

Eff: 6/23/24

ORDINANCE NO. 2024-13

**AN ORDINANCE OF THE TOWNSHIP OF OCEAN,
COUNTY OF OCEAN, STATE OF NEW JERSEY
REPEALING AND REPLACING CHAPTER 373 OF
THE TOWNSHIP CODE ENTITLED "TREES"**

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Ocean, County of Ocean and State of New Jersey, that Chapter 373 of the Township Code entitled "Trees" is hereby repealed and replaced with the following:

Chapter 373 shall be entitled "Tree Removal/Replacement"

SECTION 1.

§ 373-1 Purpose:

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

§ 373-2 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.

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

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B. "Building Lot" means a parcel of land upon which a dwelling house has been or may be erected in accordance with Chapter 410, Zoning, or may be erected with a variance.

C. 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 $CRR = 6" \times 1.5' = 9'$.

D. "Dead wood" means the wood which has ceased to grow and has died of natural causes.

E. 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.

F. "Harvesting Wood" means the removal, cutting, collecting of any wood other than that defined as dead wood.

G. "Homestead" means the principal owner-occupied residence having a maximum of three acres upon which the property owner resides and is cutting and harvesting trees on the property solely for his/her own heating requirements.

H. 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).

I. "Management Plan" means a plan for the management of timbered or forested lands developed by the New Jersey Department of Environmental Protection, or similar state or federal agency, Township Conversation Commission or Township officials.

J. "Permit" means a license issued by the Zoning Officer of the Township to remove or destroy trees or shrubs as defined in this chapter.

K. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.

L. "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.

M. "Public Right-of-Way" means any street or road shown upon a map or plan filed in the Ocean County Clerk's Office or on the Official Map of the Township.

N. "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.

O. "Shrub" means native laurel (*Kalmia latifolia*) having a root crown of three inches or greater measured at the soil or surface level.

P. "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.

Q. "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.

R. "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.

S. "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.

§ 373-3 Regulated Activities:

A. Application Process:

1. 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 Township of Ocean Zoning Officer or his/her designee. No tree shall be removed until municipal officials have reviewed and approved the removal.

a. **Application for Permit with Building Permit.** Upon application for a building permit or any construction which would cause the removal or destruction in whole or part of any tree or shrub as defined in this chapter, the application shall be accompanied by a plot plan which shall indicate the location

of all trees and shrubs on the lot or lots for which such permit is sought. The plot plan shall designate which trees, if any, are to be removed or destroyed. Copies of such plot plan shall be filed by the applicant with the Construction Official, the Zoning Officer, Engineer and Environmental Commission, if such commission is in existence at the time of application. The Building Inspector, Township Engineer and Environmental Commission shall review same and notify the Zoning Officer of their recommendations. Such recommendations shall not be binding upon the Zoning Officer. The recommendations shall be forwarded to the Zoning Officer within 15 days of the receipt of the application by the Building Inspector, Township Engineer and the Environmental Commission, failing in which the Township Zoning Officer may grant or deny a permit without further delay. Upon such approval, the Building Inspector shall issue a building permit as required by law.

b. Application for Permit without Building Permit.

Applications for a permit for the removal or destruction of trees or shrubs as defined in this chapter, where a building permit is not immediately involved, shall be made directly to the Zoning Officer and shall contain the name of the applicant, location of the property and plot plan as aforesaid, and in addition thereto the purposes for which the application is being made. The following shall be considered legitimate purposes for the removal of a tree or shrub as defined:

- i. Harvesting timber, fire protection, industrial use, private parks, scenic improvement, hardship or danger to adjacent properties, removal of diseased or damaged trees, transplanting or removal in a growing condition to other locations, installation of utilities or drainage of surface water.

The foregoing to be carried out in accordance with an approved forest management plan, taking into consideration that certain trees will be left for scenic beauty.

A copy of the plot plan shall be filed with the Environmental Commission if the Commission is in existence at the time of the filing of the application, which shall act upon the application within 15 days of the date of receipt, and if the Commission has not acted upon the application within this period, the Zoning Officer may grant or deny a permit without further delay.

2. Standards.

- a. Prior to the issuance of a permit by the Zoning Officer, the lands covered by each application shall be viewed by the

Zoning Officer or his/her; representative who shall inspect the land as to the trees and shrubs which are the subject of the application, as well as drainage and other physical conditions existing on the property and adjacent property, and the Zoning Officer or his/her representative shall issue the permit upon a finding:

- i. That the destruction or removal to be permitted would not impair the growth and development of the remaining trees and shrubs on the property of the applicant or adjacent properties;
 - ii. Would not cause soil erosion;
 - iii. Would not impair existing drainage patterns;
 - iv. Would not lessen property values in the neighborhood;
 - v. Would not substantially impair the aesthetic values of the area.
 - b. The Zoning Officer shall have the authority to affix reasonable conditions to the granting of a permit in conformity with the purposes set forth in this chapter.
3. Protection of Trees. No soil material, permanent or temporary, shall be placed within three feet of any trees or shrubs. Where grading may be required, trees shall be walled in an extension tile to the outer crown of the tree.
4. Fees. Upon the filing of an application to the Zoning Officer, the applicant shall pay \$25 to the Township for an application fee, unless the property to be harvested qualifies as a homestead, in which case the application must be submitted but the application fee and all other fees herein will be waived. In addition, if the Zoning Officer shall issue a permit for the destruction and/or removal of trees pursuant to the terms of this chapter, an additional permit fee of \$25 shall be required. Thereafter, the following fee schedule shall be in effect:
 - a. Twenty-five dollars per acre of area harvested. For the purposes of computing such fee, fractions of one acre shall constitute one acre, if the total acreage exceeds one acre. If the total acreage is less than one acre, no additional fee, other than the \$25 application fee and \$25 permit fee, shall be required.
 - b. In the alternative of the permit fee and a fee to be imposed in accordance with the acreage to be harvested, the

applicant can submit a management plan prepared by the New Jersey Department of Environmental Protection, Division of Forestry, or a similar state or federal agency, or a management plan prepared by a person holding a Bachelor of Science Degree in Forestry from a recognized institution of higher education, in which event the permit fee of \$25 and the acreage fee, \$25 per acre, or for part of an acre, will be waived by the Zoning Officer.

- c. In addition, no permit fee or harvesting fee, other than the \$25 application fee, need be paid for harvesting dead wood if and upon the condition that written permission from the owner of the subject premises be given to the Zoning Officer and a copy of such written permission be in the possession of the wood harvester at all times that such person is harvesting the dead wood from the subject premises.
- d. Harvesting wood shall require both an application fee and a permit fee, as required in Subsection a or b of this section.

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 410-135.

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.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
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 2.5" for each tree removed
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 2.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 2.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 2.5" for each tree removed

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 shall do one of the following:
 - a. Plant replacement trees in a separate area(s) approved by the municipality.

§373-4 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 or a report from a NJ licensed tree expert as per NJ Statue 45:15C-11 or arborist:

- 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, garden centers, sanitary landfill operations licensed by the Township and State of New Jersey, surface mining operations, and engineers/surveyors engaged in professional activities;
- 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.

§373-5. Enforcement:

This ordinance shall be enforced by the Township Zoning Officer, Code Enforcement Officer, and Police Department during the course of ordinary enforcement duties.

§373-6. Violations and Penalties:

- A. Whenever a violation of the provisions of the chapter occurs, or is alleged to have occurred, any person may file a written complaint, including the Zoning Officer, with the Police Department. Such complaint stating fully in the causes and basis thereof shall be filed with the Police Department, with a copy to be filed with the Zoning Officer and served on the alleged violator by the Ocean Township Police Department. The Police Department shall properly record this complaint and ascertain whether a valid permit is in effect. In the case of a violation of this chapter, the Police Department shall immediately take action upon the complaint. Such action shall include, the investigation, the issuance of a summons and the prosecution thereof.

- B. Any person or persons who shall violate any of the provisions of this chapter shall upon conviction thereof be subject to a fine not less than \$100 and not more than \$1,000, or imprisonment in the county jail for a term not exceeding 90 days; or be required to perform community service for a period not exceeding 90 days.

§373-7. 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.

SECTION 2. This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Ocean on the 21st day of May, 2024, and will be considered for second and final passage at a meeting of the Township Committee to be held on the 18th day of June, 2024, at 6:00 PM. at the Municipal Building located at 50 Railroad Avenue, Waretown, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.


DIANE B. AMBROSIO, RMC, Clerk
Township of Ocean



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Appendix A

The approved trees in the Township of Ocean are those set forth in Section 410-135C and Section 340-28 of the Township Code.

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