

TOWNSHIP OF EVESHAM

ORDINANCE NO. 6-4-2024

**ORDINANCE OF THE TOWNSHIP OF EVESHAM
REPEALING AND REPLACING CHAPTER 144 TREES AND SHRUBS
TO COMPLY WITH THE NEW STORMWATER MANAGEMENT
REGULATIONS FROM THE NJDEP**

WHEREAS, the New Jersey Department of Environmental Protection (NJDEP) has amended Stormwater Management Rules (N.J.A.C. 7:8-1 et seq); and

WHEREAS, trees play a critical 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; and

WHEREAS, there is a need to update existing Chapter 144 that was adopted by the Township February 5, 1980 to better reflect the updated Stormwater Management Rules; and

WHEREAS, the 2023 Tier A MS4 permit renewal requires permittees to, at a minimum, adopt and enforce a community-wide ordinance to control tree removal and replacement for all types of properties where the municipality has jurisdiction. This ordinance is based on the model ordinance, developed by the New Jersey Department of Environmental Protection; and

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Township Council of the Township of Evesham, County of Burlington, State of New Jersey that the Township Code should be amended to reflect the NJDEP amended Stormwater Management Rules (N.J.A.C. 7:8-1 et seq) and existing Chapter 144 is repealed and replaced with "Attachment A".

SECTION III. REPEALER

All Ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION IV. INVALIDITY

If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision and the remainder of this ordinance shall be deemed valid and effective.

SECTION V. EFFECTIVE DATE

This Ordinance shall take effect 20 days after its proper publication after final passage as required by law.

ROLL CALL VOTE - Upon Introduction 3/13/24						
COUNCIL MEMBER	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
COOPER		✓	✓			
ESPINOZA			✓			
FREEMAN, III			✓			
HANSEN	✓		✓			
MAYOR VEASY			✓			

ROLL CALL VOTE - Upon Adoption 4/10/24						
COUNCIL MEMBER	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
COOPER		✓	✓			
ESPINOZA			✓			
FREEMAN, III			✓			
HANSEN	✓		✓			
MAYOR VEASY			✓			

Adopted on second and final reading on
 APRIL 10, 2024



James Veasy
 Mayor Veasy

ATTEST

Rebecca Andrews
 Rebecca Andrews, Acting Township Clerk

Attachment A

Chapter 144 Tree Removal and Replacement

144-1 Purpose.

To establish requirements for tree removal and replacement to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare. This ordinance is intended to satisfy the requirements of the New Jersey Department of Environmental Protection (NJDEP) Stormwater Management Rules (N.J.A.C. 7:8-1 et seq).

144-2 Definitions.

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.

"Applicant" means any "person", as defined below, who applies for approval to remove trees regulated under this ordinance.

"Compensatory Planting" The planting of new plants and/or trees to either replace or compensate for existing viable plants being removed from a tract of land, at a specific ratio based on the diameters of the existing trees. See Codes 160-5 and 62-56 Natural Features & Landscaping.

"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'.

"Diameter Inches" The sum total of the diameters, in inches, of existing viable trees being removed from a tract of land, for which proportional compensation is required. See Codes 160-5 and 62-56 Natural Features & Landscaping.

"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.

"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. The determination of the criteria must be confirmed and documented by a NJ license tree expert and/or certified arborist [as per NJ Statue 45:15C-11]

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

“Person” means any individual, resident, corporation, utility, company, partnership, firm, or association.

“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.

“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.

“Street Tree” means a tree planted in in the public right-of-way. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.

“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.

“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.

“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.

“Tree of Special Value

A. The Township Council may designate, by ordinance, a certain tree or shrub or a certain species of tree or shrub as being of special value based on rarity or historical importance.

B. If any tree or shrub designated under this section is located on a site being considered for major subdivision approval, the Planning Board may, as a condition of final approval, require the developer to grant a preservation easement to the Township of Evesham.

C. If any tree or shrub designated under this section is located on private property not seeking major subdivision approval, the Township may acquire a preservation easement by gift or purchase.

144-3 Regulated Activities.

A. Tree Removal.

1. **Street Tree Removal within the ROW:** Any person planning to remove a Street Tree within the Municipal Right-of-WAY (ROW) shall submit a Street Opening Permit Application (for tree removal) to the Department of Public Works or the appropriate agency having jurisdiction (County, State, MUA etc).
2. **Planning Board or Zoning Board of Adjustment Applications:** As part of the application process; tree removal and proposed landscape plans are reviewed by Board Professionals and the Evesham Environmental Commission. Trees removed during these applications are subject to Section 62-56.
3. **Zoning Permits and Grading Plans:** Applications for Zoning Permits (including grading plans) that involve tree removal must comply with clearing ratios established by the applicable zone Performance Regulations. Clearing limits proposed above the maximum permitted will require a variance application to the appropriate board having jurisdiction. Applications that involve tree removal may include review and recommendations for approval by Township professional consultants and/or the Department of Recreation and Open Space and Department of Public Works.

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 144-4, shall be subject to the requirements of the conditions set forth in this section.
2. Residents, who wish to replace or add a street tree(s) at their own expense, must submit a request on a street opening permit. Street tree replacements or additional street tree(s) requests shall conform to Ordinance 62-56H (11). Consistent with Township Code, the responsibility of the replacement or newly added tree(s) including maintenance, care during development, and or remediating hazards shall remain the homeowner or current property owner.
3. 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 exempt under Section 144-4, shall be subject to the requirements Tree Replacement.
4. Replacement Trees: The species type and diversity of replacement trees shall be in accordance with 62-56.H.(11) Recommended List for Street Tree, Shade Tree and Prohibited Street and Shade Trees [Ord. No. 1-2-2023 adopted 2-8-2023], or from the list of trees provided by the list provided by the Pinelands Commission webpage titled "Native Pinelands Plants for the Landscape". See Tree Replacement Table (Section 8).
5. Alternative tree request for a tree not listed in either code 62-56.H.(11) or on the Pinelands Commission list titled "Native Pinelands Plants for the Landscape".

Applicant wanting to plant a tree that is not on the approved lists must submit a request in writing to the Township Department of Public Works or Planning & Zoning for approval by the Township Manager or designee. The request must include the proposed tree common and scientific name, site location on a drawing and other detailed specific information. Review and recommendations for approval may include Township professional consultants, Department of Recreation and Open Space, Department of Public Works, and the Evesham Environmental Commission.

6. Planting times/seasons.

Fall is often considered the best time of year to plant new trees. Generally, late August, September and October are the best months.

7. Replacement tree(s) shall:

- a. 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;
- b. 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;
- c. 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
- d. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

8. Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria
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. NOTE: Street trees removed will be replanted in a location to be determined by the DPW/Township as part of the permit process.
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed NOTE: Street trees removed will be replanted in a location to be determined by the DPW/Township as part of the permit process.
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed

		NOTE: Street trees removed will be replanted in a location to be determined by the DPW/Township as part of the permit process.
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed NOTE: Street trees removed will be replanted in a location to be determined by the DPW/Township as part of the permit process.

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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. Proper justification for tree removal must be demonstrated with photos of the tree/s and supporting paperwork from a NJ license tree expert and/or certified arborist [as per NJ Statue 45:15C-11] confirming the tree as hazardous.

- 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.
- H. Trees and shrubs used as a source of firewood exclusively for the landowner's use.
- I. Trees and shrubs growing within 150 feet of a building used as an owner-occupied residence.
- J. Trees and shrubs growing on a single lot, two acres or less in area, upon which is located an owner-occupied residential structure.

144-5 Enforcement, See Code 102-22

144-6 Abatement, See Code 102-24

144-7 Notice, See Code 102-25

144-8 Lien for Abatement, See Code 102-26

144-9 Violations and penalties, See Code 102-27