

ORDINANCE NO. 24-02

**ORDINANCE OF THE BOROUGH OF ROCKAWAY
MAYOR AND COUNCIL
AMENDING CHAPTER 170, LAND USE DESIGN AND PERFORMANCE STANDARDS,
OF THE CODE OF THE BOROUGH OF ROCKAWAY**

WHEREAS, Chapter 170 Land Use Design and Performance Standards, Article V. of the Code of the Borough of Rockaway entitled Tree Conservation and Protection was adopted in 2007; and

WHEREAS, the New Jersey Department of Environmental Protection has recommended changes which will go into effect in May 2024; and

WHEREAS, the Borough Engineer has recommended substantial changes to the Ordinance so as to be compliant with the New Jersey Department of Environmental Protection.

IT IS HEREBY ORDAINED by the Mayor and Council of the Borough of Rockaway, Morris County, State of New Jersey, as follows:

SECTION I

Chapter 170, Land Use Design and Performance Standards, Article V Tree Conservation and Protection is hereby repealed in its entirety and replaced with the following:

Article V. Tree Conservation and Protection

§ 170-38. Findings and purpose.

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

§ 170-39. 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.

APPLICANT

Any "person," as defined below, who applies for approval to remove trees regulated under this ordinance.

BEAUTIFICATION PROJECT

Any project proposed by the Borough to enhance public property and to include tree planting, removal, replacement, maintenance, and inspection; landscaping; grading; planting of shrubbery, flowers and any associated amenities; or any other work necessary to enhance the public property.

CLEAR CUTTING

The removal of all standing trees on a lot or on any contiguous area of a lot that comprises 20% or more of the lot area of the lot.

CRITICAL ROOT RADIUS (CRR)

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 of 9' (6"x1.5' = 9').

DIAMETER AT BREAST HEIGHT (DBH)

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-and-a-half-foot height, the DBH shall be measured at the highest point before any division.

HAZARD TREE

A tree or limbs thereof that meet one or more of the following criteria:

1. Is diseased, terminally infected with fungus, virus or insects, as determined by a NJ licensed tree expert;
2. Is dead, has ceased to physiologically function, as determined by a licensed tree expert;
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.

Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.

PERSON

Any individual, resident, corporation, utility, company, partnership, firm, or association.

PLANTING STRIP

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.

REPLACEMENT TREE

Shall mean a balled 2.5-inch caliper deciduous shade tree or conifer, as measured at a point 4.5 feet above the base of the trunk, which species is native and long lasting. A list of recommended replacement trees is available from the Township Land Development Office and in Appendix A hereto.

RESIDENT

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.

STREET TREE

“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.

TREE

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.

TREE CALIPER

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.

TREE REMOVAL

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.

§ 170-40. Regulated Activities

A. Application Process:

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, accompanied by a tree replacement plan as required by Subsection C, and the non-refundable application fee, as specified in Chapter A263, to the Borough Clerk. For all non-residential projects, as well as residential projects on properties 1.5 acres or more, a specific tree location survey will also be required.

No tree shall be removed until municipal officials have reviewed and approved the removal. A tree removal permit shall be submitted prior to any Uniform Construction Code (UCC) demolition permit being issued for a property.

B. Tree Removal Regulations

In the event of an emergency, any person otherwise subject to this section, having responsibility, jurisdiction and/or authority to cure, remedy or mitigate dangerous, hazardous, inconvenient, or unhealthy conditions resulting from the emergency, may, without first applying for and obtaining a permit under this section, take any lawful action which is otherwise a regulated activity. However, such person or the agent or designee of such person, shall apply for a Tree Removal Permit not later than the end of the second succeeding business day after any regulated activity takes place and may not proceed with non-emergency work including restoration, until a permit is obtained.

C. Tree Replacement Requirements

Any person who removes one or more street tree(s) with a DBH of 2.5" or more, or any non-street tree with DBH of 6" or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below. The species type and diversity of replacement trees shall be in accordance with Appendix A.

Replacement tree(s) shall:

1. Except as provided below, the replacement trees shall be planted on the property on which the tree removal occurred;
2. Be of nursery grade quality, balled and burlapped and not less than 2.5 inches DBH;
3. Be consistent with the species removed from the site, or another species included on Appendix A, except as otherwise approved by the Borough Engineer;
4. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date approved by the municipality;
5. 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
6. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
7. In the event that replacement of trees is required in connection with a subdivision or site plan and the tree replacement is not included in a performance bond for a subdivision or site plan, the applicant shall be required to post a cash bond or letter of credit in a form approved by the Borough Attorney and in an amount which shall be 120% of the replacement cost of the trees (including installation), as determined by the Borough Engineer. The bond shall require the tree replacement to be accomplished within a fixed period of time established by the Borough Engineer and authorize the Borough to take any of the money and make the replacement should the applicant fail to make the replacement within the time specified. The bond shall continue in effect for at least two years after the replacement to assure that the replacement tree(s) shall survive the initial growing season.

In the case of clear cutting where 100 or more trees shall be removed, the replacement requirement shall be 70% of the trees removed.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
1	DBH of 2.5" (street trees) or 6" (non-street trees) to 24.99"	Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed
2	DBH of 25" to 31.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed
3	DBH of 32" to 47.99"	Replant 5 trees with minimum tree calipers of 1.5" for each tree removed
4	DBH of 48" or greater	Replant 7 trees with minimum tree calipers of 1.5" for each tree removed

D. Replacement Alternatives:

1. If the Borough Engineer, or other designated official, determines that sufficient space is not available on the subject property, the applicant shall be required to do one of the following:
 - a. Plant replacement trees on other lands within the Borough, as approved by the Borough Engineer.
2.
 - a. Pay a fee of \$500.00 per tree removed. This fee shall be used for the purpose of planting or other beautification projects on public property within the Borough at such locations as the Borough Engineer or Mayor and Council deem appropriate.
 - b. In the event of clear-cutting 75 trees or greater, the fee is reduced to \$250.00 per tree removed.

§ 170-41. Exemptions.

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below.

- 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 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 replacement requirement. Documentation from a licensed tree expert may be required.

§ 170-42. Notice of Violation

- A. Whenever an enforcement official determines that there is or has been a violation of any provision of this article, the enforcement official shall give notice of such violation to the person, persons or entities responsible thereof under this article. Such notice shall be in writing and shall include a concise statement of the reasons for its issuance.

- B. Service of the notice may be made by personal service on the owner, occupant or operator; or by certified mail, return receipt requested, to the last known address of the person or entity upon which the same is served, as shown on by the most recent tax lists of the municipality; or a copy thereof left at the usual place of abode or office of such person or entity. Notice may be served either within or without the municipality. The notice shall also state that unless the violation is abated, removed, cured, prevented or desisted from within 30 days of the date of service of such notice, exclusive of the date of service, a summons shall be issued for the stated violation.
- C. The enforcement official may, at the time of issuance of the notice or thereafter, extend the time for compliance if, in the judgment of the enforcement official, the abatement, removal, prevention, cessation or cure of the condition in violation cannot reasonably be affected within the thirty-day period, and in such cases, the enforcement official shall state such reasonably required extended period in the notice, which shall then be applicable instead of the aforesaid 30 days.

§ 170-43. Failure to comply; issuance of summons.

- A. In the event that the violation is not abated, removed, cured, prevented or desisted from or otherwise fully remedied within the thirty-day period or extended period as set forth in the notice, a summons shall then be issued against the person, persons, entity or entities charged with a violation.
- B. In addition to the issuance of summons for an unabated violation, and where it shall be necessary and expedient for the preservation of the public health, safety, general welfare or to eliminate a fire hazard, and upon the certification of the enforcement official and after the approval of the governing body, the enforcement official may provide for the removal of or destruction of overgrown brush, weeds, including ragweed, dead or dying trees, stumps, roots, obnoxious growths, filth, garbage, trash, debris in accordance with State law.

§ 170-44. Violations and Penalties.

- A. In addition to any civil and/or other penalties authorized by law, this article or the Borough Code and/or any costs associated with a lien or abatement, any person found to be in violation of any provision of this article shall, after issuance of a summons and upon conviction, for each such violation, be subject to a fine of not less than \$500, nor more than \$2,000. Each violation of any of the provisions of this article and each day that each such violation shall continue shall be deemed to be a separate and distinct offense.

§ 170-45. Enforcement.

- A. The provisions of this article shall be enforceable by the Construction Official, Zoning Officer, Health Officer, Property Maintenance Officer, Borough Engineer, officer or other authorized officer or employee of the municipality authorized to enforce the provisions of the Borough Code, all of whom, unless otherwise specified by Ordinance or state law, shall be considered the "enforcement official" for purposes of this article.
- B. Violations of the provisions, standards and requirements set forth or referenced herein may be enforced in any lawful manner the municipality may deem appropriate, including but not limited to in accordance with the provisions of this article. Notwithstanding and in addition to any other violations, fines, penalties, remedies or relief pursuant to this article, any violation of this article shall also be subject to enforcement under any other applicable provision of the Borough Code. In addition to the aforementioned, the Borough, if appropriate, may also institute proceedings for injunction, temporary or final restraints, mandamus, abatement or other appropriate civil, equitable or other remedies to prevent, enjoin, abate or remove any violations of this article. The imposition of a fine shall not exempt the violator from compliance with the provisions of this article.

DATE: April 25, 2024

BOROUGH OF ROCKAWAY

ATTEST: Kimberly Cuspilich, Borough Clerk

BY: Thomas Mulligan, Mayor

CERTIFICATION

I, Kimberly Cuspilich, Borough Clerk of the Borough of Rockaway, in the County of Morris, do hereby certify that the foregoing is a true and correct copy of an ordinance fully adopted by the Mayor and Council at a meeting held on April 25, 2024.

Kimberly Cuspilich, RMC
Borough Clerk

CHAPTER 170. LAND USE DESIGN AND PERFORMANCE STANDARDS

ARTICLE V. TREE CONSERVATION AND PROTECTION

APPENDIX A: LIST OF APPROVED REPLACEMENT TREES

Scientific Name	Common Name	Notes
<i>Acer negundo</i>	Box Elder	Found near streams, shade and drought tolerant
<i>Acerrubrum</i>	Red Maple	Fall color, tolerates wide variety of conditions
<i>Acer Saccharum</i>	Sugar Maple	Fall color; Maple Syrup
<i>Carpinus Caroliniana</i>	Hornbeam	Shade tolerant
<i>Carya Ovata</i>	Shagbark Hickory	Hickory nuts for wildlife
<i>Celtis Occidentalis</i>	Hackberry	Attracts butterflies; blue berries
<i>Fagus Grandifolia</i>	American Beech	Grows to be a massive tree
<i>Fraxinus Americana</i>	White Ash	Ash trees tolerate wet. Baseball bats are made from this wood
<i>Fraxinus Pennsylvanica</i>	Green Ash	
<i>Juglans Nigra</i>	Black Walnut	Provides food for wildlife
<i>Liquidambar Styraciflua</i>	Sweet Gum	Considered best foliage tree. Be sure to select a variety without seed balls
<i>Liriodendron Tulipifera</i>	Tulip Tree	A very large fast-growing tree, tolerates wet conditions
<i>Ostrya Virginia</i>	Ironwood	
<i>Platanus Occidentalis</i>	Sycamore	Interesting bark; can grow very large
<i>Populus Grandidentata</i>	Large-toothed Aspen	
<i>Populus Tremuloides</i>	Quaking Aspen	
<i>Quercus Alba</i>	White Oak	Acorns; Holds dry leaves in winter
<i>Quercus Bicolor</i>	White Swamp Oak	
<i>Quercus Rebra</i>	Red Oak	
<i>Tilia Americana</i>	American Linden	Popular tree in Chatham Township
<i>Ulmus Americana</i>	American Elm	Large stately tree nearly extinct in wild from Dutch Elm disease. Disease resistant varieties are now available