

ORDINANCE NO. 2024-22

**ORDINANCE OF THE BOROUGH OF WASHINGTON, COUNTY OF WARREN,
STATE OF NEW JERSEY**

**ESTABLISHING CHAPTER 83A “TREE REMOVAL - REPLACEMENT” OF THE
CODE OF THE BOROUGH OF WASHINGTON**

WHEREAS, the State of New Jersey, Department of Environmental Protection, effective as of December 01, 2022, had revised and readopted the “Tier A Municipal Stormwater General Permit, NJPDES: NJ0141852 (MS4 General Permit), in accordance with N.J.A.C. 7:14A and the Borough of Washington, County of Warren has been designated as a Tier A municipality; and

WHEREAS, the MS4 General Permit makes necessary the adoption or amendment of various municipal ordinances to incorporate environmental protections related to stormwater quality and that the NJDEP has provided the mandatory language needed for said protections; and

WHEREAS, the following environmental protections are appropriately incorporated into a new Borough Code Chapter 83A, “TREE REMOVAL - REPLACEMENT” to establish the required standards for removal and replacement trees on public and private lands in the Borough of Washington.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Washington, County of Warren that Chapter 83A, “TREE REMOVAL - REPLACEMENT” is hereby established as required by State of New Jersey, Department of Environmental Protection, Tier A Municipal Stormwater General Permit as follows:

CHAPTER 83A Tree Removal

§ 83A-1. Purpose:

An ordinance to establish requirements for tree removal and replacement in Washington Borough to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare.

§ 83A-2. Definitions:

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- A. “Applicant” means any “person”, as defined below, who applies for approval to remove trees regulated under this ordinance.
- B. “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’.

- C. "Diameter at Breast Height (DBH)" means the diameter of the 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 4 ½ foot height, the DBH shall be measured at the highest point before any division.
- D. "Hazard Tree" means a tree or limbs thereof that meet one or more of the criteria below. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.
1. Has an infectious disease or insect infestation;
 2. Is dead or 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, sidewalks, etc.); or
 5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).
- E. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.
- F. "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.
- G. "Resident" means an individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.
- H. "Street Tree" means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.
- I. "Tree" means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.
- J. "Tree 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 (4) inches, the measurement is taken twelve (12) inches above the soil line.
- K. "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.

§ 83A-3. Regulated Activities; Permit Required; Fees.

- A. Any person planning to remove a street tree, as defined as Tree removal, with DBH of 2.5” or more or any non-street tree with DBH of 6” or more on their property shall submit a Tree Removal Application to the Borough Zoning Officer, including removals where an exemption is claimed. No tree shall be removed until municipal officials have reviewed and approved the removal.
- B. Where regulated tree removals are proposed as part of a development application filed with the Washington Borough Land Use Board, a separate application process as part of this Chapter shall not be required.
- C. Application Fees for tree removal categories 1 through 4 in the Tree Replacement Requirements Table below shall be set by Borough Resolution.

§ 83A-4. Tree Replacement Requirements

- A. Any person who removes one or more street tree(s) with a DBH of 2.5” or more, unless exempt under § 126-5, shall be subject to the requirements of the Tree Replacement Requirements Table below.
- B. Any person, who removes one or more tree(s), as defined as Tree removal, with a DBH of 6” or more per acre, unless exempt § 126-5, shall be subject to the requirements of the Tree Replacement Requirements Table.
- C. The species type and diversity of replacement trees shall be in accordance with the recommended native tree species set forth in the Borough’s list on file in the Borough Clerk’s office pursuant this article.
- D. Replacement trees 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 below.
 - 2. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the municipality.
 - 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 towards tree replacement requirements.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
1	DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99”	Replant 1 tree with a minimum tree caliper of 1.5” for each tree removed

2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed

Application Fees to be set by Borough Resolution

E. Replacement Alternatives:

1. If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:
 - a. Plant replacement trees in a separate area(s) approved by the municipality.
 - b. Pay a fee of (amount to be set by Borough Resolution) per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

§ 126-5. Exemptions.

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below. Proper justification shall be provided, in writing, to the municipality by all persons claiming an exemption, which justification may be in the form of photos, statements or opinions from NJ licensed tree experts (pursuant to N.J.S.A 45:15C-11) or arborists, as deemed necessary by the reviewing Borough official based on the exemption claimed.

- A. Residents who remove less than four (4) trees per acre that fall into category 1, 2, or 3 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. For example, if 3 trees from category 1 are removed in July 2023, the 'count' resets to zero in July 2028. However, if 1 tree from category 1 is removed in July 2023 and another in July of 2025 the first tree will come off the count in July 2028 and the second in July 2030.]
- B. Tree farms in active operation, nurseries, fruit orchards, and garden centers.
- 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 a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP 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. Hazard trees may be removed with no fee or replacement requirement.
- H. Removal of invasive, nonnative species of trees, such as, without limitation, Tree of Heaven, Bradford Pear, and Norway Maple.
- I. Removal of trees by or on the behalf of the Borough of Washington.

§ 126-6. Enforcement.

This article shall be enforced by the Zoning Officer, Municipal Police Department and/or other Municipal Officials of the Borough of Washington during the course of ordinary enforcement duties.

§ 126-7. Violations and Penalties:

Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a fine equal to the cost for the replacement of the tree, but shall not be less than the amount of the required replacement tree(s) and cost of planting.

SEVERABILITY.

Where any section, subsection, sentence, clause, or phrase of these regulations is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared

EFFECTIVE DATE.

This ordinance shall take effect immediately upon final publication as provided by law.

Adopted: September 17, 2024