

**BOROUGH OF NETCONG**

**ORDINANCE NO. 2024 - 6**

**AN ORDINANCE AMENDING CHAPTER 246 OF THE CODE OF THE BOROUGH OF NETCONG AND ESTABLISHING TREE REMOVAL AND REPLACEMENT REQUIREMENTS**

**BE IT ORDAINED** by the Borough Council of the Borough of Netcong, in the County of Morris and State of New Jersey, as follows:

**Section 1.** Chapter 246, “Stormwater Control”, of the Revised General Ordinances of the Borough of Netcong, shall be amended by the inclusion of new Article III “Tree Removal and Replacement” which shall read, in its entirety, as follows:

**ARTICLE III**

**TREE REMOVAL AND REPLACEMENT**

**246-19. Purpose**

The purpose of this Article is to establish requirements for tree removal and replacement in the Borough of Netcong in order to comply with the NJDEP Tier A MS4 permit renewal requirements established by the State of New Jersey.

**246-20. 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.

- 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”x1.5’ = 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.
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 licensed Landscape Architect, certified arborist, Licensed Tree Expert (LTE) or Licensed Tree Care Operator (LTCO).
- E. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.
- F. "Planting strip" mean the area within the public right-of-way between the abutting property line and the curb or edge of pavement, 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 within the public right-of-way. This also includes trees planted within shade tree easements.
- 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.

## **246-21. Regulated Activities**

### **A. 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 which is not exempted from the requirements of this ordinance shall submit a Tree Removal Application to the Zoning Officer of the Borough. No tree shall be removed, unless exempted under Section 246-22 until municipal officials have reviewed and approved the removal.
2. For larger scale clearing projects over 5,000 square feet, the applicant shall submit a tree survey as part of the application to determine number, sizes, and exemptions of trees.
3. Applicants will be subject to a \$25 application fee.

### **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 246-22, shall be subject to the requirements of the Tree Replacement Requirements Table below.
2. Any person who removes one or more tree(s), unless exempt under Section 246-22, as defined as Tree removal, with a DBH of 6”, 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 a list of approved trees and planting requirements kept on file in the Public Works Department

Replacement tree(s) shall:

1. Be replaced in kind with a tree that meets 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. The applicant shall post a bond 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:**

<b>Category</b>	<b>Tree Removed (DBH)</b>	<b>Tree Replacement Criteria (See Appendix A)</b>
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
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers 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 per tree removed in accordance with the formula established and on file with the Borough Administrator. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

**246-22. Exemptions:**

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below. Proper justification shall be provided, when requested by the Borough, in writing, by all persons claiming an exemption:

- A. The removal of one tree that falls into category 1, 2, or 3 of the Tree Replacement Requirements Table from a single lot within a two-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.

**246-23 Enforcement:**

This ordinance shall be enforced by the Department of Public Works during the course of ordinary enforcement duties.

**246-24 Violations and Penalties**

Any person who violates or who fails or refuses to comply with the provisions of this article shall be subject to a fine of not less than \$50 nor more than \$1,000 and/or any other

penalty that is consistent with Chapter 74, Violations and Penalties, of the Municipal Code for each offense.

**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 and publication in the manner provided by law.

NOTICE IS HEREBY GIVEN, that the foregoing Ordinance was introduced in writing at a meeting of the Borough Council of the Borough of Netcong, County of Morris and State of New Jersey, held on the 8<sup>th</sup> day of February, 2024, introduced and read by title and passed on the first reading and that the said Governing Body will further consider the same for second reading and final passage thereon at a meeting to be held on the 14<sup>th</sup> day of March, 2024 at 7:30 p.m., prevailing time, at the Municipal Building in said Borough, at which time and place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

**BOROUGH OF NETCONG  
COUNTY OF MORRIS  
STATE OF NEW JERSEY**

**ATTEST:**

\_\_\_\_\_  
Cynthia Eckert, Borough Clerk

By: \_\_\_\_\_  
Elmer Still, Mayor