

XORDINANCE 2023-12

AN ORDINANCE AUTHORIZING CHAPTER 17, ENTITLED "DEVELOPMENT REGULATIONS", OF THE CODE OF THE BOROUGH OF BEACHWOOD, COUNTY OF OCEAN AND STATE OF NEW JERSEY TO INCLUDE ARTICLE X, "TREE REMOVAL-REPLACEMENT"

ARTICLE X. Tree Removal-Replacement Ordinance

SECTION I. Purpose:

An ordinance to establish requirements for tree removal and replacement in Borough of Beachwood 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 data 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.
 - a. Has an infectious disease or insect infestation;
 - b. Is dead or dying;
 - c. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
 - d. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or
 - e. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or 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 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. 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 V, 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) per acre with a DBH of 6", unless exempt under Section V, 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 the following regulations:

1. In the upland, plantings shall be one of the following kinds of trees, the maximum size and characteristics of which follow:
 - (a) Hop hornbeam (*Ostrya virginiana*): 30 to 40 feet tall; leaves turn yellow in fall; broad rounded crown.
 - (b) Bradford callery pear (*Pyrus calleryana* Bradford): grows 30 to 40 feet high; masses of white flowers; glossy green foliage turns bright crimson in fall.
 - (c) Mount hope norway maple (*Acer platanoides* f. *erectum*): grows 30 to 40 feet high; globe-shaped top.
 - (d) Japanese zelkova (*Zelkova serrata* village green): grows to greater than 40 feet tall; dark green foliage turning rusty red color in fall.
 - (e) Scholar tree (*Sophora japonica* regent): 30 to 40 feet tall; with creamy white flowers from July through September; lovely spreading tree.
 - (f) Red oak (*Quercus rubra*): 60 to 80 feet tall; leaves turn deep red or orange in fall; broad symmetrical crown.
 - (g) Pin oak (*Quercus palustris*): 60 to 80 feet tall; grows rapidly in well-drained soils; pyramidal crown; excellent autumn foliage.
 - (h) Willow oak (*Quercus phellos*): 70 to 80 feet tall; leaves turn yellow in fall; dense rounded crown.
 - (i) Summershade norway maple (*Acer platanoides*): grows to heights greater than 40 feet; dark green foliage; shapely upright head.
 - (j) Ginkgo biloba (*Salisburia*): 50 to 75 feet high; picturesque, exotic stately.
 - (k) Green spire linden (*Tilia cordata* greenspire): 30 to 40 feet high; attractive fragrant flowers; small leathery dark green foliage.

2. In areas adjacent to streams, wetlands and lakes, plantings shall be one of the following kinds of trees, the maximum size and characteristics of which follow:

- (a) Sweet gum (*Liquidambar styraciflua*): 80 to 120 feet high; rich red foliage in fall; tall and symmetrical.
- (b) Willow oak (*Quercus phellos*): 70 to 80 feet tall; pyramidal shape; leaves turn yellow in fall.
- (c) London plane tree (*Platanus acerifolia*): 70 to 100 feet tall; grows rapidly, especially on moist sites.
- (d) Crimson king maple (*Acer platanoides*); height to 50 feet; brilliant crimson leaves; color retained throughout summer.
- (e) Thornless honey locust (*Gleditsia triacanthos* var. *inermis*): 60 to 70 feet high. Acceptable varieties are:
 - [1] Skyline honey locust, pyramid form with ascending branches (60° to 90° angle); compact dark green leaves.
 - [2] Shademaster (Plant Patent No. 151) ascending branches, dark green leaves.
- (f) Marshall's green ash (*Fraxinus Pennsylvania marshall's*): deep rooted; glossy foliage; can withstand moist soils.

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:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
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
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed

B. 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 plant replacement trees approved by the municipality.

SECTION IV. Tree Removal Permit Fees:

- A. The fees for an Annual Permit shall be: \$25 for the removal of 50 trees or less, and \$50 for the removal of more than 50 trees. All other fees shall be as follows:
- B. The fee for removal of one to 10 trees shall be \$10.
- C. For removal of more than 10 trees, the fees shall be: an additional \$10 shall be charged for the removal of each additional 10 trees or any part thereof, i.e., \$20 for removal of 11 to 20 trees. The maximum fee for the removal of more than 40 trees shall be \$50.
- D. In all events, the fee for tree removals in major subdivisions shall be \$10 per acre or any portion thereof.

SECTION V. 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, including color photographs of the existing conditions, and a statement from a licensed tree expert or arborist verifying that the appropriate exemption qualifications have been met:

- A. Clearing, cutting, and/or removal of trees which is necessary to service, maintain, or ensure the continued safe use of a lawfully existing structure, right of way, field, park, and/or garden.

- 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 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;
- E. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- F. Nuisance trees may be removed with no fee or replacement requirement.

SECTION VI. Enforcement:

This ordinance shall be enforced by the Code Enforcement Officer during the course of ordinary enforcement duties.

SECTION VII. 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 determined by the Borough of Beachwood officials. The removal of a tree of significance is not subject to a fine limit.

SECTION VIII. 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 IX. 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.

Introduced October 18, 2023 ROLL CALL:

Council	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Council President Cairns</i>			X			
<i>Councilwoman Clayton</i>			X			
<i>Councilman Feeney</i>						X
<i>Councilman Komsa</i>	X		X			
<i>Councilman LaCrosse</i>			X			
<i>Councilman Zakar</i>		X	X			

SUSAN A. MINOCK, RMC,
MUNICIPAL CLERK

Adopted November 1, 2023 ROLL CALL:

Council	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Council President Cairns</i>			X			
<i>Councilwoman Clayton</i>						X
<i>Councilman Feeney</i>						X
<i>Councilman Komsa</i>		X	X			
<i>Councilman LaCrosse</i>			X			
<i>Councilman Zakar</i>	X		X			

SUSAN A. MINOCK, RMC,
MUNICIPAL CLERK

ATTESTED BY

SUSAN A. MINOCK, RMC
MUNICIPAL CLERK

RONALD F. ROMA, JR.
MAYOR

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced by the Borough Council of the Borough of Beachwood at a meeting held on **October 18, 2023** and was considered for final adoption and passage at a meeting held by the Mayor and Council on **November 1, 2023 at 7:00 p.m.**, at the Borough Hall, located at 1600 Pinewald Road, Beachwood, NJ 08722. At that time any interested person may have come forward and be heard regarding the proposed adoption of this Ordinance.