

Borough of Fair Lawn



ORDINANCE NO. 2693-2024

AN ORDINANCE REPEALING CHAPTER 125-45, TREES, AND REPLACING WITH A NEW CHAPTER 125-45, TREE REMOVAL AND REPLACEMENT, OF THE CODE OF THE BOROUGH OF FAIR LAWN 2000

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Fair Lawn that the Borough Code of Fair Lawn 2000 is amended and supplemented by inserting the text **underlined and marked in bold** as follows:

SECTION 1: Chapter 125-45, Trees, be and is hereby repealed in its entirety to be replaced with a new Chapter 125-45, Tree Removal and Replacement, to read as follows:

§ 125-45 Tree Removal and Replacement.

A. Purpose.

1. To enhance the quality of life and overall health of Fair Lawn residents, and foster a better environment, by preserving, protecting, planting and maintaining safe, healthy, and sustainable trees as follows:

(a) Removing pollutants and replenishing oxygen;

(b) Providing shade and moderating the effects of temperature extremes;

(c) Reducing stormwater runoff;

(d) Replenishing and improving groundwater supplies;

(e) Stabilizing soil by preventing erosion and sedimentation;

(f) Providing visual screen and sound attenuation;

(g) Storing and sequestering carbon;

(h) Providing food and shelter for birds and beneficial wildlife; and

(i) Conserving energy.

2. To support the goals and objectives of the Community Forestry Management Plan.

B. Definitions.

1. "Accepted Standards" means standards as defined in the Approved American National Standard ANSI A300, *Tree, Shrub, and Other Woody Plant Management – Standard Practices* (ANSI A300 parts 1 – 10).

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

3. "Borough Arborist" means the Arborist appointed by the Borough Council or, if the position is vacant, the Borough Engineer.

4. "Boundary Line Tree" means a tree in which the property line between or among properties passes through the tree's trunk.

5. "Caliper" means, when referring to nursery stock, the diameter of a tree measured in accordance with the *American Standard For Nursery Stock*, ANSI Z60.1, American Nursery & Landscape Association, Washington, D.C.

(a) Shade and Flowering Trees: Caliper measurement of the trunk shall be taken six (6") inches above the ground up to and including four (4") inch caliper size. If the caliper at six (6") inches above the ground exceeds four (4") inches, the caliper should be measured at twelve (12") inches above the ground.

(b) Clump Form and Multi-Stem Trees: Caliper shall be equal to one-half of the total calipers of up to the three largest trunks.

6. "Community Forestry Management Plan" ("CFMP") means the Borough of Fair Lawn's Community Forestry Management Plan accredited by the New Jersey Urban & Community Forestry, New Jersey Department of Environmental Protection.

7. "Critical Root Zone" ("CRZ") means the minimum volume of roots necessary for tree health and safety as defined in ANSI A300. CRZ (radius from the trunk center in feet) is calculated by multiplying the tree's diameter at breast height (DBH) by 5/12.

8. "Diameter at Breast Height" ("DBH") means the diameter of the trunk of a tree measured at a point four and one half (4.5') feet above ground level from the uphill side of the tree.

9. "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. A Licensed Tree Expert shall make all Hazard Tree determinations. A Hazard Tree:

(a) Has an infectious disease or insect infestation;

(b) Is dead or dying;

(c) Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;

(d) Is causing obvious damage to structures (building foundations, sidewalks, etc.); or

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

10. "Height" means the measurement of a tree from the ground level for field grown stock or from the soil line for container grown stock, which should be at or near the top of the root flare.

11. "Landmark Tree" means any tree designated and identified as such by the Borough Council pursuant to the standards set forth in § 226-4 of the Borough Code.

12. "Licensed Tree Care Operator" (LTCO) means an expert as defined in the Tree Experts and Tree Care Operators Licensing Act, N.J.S.A. 45:15C-11 et seq.; an LTCO can perform all of the following: tree pruning, tree removal, stump grinding, stump removal, brush cutting, and brush removal.

13. "Licensed Tree Expert" (LTE) means an expert as defined in the Tree Experts and Tree Care Operators Licensing Act, N.J.S.A. 45:15C-11, et seq., is distinct from an LTCO, and can perform all of the duties of an LTCO plus fertilization, tree establishment, consulting, diagnosis, treatment of diseases, cabling and bracing, tree management during site development and tree assessment. An LTE shall have tree risk assessment qualifications and shall use applicable protocols for tree risk assessment.

14. "Person" means any individual, corporation, company, partnership, firm, association, political subdivision of the State and any state, interstate or federal agency.

15. "Planting Strip" means the part of a street right-of-way between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

16. "Public Lands" means lands owned or controlled by the Borough or by any other governmental body, including highways, parks, public rights of way and easements.

17. "Public Tree" means any tree located on Public Lands.

18. "Regulated Tree" means any tree on private property having a trunk with DBH of six (6") inches or more or any Public Tree with DBH of one and one-half (1.5") inches or more.

19. "Top or Topping" means, with reference to trees, the severe cutting back of limbs to stubs larger than three (3") inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

20. "Tree" means a woody perennial plant, typically having a single stem, multiple stems or trunks growing to a considerable height and bearing lateral branches at some distance from the ground.

21. "Tree Protection Zone" (TPZ) means, as defined in ANSI A300, the area surrounding a tree defined by a specified distance in which excavation and other construction-related activities should be avoided. The TPZ is variable depending on species, factors, age and health of the plant, soil conditions, and proposed construction. The TPZ may be accomplished by physical barriers or soil protection layers and treatment. TPZ shall be calculated for each individual tree by an LTE using current industry standards and best practices.

22. "Tree Removal" means the act of killing or causing irreparable damage that leads to the decline and/or death of a Regulated Tree, and includes, but is not limited to, cutting down, excessive pruning, application of substances that are toxic, and improper grading and/or soil compaction within the TPZ of the Regulated Tree.

C. Regulated Activities.

1. Any Person planning to remove a Regulated Tree shall submit a Tree Removal application to the Borough of Fair Lawn Superintendent of the Department of Public Works (DPW). A Tree Removal application for the removal of three (3) or more trees shall be reviewed by the Borough Arborist. No Regulated Tree shall be removed until the application has been reviewed by the Borough and a permit has been issued. No Regulated Tree shall be removed or substantially altered other than by an LTE or LTCO who is registered with the Borough per Chapter 227.

(a) Tree Removal Permit Application. All applications shall be submitted in accordance with the following:

(i) The application shall contain the name of the applicant, name and address of owner of the property (with consent of the owner if different from the applicant), street address and tax lot and block of the property in question, telephone number, email address, LTE and/or LTCO name, address, telephone and license number, the total number of trees to be removed, and the reasons for the removal.

(b) A Tree Removal plan shall be submitted consisting of a survey or approved site plan showing the location, size and species of all Regulated Trees on the property indicating with an "X" those Regulated Trees proposed to be removed.

(c) All Regulated Trees proposed to be removed shall be marked with a ribbon. Trees shall not be marked with paint.

(d) Proof of written consent from the adjacent property owner for any Boundary Line Tree proposed to be removed.

(e) Tree replacement plan showing the location, species, planting size and caliper of trees proposed to be planted.

(f) Application fee in the amount of twenty-five (\$25) dollars.

2. Tree Replacement Requirements. Replacements shall be properly maintained for a period of two (2) years to ensure their survival and shall be replaced as needed. Trees planted in temporary containers or pots do not count towards tree replacement requirements. Replacement shall be made in accordance with the following table:

Table 2-1: TREE REPLACEMENT REQUIREMENTS & REMOVAL PERMIT FEES

<u>Category</u>	<u>Tree Removed (DBH)</u>	<u>Required Action</u>	<u>Permit Fee</u>
<u>1</u>	<u>2.5" to 5.99" (public trees)</u>	<u>Replant one (1) tree with a minimum caliper of 2-2.5" for each tree removed</u>	<u>\$50 per tree to be removed</u>
<u>2</u>	<u>6" to 12.99"</u>	<u>Replant one (1) tree with a minimum caliper of 2-2.5" for each tree removed</u>	<u>\$50 per tree to be removed</u>
<u>3</u>	<u>13" to 22.99"</u>	<u>Replant two (2) trees with a minimum caliper of 2-2.5" for each tree removed</u>	<u>\$50 per tree to be removed</u>
<u>4</u>	<u>23" to 32.99"</u>	<u>Replant three (3) trees with a minimum caliper of 2-2.5" for each tree removed</u>	<u>\$50 per tree to be removed</u>
<u>5</u>	<u>33" or greater</u>	<u>Replant four (4) trees with a minimum caliper of 2-2.5" for each tree removed</u>	<u>\$50 per tree to be removed</u>

3. Replacement Alternatives: If the Borough 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 on other lands owned by the applicant within the Borough of Fair Lawn.

(b) In lieu of off-site replacement, the applicant shall pay a fee in the amount of two hundred fifty (\$250) dollars per tree required to be replaced. This fee shall be placed into the Fair Lawn Tree Trust.

4. Time of Completion: Any tree required to be planted shall be planted within twelve (12) months after the completion of the project or removal of the tree for which the permit was issued, preferably during the Spring or Fall planting seasons.

5. Protection of existing trees.

(a) In connection with any construction, subsequent to tree clearing but prior to the issuance of a building permit or start of construction, snow fencing or other protective barrier acceptable to the Borough Construction Official shall be placed around trees that are not to be removed. Snow fencing or other protective barrier shall be installed at the limit of the TPZ for each tree as determined by the LTE. No equipment, including construction vehicles, chemicals, soil deposits or construction materials, shall be placed within the TPZ of any tree.

(b) No Person shall:

(i) Cut down or remove any tree except as permitted by this Section 125-45 or allow or cause such cutting or removal.

(ii) Cause or allow any willful damage, injury or disfigurement of any tree growing within the subject property. For purposes of this subsection, the actions of any Person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as the result but not limited to the following: cutting, gashing or slitting on any tree; the pouring of any liquid or other material on any tree or on the nearby ground; the construction or placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placement or removal of any soil within the TPZ of any tree.

(iii) Store or pile building materials or debris or place construction equipment within the TPZ of any tree.

(iv) In the event that any tree to be saved in connection with construction, as set forth above, or any tree planted in mitigation shall

die within two years after planting, it shall be replaced by the property owners within six (6) months.

D. Standards for application review.

1. Upon receipt of an application for Tree Removal, the Borough Arborist or the Superintendent of the Department of Public Works (DPW) shall inspect the site on which the Regulated Trees proposed for removal are located and shall evaluate the drainage and other physical conditions existing on the subject property and adjoining properties. The Borough Arborist shall consider the following factors in deciding whether to approve such permit:

(a) Whether the proposed cutting or removal would impair the growth and redevelopment of the remaining trees on the applicant's property or adjacent property.

(b) Whether the proposed removal would change existing drainage patterns.

(c) Whether the proposed removal would allow soil erosion or would increase dust.

(d) Whether the proposed removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or the wooded aspect of the lot as viewed from the adjacent public road.

(e) Whether the proposed removal would constitute a horticulturally advantageous thinning of an existing overgrown area or the removal of dead or diseased trees.

(f) The overall effect of removal of such tree(s) on the physical and aesthetic value of the property and the neighborhood.

(g) Whether the area where such tree(s) are located will be occupied by a building or structure, a driveway, a roadway or a sewer line.

(h) Whether the proposed changes in the topography of the area where such tree(s) are located will have depressed land configuration or fill of land that shall be deemed injurious to the tree or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.

(i) Whether the proposed removal would remediate a safety hazard to persons or structures.

E. Conflict with other laws.

Notwithstanding anything in this Section 125-45 to the contrary, no Tree Removal shall be permitted where prohibited by any other municipal, State or federal statute, ordinance or regulation.

F. Issuance of Permits.

1. Permit: Upon approval of the application by the Superintendent of the Department of Public Works (DPW), the marking of trees to be removed, and the installation of tree protection for remaining trees, a Tree Removal permit will be issued by the Borough. The permit shall be displayed on the subject property in a conspicuous place so that it shall be visible from the closest public roadway. The permit shall be displayed while tree work is being done and for the next ten (10) days thereafter.

2. No permit shall be issued retroactively except in cases where a tree has been removed under emergency circumstances in which case documentation (photographs of the tree) shall be submitted to the Borough Superintendent of DPW.

G. Exemption for Hazard Trees.

All Persons shall comply with the permitting requirements and Tree Replacement Requirements in Table 2-1 hereof, except that no permit fee is required to remove Hazard Trees, and the Tree Replacement Requirements at Table 2-1 shall not apply thereto. Proper justification for the exemption shall be provided to the Borough in the form of a written determination from an LTE.

H. Enforcement, Violations, Penalties.

1. This ordinance shall be enforced by the Borough's Property Maintenance Official and Fair Lawn Police Department who may issue notifications of violations and take any other actions necessary to enforce this ordinance.

2. Any person found to be in violation shall be subject to a penalty of one or more of the following: imprisonment in the county jail for any term not exceeding 90 days; or by a fine not exceeding two thousand (\$2,000) dollars; or by a period of community service not exceeding 90 days. Each tree damaged, removed or destroyed in violation of this Section 125-45 shall be considered a separate offense, and a separate fine shall be levied for each tree.

SECTION 2: Each section of this Ordinance and every subsection hereof shall be deemed independent, separate and distinct from all other sections, and the holding of any section or a part hereof to be unconstitutional, void, or ineffective for any cause shall not be deemed to affect the validity or

constitutionality of any other section or part hereof, and to this end, the provisions of this Ordinance are hereby declared severable.

SECTION 3. All other ordinances, codes or parts thereof that are in conflict or inconsistent with this Ordinance are hereby repealed, to the extent of such conflict or inconsistency. In the event of any inconsistencies between the provisions of this Ordinance and any prior Borough ordinances, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Borough's ordinances are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 4: This Ordinance shall take effect upon passage and publication as required by law.

Introduced: March 26, 2024

	Motion	Second	Aye	Nay	Abstain	Absent
Salinas			X			
Krause	X		X			
Reinitz			X			
Cutrone		X	X			
Rottenstrich			X			

Adopted: April 30, 2024

	Motion	Second	Aye	Nay	Abstain	Absent
Salinas	X		X			
Krause			X			
Reinitz			X			
Cutrone		X	X			
Rottenstrich			X			

Attest:

Nicholas J. Magarelli, RMC
Municipal Clerk

Approved:

Gail Rottenstrich
Mayor