

ORDINANCE NO. 13-2024 OF THE COMMON COUNCIL OF THE CITY OF BURLINGTON AMENDING THE CODE OF THE CITY OF BURLINGTON TO ESTABLISH CHAPTER 332 ENTITLED, “TREE REMOVAL AND REPLACEMENT”

WHEREAS, the City of Burlington (the “City”) is organized as a Mayor-Council form of government pursuant to the Optional Municipal Charter Law, N.J.S.A. 40:69A; and

WHEREAS, the City adopted new stormwater control regulations through Ordinance No. 14-2021, codified as Chapter 207, Article VI of the City Code; and

WHEREAS, the revised regulations require the City adopt regulations on tree removal and replacement; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, the Common Council of the City of Burlington is authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the City by law.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Burlington that the Code of the City of Burlington is hereby amended, revised and/or supplemented as follows:

SECTION 1. The Code of the City of Burlington is hereby amended, revised, and supplemented establishing Chapter 332, entitled “Tree Removal and Replacement” as follows:

CHAPTER 332 – Tree Removal and Replacement

§ 332-1. Purpose:

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

§ 332-2. 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.
- 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.
- E. “Person” means any individual, corporation, company, partnership, firm, association, political subdivision of this State and any state, interstate or Federal agency.
- 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.

§ 332-3. Regulated Activities:

A. 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 Department of Public Works. No tree shall be removed until municipal officials have reviewed and approved the removal.
2. A tree protection management plan must be submitted at the time of site plan or subdivision application, pursuant to this chapter. A tree protection management plan shall contain the following information on a plot plan:

- a. Location of all existing or proposed buildings, driveways, grading, septic fields, easements, underground utility lines, rights-of-way, and other improvements.
 - b. Location of existing wetland buffers, natural features, including wooded areas, watercourses, wetlands, and floodplains.
 - c. The limits of the tree protection zone.
 - d. Location of all existing live trees with trunk diameters six inches or greater, measured 4 1/2 feet above ground level. Each tree shall be noted by its species, size and general health condition. Whenever possible, the actual canopy spread shall be shown. If it must be estimated, the canopy shall equal 1 1/2 feet of diameter per one inch of trunk diameter. If the trees to be preserved are part of a wooded area, only the outermost canopy line need be shown, unless disturbance is proposed within 200 feet of the canopy line; then, individual trees located within 50 feet of the proposed edge of the woodland shall be shown.
 - e. Each tree, or mass of trees, to be removed or transplanted shall be clearly marked.
 - f. A chart tabulating the diameter inches being removed, and the required compensatory trees.
 - g. Specifications for the removal of existing trees and for the protection of existing trees to be preserved, including detail(s) of tree protection fencing, as required.
 - h. Location of compensatory proposed trees.
3. Permit and review fees. Any person wishing to obtain a tree removal permit shall make application for review and approval by the Director of Public Works. The following fees shall apply to applications for removal of five or more trees with a DBH of six inches or greater. With respect to subdivisions, "lot" means each lot that results or will result from the subdivision.
- a. Permit, review and inspection fees for individual or multiple lot tree protection management plans. Any person who seeks approvals provided in this section must pay the following fees for each approval requested:
 - i. Tree protection management plan application fee (per lot): \$35.
 - ii. Engineer's review fee upon individual or multiple lot tree management plan (per lot): \$100.
 - iii. Engineer's review fee upon submission of each revised or as-built individual or multiple lot plan (per lot): \$100.
 - iv. Initial site inspection fee: \$200 per lot.

- v. Site reinspection fee: \$200 per lot.
- b. Tree removal permits applications shall be filed at the construction office and shall be completed in full. The application must be deemed complete and all required fees be paid prior to review. The Director of Public Works shall have up to seven days to review the complete application.
- c. Inspections. After the application is reviewed and deemed complete, the Director of Public Works or his designee shall inspect the trees and property which are the subject of the permit application within five days.
- d. Permit approval or denial. The Director of Public Works shall approve or deny the tree removal permit within 10 business days after the completion of the inspection. The Director of Public Works shall notify the applicant, in writing, of the approval or of the factual basis and criteria for any denial. The final decision of the Director of Public Works may be appealed to the City Common Council by filing a written notice within 10 days of the final decision. The City Common Council shall hold a public hearing and issue its decision within 30 days after the notice of appeal is filed, unless the applicant requests, and the City Common Council consents to, an extension of time.
- e. Option to pay review and inspection costs based on time and materials; payment from application escrows. Applicants for development who have posted review/inspection escrows with the City in connection with any application for site plan, subdivision, or other City approval may elect in writing to have the Director of Public Works paid for any tree protection management plan related review and/or inspection pursuant to this section based on time expended and materials used rather than at the flat fee rates set forth in Subsection A(3)(a)[i] through [v] above. Additionally, any such applicant may elect, in writing, that any Director of Public Works tree protection management plan-related review/inspection fees (whether based on flat fee or time and materials) be paid from such applicant's review/inspection escrow(s), in which instance such applicant's tree protection management plan(s) will be reviewed/inspected by the Director of Public Works as part of such site plan, subdivision, or other Land Use Board or City Common Council application, whereupon all of the Director of Public Works's fees and costs for tree protection management plan-related review/inspection will be reimbursed from such applicant's review/inspection escrow(s) along with other review and inspection costs and fees relating to such application.
- f. Exemption. Any owner, developer and/or applicant who is seeking to remove trees in conjunction with a development project, which proposed development application is pending before the City Land Use Board, is exempted from the requirement to obtain a separate tree protection management plan approval and permit as long as the Land Use Board specifically addresses tree protection and

compensatory plantings in their respective approvals.

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 332-4, 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 332-4, 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 City;
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

C. Replacement Alternatives:

1. If the City 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 City.
 - b. Pay a fee of according to the schedule below. This fee shall be placed into a fund dedicated to tree planting.

Tree Replacement Fees Table:

Category	Tree Removed (DBH)	Replacement Tree Value (See Sub-Section C(1)(b))
1	DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99”	\$350
2	DBH of 13” to 22.99”	\$700
3	DBH of 23” to 32.99”	\$1,050
4	DBH of 33” or greater	\$1,400

§ 332-4. 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 City by all persons claiming an exemption. Proper justification shall consist of submissions such as photos and/or statements from NJ licensed tree expert as per NJ Statue 45:15C-11 or 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 City;

- 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.

§ 332-5. Enforcement:

This ordinance shall be enforced by the City Police Department and/or other Municipal Officials of the City of Burlington during the course of ordinary enforcement duties.

§ 332-6. 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 not exceeding \$1,400 or imprisonment in the county jail for a term not exceeding 90 days, or both, in the discretion of the Municipal Court Judge before whom such defendant shall be convicted. Each tree destroyed or removed in violation of this section shall be considered a separate offense.

SECTION 2: Except as set forth in Section 1, the balance of the Code of the City of Burlington shall not be affected by this Ordinance.

SECTION 3: All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4: If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.

SECTION 5: This Ordinance shall take effect thirty (30) days after final passage by Council or twenty (20) days after approval by the Mayor, whichever comes first.

ORDINANCE NO. 13-2024

Passed Common Council,

George Chachis, President
Common Council

Approved,

Barry W. Conaway, Mayor

ATTEST:

Cindy A. Crivaro, RMC
Municipal Clerk

Introduction: 04/02/24
Publication: 04/08/24
2nd & Final: 04/16/24
Publication: 04/19/24
Effective: 05/06/24

Appendix A

Approved list of Replacement tree Species and Planting Standards for the City of Burlington

It is required that each planting site is reviewed, and the appropriate tree selected. In most instances, sites will be selected before trees are ordered. Some considerations should be as follows:

1. Growth characteristics of the tree.
2. Any special requirements of the particular tree.
3. Any underground utilities such as gas, water, sewer, etc.
4. Overhead wires, street light poles, signal lights, etc.
5. Other nearby trees.
6. Street intersections, stop signs, street signs, etc.
7. Any additional factors that may influence the subject trees during their life or any effect the tree will have on the site.
8. Current disease and insect problems, etc.

Proper planting standard procedures shall be in accordance with the American Association of Nurseryman Standards and ANSI A300 "Tree Care Management Practices".

Tree Species	Planting Season	Planting Procedure
Flowering dogwood (white) tree form	Fall Dig Hazard; April to Mid-June	May be planted under wires
Flowering dogwood (pink) tree form	Fall Dig Hazard; April to Mid-June	May be planted under wires
Washington Hawthorne (tree form)	Fall Dig Hazard; April to Mid-June	May be planted under wires
Sentry ginkgo (male grafted only)		May be planted where no wires overhead
Shademaster locust	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Sunburst locust	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Panicled goldenrain tree	Fall Dig Hazard; April to Mid-June	May be planted under wires
Sweetgum	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Japanese flowering crab	Fall Dig Hazard; April to Mid-June	May be planted under wires
Sourwood		May be planted under wires

Tree Species	Planting Season	Planting Procedure
Amur corktree		May be planted under wires, must be high branched 6-7 ft
White pine		May be planted where no wires overhead
London plane	Fall Dig Hazard	May be planted where no wires overhead
American plane	Fall Dig Hazard	May be planted where no wires overhead
Kwanzan (Japanese flowering cherry)	Fall Dig Hazard; April to Mid-June	May be planted under wires
Northern red oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Scarlet oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Shingle oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Burr oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Chestnut oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Black oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Pagoda tree	April to Mid-June; and Sept-October	May be planted under wires
American linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
European littleleaf linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
Greenspire linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
Silver linden	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
European linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
American elm	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Red maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Columnar red maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Sugar maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Columnar sugar maple		May be planted where no wires overhead
European hornbeam	Fall Dig Hazard; April to Mid-June	May be planted under wires

Tree Species	Planting Season	Planting Procedure
Pyramidal European hornbeam	Fall Dig Hazard; April to Mid-June	May be planted under wires
Katsura tree		May be planted where no wires overhead
Japanese zelkova	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Willow oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
October Glory Red maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Ruby red horsechestnut (parking areas)	April to Mid-June; and Sept-October	May be planted where no wires overhead
Amur maple	April to Mid-June; and Sept-October	May be planted where no wires overhead