

**BOROUGH OF GARWOOD**

**ORDINANCE NO. 24-34**

Adopted: December 5, 2024

Introduced:	November 18, 2024
Motion:	Council President Kearney
Seconded:	Councilman Foley

Public Hearing:	December 5, 2024
Motion:	Council President Kearney
Seconded:	Councilman Foley

**AN ORDINANCE BY THE COUNCIL OF THE BOROUGH OF GARWOOD AMENDING THE BOROUGH OF GARWOOD'S CODE OF ORDINANCES, CHAPTER 138, "SHADE TREES", AND CREATING NEW ARTICLE V, "TREE REMOVAL AND REPLACEMENT".**

**WHEREAS**, trees play a crucial, often overlooked, role in the water cycle and in the mitigation of stormwater runoff issues such as soil erosion, pollutant reduction, infiltration, quantity reduction, and thermal effects; and

**WHEREAS**, the New Jersey Department of Environmental Protection ("NJDEP") requires municipalities to adopt and enforce a community-wide ordinance covering tree removal/replacement; and

**WHEREAS**, the Borough Shade Tree Officer has reviewed the draft ordinance provided by the NJDEP and modified such draft to meet the needs of the Garwood community; and

**WHEREAS**, the Borough Council seeks to amend the Code by creating new Article 5, Tree Removal-Replacement to ensure that the Borough is compliant with the requirements of the NJDEP; and

**NOW, THEREFORE, BE IT ORDAINED** by the governing body of the Borough of Garwood that Chapter 138 (Shade Tree), New Article V (Tree Removal-Replacement) of the Borough Code of the Borough of Garwood is hereby created as follows (additions underscored, ~~deletions struck through~~):

**Chapter 138 - Article V - Tree Removal-Replacement**

**SECTION I. Purpose:**

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

**SECTION II. Definitions:**

The following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance 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 use of the word "shall" means the requirement is always mandatory and not merely directory.

A. "Applicant" means any "person", as defined below, who applies for approval to remove a tree(s) 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. [Municipalities may choose to require a Licensed Tree Expert to make all Hazard tree determination]

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.

### **SECTION III. Regulated Activities:**

#### **A. Application Process:**

1. Any person planning to remove a street tree, as defined as Tree removal, with DBH of 2" or more or any non-street tree, or with DBH of 6" or more on their property shall submit a Tree Removal Application to the Borough Shade Tree Officer. No tree shall be removed until the Shade Tree Officer has reviewed and approved the removal. The applicant shall submit a tree survey showing trees having a DBH equal to or larger than 2" for all development applications being submitted to a Borough Land Use Board or Zoning Officer. The components of this survey shall include number, size (DBH) and species of all trees on the subject property.
2. A fee shall be submitted as part of this application as per the Table below.

#### **B. Tree Replacement Requirements**

1. Any person who removes one or more street tree(s) with a DBH of 2.5" or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.
2. Any person, who removes one or more tree(s), as defined as Tree removal, with a DBH of 6" or more per acre, unless otherwise detailed under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table.

The species type and diversity of replacement trees shall be in accordance with Appendix A of this ordinance. Trees may be planted that are not on this list, but the applicant must obtain approval from the Shade Tree Officer prior to any such planting. The Shade Tree Officer can require the removal of trees that are not on this list if planted without approval.

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 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; and
4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

**Tree Replacement Requirements Table:**

<u>Category</u>	<u>Tree Removed (DBH)</u>	<u>Tree Replacement Criteria (See Appendix A)</u>	<u>Application Fee</u>
<u>1</u>	<u>DBH of 2.5" (for street trees) or 6" (for non-street trees) to 12.99"</u>	<u>Replant 1 tree with a minimum tree caliper of 2.0" for each tree removed.</u>	<u>Zero</u>
<u>2</u>	<u>DBH of 13" to 22.99"</u>	<u>Replant 2 trees with minimum tree calipers of 2.0" for each tree removed</u>	<u>Zero</u>
<u>3</u>	<u>DBH of 23" to 32.99"</u>	<u>Replant 3 trees with minimum tree calipers of 2.5" for each tree removed</u>	<u>Zero</u>
<u>4</u>	<u>DBH of 33" or greater</u>	<u>Replant 4 trees with minimum tree calipers of 2.5" for each tree removed</u>	<u>Zero</u>

**C. 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 Shade Tree Officer.
  - b. Pay a fee equal to the cost of a new planting as accepted by the Borough in its most recent road reconstruction project per tree removed. This fee shall be placed into the Shade Trust established by the Borough dedicated to tree planting and continued maintenance of the trees.

**SECTION IV. 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 Borough Shade Tree Officer by all persons claiming an exemption.

- A. Residents who remove less than four (4) trees from their property that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a five-year period.
- 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, but applicant must still submit an application -which may be 'after the fact', but within a two-week time from the Hazardous tree removal.

**SECTION V. Enforcement:**

It shall be the duty of the Police Department of the Borough of Garwood or the Borough Code Enforcement Officer to enforce the rules and regulations of this chapter. The Police or Code Enforcement Officer shall take enforcement action, including warnings and summonses, upon the request of the Shade Tree Officer.

**SECTION VI. 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 of \$300 per tree to be established by municipality but shall not be less than the amount of the required replacement tree(s) and cost of planting as defined above. This fine is in addition to the replacement tree(s) cost.

**Appendix A**

Approved list of Replacement tree Species and Planting Standards for Borough of Garwood

<b>Tree Species</b>	<b>Planting Season</b>	<b>Planting Procedure</b> (soil type, watering, pruning, staking, wrapping, exposure, depth, mulching, etc)
<b>Acer Campestre – Hedge Maple</b>	Planting season is from April 15 – June 15, and October 15- November 30.	All trees must be pruned for street tree use with no branches lower than 4' (four feet) from the ground, and be single-trunked. All planting is to be conducted in accordance with the standards stated in the most recent edition of 'Proper Tree Planting' published by the New Jersey Shade Tree Federation. Any tree planting outside of this time frame must utilize alligator bags filled with water on a weekly basis after a maximum seven (7) day period without rainfall of 1" or more. Tree staking is not required. All plantings must include a two-inch (2") layer of mulch. Volcano mulching is prohibited. No more than 25% of any one variety shall be selected/planted, and no more than 25% of the trees planted on any one street block shall be of the same variety.
<b>Acer pensylvanicum (striped maple)</b>	See Above.	See Above.
<b>Carpinus carolinia (Hornbeam/Ironwood)</b>	See Above.	See Above.
<b>Celtis occidentalis (Hackberry)</b>	See Above.	See Above.
<b>Cercis Canadensis (Eastern redbud)</b>	See Above.	See Above.


Tree Species	Planting Season	Planting Procedure (soil type, watering, pruning, staking, wrapping, exposure, depth, mulching, etc)
Crataegus crus-galli (cockspur hawthorn)	See Above.	See Above.
Crataegus Phaenopyrum (Washington Hawthorn)	See Above.	See Above.
Gleditsia triacanthos var. inermis – Thornless Honeylocust	See Above.	See Above.
Halesia carolina (Carolina silverbell)	See Above.	See Above.
Malus - (Crabapple) – dependent on variety	See Above.	See Above.
Prunus americana (American plum) other Cherry/Plum trees also -dependent on variety	See Above.	See Above.
Syringa amurensis (Ivory Silk Tree)	See Above.	See Above.
Parrotia persica (Persian Ironwood)	See Above.	See Above.
Any other tree as opined by the Shade Tree Officer.		

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

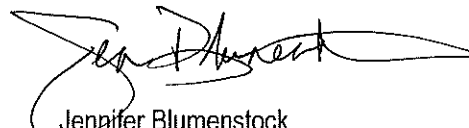
BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect after final passage and publication in accordance with applicable law.

ATTEST:

  
 Nennette Perry, R.M.C.  
 Municipal Clerk

APPROVED:

  
 Jennifer Blumenstock  
 Mayor

RECORDED VOTE	INTRODUCTION:	ADOPTION:
COUNCILWOMAN BOTO	AYE	AYE
COUNCILMAN FOLEY	AYE	AYE
COUNCILMAN LAZAROW	AYE	AYE
COUNCILWOMAN NOLDE	AYE	AYE
COUNCILWOMAN SALMON	AYE	AYE
COUNCIL PRESIDENT KEARNEY	AYE	AYE