

AN ORDINANCE OF THE TOWNSHIP OF ROBBINSVILLE REPEALING AND REPLACING CHAPTER 241 OF THE CODE OF THE TOWNSHIP OF ROBBINSVILLE ENTITLED “TREES”

WHEREAS, trees play a critical, 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”) has prepared a model ordinance intended to ensure that permittees are considering these undervalued assets in their stormwater management efforts and that the 2023 Tier A MS4 permit renewal requirements that permittees, at a minimum, adopt and enforce a community-wide ordinance to control tree removal and replacement for all types of properties where the municipality has jurisdiction, are satisfied; and

WHEREAS, in order to satisfy the NJDEP’s permit renewal requirements, the Township is required to amend its existing tree ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Robbinsville, County of Mercer, State of New Jersey, that Chapter 241, “Trees,” is hereby Repealed and Replaced with the following:

SECTION 1.

Chapter 241 – Trees

§ 241-1 Purpose.

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

§ 241-2 Definitions.

For the purposes 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.

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 = 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 ½ 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 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. A tree shall only be determined to be a "Hazard Tree" by a licensed landscape architect (LLA), horticulturist, certified professional landscaping designer, and/or municipal officials.

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).

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.

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

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.

§ 241-3 Tree removal permit required.

- A. For the removal of trees not in conjunction with an application for development of property involving minor or major subdivision or site plan, or in any other form of development where the approval of the Land Use Board is not required, an application in a form to be established shall be submitted in duplicate to the Administrative Officer with the application fee and providing the following information:
 - 1) Required Information:
 - a) Street address of property with block and lot identified;
 - b) Name of owner of property, phone number and name of occupant of premises and phone number, if applicable;
 - c) Total acreage of the tract;
 - d) Location of all proposed trees having a DPM of four inches or greater to be cut, removed or damaged in such a way as to cause a need for their removal, noting each tree by its species, size and general health condition;
 - e) The applicant shall identify the land upon which the tree(s) are located, preferably on a survey, plot plan, or hand drawing to scale; and
 - f) Reason for the removal, including a description of the type of tree removal.
 - g) Identification of any tree professional involved in the project.
 - 2) Where an application is made in connection with the construction of a building or other improvement, a Zoning Permit and a tree removal permit must be issued prior

to the clearing of trees and the construction of said new building or other improvement. No building permit shall be issued until the tree removal permit has been granted.

- 3) Upon receipt of the application for tree removal permit, the Administrative Officer, in conjunction with the Township Engineer, may field inspect the lot to determine if the removal, clearing or relocation of the trees does not violate the below-listed criteria:
 - a) The tree(s) to be removed is not located within a conservation area, environmentally sensitive area, wetland area or buffer area designated by state, county, or Township ordinance, or as delineated and/or specified on a previously approved site plan or subdivision plan for the property in question.
 - b) The tree(s) to be removed was not required to be planted by a previously approved application and/or landscape plan to provide screening or buffering for a building or structure located on the property in question or on an adjacent parcel of land.
 - c) An increase of surface water runoff.
 - d) Soil instability and erosion.
 - e) A negative impact on the adjacent properties
 - f) Removal or disturbance of historic or landmark tree(s)

- 4) The Administrative Officer, in conjunction with the Township Engineer, shall also consider the following as a basis for determining permitted tree removal:
 - a) The impact on existing trees.
 - b) Inherent value of the tree(s) as a specimen or historic tree.
 - c) Inherent value from stands of trees.
 - d) Clearance for proposed road, sight easements, utility rights of way, or approved driveway right-of-way.
 - e) Clearance of trees for the construction of a building plus a twenty-five-foot-wide area surrounding such buildings.
 - f) Clearance of trees for the construction of septic tanks, leaching fields, sewer plants and other utilities shall be considered if the plan is approved by the County Health Department or Township Health Officer
 - g) Clearance of any dead, dying, diseased, damaged, or infested tree, or trees whose angle or growth makes them a hazard to structures, utilities, or human life as verified by the Zoning Official in consultation, if necessary, with the Township Engineer and/or Department of Public Works.
 - h) Grading changes must be noted on all applications.

- 5) A tree removal permit issued by the Administrative Officer under this subsection shall be valid for one (1) year from the date of issuance. Permits not used within

this period will require a new application and the payment of new fees. For the purposes of this section, a permit shall no longer be valid when the work authorized by the permit is completed.

- 6) If the proposed removal violates one of the listed criteria, the matter shall be referred to the board which had or would have jurisdiction.
- B. For the removal of trees in conjunction with an application for development of property as either a minor or major subdivision or site plan, or in any other form of development where the approval of the Land Use Board will be required, the applicant shall submit a tree removal permit application to the Board as part of the proposed construction development in a form and manner which complies with the Township's Land Use Regulations.
- 1) Landscape plan required. An applicant shall also submit, as required pursuant to § 142-47(C), a landscape plan prepared by a licensed landscape architect (LLA), horticulturist, or certified professional landscaping designer, and a tree replacement plan prepared by the LLA or a certified forester. The plans shall:
 - a) Identify existing and proposed trees, shrubs, bushes, plant material, ground cover and natural features.
 - i. Such a plan shall be to scale.
 - ii. When existing natural growth is proposed to remain, the applicant shall include in the plans proposed methods to maintain and protect the existing trees and growth during and after construction.
 - iii. These shall include fences, berms, curbing tree wells and similar devices.
 - b) Show the locations and genus and species of all individual trees or groups of trees having a DPM of four inches or more and these trees shall also be written on a list attached to the plan.
 - c) Show the limits of disturbance.
 - d) Show the areas reserved for the stockpiling of soil and storage of equipment and temporary fencing, which shall not be within ten (10) feet from the dripline of any tree; and
 - e) Show the structures on the property, utility lines, waste lines, septic fields, and storage tanks.
 - 2) All trees to be saved and/or planted subject to board approval shall be recorded as a conservation easement.

§ 241-4 Removal of trees.

- A. Provisions must be made for the removal of stumps and branches from the property.
- B. Tree removal must include stump grinding to a depth of 18 inches.

- C. Removed trees, trunks and stumps may be processed into chips or mulch and applied to the site with the approval of the Township Engineer and/or Administrative Officer. Removed trees, trunks and stumps that are diseased shall not be processed into chips or mulch and applied to the site, but disposed of in a manner that does not spread disease or pests if applicable.

§ 241-5 Tree replacement.

- A. Any tree removed under the conditions stated below, unless otherwise exempt pursuant to § 241-6, shall be replaced in accordance with the requirements below provided in this section.
 - 1) One or more street tree(s) with a DBH of 2.5” or more, unless exempt under § 241-6, shall be subject to the requirements of the Tree Replacement Requirements Table below.
 - 2) One or more tree(s), as defined as Tree Removal, with a DBH of 6” or more, unless otherwise detailed under § 241-6, shall be subject to the requirements of the Tree Replacement Requirements Table.
- B. In addition to an application for tree removal permit, a tree replacement plan must be submitted to the Administrative Officer and/or the Land Use Board. Any tree replacement plan must be compatible with the location’s zoning and land use ordinances, approved site plans or subdivisions, and with the Township’s Master Plan. The tree replacement plan shall show where the replacement trees will be located and the proposed planting details and specifications, including a schedule and plan for watering new plantings to ensure their continued growth, shall be prepared by a licensed landscape architect (LLA), horticulturist, or certified professional landscaping designer. All trees shall be planted and maintained to the generally accepted industry standards.
- C. Replacement tree(s) shall be located on the site in question. If replacement trees cannot be accommodated on site, then an equivalent cash payment of the value of the tree shall be placed in the Landscaping Planting Fund pursuant to § 142-90.2.
- D. Replacement trees shall have a minimum of two-inch to two-and-one-half-inch caliper, balled and burlapped, and according to the standards as established by the latest publication of the American Association of Nurserymen. One-and-one-fourth-inch bare root and one-and-one-half-inch to two-inch containerized trees may be utilized as well with the approval of the Township Engineer and/or Administrative Officer, but must be checked if root bound and, if so, remedied before planting upon inspection by the Township Engineer and/or their designee. Utilization of Bare Root must strictly follow industry standards upon planting. Generally bare root specimens when utilized shall be calculated by multiplying the number of required two-inch to two-and-one-half-inch trees by 1.5 and the number of required three-and-one-half-inch to four-inch trees by 2.5.

- E. The genus and species of replacement tree(s) shall be the same as the species removed, provided the species was appropriate to the location, unless it is classified as an invasive tree, non-native species, or prone to diseases and pests; the species of replacement tree(s) must be approved during tree replacement plan review with the Administrative Officer and/or Land Use Board, in collaboration with the Township Engineer and Board Professionals.
- F. It is of vital importance in the selection of the genus and species of replacement trees to consider using appropriate species native to the mid-Atlantic region, and
 - 1) The size and shape of the tree at maturity;
 - 2) The degree, type and cost of care;
 - 3) Possible sidewalk heaving;
 - 4) Inter-branching from incorrect spacing;
 - 5) Susceptibility to weather, parasites and diseases;
 - 6) Effects on pedestrians, vehicles, structures and aesthetics;
 - 7) Safety and repairs over the lifetime of the tree;
 - 8) Presence or absence of overhead utility wires; and
 - 9) Contribution of the trees based on the ecosystem.
- G. Replacement trees must be under warranty by the nursery supplier for one (1) year after installation.
- H. When all replacement trees are planted a final inspection by the Township Engineer and/or their designee shall be requested; successful passing of the final inspection is a prerequisite for the issuance of a certificate of occupancy.
- I. When a site cannot reasonably accommodate the requirements set forth in this chapter, or the number of trees to be removed is greater than the number of trees to be replaced under the landscaping and tree replacement plan due to limited available planting area, the applicant shall make a contribution to be deposited into the Landscaping Planting Fund pursuant to § 142-90.2.
- J. Refer to Appendix C (Attachment 3) Tables C-2 to C-5 of Chapter 142 for a list of approved plantings. Replacement tree(s) shall:
 - 1) Be replaced in kind with a tree that has an equal or greater DBH than the tree removed or meet the Tree Replacement Criteria in the table below;

Table 1: Tree Replacement Requirements Table.

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Application Fee
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	\$15
2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 1.5” for each tree removed	\$20
3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 1.5” for each tree removed	\$20
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 1.5” for each tree removed	\$25

§ 241-6 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. “Proper justification” shall consist of photos and statements from a NJ licensed tree expert as per N.J.S.A. 45:15C-11 or an arborist.:

- A. Residents who remove less than five (5) trees per one-half acre that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a two (2) year period. For purposes of this exemption, the number of trees removed is a rolling count across a five (5) year period (For example, if three (3) trees from category 1 are removed in July 2024, the “count” resets to zero (0) in July 2028. However, if one (1) tree from category 1 is removed in July 2024 and another in July 2025, the first tree will come off the “count” in July 2029 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. Any tree requiring removal due directly to the Emerald Ash Borer epidemic.
- I. Invasive tree species due to unchecked maintenance.

§ 241-7 Enforcement.

This ordinance shall be enforced by the Police Department, Code Official, and/or Township Engineer during the course of ordinary enforcement duties.

§ 241-8 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, or the actual amount required to replace the tree, including costs of planting, whichever is greater.

SECTION 2.

This ordinance shall take effect upon final passage and publication according to law.

SECTION 3.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

PASSED: April 25, 2024

ADOPTED: April 25, 2024

Alicia Gonzalez, Deputy Municipal Clerk

Bruce Darvas, Acting Mayor