

BOROUGH OF DUNELLEN
ORDINANCE # 2024- 22

The following ordinance was Introduced for first reading on June 3, 2024. A second reading, public hearing and adoption is being held at 7:00 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey, on June 17, 2024, and copies of this Ordinance have been posted on the public bulletin board prior to the date for second reading and final passage and copies of this Ordinance have been available at the Office of the Borough Clerk for any interested members of the public

**AN ORDINANCE REPEALING AND REPLACING CHAPTER 275 “TREES” OF
THE CODE OF THE BOROUGH OF DUNELLEN**

BE IT ORDAINED by the Borough Council of the Borough of Dunellen, in the County of Middlesex, State of New Jersey as follows:

SECTION 1. Part II, “General Legislation”, Chapter 275 “Trees”, is hereby repealed and replaced as follows:

§ 275-1 Intent.

It is the intent of this chapter to promote the general welfare of the residents of the Borough of Dunellen by providing for the protection, regulation, selection, planting and cutting of trees in such a way as to protect and preserve the environment and the quality of life of the residents of the Borough.

§ 275-2 Legislative findings.

The governing body of the Borough of Dunellen does find that the indiscriminate, uncontrolled, and excessive destruction, removal and cutting of trees upon lots and tracts of land within the Borough has resulted in creating increased water runoff, soil erosion, stream channel sedimentation and consequent flooding, depression of the water table, noise pollution and dust and decreased soil fertility, air quality, climate moderation, wildlife habitat and property values, with the result that there has been and will continue to be further deterioration affecting the health, safety and general well being of the residents of the Borough of Dunellen.

§ 275-3 Definitions.

As used in this chapter, the following terms will have the meanings indicated.

DIAMETER AT BREAST HEIGHT (DBH)

The diameter of a tree measured at a point on the tree 4 1/2 feet from ground level.

HAZARD TREE

A. “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.

B.

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 Licensed Tree Expert (LTE).

PERSON

Any individual, firm, partnership, association or corporation.

PLANT CONSTRUCTION

As applied to public utility companies, means poles, wires, cables, surface conduits, pipes, manholes and appurtenant facilities of such companies installed in a street.

PUBLIC RIGHT-OF-WAY

Any street, avenue, boulevard, road, parkway, viaduct, drive or other way which is an existing state, county or municipal roadway or which is shown upon a plat heretofore approved pursuant to law or which is approved by official action as provided by the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) or which is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a Planning Board and the grant to such Board of the power to review plats and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

PUBLIC UTILITY COMPANY

A public utility as defined in N.J.S.A. 48:2-13.

SHRUB

Native or volunteered woody plant with multiple stems having a root crown (the diameter of the trunk just prior to its spreading into roots) of three inches or greater at the soil or surface level.

SITE

Any lot, tract, parcel or parcels of land within the Borough.

TREE

Any deciduous or coniferous species which reaches a typical mature height of 10 feet and a typical mature DBH of four inches or greater. Any species not qualifying as a tree under this definition shall be considered a stem and shall not fall within the purview of this chapter.

TREE REMOVAL AND SITE CLEARING PERMIT

A certificate issued by the Shade Tree Commission of the Borough of Dunellen to authorize the removal or destruction of trees within the public right of way or a certificate issued by the Dunellen Borough Construction Code Official for all other non-exempt trees removed outside the public right of way.

UNDISTURBED AREA

An area in which trees, shrubs and undercover will not be disturbed by filling, cutting or by any other means.

§ 275-4 Permit required to plant trees in public rights-of-way.

No shade or ornamental tree or shrub shall be planted in any of the public rights-of-way until such tree or shrub shall have been approved and the place where it is to be planted shall have been reviewed by the Dunellen Shade Tree Commission and a permit granted.

§ 275-5 Permit required to remove trees.

A. Application Process:

No person shall remove or destroy or cause to be removed or destroyed any tree with a DBH of 6” or more without first having obtained a tree removal and site clearing permit, except as otherwise provided herein. Notwithstanding any other provisions to be contrary, nothing contained herein shall require the Borough of Dunellen, its agents, representatives or employees to obtain a tree removal and site clearing permit before removing or destroying or causing to be removed or destroyed any tree.

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 275-6, 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 exempt under Section 275-6, shall be subject to the requirements of the Tree Replacement Requirements Table.

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.
5. Shall include 80% native species and 20% decorative trees that are flowering decorative species.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Application Fee (See Section 275-8)
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 2.0” for each tree removed	
2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 2.0” for each tree removed	

3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 2.0” for each tree removed	
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 2.0” for each tree removed	

A. 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.

§ 275-6 Limitations and 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 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.

§ 275-7 Application procedures for tree removal and site clearing permit.

- A. For properties where no subdivision of land and/or site plan application is required:
 - (1) Residential properties. To obtain a tree removal and site clearing permit, the applicant must furnish to the Dunellen Borough Construction Code Official a sketch of the property of sufficient accuracy showing the approximate location, trunk DBH and species of trees to be removed. Upon review and inspection (if necessary), the Dunellen Borough Construction Code Official shall have sole authority for permit approval.
 - (2) Nonresidential property, vacant or otherwise developed. No trees shall be removed unless and until a tree removal and site clearing permit has been obtained by filing an application as described in Subsection A(1) above, with the Dunellen Borough Construction Code Official. .
- B. Where subdivision of land and/or site plan approval is required, applicants shall follow procedures prescribed in § 115A-23C.

§ 275-8 Fees.

- A. Fees payable for the filing of an application for a tree removal and site-clearing permit shall be as follows:
 - (1) For existing residential property not involving subdivision and/or site plan: the sum of \$25.
 - (2) For all other applications: \$75 per acre or portion thereof as specified in Chapter 115A, Land Development.
- B. All fees collected for a tree removal and site clearing permit shall be payable to the Borough of Dunellen.

§ 275-9 Standards for issuance of permit.

No tree removal and site clearing permit shall be issued unless and until the land and subject trees described in the permit application have been reviewed by the Dunellen Borough Construction Code Official and the Construction Code Official concurs that the tree removal from the site in accordance with the plan shall not:

- A. Impair the growth and development of the remaining trees on the site or adjacent/contiguous properties;
- B. Cause soil erosion or increased dust;
- C. Impair the growth and development of the remaining trees on the site or adjacent/contiguous properties;
- D. Cause soil erosion or increased dust;
- E. Impair existing drainage patterns;
- F. Substantially impair the aesthetic values of the area; and
- G. Be in conflict with the recommendations and findings of the Dunellen Borough Construction Code Official or Shade Tree Commission.

§ 275-10 Inspection and compliance.

No certificate of occupancy or building permit shall be issued unless and until there has been an inspection by the Borough Engineer showing that the property and tree removal is in compliance with the tree removal and site clearing permit.

§ 275-11 Required permits for non-utility operations.

No person shall do any of the following acts to any tree or shrub on a public right-of-way without the prior approval and permit issued from the Dunellen Shade Tree Commission, which will solicit comment from the Borough of Dunellen Construction Office when appropriate:

- A. Cut, disturb or interfere in any way with any root.
- B. Spray with any chemical.
- C. Remove or damage any guard or device placed to protect any tree or shrub.
- D. Conduct, razing, removal or renovation of any structure if deemed by the Dunellen Shade Tree Commission to be damaging to neighboring street trees.
- E. Place or distribute chemicals, including but not limited to salt, which chemical or combination of chemicals is deleterious to tree health.
- F. Remove soil, either for trenching or otherwise.

§ 275-12 Required permits for utility operations; exemptions.

- A. The Dunellen Shade Tree Commission may grant to public utility companies a blanket permit for tree pruning for line clearance and for the installation and the maintenance of subsurface and aboveground plant construction if there is interference with or endangerment to trees within the public right of way.
- B. Public utilities may, during periods of emergency, without specific prior permit install temporary attachments to trees and make emergency subsurface repairs within the public right of way.
- C. Each utility company shall exercise reasonable diligence in the maintenance of its plant construction so as to avoid damage to trees.

§ 275-13 Violations and penalties.

Any person found guilty of violating any of the provisions of this chapter shall be subject to a fine not to exceed \$2,000 but not less than the amount of the required replacements trees and cost of planting or imprisonment for a term of up to 90 days, or both, for each violation. Each day that such violation continues shall be considered a separate violation.

SECTION 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof,

SECTION 3. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 4. This Ordinance shall take effect immediately after final passage in the manner provided by law.

Approved June 17, 2024