

BOROUGH OF BOUND BROOK
County of Somerset

ORDINANCE NO. 2023-052

AN ORDINANCE REPEALING CHAPTER 27, TREES, SECTIONS 27-1.2, 27-1.3 AND 27-1.6 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BOUND BROOK TO CREATE SECTION 27-1.2, TREE REMOVAL – REPLACEMENT

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Bound Brook as follows:

SECTION 1. Chapter 27, Trees, Section 27-1.2, 27-1.3 and 27-1.6 of the Revised General Ordinances of the Borough of Bound Brook is hereby repealed and Section 27-1.2, Tree Removal- Replacement is hereby created by deleting the text **[marked in bold and enclosed in brackets]** and inserting the text **underlined and marked in bold**, to read as follows:

27-1.2 **[Written permission required for certain acts.] Tree Removal-Replacement**

[No person shall do to any municipal tree within the Borough any of the following acts without having first obtained written permission from the Shade Tree Commission:]

- [a. Cut, prune, trim, break, damage, kill or remove any tree.]**
- [b. Cut, unduly disturb or interfere with in any way any root of a tree.]**
- [c. Spray any tree with any chemical.]**
- [d. Fasten any rope, wire, sign or other device to a tree or to any guard above such tree.]**
- [e. Remove or damage any guard or device placed to protect any tree.]**
- [f. Place or maintain upon the ground in any street stone, cement or other material or substance in such manner as may obstruct the free access of air and water to the roots of any tree.]**
- [g. Lay any sidewalk along or open, construct, curb or pave any street or do any like act so as to interfere with or do injury to any tree or the roots thereof.]**
- [h. Excavate within six feet of any tree.]**
- [i. Attach or fasten any wire, insulation or other device for holding any wire to any tree.**
- [j. Plant or set out any tree in or on any street.]**
- [k. Erect, alter, repair or remove a building or structure in a manner that will endanger nearby trees, whether through the placement of materials hazardous to trees or otherwise.]**

SECTION I. Purpose:

An ordinance to establish requirements for tree removal and replacement in the Borough of Bound Brook 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 $CRR = 6" \times 1.5' = 9'$.**
- 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 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. Optional 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 the Borough Shade Tree Commission and the Department of Public Works. No tree shall be removed until Borough officials have reviewed and approved the removal.

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 New Jersey Shade Tree Federation planting species and requirements found at [Layout 1 \(njstf.org\)](http://Layout 1 (njstf.org))

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:

<u>Category</u>	<u>Tree Removed (DBH)</u>	<u>Tree Replacement Criteria (See Appendix A)</u>
<u>1</u>	<u>DBH of 2.5" (for street trees) or 6" (for non-street trees) to 12.99"</u>	<u>Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed</u>
<u>2</u>	<u>DBH of 13" to 22.99"</u>	<u>Replant 2 trees with minimum tree calipers of 1.5" for each tree removed</u>
<u>3</u>	<u>DBH of 23" to 32.99"</u>	<u>Replant 3 trees with minimum tree calipers of 1.5" for each tree removed</u>
<u>4</u>	<u>DBH of 33" or greater</u>	<u>Replant 4 trees with minimum tree calipers of 1.5" for each tree removed</u>

C. 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 do one of the following:**
 - a. Plant replacement trees in a separate area(s) approved by the municipality.**
 - b. Pay a fee of \$500 per tree removed. 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 Department of Public Works by all persons claiming an exemption. Justification can be in the form of photos and/or statements from a NJ Licensed Tree Expert or an Arborist.

- 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. The number of trees removed is a rolling count across a five-year period. For example, if 3 trees from category 1 are removed in July 2023, the 'count' resets to zero in July 2028. However, if 1 tree from category 1 is removed in July 2023 and another in July of 2025 the first tree will come off the count in July 2028 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.**

[27-1.3 Prohibited acts.] RESERVED

[No person shall do any of the following acts to any municipal tree in the Borough of Bound Brook:]

[a. Cause or permit gas or other substances deleterious to tree life to come in contact with the soil surrounding the roots of any municipal tree in a manner that will injure, kill or destroy the tree.]

[b. Cause or permit brine, salt, oil, liquid dye or any other substance deleterious to tree life to lie, leak, pour, flow, drip, or in any other manner whatever enter the soil around the base of a tree in any street.]

[c. Prevent, delay or interfere with the Shade Tree Commission or its authorized agents in the performance of their duties.]

[d. Build a fire or station a tar kettle, road roller or other device in any street in a manner that will result in heat, vapors or fumes therefrom injuring any tree.]

[e. Use or operate shovels, machines, equipment, tools or any other implement in such a manner as to damage, injure or destroy a tree.]

[27-1.6 Enforcement; violations and penalties.] RESERVED

[Members of the Shade Tree Commission, the Department of Code Enforcement and the Bound Brook Police Department (BBPD) are designated to enforce the provisions of this section. In the event that a member of the Shade Tree Commission, or inspector from the Department of Code Enforcement or an officer of the BBPD determines that a violation of this section or any regulation promulgated pursuant thereto has occurred, a summons and/or complaint may be filed with the Municipal Court whether or not a notice of violation or order has been served. Any person, firm or corporation that violates or neglects to comply with the provisions of this section or any regulation promulgated pursuant thereto shall, upon conviction thereof, be liable in Municipal Court for a minimum fine of \$200 to a maximum fine of \$2,000. Monies collected from these fines will be deposited into the Borough Shade Tree Trust Fund and used solely for the purchase and planting of new trees within the Borough. Violations involving more than one tree will be treated as a separate violation for each tree effected.]

SECTION 2: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION 3: SEVERABILITY

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.


SECTION 4: EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage and publication as provided by law.

SECTION 5: CODIFICATION

This ordinance shall be a part of the Code of Borough of Bound Brook as though codified and fully set forth therein. The Borough Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

ATTEST



Jasmine D. McCoy
Borough Clerk

BOROUGH OF BOUND BROOK



Mayor David Morris

Date of Introduction: November 9, 2023

Date of Adoption: November 28, 2023