

**BOROUGH OF PROSPECT PARK
COUNTY OF PASSAIC**

ORDINANCE NO. 2024-06

**ORDINANCE AMENDING THE CODE OF THE BOROUGH OF PROSPECT PARK
ADOPTING THE NJDEP MANDATED REGULATIONS FOR TREE REMOVAL AND
REPLACEMENT**

WHEREAS, the New Jersey Department of Environmental Protection (NJDEP) requires municipalities to adopt NJDEP mandated regulations for tree removal and tree replacement; and

WHEREAS, the Borough Engineer has reviewed the model ordinance provided by NJDEP and recommends its adoption; and

WHEREAS, the Mayor and Borough Council have determined that it is in the best interest of the Borough of Prospect Park to adopt the NJDEP model ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Prospect Park that the Code of the Borough of Prospect Park is hereby amended to create a Chapter entitled, "Tree Removal and Replacement" and to govern and provide for the regulations of tree removal and replacement within the Borough of Prospect Park and the enforcement thereof to state as follows:

TREE REMOVAL AND REPLACEMENT

Section I. Purpose.

An ordinance to establish requirements for tree removal and replacement in the Borough of Prospect Park 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" 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 = $6" \times 1.5' = 9'$.

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.

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:

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 the Construction Department. 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.

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	\$100.00
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$200.00
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$300.00
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	\$500.00

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.
 - b. Pay a fee of (amount to be set by municipality) per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

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, and shall include proper justification such as photos or statements from 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.
- 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 Police Department and/or the Building Code Enforcement Official of the Borough of Prospect Park 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 a fine of \$200.00.

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.

Section VIII. Effective Date.

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

Appendix A

Approved list of Replacement tree Species and Planting Standards for the Borough of Prospect Park

Tree Species Botanical Name Common Name	Planting Season	Planting Procedure (soil type, watering, pruning, staking, wrapping, exposure, depth, mulching, etc)
Cornus kousa ‘National’ Kousa National Dogwood	Spring to Fall	Under or Near Electric Utilities
Magnolia ‘Wada’s Memory’ Wada’s Memory Magnolia	Spring to Fall	Under or Near Electric Utilities And Parks
Acer Campestre Hedge Maple	Spring to Fall	Under or Near Electric Utilities
Cercis canadensis Redbud	Spring	Under or Near Electric Utilities And Parks
Liriodendron tulipifera Tulip Tree	Spring to Fall	For Parks
Quercus bicolor Swamp White Oak	Spring	For Parks
Carpinus betulus European Hornbeam	Spring to Fall	For Parks
Betula nigra River Birch	Spring	For Parks

BE IT FURTHER ORDAINED by the Mayor and Council that if any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall continue in full force and effect, and to this end, the provisions of this Ordinance are hereby declared to be severable; and

BE IT FURTHER ORDAINED by the Mayor and Council that all prior ordinances, or sections of ordinances, inconsistent with the within ordinance are hereby repealed; and

BE IT FURTHER ORDAINED this Ordinance shall take effect upon final passage and publication according to law.

Introduction and First Reading:


April 15, 2024

COUNCIL MEMBER	Motion	Second	Ayes	Nays	Abstain	Absent
Council President Ortiz	✓		✓			
Councilman Artis						✓
Councilman Daghestani			✓			
Councilman Hussain			✓			
Councilwoman Perez			✓			
Councilman Shah		✓	✓			

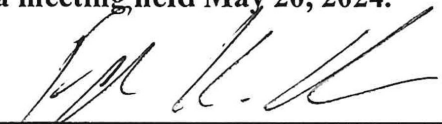
Second and Final Reading of Ordinance Adoption:

May 20, 2024

COUNCIL MEMBER	Motion	Second	Ayes	Nays	Abstain	Absent
Council President Ortiz						✓
Councilman Artis						✓
Councilman Daghestani			✓			
Councilman Hussain		✓	✓			
Councilwoman Perez						✓
Councilman Shah	✓		✓			


Mohamed Khairullah, Mayor

**This Ordinance was duly passed on second and final reading
by the Council of the Borough of Prospect Park
at a meeting held May 20, 2024.**


Fahim K. Abedrabbo, Acting Municipal Clerk