

# ADOPTED ORDINANCE CITY OF RAHWAY, NEW JERSEY

No. O-21-24

## AN ORDINANCE AMENDING CHAPTER 393 FOR TREE REMOVAL AND REPLACEMENT

**WHEREAS**, Chapter 393 for Tree Removal and Replacement establishes the requirements for tree removals and replacements within the City of Rahway; and

**WHEREAS**, the City of Rahway is amending Chapter 393 for tree removals and replacement; and

**WHEREAS**, the amendments consist of changes to the entirety of the ordinance to preserve and protect trees within the City of Rahway.

**NOW, THEREFORE**, be it ordained, by the City Council of the City of Rahway, County of Union, State of New Jersey, as follows:

Chapter 393 has been amended in its entirety to update the tree removal and replacement in order to preserve and protect the trees within the City;

Chapter 393 Sections 1-12, shall be amended to modify the following:

### Chapter 393 Tree Removal and Replacement

- § 393-1 **Purpose.**
- § 393-2 **Applicability of Provisions.**
- § 393-3 **Definitions.**
- § 393-4 **Private Trees.**
- § 393-5 **City Trees.**
- § 393-6 **Tree Replacement.**
- § 393-7 **Other Regulations with Respect to City Trees.**
- § 393-8 **Exemptions.**
- § 393-9 **Inspection and Enforcement.**
- § 393-10 **Violations and Penalties.**
- § 393-11 **Severability.**
- § 393-12 **Effective Date.**

**§ 393-1 Purpose.**

An ordinance to establish requirements for tree removal and replacement in the City of Rahway to preserve and protect trees within the City of Rahway. The City of Rahway finds that the indiscriminate and excessive cutting of trees causes increased surface runoff and soil erosion which adversely impacts the health, safety and general welfare of the inhabitants of the City of Rahway and causes increased municipal costs to control drainage within the City.

**§ 393-2 Applicability of Provisions.**

This article shall apply to all persons or corporations for any activity in the City of Rahway where tree removal is anticipated.

**§ 393-3 Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**APPLICANT**

Any "person" who applies for approval to remove trees regulated under this ordinance.

**CITY TREE**

A tree located on land owned by the city or in a right-of-way, city easement, park or parkway or within the planting strips, islands, medians, or sidewalk lines on both sides of a street.

**DIAMETER AT BREAST HEIGHT (DBH)**

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.

**DRIPLINE**

A line connecting the tips of the outermost branches of a tree projected vertically onto the ground.

**HAZARD TREE**

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, roadways, etc.); or
5. For Private Trees, the tree is determined to be a threat to public health, safety, and/or welfare by a Licensed Tree Expert (LTE).
6. For City Trees, the tree is determined to be a threat to public health, safety, and/or welfare by the Director of Public Works or the City Engineer.

**PERSON**

Any individual, partnership, corporation, agency or other entity.

**PRIVATE TREE**

Any tree other than a city tree as heretofore defined.

**TREE**

Any living 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 REMOVAL**

Shall be defined as 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.

**§ 393-4 Private Trees.**

Removal of Private Trees shall be prohibited unless the following conditions are met:

- A. A Tree Removal Application and appropriate fee are submitted to and approved by the office of the City Engineer.
- B. The quantity of Private Tree removals proposed on the Tree Removal Application does not exceed the permitted removal rate identified in the Permitted Tree Removal Table AND the requirements identified in the Tree Replacement Requirements Table will be satisfied in accordance with this ordinance.
- C. Where the removal of a Private Tree is associated with other improvements on the property, the property owner must obtain approvals from the Engineering & Land Use Department, Building Department, Planning Board, Zoning Board or from other agencies having jurisdiction. The limitations of the Permitted Tree Removal Table shall not apply for these trees. The requirements of the Tree Replacement Requirements Table shall apply for these trees.
- D. The Private Tree is determined to be a Hazard Tree by a Licensed Tree Expert (LTE). A report prepared by an LTE must be submitted to the City Engineer for review and approval. The report must include photographs of the Private Tree(s) in question and written justification for the classification of the Private Tree as a Hazard Tree in accordance with the definition for Hazard Tree. This report must be obtained by and at the cost of the property owner.
- E. Permitted Tree Removal Table

Total Property Size Range	Category 1 or 2 Tree Permitted Tree Removal (5 Year Rolling Count)	Category 3 or 4 Tree Permitted Tree Removal (10 Year Rolling Count)	Maximum Permitted Tree Removals at Any Given Time	Permit Application Fee
<1/4 Acre	1 Private Trees	1 Private Trees	1 Private Trees	\$50
1/4 Acre up to 3/4 Acre	2 Private Trees	2 Private Trees	2 Private Trees	
3/4 Acre up to 1 Acre	3 Private Trees	3 Private Trees	3 Private Trees	
> 1 Acre	4 Private Trees	4 Private Trees	4 Private Trees	
All	Hazard Tree – No Limit			No Fee (but permit required)

- (1) Rolling Count. The number of trees removed is a rolling count across a five- or ten- year period. For example, if one (1) Category 1 or 2 tree is removed in May 2024, the count is reset to zero in May 2029. However, if an additional tree is removed in May 2025, the count is two (2) trees until May 2029. After May 2029, the count will then reduce to one (1) tree until May 2030 when the count returns to zero (0).
- (2) If a combination of Category 1 or 2 and Category 3 or 4 trees are removed during the rolling count, the Maximum Permitted Tree Removal at Any Given Time requirement shall apply. For example, for a property that is 1/4 acre up to 3/4 acres, if two (2) Category 1 or 2 trees are removed in May 2024 and an application is submitted to remove one (1) Category 3 or 4 tree in May 2026, the application will be denied since the Maximum Permitted Tree Removal at Any Given Time has already been exhausted at a maximum of two (2).

**§ 393-5 City Trees.**

Removal of City Trees shall be prohibited unless the following conditions are met:

- A. The Director of Public Works or the City Engineer orders the City Tree to be removed or grants authorization for same. City Trees shall only be removed by the Department of Public Works unless authorization is provided by the Director of Public Works or the City Engineer for a third party to remove same.
- B. For City Trees, the Director of Public Works or City Engineer may direct or authorize the removal of a City Tree if they determine the following:
  - (1) Such removal is necessary for the construction of any municipal or public improvement or where such tree is causing damage to City property, right-of-way, or adjacent private property; or
  - (2) The Director of Public Works or the City Engineer determine that such removal is necessary to permit the construction of a driveway or other improvement on private property for which appropriate land use, building and/or engineering approvals have been obtained by the property owner. The removed tree(s) shall be replaced per § 393-6 Tree Replacement. The private property owner benefiting from the removal shall be responsible for the removal and replacement of same.

(3) The City Tree is determined by the Director of Public Works or the City Engineer to be a Hazard Tree.

**§ 393-6 Tree Replacement.**

A. Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria
1	DBH of 2.5" (for City Trees) or 6" (for Private Trees) to 12.99"	Replant 2 tree with a minimum tree caliper of 1.5" for each tree removed
2	DBH of 13" to 22.99" for any tree	Replant 3 trees with minimum tree caliper of 1.5" for each tree removed
3	DBH of 23" to 32.99" for any tree	Replant 4 trees with minimum tree caliper of 1.5" for each tree removed
4	DBH of 33" or greater for any tree	Replant 5 trees with minimum tree caliper of 1.5" for each tree removed

B. Replacement Alternatives:

- (1) If the Director of Public Works or City Engineer 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 Director of Public Works or City Engineer.
  - b. Pay a fee of \$250.00 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

**§ 393-7 Other Regulations with Respect to City Trees.**

A. It shall be unlawful to commit any of the following acts with respect to City Trees without the prior written permission of the Director of Public Works or City Engineer:

- (1) Cut, prune, break, injure, alter or remove any City tree; or cut, unduly disturb or interfere in any way with any root of a City Tree(s).
- (2) Spray any City Tree(s) with any chemical.
- (3) Fasten any rope, wire, sign or other device to a City Tree(s) or to any guard about such a City Tree(s).
- (4) Install, remove or injure any guard or device placed to protect any City Tree(s).
- (5) Close or obstruct any open spaces provided about the base of a City Tree(s) to permit the access of air, water and fertilizer to the roots of such City Tree(s).
- (6) Cut any City Tree root(s) within 10 feet of any trunk or any roots four inches in diameter.
- (7) Subsection A. (1) through (6) of this section shall not apply to any public utility or cable company having or maintaining any electric, telephone, telegraph or other

wire above a public street or right-of-way, except that in all nonemergent circumstances, said public utility or cable operator shall notify the Director of Public Works and the City Engineer of its intention to perform any of the acts set forth in Subsection A. (1) through (6) hereof. The Director of Public Works or City Engineer shall grant such written permission if the activity for which such permission is requested is in the public interest and is not likely to injure any City Tree(s).

(8) Any and every person having or maintaining any electric, telephone, telegraph, or other wires or lines running through a public street or park shall securely fasten and maintain such wires and lines in such a manner as will safeguard City Tree(s) against any damage therefrom and shall make periodic adjustments whenever necessary to prevent damage to City Tree(s).

(9) When necessary to prune or remove any City Tree(s) along a public street, the Director of Public Works shall notify any utility or cable company maintaining lines along said public streets.

B. The Director of Public Works or City Engineer may waive in whole or in part any such provisions of this section but only to the extent determined to be absolutely necessary to alleviate an undue hardship.

#### **§ 393-8 Exemptions.**

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below.

- A. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
- B. 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;
- C. 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;
- 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;

#### **§ 393-9 Inspection and Enforcement.**

- A. Inspections shall be performed by the Department of Public Works or the Department of Engineering and Land Use.
- B. Enforcement of the provisions of this ordinance shall be performed by the Department of Engineering and Land Use during the course of ordinary enforcement duties.



§ 393-10 **Violations and penalties.**

Any person violating any of the provisions of this ordinance shall be subject to a fine of not more than \$1,000 per removed, damaged or impacted tree or to imprisonment in the county jail for a period not exceeding 90 days, or both, at the discretion of the Municipal Judge.

§ 393-11 **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.

§ 393-12 **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.

**MOTION:** Parson                    **SECOND:** Entire Council

**YES:** Councilmembers Brooks, Brown, Gibilisco,  
Miles, Mojica, Newbury, Parker, Timmons,  
Parson


**NO:** None

**ABSTAIN:** None

**ABSENT:** None

**INTRODUCTION:** June 10, 2024

**ADOPTION:** July 8, 2024



Vannie D. Parson, Council President



APPROVAL Raymond A. Giacobbe, Mayor



ATTEST Heather Capone, City Clerk