

**ORDINANCE NO. 2023-14**

**ORDINANCE OF THE BOROUGH OF MOUNT EPHRAIM, COUNTY OF CAMDEN, STATE OF NEW JERSEY, AMENDING THE CODE OF THE BOROUGH OF MOUNT EPHRAIM TO INCLUDE NEW CHAPTER 404 ENTITLED, "TREE REMOVAL AND REPLACEMENT"**

**WHEREAS** the Borough of Mount Ephraim (the "Borough") is a municipal corporation organized and operating under the laws of the State of New Jersey; and

**WHEREAS** the Borough adopted new stormwater control regulations through Ordinance No. 2021-02, codified as Chapter 512 of the Borough Code; and

**WHEREAS** the revised regulations require the Borough adopt regulations on tree removal and replacement; and

**WHEREAS** pursuant to N.J.S.A. 40:48-2, the Mayor and Borough Commissioners of the Borough are authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the Borough by law.

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Mount Ephraim that the Code of the Borough of Mount Ephraim is hereby amended, revised and/or supplemented as follows:

**SECTION 1.** The Code of the Borough of Mount Ephraim is hereby amended, revised, and supplemented by adding new Chapter 404, entitled "Tree Removal and Replacement" as follows:

**§ 404-1. Purpose:**

An ordinance to establish requirements for tree removal and replacement and penalties for noncompliance in the Borough of Mount Ephraim to protect the environment, public health, safety and welfare.

**§ 404-2. 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.

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

**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 of 9 (6 x 1.5=9)

**Diameter at Breast Height (DBH)** - means the diameter of the trunk of a tree generally

measured at a point four and a half feet above ground level from the downhill side of the tree.

**Hazard Tree** – means a tree or limbs thereof that meets one or 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 pedestrian or vehicles, where pruning attempts have not been effective;
4. Is causing obvious damage to structures (such as building foundations, sidewalks, sewer lines, etc.); or
5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist of 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 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 where a tree(s) regulated by this ordinance is removed or proposed to be removed.

**Street Tree** - means a tree planted in the sidewalk or a planting strip in the public right-of-way.

**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 tree treatments intended to manage invasive species.

#### **§ 404-3. Regulated Activities:**

##### **A. Tree Removal Application Process:**

1. Any person planning to remove a street tree 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 Borough Clerk or designee. No tree shall be removed until municipal officials have reviewed and approved the removal.

**B. Tree Replacement Requirements**

1. Within a five-year period, any person who removes one or more street tree(s) with a DBH of 2.5” or more, unless exempt under Section 404-4, shall be subject to the requirements of the Tree Replacement Requirements Table below.
2. Any person, other than a resident, who removes one or more tree(s) with a DBH of 6” or more per acre, unless exempt 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 the most recent list of native trees published by the New Jersey Department of Environmental Protection which shall be listed in Appendix A.

Replacement tree(s) shall:

1. Be replaced in kind with a tree that has an equal or greater DBH than the 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.

**Tree Replacement Requirements Table:**

Category	Tree Removed (DBH)	Required Action
1	DBH of 2.5” (for street trees) or 6” (for other trees) to 12.99”	Replant 1 tree in accordance with Appendix A, with a minimum DBH of 1.5” for each tree removed
2	DBH of 13” to 22.99”	Replant 2 trees in accordance with Appendix A, with minimum DBHs of 1.5” for each tree removed
3	DBH of 23” to 32.99”	Replant 3 trees with minimum DBHs of 1.5” for each tree removed
4	DBH of 33” or greater	Replant 4 trees with minimum DBHs of 1.5” for each tree removed

**C. Replacement Alternatives:**

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 \$100.00 per tree removed. This fee shall be placed into a fund dedicated to tree planting.

**§ 404-4. Exemptions:**

All persons shall comply with the tree replacement standard outlined above, except in the following cases. Proper justification shall be provided, in writing, to the municipality by all persons claiming an exemption including photos, a detailed explanation as to why they should be exempt and any statements from a licensed tree expert or arborist.

- A. Clearing, cutting, and/or removal of trees which is necessary to service, maintain, or ensure the continued safe use of a lawfully existing structure, right-of-way, field, park, and/or garden.
- 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;
- D. 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;
- E. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- F. Hazard trees may be removed with no fee or replacement requirement.

**§ 404-5. Enforcement:**

This ordinance shall be enforced by the Mount Ephraim Police Department, the Mount Ephraim Property Maintenance Officer, the Mount Ephraim Superintendent of Public Works and/or other Municipal Officials of the Borough of Mount Ephraim, during the course of ordinary enforcement duties.

**§ 404-6. Violations and Penalties:**

Any person(s) who is found to be in violation of the provisions of this ordinance shall, upon conviction thereof, be liable for penalties or any combination thereof as set forth in Chapter x-xx of the Code of the Borough of Mount Ephraim, in the discretion of the Judge of the Municipal Court before whom such violation is heard and conviction made. Each day that a violation occurs shall be deemed a separate and distinct violation, subject to the penalty provisions of this Chapter.

**§ 404-7. 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.

All ordinances contrary to the provisions of this Ordinance are hereby repealed to the extent that they are inconsistent herewith.

This Ordinance shall take effect immediately after its passage and publication in accordance with law.

**BOROUGH OF MOUNT EPHRAIM**

**Date of Introduction: August 3, 2023**  
**Date of Adoption: September 7, 2023**

**Approved:** \_\_\_\_\_  
**Mayor Michael Tovinsky**

**Attest:** \_\_\_\_\_  
**Terry Shannon, Borough Clerk**