

**ORDINANCE 04-2024**

**BOROUGH OF EATONTOWN  
COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

**AN ORDINANCE OF THE BOROUGH OF EATONTOWN CONCERNING TREE REMOVAL AMENDING  
CHAPTER 307 REMOVAL OF TREES INCORPORATING THE REQUIREMENTS OF THE BOROUGH'S NJDEP  
TIER ONE MUNICIPAL STORMWATER GENERAL PERMIT**

**WHEREAS**, trees play a critical role in the water cycle where they reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety and welfare; and

**WHEREAS**, the NJDEP revised the Tier A Municipal Stormwater General Permit in 2023, which also reclassified all municipalities into the Tier A; and

**WHEREAS**, the 2023 Tier A MS4 permit renewal requires permittees to adopt and enforce a community-wide ordinance to control tree removal and replacement.

**WHEREAS**, the Borough Council believes it is in the best interest of its residents to amend and update its tree replacement requirements in order to comply with the requirements of its Tier A MS 4 stormwater permit and to meet the NJDEP's standards regarding tree removal.

**NOW THEREFORE BE IT ORDAINED**, by the Borough Council of the Borough of Eatontown, County of Monmouth and State of New Jersey, hereby amends Chapter 307 of the Borough Code entitled Removal of Trees as follows:

[deletions are marked as strike-out and additions are underlined]

Chapter 307

§307-1 -Purpose

The Borough Council of the Borough of Eatontown does herein decide and find that the indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon lots and tracts of land within the Borough has resulted in increased municipal drainage costs, drainage control costs, and has further caused increased soil erosion, decreased fertility of soil and increased dust, which has deteriorated property values and has further rendered land unfit and unsuitable for the most appropriate use, with the result that there has been and will result in the future a deterioration of conditions affecting the health, safety and general well-being of the inhabitants of the Borough and has caused the passage of this article to regulate and control the indiscriminate and excessive cutting of trees in the Borough in conformance with its requirements in conformance with its New Jersey Department of Environmental Protection 2023 Tier A MS4 permit.

§307-2 Definitions. As used in this subsection, the following terms shall have the meanings indicated:

Applicant means any person or entity who applies for approval to remove trees regulated under this ordinance.

**CALIPER** means the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees, whose caliper exceeds four inches, the measurement is taken twelve (12) inches above the soil line.

Critical Root Radius (CRR)" – means the zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6" DBH would have a CRR = 6"x1.5' = 9'.

**DIAMETER AT BREAST HEIGHT (DBH)** means the diameter of trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the four and a half foot height, the DBH shall be measured at the highest point before any division.

**DO NOT PLANT LIST** a promulgation of the Shade Tree Commission that identifies trees which are not permissible to be planted as a replacement tree or part of a Planning Board or Zoning Board application. The DO NOT PLANT LIST shall be posted on the Borough webpage, filed with the Zoning Officer and may be amended from time to time. Deviations from this list are subject to the approval of the Shade Tree Commission or Planning or Zoning Board depending upon the issue being addressed and their respective jurisdiction.

**ENVIRONMENTALLY CRITICAL AREAS.** An area or feature which is of significant environmental value, including but not limited to wetlands, floodplains, important farm lands, agricultural development areas, steep slopes, endangered or threatened species and their designated habitats, important aquifer recharge areas, coastal areas, stream corridors, parks and preserves.

**HAZARD TREE** means a tree or limbs thereof that meet one or more of the following: 1. Has an infectious disease or insect infestation; 2. Is dead or imminently dying; 3. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective; 4. Is causing obvious damage to structures such as building foundations; or 5. Is determined to be a threat to public health, safety, and/or the welfare by a New Jersey licensed tree expert in accordance with N.J.S.A. 45:15C-11 or a licensed arborist. The Department of Public Works shall have the authority to determine a hazard tree on public property, in a public easement or public right of way.

**INVASIVE SPECIES** are those species as identified in Borough Land Use Ordinance section 89-83.A.4. Invasive species may be removed without replacement upon proper application to and approval from the Borough Zoning Officer and Land Use Administrator.

**PLANTING GUIDE** a promulgation of the Shade Tree Commission that identifies trees which are permissible to be planted as a replacement tree. The Planting Guide shall be posted on the Borough webpage, filed with the Zoning Officer and may be amended from time to time. Other trees may be planted which are not included on the list subject to the approval of the Shade Tree Commission or Planning or Zoning Board depending upon the issue being addressed and their respective jurisdiction.

**PLANTING STRIP** means the part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

**PUBLIC RIGHT-OF-WAY** Any street or road shown upon a map or plan filed in the Monmouth County Clerk's office or on the Official Map of the Borough of Eatontown, including but not limited to public easements such as drainage and utility easements.

**RESIDENT** means an individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.

**SHRUB.** Native or volunteered laurel and wild azaleas having a root crown (the diameter of the trunk just prior to its spreading into roots) of three inches or greater at the soil or surface level.

**SITE.** Any lot, tract, parcel, or parcels of land within the Borough.

**SITE PLAN.** A development plan of one or more lots on which is shown: **(1)** The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains, marshes and waterways; **(2)** The location of all existing and proposed building, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, and screening devices; **(3)** The location of all existing and proposed soil erosion and sedimentation control measures; **(4)** The location of existing and proposed surface water runoff control measures; and **(5)** Any other information that may be reasonably required in order to make an informed determination with regard to application for approval of site plans.

**SUBDIVISION.** **1.** The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this chapter, if no new streets are created: **(a)** Divisions of land found by the Planning Board or Subdivision Committee thereof appointed by the Chairman to be for agricultural purposes where all resulting parcels are five acres or larger in size; **(b)** Divisions of property by testamentary or intestate provisions; **(c)** Divisions of property upon court order including but not limited to judgements of foreclosure; **(d)** Consolidation of existing lots by deed or other recorded instrument; and **(e)** The conveyance of one or more adjoining lots, tracts, or parcels of land owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of

the Borough Municipal Land Use Ordinance and are shown and designated as separate lots, tracts or parcels on the Tax Map of the Borough of Eatontown. **(2)** The term "subdivision" shall also include the term "resubdivision."

**TREE.** Any of the following living trees having a trunk of a diameter greater than as set forth below, measured at one foot above ground level:**(a)** Deciduous tree: six inches (or circumf. 19 inches).**(b)** Coniferous tree: six inches (or circumf. 19 inches). **(c)** American holly tree (*Ilex opaca*), dogwood (*Cornus florida*), and broadleaf evergreens: one inch.

Tree removal" means to kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, over-mulching or improper mulching, and improper grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

**TREE REMOVAL AND SITE CLEARING PERMIT.** A certificate issued by the Zoning Officer of the Borough to remove or destroy trees or shrubs as defined in this subsection.

**UNDISTURBED AREA.** An area in which trees, shrubs and undercover will not be disturbed by filling, cutting, or by any other means.

§307-3 Permit requirements.

Any residential or commercial property owner seeking to remove a tree on their property is subject to an application process, defined below.

A. ~~For purposes of this ordinance, all properties will be divided as residential or commercial. Commercial properties shall mean all properties other than residential properties.~~

a. Commercial Properties:

- i. Tree removal as part of a Site Plan or Subdivision will be referred to the Shade Tree Commission. The Shade Tree Commission may prepare a memorandum to make recommendations to the Planning Board and/or Zoning Board. The Shade Tree Commission shall serve as advisory body to the Planning and Zoning Boards pursuant to N.J.S.A. 40:64-1. The Planning and Zoning Board secretary shall advise the Shade Tree Commission, Environmental Commission, and Fire Prevention Commission of all Site Plan or Subdivision applications.
- ii. Tree removal which is not part of a Site Plan and where the property owner wishes to clear cut vacant land of trees shall be applied for with the Zoning Officer and referred to the Borough Engineer who, after consultation with the Shade Tree Commission, shall determine what may be clear cut. In rendering such a determination, the Borough Engineer may require the applicant to make payment into the tree fund and replant elsewhere on the property. The

applicant shall pay monies into escrow in an amount to be determined by the Land Use Administrator for the Borough Engineer to review such an application.

The Zoning Officer may require a tree survey be provided to determine the number, sizes and exemptions of trees for assessment of fees related to the application. The site clearing permit shall be issued by the Zoning Officer.

Failure to apply for a Site Clearing Permit is a violation and subject to penalties enforced by the Code Enforcement Officer or Zoning Officer.

b. Residential Properties:

- i. Tree removal from residential property is subject to the conditions set forth below.
- ii. ~~Where a resident seeks to remove a tree from the public easement or right of way, the residential properties are less than one acre and the resident seeks to remove trees on their property:~~
  1. ~~If the tree(s) are on a public easement or right of way, referral to the Shade Tree Commission whose process shall be defined below.~~
  2. ~~If the tree(s) are not on a public easement or right of way, no municipal approval shall be required. The removal of trees outside of the public easement or right of way shall be subject to the Tree Replacement Requirements Table.~~
- iii. ~~Where residential properties are equal to or greater than one acre:~~
  1. ~~If the tree(s) are on a public easement or right of way, referral to the Shade Tree Commission whose process will be defined below.~~
  2. ~~If the tree(s) are not on a public easement or right of way, referral to the Borough Engineer with the property owner being required to place money into escrow to pay for the Borough Engineer's review, who in consultation with the Shade Tree Commission shall determine what Trees may be cut down, or whether the property owners shall make payment into a tree fund and/or replant elsewhere on the property. In rendering this review, the Shade Tree Commission shall make a clear explanation to address the harm, if any, of clear cutting Trees and drainage issues.~~
- iv. ~~Stipulations for all residential properties:~~
  1. ~~If the tree is on a public easement or right of way, the Department of Public Works alone has the authority to determine whether the tree is a hazard and in need of pruning or removal. The Department of Public Works shall have the authority to make the decision without consultation with the Shade Tree Commission.~~

§307-4 Application Process. Any person seeking to cut or remove trees shall follow the within process:

a. Commercial Properties:

- i. For those applying for Site Plan or Subdivision approval to the Planning Board or Zoning Board, such tree removal applications shall be part of the zoning application process.
- ii. For those seeking a site clearing permit, application shall be made to the Zoning Officer and Land Use Administrator, who must receive an escrow fund payment and survey from the applicant, and who shall work in consultation with the Borough Engineer and the Shade Tree Commission to consider a site clearing plan.

b. Residential Properties:

- i. All residential applications shall be made to the Zoning Officer and Land Use Administrator using a Tree Removal/Pruning request form. The fee for this application shall be set at \$25.
- ii. The Zoning Officer and Land Use Administrator shall determine if the tree is within the public right of way. If the tree is on a public right-of-way, it shall be referred to the Department of Public Works who shall determine if there is an emergent need to remove or cut the tree.
- iii. If the Department of Public Works determines that there is no emergent need to remove or cut the tree, the resident shall be referred to the Shade Tree Commission for a public hearing.
- iv. If the Department of Public Works determines that there is an emergency, they may act to prune or remove the tree without regard to the Shade Tree Commission. ~~The Department of Public Works may notify the Shade Tree Commission of any requirements to replant the tree, or, if the land cannot sustain a replacement tree, the resident may pay into the tree fund. A tree that is removed by the Department of Public Works for being a hazard will be referred to the Shade Tree Commission for replacement or fee using the Tree Replacement Requirement Table set forth in Section 307-6.~~
- v. If there is an emergency, the decision to remove a tree on public property, in a public easement or public right-of-way shall be delegated to the Department of Public Works.

§307-5 Shade Tree Commission. The powers, duties, and authorizations of the Shade Tree Commission are set forth in Chapter 7, Article III, (Sections 7-12 through 25) of the Code of the Borough of Eatontown.

**307-6. Tree Replacement Requirements:**

- A. Any person or entity who removes one or more trees shall be subject to the Tree Replacement Requirements Table below. For Site Plan applications, the Tree Replacement requirements will be considered in addition to any Landscaping, buffering and screening requirement listed in Borough Code 89-39.

**Tree Replacement Requirements Table:**

<u>Category</u>	<u>Tree (as defined and measured in Chapter 301-1.B.) Removed</u>	<u>Tree Replacement Criteria</u>	<u>Payment to Tree Fund In-Lieu of Replacement</u>
<u>1</u>	<u>1" to 12.99" DBH</u>	<u>Replant 1 tree with a minimum tree caliper of 2.5"-3" for each tree removed</u>	<u>\$200</u>
<u>2</u>	<u>13" to 22.99" DBH</u>	<u>Replant 2 trees with minimum tree calipers of 2.5"-3" for each tree removed</u>	<u>\$300</u>
<u>3</u>	<u>23" to 32.99" DBH</u>	<u>Replant 3 trees with minimum tree calipers of 2.5"-3" for each tree removed</u>	<u>\$400</u>
<u>4</u>	<u>33" or greater DBH</u>	<u>Replant 4 trees with minimum tree calipers of 2.5"-3" for each tree removed</u>	<u>\$500</u>

B. Replacement tree(s) shall:

1. Be replaced in kind with a tree that has an equal or greater DBH than tree removed or meet the Tree Replacement Criteria in the table above;
2. Be planted within twelve (12) months of the date of removal of the original tree(s);
3. Be monitored by the applicant for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12) months;
4. Shall not be planted in temporary containers or pots, as these do not count toward tree replacement requirements; and
5. Shall not be identified on the Do Not Plant List nor be an invasive species.

C. Replacement Alternatives:

1. If it is determined that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred or is requested to occur:

- a. If the tree is on the public right of way, the Shade Tree Commission may modify the above replacement schedule to allow for a tree or trees appropriately sized for the area. If none exists, the applicant shall pay into the tree fund according to the Tree Replacement Requirements Table.
- b. If the tree is outside of the public right of way, the applicant shall pay into the tree fund according to the Tree Replacement Requirements Table.

D. Exemptions:

1. All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below:
  - a. Residents who remove fewer than four trees outside of the public right of way that fall into any Category 1, Category 2, Category 3 or Category 4 of the Tree Replacement Requirements Table within a five-year period. The number of trees removed is a rolling count across a five year period. This exemption does not apply to the count of trees removed from the public easement or right of way which are governed by the Shade Tree Commission;
  - b. Tree farms in active operation, nurseries, fruit orchards and garden centers (excluding those trees required as part of their site plan approval);
  - c. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality;
  - d. Any trees removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan;
  - e. Any trees removed pursuant to New Jersey Department of Environmental Protection (NJ DEP) or US Environmental Protection Agency (EPA) approved environmental cleanup, or NJ DEP approved habitat enhancement plan;
  - f. Approved game management practices, as recommended by the State of New Jersey, Department of Environmental Protection, Division of Fish, Game and Wildlife;
  - g. Any invasive tree may be removed without regard to the tree removal count above. Such removal will neither require a replacement tree nor a payment to the tree fund; and
  - h. Hazard trees may be removed without regard to the tree removal count above. Such removal will neither require a replacement tree nor a payment to the tree fund. A tree outside of the public right of way will only be determined a

hazard in need of removal with a written and signed statement from a New Jersey licensed tree expert as per NJ Statute 45:15C-11 or licensed arborist.

## §307-7 Fines and Penalties.

A. Commercial Properties: All allegations of code violations shall be referred to the Zoning Officer. The Zoning Officer shall determine site plan conformity.

1. In consultation with the Borough Engineer, the Zoning Officer shall have the authority to determine if the property is in violation of Site Plan approval.
2. If the property is in violation of Site Plan approval, the property issue shall be returned to the Planning Board or Zoning Board for resolution.
3. If a violation is found to exist which does not require appearance at the Planning Board or Zoning Board, the matter shall be referred to the Shade Tree Commission, who in conjunction with the Borough Engineer shall recommend replacement trees or payment to the tree fund. Commercial Properties who disagree with this decision may appeal to the Planning or Zoning Board, as appropriate for final resolution.

B. Residential Properties: All residential properties whose owners cut a non-hazardous tree without permission shall be subject to the following penalties.

1. Trees on a public easement or right-of-way: The owner shall meet with the Shade Tree Commission to determine whether a replacement tree must be planted. If a replacement tree is not plausible due to issues with topography and roots, etc. the owner shall be required to make a payment to the tree fund. Failure to do so will result in a violation of the ordinance and the issuance of a summons to Court by the Code Enforcement Officer.
2. Trees outside a public easement or right-of-way:
  - A. All trees removed outside of the public right of way shall be subject to the Tree Replacement Requirements Table.
  3. ~~On properties an acre or larger, the matter shall be referred to the Borough Engineer who, in consultation with the Shade Tree Commission, shall determine the penalty including but not limited to replanting; if replanting is not plausible, a payment to the tree fund shall be made. Failure to do so will result in a violation of the ordinance and the issuance of a summons to Court by the Code Enforcement Officer.~~
  4. ~~On properties measuring less than one acre are not subject to this code section.~~

C. The Zoning Officer shall be responsible to implement and enforce this Ordinance. The failure to replace a tree or make a payment to the Eatontown Tree Fund as required by the Ordinance shall result in a penalty to be assessed in an amount up to \$2000 per violation.

§307-8 Tree Fund. The Borough of Eatontown Tree Fund shall hold maintain funds with which to replace trees on public, residential and commercial properties throughout the Borough.

- A. The Shade Tree Commission and Department of Public Works shall have the authority to cause trees to be planted using funds held in the Tree Fund.
- B. The Fund shall set aside the following funds for the following tree sizes:
  - i. Small trees, whose height at maturity is under 25 feet: \$150.
  - ii. Medium trees, whose height at maturity is between 25 feet and 40 feet: \$250.
  - iii. Large trees, whose height at maturity is over 40 feet: \$350.

Date Introduced: 4/10/2024

Date Adopted: 5/8/2024

APPROVED:

Anthony Talarico, Jr. Mayor

Date: 5/8/2024

ATTEST:

Julie Martin, Municipal Clerk

Date: 5/8/2024

