

BOROUGH OF NEW PROVIDENCE

ORDINANCE 2024-07

**AN ORDINANCE ESTABLISHING TREE REMOVAL AND REPLACEMENT REGULATIONS WITHIN THE BOROUGH OF NEW PROVIDENCE**

**BE IT ORDAINED** by the Borough of New Providence, County of Union, State of New Jersey that Chapter 247, 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 New Providence 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. "Enforcement Officer" means the municipal official assigned to enforce the provisions of this chapter.
- E. "Hazardous 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.
- F. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.
- G. "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.
- H. "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.
- I. "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.
- J. "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.
- L. "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. Protection of Trees**

1. In the erection, alteration or repair of any structure of building, the owner, contractor or other person in charge thereof shall place such guards around all nearby trees as will effectively prevent injury to such trees.
2. No person shall use or operate any power shovel, bulldozer or other implement, machine or tool in such a manner as to damage or destroy any tree.

#### **B. Removal and Replacement of Trees**

No tree exceeding four inches (4") in diameter shall be destroyed or removed, except under the

following circumstances:

1. The present location of a tree would cause a hardship or create a nuisance or a hazard to the safety and welfare of the public.
2. Trees to be removed are located within the areas to be occupied by buildings, driveways or recreation areas within a distance of 15 feet around the perimeter of such building, provided that the enforcement official or Planning Board or Zoning Board of Adjustment, where applicable, may specify that certain species of trees within the 15 foot perimeter shall remain standing.
3. The removal of living trees is subject to replacement in accordance with the tree replacement requirement table set forth hereinafter.

### C. Application for Tree Removal Permit

A person desiring to obtain a tree removal permit shall make application with the Enforcement Officer on a form to be provided for that purpose. The application submission shall include, at a minimum the following:

1. The name and address of the applicant. If the applicant is different than the property owner, the property owner must consent to the filing of the application.
2. The lot and block of the property from which the tree(s) are to be removed.
3. A survey or other drawing depicting the shape and dimensions of the property, including the location of all existing and proposed structures and improvements as well as the location, diameter, type and species of all trees to be removed on the property.
4. A statement as to the reason for the requested tree removal.
5. The name and address of the licensed tree contractor undertaking the removal and their qualifications or license to perform such work.
6. A proposed tree replanting plan, if applicable, showing the location, diameter, type and species of all trees to be provided. The tree replanting plan shall be subject to the approval of the Enforcement Officer.
7. Any other information reasonably deemed necessary by the Enforcement Officer.
8. The application fee for a tree removal permit as set by resolution of the Borough Council.
9. Any person planning to remove a tree with DBH of 4" or more on their property shall submit a Tree Removal Application to Enforcement Officer. **No tree shall be removed until municipal officials have reviewed and approved the removal.**
10. Fees payable for the filing of an application for a tree removal and site clearing permit shall be as follows:

- a. For existing residential property not involving subdivision of site plan: \$25.00.
- b. For all other applications: \$75.00 per acre or portion thereof.

D. Licensed Tree Removal Contractor

No tree may be removed by any person other than a tree contractor licensed in accordance with the New Jersey Tree Experts and Tree Care Operators Licensing Act, N.J.S.A. 45:15C-11, et seq., except for tree removal completed by the owner of an occupied single or two-family detached dwelling.

E. Right to Appeal

In the event that an applicant believes that he/she has been wrongfully denied a tree removal permit an application for an Appeal may be filed with the Board of Adjustment.

F. Tree Replacement Requirements

- 1. Any person who removes one or more tree(s) with a DBH of 6” or more, 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 planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the Borough;
- 2. 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
- 3. Any property owner who commits to replacing a tree or trees but fails to do so within one year of the date of the permit shall be subject to the penalty provision of this article and shall be liable for the costs for the Borough to replace the tree(s) at a location chosen by the Enforcement Officer. The cost shall include actual expenses, plus an administrative surcharge of 15%.

**Tree Replacement Requirements Table:**

<b>Category</b>	<b>Tree Removed (DBH)</b>	<b>Required Action</b>	<b>Basic Application Fee</b>
1	DBH of 6” to 12.99”	Replant 1 tree with a minimum tree caliper of 1.5” for each tree removed	\$10.00 per tree
2	DBH of 13” to 22.99”	Replant 2 tree with a minimum tree caliper of 1.5” for each tree	\$10.00 per tree

		removed	
3	DBH of 23" to 32.99"	Replant 3 tree with a minimum tree caliper of 1.5" for each tree removed	\$10.00 per tree
4	DBH of 33" or greater	Replant 4 tree with a minimum tree caliper of 1.5" for each tree removed	\$10.00 per tree

G. 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 public area(s) approved by the Borough.
  - b. Submit a payment to the Borough in lieu of providing a physical tree in the amount of \$300 per tree to be used for the planting of 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. 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.
- B. 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;
- C. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- D. Hazardous trees may be removed with no replacement requirement.

**SECTION V. Enforcement:**

This ordinance shall be enforced by the New Providence Police Department or Code Enforcement, the Public Works Manager, the Borough Engineer, the Construction Official and the Zoning Officer 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 of \$1,000.00 per tree removed. 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.

# APPENDIX A

## List of Recommended Replacement Tree Species

<b>SPECIES and COMMON NAME</b>	<b>BEST VARIETIES</b>	<b>DESCRIPTION</b>	<b>NATIVE and/or NATIVE CULTIVAR</b>	<b>FALL DIGGING HAZARD</b>
<i>Acer freemanii</i> x Freman Maple	Autumn Fantasy, Armstrong, Armstrong Gold	Upward Branching Structure. A cross between Red Maple and Sugar Maple.	X	
<i>Acer rubrum</i> Red Maple	Brandywine, Red Sunset, Redpointe	Sturdy Branching resists storm damage	X	Y
<i>Acer saccharum</i> Sugar Maple	Fall Fiesta, Green Mountain, Legacy	Dense Shade, Excellent Fall Color	X	
<i>Amalanchier grandiflora</i> Service Berry (Shadblow)	'Robin Hill'	Light Pink	X	
<i>Amalanchier laevis</i> Service Berry (Shadblow)	'Spring Flurry'	Reddish Leaves, Bright White Flowers	X	
<i>Betula nigra</i> River Birch	Duraheat, Heritage, Little King	Compact	X	Y
<i>Carpinus caroliniana</i> American Hornbeam	'Ball of Fire'	Reddish Fall Color	X	
<i>Carpinus caroliniana</i> American Hornbeam	'Native Flame'	Red/Orange Fall Color	X	Y
<i>Carpinus caroliniana</i> American Hornbeam	'Palisade'	Upright Oval Growth, Yellow to Orange Fall Color	X	Y
<i>Carpinus caroliniana</i> American Hornbeam	'Rising Fire'	Orange Fall Color	X	Y
<i>Celtis occidentalis</i> Hackberry	Prairie Pride, Windy City	Dark Green Foliage, Interesting Bark Pattern	X	Y
<i>Cercis canadensis</i> American Redbud	'Summers Tower,' 'Cotton Candy'	Lavender Pink or Pink Flowers	X	
<i>Cercis Canadensis</i> <i>var. texensis</i> American Redbud	'Oklahoma'	Smaller, Glossy, Tougher Leaves; Heat	X	
<i>Cladrastis lutea</i> American Yellowwood		Showy White Flowers in Spring, Yellow/ Orange Fall Color	X	Y
<i>Cornus rutgerensis</i> Rutgers Dogwood	'Constellation,' 'Celestial'	White	X	Y
<i>Cornus rutgerensis</i> Rutgers Dogwood	'Stellar Pink'	Light Pink	X	Y

<b>SPECIES and COMMON NAME</b>	<b>BEST VARIETIES</b>	<b>DESCRIPTION</b>	<b>NATIVE and/or NATIVE CULTIVAR</b>	<b>FALL DIGGING HAZARD</b>
<i>Cornus x kousa</i> 'venus' Venus Dogwood		Large, Pure White Flowers	X	Y
<i>Ginkgo biloba</i> Ginkgo	Autumn Gold, Goldspire (use male only)	Excellent Summer Foliage, Autumn Gold Foliage		
<i>Gymnocladus dioica</i> Kentucky Coffee Tree	'Espresso'	Hardy	X	
<i>Ilex opaca</i> American Holly	'Jersey Knight,' 'Jersey Princess' (male and female)	Dark Foliage, Excellent Fruit Set, Evergreen	X	
<i>Liquidambar styraciflua</i> Sweetgum	'Slender Silhouette'	Narrow, Great Fall Color	X	
<i>Magnolia virginiana</i> Sweetbay Magnolia	Emerald Tower, Green Mile, Green Shadow, Northern Belle	Semi-Evergreen, Fragrant Summer Flowers	X	
<i>Malus spp</i> Flowering Crabapple	'Brandywine'	Grows to 30' in height		
<i>Malus spp</i> Flowering Crabapple	'Redpointe'	Pest and Disease Resistant		
<i>Malus spp</i> Flowering Crabapple	'Royal Raindrops'	Vibrant Pink to Red Flowers		
<i>Malus spp</i> Flowering Crabapple	'Showtime'	Fuchsia Red Flowers, Fiery Orange Fall Color		
<i>Nyssa sylvatica</i> Black Gum		Crimson Fall Color	X	
<i>Nyssa sylvatica cultivar</i> Black Gum	'Green Gables'	Tolerates Wet Sites	X	Y
<i>Ostrya virginiana</i> American Hop-Hornbeam	'Autumn Treasure'	Shade/Sun/Drought- Tolerant, Brilliant Fall Color	X	Y
<i>Parrotia subaequalis</i> Persian Ironwood		Crimson Red Fall Color, Tolerant of Heat and Cold, Pest Resistant		
<i>Picea abies</i> Norway Spruce		Tolerant Evergreen		
<i>Prunus spp</i> Flowering Cherry	'First Blush'	Oval Shape, Pink Flowers, Orange Fall Color		Y
<i>Prunus spp</i> Flowering Cherry	'Royal Burgundy'	Vase Shaped, Prefers Well-Drained Soils		Y
<i>Prunus sargentii</i> Flowering Cherry	'Pink Flair'	Narrow, Upright Form		Y



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<i>Prunus sargentii</i> Flowering Cherry	'Pink Myst'	Dark Pink Flowers, Orange/Red Fall Color		
<i>Prunus serrulata</i> Flowering Cherry	'Kwanzan'	Double Blossom, the Tree that made Washington DC famous		Y
<i>Quercus alba</i> White Oak		Incredible Longevity	X	Y
<i>Quercus bicolor</i> Swamp White Oak		A Low-Maintenance Shade Tree	X	Y
<i>Quercus warei</i> Ware's Oak	'Kindred Spirit'	Columnar Form		Y
<i>Quercus x warei</i> Ware's Oak	'Regal Prince'	Columnar, Resistant to Powdery Mildew		Y
<i>Taxodium distichum</i> Bald Cypress	Emerald Shadow, Green Whisper, Shawnee Brave	Deciduous Conifer	X	
<i>Thuja plicata</i> Western Red Cedar	'Green Giant' Arborvitae	Evergreen, Deer Resistant		Y
<i>Tilia americana</i> American Linden	'Redmond'	Beautiful Heart-Shaped Leaves, a Favorite Pollinator Species	X	
<i>Tilia cordata</i> Linden	'Greenspire,' 'Littleleaf'	Pyramidal Shape, Dark Green Glossy Foliage	X	
<i>Ulmus davidiana</i> var. <i>japonica</i> 'Morton' Accolade Elm		Resistant to Dutch Elm Disease		Y

# APPENDIX B

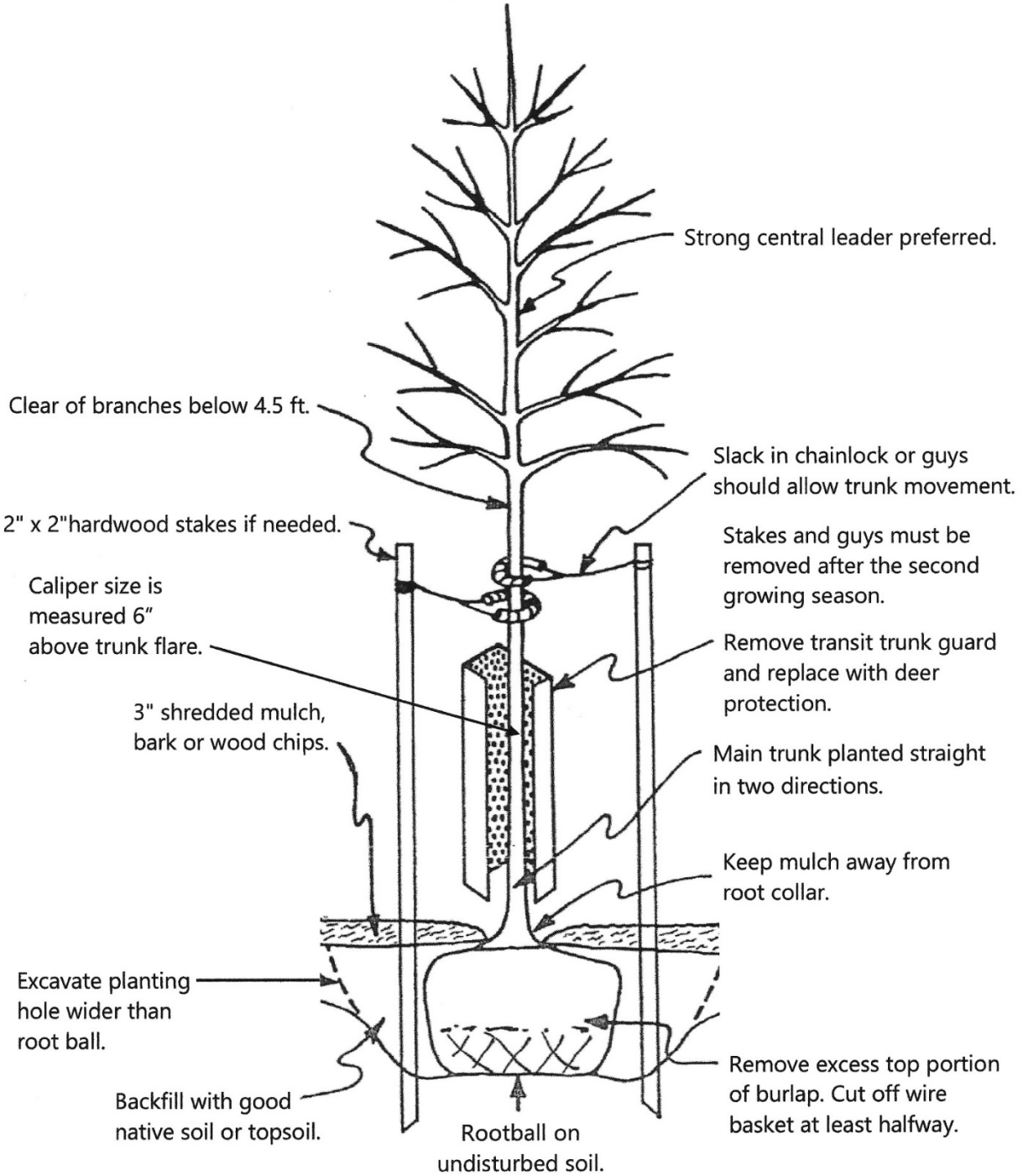
## List of Invasive or Problematic Species

The following is a list of trees and plants that shall **not** be used as replacement trees or be planted due to their invasive and damaging nature. This list has been established in order to protect and promote public health, safety and welfare, and protect public and private properties and indigenous and other plant material through the restriction and prohibition of new plantings of invasive plants, and the cultivating and/or maintenance and/or growing of existing plantings of invasive plants.

1. *Acer platanoides* (Norway Maple)
2. *Ailanthus altissima* (Tree of Heaven)
3. *Albizia julibrissin* (Mimosa)
4. Bamboo
5. *Fraxinus* (Ash)
6. Invasive plants resembling or having the characteristics of Running Bamboo
7. *Pinus nigra* (Austrian Pine)
8. *Prunus cerasifera* ( Purple Leaf Plum)
9. *Prunus padus* (Purple Leaf Bird Cherry 'Summer Glow')
10. *Pyrus calleryana* ( Bradford Pear/Callery Pear)
11. *Sorbus americana* (Mountain Ash)
12. *Tsuga canadensis* (Hemlock) – unless controlled for scale and adelgid

## APPENDIX C

### Tree Planting Standards and Details



Clump replacement trees are also acceptable.

INTRODUCTION: April 30, 2024  
PUBLIC HEARING: May 14, 2024  
ADOPTION: May 14, 2024

BOROUGH OF NEW PROVIDENCE  
COUNTY OF UNION  
STATE OF NEW JERSEY



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Allen Morgan, Mayor

Attest:



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Denise Brinkofski, Borough Clerk