

## ORDINANCE 2303

### AN ORDINANCE ESTABLISHING TREE REMOVAL AND REPLACEMENT REGULATIONS WITHIN THE BOROUGH OF SOUTH PLAINFIELD

**BE IT ORDAINED** by the Borough of South Plainfield, County of Middlesex, State of New Jersey that Chapter 444, Trees, of the Code of the Borough be deleted and replaced with the following:

#### **SECTION I. Purpose:**

An ordinance to establish requirements for tree removal and replacement in the Borough of South Plainfield 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:**

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 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 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.
- 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 as defined pursuant to the Tree Expert and Tree Care Operator's Licensing Act, N.J.S.A. 45:15C-11, et seq.
- 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 adjacent to the portion of the street reserved for vehicular traffic 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 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 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 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 Construction Official. **No tree shall be removed until municipal officials have reviewed and approved the removal.**
- 2. Fees payable for the filing of an application for a tree removal and site clearing permit shall be \$15.00 for each tree to be removed, to a maximum fee of \$300 for each application for existing residential property not involving subdivision of site plan, and a maximum fee of \$600.00 per acre or portion thereof for all other applications.

#### **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, other than a resident, who removes one or more tree(s) with a DBH of 6” or more per acre, unless exempt 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.

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 Borough;
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:**

Category	Tree Removed (DBH)	Required Action
1	DBH of 2.5" (for street trees) or 6" (for other 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 tree with a minimum tree caliper of 1.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 tree with a minimum tree caliper of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 tree with a minimum tree caliper of 1.5" for each tree removed

C. Replacement Alternatives:

1. If the Borough 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 Borough.
  - b. Provide an estimate from a nursery for supplying the requisite number of trees, unplanted, and the fee shall be twice the estimate. The Borough shall have full and sole discretion to review all estimates and may reject any or all estimates and require submission of further estimates which shall be subject to the same requirements. This fee shall be placed into a fund 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 by all persons claiming an exemption which make consist of photographs, statements from an LTE or certified arborist, or such other evidence as may be required by the Borough.

- 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.

- 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 Borough;
- 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.

**SECTION V. Enforcement:**

This ordinance shall be enforced by the South Plainfield Police Department or Code Enforcement during the course of ordinary enforcement duties.

**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 equal to the greater of \$1,000.00, or the cost of acquiring and planting a replacement tree. The court shall have the discretion in lieu of a fine to require replacement of the basal area of the removed tree.

**SECTION VII. Severability:**

Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase, and finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause or reason shall not affect any other portion of this Ordinance.

**SECTION VIII. Effective Date:**

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.