in the Public Works or Utility Department. The Milltown Shade Tree Committee recommends the course entitled "Tree Pruning" or its equivalent which has been approved by the New Jersey Community Forestry Council. If this course is not available, the Milltown Shade Tree Committee shall designate another course and advise the Mayor and Borough Council in writing of same.
- b. The Supervisors in the Milltown Public Works and Utilities Departments who oversee the pruning and planting of trees are required to take "Tree Planting and Installation" or its equivalent at Rutgers University – Cook College in addition to the course recommended in subsection a. If this course is not available, the Milltown Shade Tree Committee shall designate another course and advise the Mayor and Borough Council in writing of same.
- c. The Supervisors in the Milltown Public Works and Utilities Departments are required to take "Hazardous Tree Identification" or its equivalent at Rutgers University – Cook College.
- d. The Supervisors in the Milltown Public Works and Utilities Departments are required to take the New Jersey Community Forestry Act CORE curriculum.

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19-1-22 Residential Development.

- a. All new residential development shall submit plans for all trees and shrubs to be planted and removed as required by Chapter XXXIV, Comprehensive Development, a copy of which shall be forwarded to the Milltown Shade Tree Committee for review and comment. Plans must include the common names, scientific names, variety, sizes, quantities and location of the trees and shrubs.
- b. The Milltown Shade Tree Committee shall provide recommendations to the appropriate board concerning the type, quantity, sizes, species and placement of trees.
- c. No performance bond shall be released for a new residential development until the Milltown Shade Tree Committee has reviewed and verified that all required shade trees have been planted correctly.

19-1.23 Commercial Development.

- a. All new commercial development shall submit plans for all trees and shrubs to be planted and removed as required by Chapter XXXIV, Comprehensive Development, a copy of which shall be forwarded to the Milltown Shade Tree Committee for review and comment. Plans must include the common names, scientific names, variety, sizes, quantities and location of the trees and shrubs.
- b. The Milltown Shade Tree Committee shall provide recommendations to the appropriate board concerning the type, quantity, sizes, species and placement of trees.
- c. No performance bond shall be released for a new commercial development until the Milltown Shade Tree Committee has reviewed and verified that all required shade trees have been planted correctly.

19-1.24 Damage to Shade Trees Due to Vehicular Accident or Observed Vandalism and Police Notification. In order to obtain compensation for the Borough of Milltown Shade Trees accidentally damaged or destroyed by motor vehicles or observed acts of vandalism, the Milltown Police shall notify the Milltown Shade Tree Committee in writing that such damage has occurred. This notification will include the date and time of the incident, the name and address of the person(s) involved, the insurance carrier and a copy of the accident or police report if a motor vehicle has been involved.

For the purpose of this subsection:

- a. Motor vehicle shall include cars, trucks, motorcycles and all other forms of motorized transportation; and
- b. Vandalism shall include, but not be limited to, any of the items identified in Subsection 19-1.11.

19-1.25 Reserved.

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19-4.8 Fees and Escrows.

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c. *Tree Escrow Fund Established.*

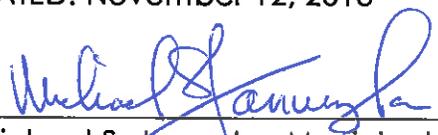
1. A Tree Escrow Fund shall be established by the Borough to promote environmental enhancement programs such as tree planting, tree preservation, park development, landscaping and/or other related projects on or within municipally-owned properties or facilities. A separate trust account shall be established for this purpose. Appropriations from the Tree Escrow Fund shall be authorized by the Mayor and Council and shall be used for the above municipal purpose through the recommendation of the Shade Tree Committee and the Environmental Commission.

Section 4. Each clause, section or subsection of the ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

Section 5. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

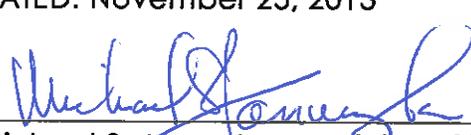
Section 6. This ordinance shall take effect immediately upon adoption and publication according to law.

ADOPTED ON FIRST READING
DATED: November 12, 2013



Michael S. Januszka, Municipal Clerk

ADOPTED ON SECOND READING
DATED: November 25, 2013



Michael S. Januszka, Municipal Clerk

APPROVAL BY MAYOR ON THIS 27th DAY OF November, 2013



Eric A. Steeber, Mayor

I, Michael S. Januszka, Clerk of the Borough of Milltown hereby certify that the foregoing is a true copy of an ordinance duly adopted by the Borough Council of the Borough of Milltown, Middlesex County, State of New Jersey at a regular meeting held on November 25, 2012.

Michael S. Januszka, RMC
Borough Clerk