

## BOROUGH OF BRIELLE ORDINANCE NO. 1135

### AN ORDINANCE TO AMEND CHAPTER SEVENTEEN OF THE CODE OF THE BOROUGH OF BRIELLE ENTITLED "PROTECTION OF NATURAL FEATURES"

BE IT ORDAINED, by the Governing Body of the Borough of Brielle that Chapter 17 of the Municipal Code is hereby amended. The existing Chapter 17 Section 17.1 to 17.10 is hereby repealed and is replaced by the following:

#### 17.1 Purpose:

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

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. This ordinance is intended to ensure that permittees are considering these undervalued assets in their stormwater management efforts.

#### 17.2 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. For species of trees where the main trunk divides below the 4-foot height, the DBH shall be measured at the highest point before any division.

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. [Municipalities may choose to require a Licensed Tree Expert to make all Hazard tree determination]

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

Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (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 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.

G. "Resident" means 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.

H. "Street Tree" means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) 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.

### 17.3 Regulated Activities:

Application review and approval can be conducted along with existing business practices and permit application review such as, but not limited to, site plan approvals, building permit approvals, planning board application approval, etc.

A. Optional Application Process:

1. 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 to Code Enforcement Officer. No tree shall be removed until municipal officials have reviewed and approved the removal.

B. Tree Replacement Requirements

1. Person who removes one or more street tree(s) with a DBH of 2.5" or more, unless exempt under 17.4, shall be subject to the requirements of the Tree Replacement Requirements Table below.

2. Any person who removes one or more tree(s), as defined as Tree removal, with a DBH of 6" or more per acre, unless otherwise detailed under 17.4, 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 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)	Application Fee <i>[Municipality may choose to include and determine appropriate fees]</i>
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	\$190.00
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$200.00
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$225.00
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	\$250.00

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 (amount to be set by municipality) per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

#### 17.4 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:

- A. Residents who remove less than four (4) trees per acre 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.

17.5 (See attached Appendix "A"). This appendix may be amended from time to time as deemed necessary to add or remove acceptable tree species.

#### 17.6 Enforcement:

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

#### 17.7 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.

#### 17.8 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.

Appendix A

<b>Tree Species</b>	<b>Common Name</b>	<b>Planting Season</b>	<b>Planting Procedure</b>	<b>Growth Habit</b>
Acer negundo	boxelder	Spring/Fall	Brielle Shade Tree Commission will provide information for each tree	Tree
Acer rubrum	red maple	Spring/Fall		Tree
Betula lenta	sweet birch	Spring/Fall		Tree
Betula nigra	river birch	Spring/Fall		Tree
Betula populifolia	gray birch	Spring/Fall		Tree
Carya alba	mockernut hickory	Spring/Fall		Tree
Carya cordiformis	bitternut hickory	Spring/Fall		Tree
Carya glabra	pignut hickory	Spring/Fall		Tree
Carya ovalis	red hickory	Spring/Fall		Tree
Castanea dentata	American chestnut	Spring/Fall		Tree
Catalpa bignonioides	southern catalpa	Spring/Fall		Tree
Chamaecyparis thyoides	Atlantic white cedar	Spring/Fall		Tree
Cercis canadensis	Redbud	Spring/Fall		Tree
Diospyros virginiana	common persimmon	Spring/Fall		Tree
Fagus grandifolia	American beech	Spring/Fall		Tree
Fraxinus americana	white ash	Spring/Fall		Tree
Fraxinus nigra	black ash	Spring/Fall		Tree
Fraxinus pennsylvanica	green ash	Spring/Fall		Tree
Fraxinus profunda	pumpkin ash	Spring/Fall		Tree
Juglans cinerea	butternut	Spring/Fall		Tree

Juglans nigra	black walnut	Spring/Fall		Tree
Juniperus virginiana	eastern redcedar	Spring/Fall		Tree
Lagerstroemia indica	crepe myrtle	Spring/Fall		Tree
Liquidambar styraciflua	sweetgum	Spring/Fall		Tree
Liriodendron tulipifera	tuliptree	Spring/Fall		Tree
Magnolia acuminata	cucumber-tree	Spring/Fall		Tree
Magnolia tripetala	umbrella-tree	Spring/Fall		Tree
Morus rubra	red mulberry	Spring/Fall		Tree
Nyssa sylvatica	blackgum	Spring/Fall		Tree
Pinus echinata	shortleaf pine	Spring/Fall		Tree
Pinus rigida	pitch pine	Spring/Fall		Tree
Pinus strobus	eastern white pine	Spring/Fall		Tree
Pinus virginiana	Virginia pine	Spring/Fall		Tree
Platanus occidentalis	American sycamore	Spring/Fall		Tree
Populus deltoides	eastern cottonwood	Spring/Fall		Tree
Populus grandidentata	bigtooth aspen	Spring/Fall		Tree
Populus tremuloides	quaking aspen	Spring/Fall		Tree
Prunus pendula	weeping cherry	Spring/Fall		Tree
Quercus alba	white oak	Spring/Fall		Tree
Quercus bicolor	swamp white oak	Spring/Fall		Tree
Quercus coccinea	scarlet oak	Spring/Fall		Tree
Quercus falcata	southern red oak	Spring/Fall		Tree
Quercus palustris	pin oak	Spring/Fall		Tree
Quercus phellos	willow oak	Spring/Fall		Tree

Quercus prinus	chestnut oak	Spring/Fall		Tree
Quercus rubra	northern red oak	Spring/Fall		Tree
Quercus stellata	post oak	Spring/Fall		Tree
Quercus velutina	black oak	Spring/Fall		Tree
Robinia pseudoacacia	black locust	Spring/Fall		Tree
Salix nigra	black willow	Spring/Fall		Tree
Tilia americana	American basswood	Spring/Fall		Tree
Tsuga canadensis	eastern hemlock	Spring/Fall		Tree
Ulmus americana	American elm	Spring/Fall		Tree
Ulmus rubra	slippery elm	Spring/Fall		Tree
Acer saccharum	sugar maple	Spring/Fall		Tree, Shrub
Amelanchier arborea	common serviceberry	Spring/Fall		Tree, Shrub
Amelanchier canadensis	Canadian serviceberry	Spring/Fall		Tree, Shrub
Amelanchier laevis	Allegheny serviceberry	Spring/Fall		Tree, Shrub
Carpinus caroliniana	American hornbeam	Spring/Fall		Tree, Shrub
Celtis occidentalis	common hackberry	Spring/Fall		Tree, Shrub
Cephalanthus occidentalis	common buttonbush	Spring/Fall		Tree, Shrub
Cornus florida	flowering dogwood	Spring/Fall		Tree, Shrub
Cornus sericea	redosier dogwood	Spring/Fall		Tree, Shrub
Crataegus calpodendron	pear hawthorn	Spring/Fall		Tree, Shrub
Crataegus crus-galli	cockspur hawthorn	Spring/Fall		Tree, Shrub
Crataegus pedicellata	scarlet hawthorn	Spring/Fall		Tree, Shrub
Crataegus pruinosa	waxyfruit hawthorn	Spring/Fall		Tree, Shrub

Crataegus succulenta	fleshy hawthorn	Spring/Fall		Tree, Shrub
Crataegus uniflora	dwarf hawthorn	Spring/Fall		Tree, Shrub
Gleditsia triacanthos	honeylocust	Spring/Fall		Tree, Shrub
Hamamelis virginiana	American witchhazel	Spring/Fall		Tree, Shrub
Ilex laevigata	smooth winterberry	Spring/Fall		Tree, Shrub
Ilex opaca	American holly	Spring/Fall		Tree, Shrub
Ilex verticillata	common winterberry	Spring/Fall		Tree, Shrub
Juniperus communis	common juniper	Spring/Fall		Tree, Shrub
Kalmia latifolia	mountain laurel	Spring/Fall		Tree, Shrub
Lindera benzoin	northern spicebush	Spring/Fall		Tree, Shrub
Maclura pomifera	osage orange	Spring/Fall		Tree, Shrub
Magnolia virginiana	sweetbay	Spring/Fall		Tree, Shrub
Morella caroliniensis	southern bayberry	Spring/Fall		Tree, Shrub
Morella pensylvanica	northern bayberry	Spring/Fall		Tree, Shrub
Ostrya virginiana	hophornbeam	Spring/Fall		Tree, Shrub
Prunus americana	American plum	Spring/Fall		Tree, Shrub
Prunus serotina	black cherry	Spring/Fall		Tree, Shrub
Prunus virginiana	chokecherry	Spring/Fall		Tree, Shrub
Quercus ilicifolia	bear oak	Spring/Fall		Tree, Shrub
Quercus marilandica	blackjack oak	Spring/Fall		Tree, Shrub
Quercus prinoides	dwarf chinkapin oak	Spring/Fall		Tree, Shrub
Rhus copallinum	winged sumac	Spring/Fall		Tree, Shrub
Rhus glabra	smooth sumac	Spring/Fall		Tree, Shrub
Robinia hispida	bristly locust	Spring/Fall		Tree, Shrub

Salix bebbiana	Bebb willow	Spring/Fall		Tree, Shrub
Salix discolor	pussy willow	Spring/Fall		Tree, Shrub
Salix lucida	shining willow	Spring/Fall		Tree, Shrub
Salix sericea	silky willow	Spring/Fall		Tree, Shrub
Sassafras albidum	sassafras	Spring/Fall		Tree, Shrub
Staphylea trifolia	American bladdernut	Spring/Fall		Tree, Shrub
Viburnum dentatum	southern arrowwood	Spring/Fall		Tree, Shrub
Viburnum lentago	nannyberry	Spring/Fall		Tree, Shrub
Viburnum nudum	possumhaw	Spring/Fall		Tree, Shrub
Viburnum prunifolium	blackhaw	Spring/Fall		Tree, Shrub
Zanthoxylum americanum	common pricklyash	Spring/Fall		Tree, Shrub

BE IT FURTHER ORDAINED, that this Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

BE IT FURTHER ORDAINED, that this ordinance or parts of ordinance inconsistent with the foregoing are hereby repealed, but only to the extent of the inconsistency,

BE IT FURTHER ORDAINED, that this ordinance shall take effect immediately upon passage and publication according to law.