

ORDINANCE NO. 9 – 2024

AN ORDINANCE REPEALING CHAPTER 87, TREES, AND ADOPTING A NEW CHAPTER 87 TO BE ENTITLED “TREE REMOVAL” OF THE CODE BOOK OF THE BOROUGH OF CLAYTON

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Clayton, County of Gloucester and State of New Jersey that Chapter 87, Trees, be and is hereby repealed and a new Chapter 87 shall be adopted and entitled “Tree Removal” and to read as follows:

Section 1. Purpose:

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

Section 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 ½ 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.

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, forester, Licensed Tree Expert (LTE) , or the Public Works Director or their designee

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 owns the residential property or contractor hired by the individual who owns 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.

Section 3. Regulated Activities:

A. Application Process:

1. Any person planning to remove street trees, as defined as Tree removal, with DBH of 4” or more or any non-street trees with DBH of 6” (that exceeds the amount allowed in Section IV A of this Ordinance) shall submit a Tree Removal Application. Application shall be submitted to the zoning official if only removing trees. Tree removal along with any other land disturbance shall have application submitted along with applications for grading plans, site plans or subdivision plan approval. No tree, exceeding the amount allowed, shall be removed until municipal officials have reviewed and approved the removal. A tree removal application, location survey and replacement plan must be submitted with the associated grading, zoning, site plan or subdivision application. The survey must include the location, size and type of all trees equal to or greater than 6” DBH. A tree removal application and replacement plan must also be submitted for projects greater than 5 trees removed.

B. Tree Replacement Requirements

1. Any person who removes street tree(s) with a DBH of 4” or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.
2. Any person, who removes tree(s), as defined as Tree removal, with a DBH of 6” or more, unless otherwise detailed under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.

The species type and diversity of replacement trees shall be in accordance with Appendix A or as agreed to by the reviewing authority.

Replacement tree(s) shall:

1. Be replaced in kind with a tree that meets 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) planting seasons to ensure their survival and shall be replaced as needed within twelve (12) months;
4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
5. Shall not be planted in the Public Right of Way planting strip. Street trees shall be planted a minimum of 10 feet distant from the public sidewalk and be located within an easement for access and emergency maintenance of the trees.

6. Application fee for tree removal application only is \$35 plus \$150 review fee.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
1	DBH of 4” (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

C. Replacement Alternatives:

1. If the municipality determines per the requirements of this Chapter 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 \$350.00 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of trees.

Section 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 five (5) trees per property (or acre if greater than one acre) that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a five-year period.
- 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.

Section 5. Enforcement:

This ordinance shall be enforced by the Code Enforcement Official or their designee during the course of ordinary enforcement duties.

Section 6. Violations and Penalties:

- A. Any person(s) who removes trees in violation of this ordinance shall be subject to the following penalties: A fine not to exceed \$1,000.00 or imprisonment for a term of not more than 30 days or a period of community service not to exceed 90 days, or both as such court in its discretion may impose. Each day during or on which a violation occurs or continues shall be deemed a separate offense.

Section 7. 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 8. 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.

BOROUGH OF CLAYTON

ATTEST:

Thomas Bianco, Mayor

Christine Newcomb, Borough Clerk

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