



**Kearny Town Council**

402 Kearny Avenue  
Kearny, NJ 07032

[www.kearnynj.org](http://www.kearnynj.org)

FIRST READING -	4-16-24
PUBLISH -	4-24-24
SECOND READING -	5-7-24
PUBLISH -	5-14-24
PLAN BD REVIEW -	

**ORDINANCE 2024-13**

**An Ordinance Creating Chapter 37: “Tree Preservation and Removal” Within the Town of Kearny’s Municipal Code**

**WHEREAS**, trees play a critical, often overlooked, 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. This ordinance is intended to ensure that permittees are considering these undervalued assets in their stormwater management efforts.

**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.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF KEARNY AS FOLLOWS:**

**THAT:** A new chapter be added to the Town of Kearny’s Municipal Code entitled: Chapter 37: Tree Preservation and Removal,” which shall read as follows:

**SECTION I. Purpose:**

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

**SECTION II. 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" mean 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  $CRR = 6" \times 1.5' = 9'$ .

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. [Municipalities may choose to require a Licensed Tree Expert to make all Hazard tree determination]

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).

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 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.

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 III. Regulated Activities:**

#### **A. Application Process:**

Any person planning to remove a street tree, as defined as Tree removal, 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 the Manager of the Department of Public Works and/or their designee. No tree shall be removed until municipal officials have reviewed and approved the removal.

#### **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 IV, 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 detailed under Section IV, 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 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 conform to the American National Standards Institute (ANSI) A-300 “[Standards for Tree Care Operations](https://www.tcia.org/TCIA/Build_Your_Business/A300_Standards/A300_Standards.aspx)” and shall follow all tree care Best Management Practices published by the International Society of Arboriculture.

**Tree Replacement Requirements Table:**

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Application Fee
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	\$25
2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 1.5” for each tree removed	\$25
3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 1.5” for each tree removed	\$25
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 1.5” for each tree removed	\$25

**C. 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 may plant the required replacement trees in a separate area(s) as approved by the Town.

**SECTION IV. 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, including photos and statement from an NJ licensed tree expert or arborist as per NJ Statute 45:15C-11.

- 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 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 V. Enforcement:**

This ordinance shall be enforced by the Manager of the Department of Public Works and/or their designee during the course of ordinary enforcement duties.

**SECTION VI. Violations and Penalties:**

Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to the penalties set forth in Section 1-5 of the Town Code.

**SECTION VIII. 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.

## Appendix A

### Approved list of Replacement tree Species and Planting Standards for Town of Kearny

Tree Species (Scientific Name)	Tree Species (Common Name)	Planting Season	Recommended for Planting when located within Flood Hazard Area <sup>1</sup>	PSE&G Recognized as Compatible with Overhead Utilities <sup>2</sup>
<b>Large Trees: Mature Height of 45 Feet or Greater</b>				
<i>Acer rubrum</i>	Red Maple	Spring or Fall	Yes	
<i>Acer saccharum</i>	Sugar Maple	Spring or Fall		
<i>Carya ovata</i>	Shagbark Hickory	Spring		
<i>Celtis occidentalis</i>	Hackberry	Later Winter to Early Spring	Yes	
<i>Cercidiphyllum japonicum</i>	Katsura Tree	Spring to Early Summer		
<i>Eucommia ulmoides</i>	Hardy Rubber Tree	Spring		
<i>Ginkgo biloba</i>	Ginkgo	Spring		
<i>Gleditsia triacanthos</i>	Honey Locust	Spring or Fall		
<i>Liquidambar styraciflua</i> 'Rotundiloba'	Seedless Sweetgum	Spring	Yes	
<i>Liriodendron tulipifera</i>	Tulip Tree	Spring to Early Fall		
<i>Metasequoia glyptostroboides</i>	Dawn Redwood	Fall		
<i>Nyssa sylvatica</i>	Black Gum	Spring	Yes	
<i>Platanus x acerifolia</i>	London Plane	Spring or Fall		
<i>Platanus occidentalis</i>	American Sycamore	Late Winter to Early Spring		
<i>Quercus acutissima</i>	Sawtooth Oak	Spring or Fall		
<i>Quercus alba</i>	White Oak	Spring or Fall		
<i>Quercus bicolor</i>	Swamp White Oak	Spring	Yes	
<i>Quercus imbricaria</i>	Shingle Oak	Spring		
<i>Quercus macrocarpa</i>	Bur Oak	Spring or Fall		
<i>Quercus palustris</i>	Pin Oak	Fall		
<i>Quercus phellos</i>	Willow Oak	Spring or Fall		
<i>Quercus prinus</i>	Chestnut Oak	Spring		
<i>Quercus robur</i>	English Oak	Spring or Fall		
<i>Quercus rubra</i>	Red Oak	Spring or Fall	Yes	
<i>Styphnolobium japonicum</i>	Scholar Tree	Late Fall to Early Spring		
<i>Taxodium distichum</i>	Bald Cypress	Late Winter to Early Spring	Yes	
<i>Tilia cordata</i>	Littleleaf Linden	Fall		

<i>Tilia tomentosa</i>	Silver Linden	Fall		
<i>Ulmus americana</i>	American Elm	Spring or Fall	Yes	
<i>Zelkova serrata</i>	Zelkova	Spring		
<b>Medium Trees: Mature Height of 30 to 45 Feet</b>				
<i>Cladrastis kentukea</i>	Columnar European Hornbeam	Late Winter to Early Spring		
<i>Cladrastis kentukea</i>	Yellowwood	Late Winter to Early Spring		
<i>Maackia amurensis</i>	Amur Maackia	Late Fall to Early Spring		
<i>Phellodendron amurense</i>	Amur Cork Tree	Spring		
<i>Prunus sargentii</i> 'Columnaris'	Columnar Sargent Cherry	Spring or Fall		
<i>Prunus subhirtella</i> 'Autumnalis'	Autumn Flowering Cherry	Spring or Fall		
<i>Pyrus calleryana</i>	Callery Pear/ Flowering Pear	Spring to Early Fall		
<i>Ulmus parvifolia</i>	Lacebark Elm/ Chinese Elm	Fall		
<b>Small Trees: Mature Height of 20 to 30 Feet</b>				
<i>Acer buergerianum</i>	Trident Maple	Spring or Fall		
<i>Acer ginnala</i>	Amur Maple	Spring to Early Summer		Yes
<i>Acer griseum</i>	Paperbark Maple	Fall		
<i>Acer tataricum</i>	Tatarian Maple	Spring or Fall		Yes
<i>Amelanchier laevis</i>	Serviceberry	Spring	Yes	
<i>Cornus florida</i>	Flowering Dogwood	Spring or Fall	Yes	Yes
<i>Cornus kousa</i>	Kousa Dogwood	Spring		
<i>Cornus mas</i>	Cornelian Cherry	Spring		Yes
<i>Crataegus viridis</i> 'Winter King'	Winter King Hawthorn	Spring		
<i>Halesia tetraptera</i>	Silverbell	Spring		
<i>Koelreuteria paniculata</i>	Golden Rain Tree	Spring		Yes
<i>Malus baccata</i> 'Columnaris'	Columnar Siberian Crabapple	Later Winter to Early Spring		
<i>Malus</i> 'Red Baron'	Red Barron Crabapple	Spring or Fall		Yes
<i>Malus</i> 'Red Jewel'	Red Jewel Crabapple	Spring		
<i>Prunus cerasifera</i>	Flowering Plum	Early Spring		
<i>Prunus x incam</i>	Okame Cherry	Spring or Fall		
<i>Prunus sargentii</i> 'Accolade'	Accolade Flowering Cherry	Spring or Fall		
<i>Prunus serrulata</i> 'Amanogawa'	Amanogawa Cherry	Spring or Fall		
<i>Prunus serrulata</i> 'Kwanzan'	Kwanzan Cherry	Spring or Fall		
<i>Prunus virginiana</i> 'Canada Red'	Canada Red Chokecherry	Spring or Fall		
<i>Prunus yedoensis</i>	Yoshino Cherry	Spring or Fall		

<i>Syringa reticulata</i> (a.k.a. <i>Syringa amurensis japonica</i> )	Japanese Lilac	Later Winter to Early Spring		Yes
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**Sources:**

1. [https://water.rutgers.edu/Green\\_Infrastructure\\_Guidance\\_Manual/TREE-PIT-GUIDANCE\\_01252022.pdf](https://water.rutgers.edu/Green_Infrastructure_Guidance_Manual/TREE-PIT-GUIDANCE_01252022.pdf)
2. <https://nj.pseg.com/safetyandreliability/reliability/treertrimming/righttreerightplace>
3. <https://npsnj.org/>



**BE IT FURTHER ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF KEARNY:**

**THAT:** All prior Ordinances, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**THAT:** This Ordinance shall become effective immediately upon final passage and publication as required by law.

**HISTORY:**

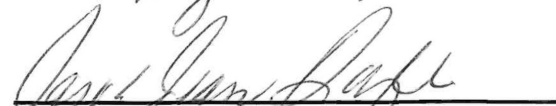
04/16/24 Council INTRODUCED  
Next: 05/07/24

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** George Zapata, Council Member  
**SECONDER:** Gerald Ficeto, Council Member  
**AYES:** Doyle, Eckel, Konopka, DeCastro, Ficeto, Zapata, Theodoropoulos, Solano, da Silva

I certify that the foregoing ordinance was introduced by the Council on first reading on April 16, 2024, duly published according to law, and passed on second reading and final passage on May 7, 2024.

  
PATRICIA CARPENTER, TOWN CLERK

I hereby approve the foregoing ordinance this 15 day of May 2024

  
CAROL JEAN DOYLE, MAYOR

MAY 15, 2024 James Bruno  
Dpw, Constaction,  
Court, Police