

ORDINANCE 2024-06

AN ORDINANCE OF THE BOROUGH OF SEASIDE PARK, COUNTY OF OCEAN AND STATE OF NEW JERSEY AMENDING CHAPTER 200 OF CODE OF THE BOROUGH OF SEASIDE PARK, ENTITLED "DEVELOPMENT REGULATIONS" SO AS TO CREATE NEW SECTION 200-56.1 TO BE TITLED "TREE REMOVAL AND REPLACEMENT"

WHEREAS, pursuant to N.J.S.A. 40:48-1 et seq., the governing body of every municipality may make, amend, repeal and enforce such ordinances, regulations, rules and by-laws not contrary to the laws of this state or the United States, as it may deem necessary and proper for the good government, order and protections of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by law; and

WHEREAS, the Borough of Seaside Park is a body politic and corporate in law pursuant to N.J.S.A. 40A:60-1 et seq.; and

WHEREAS, pursuant to N.J.S.A. 40:55D-62, the Governing Body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon, and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements; provided that the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance; and

WHEREAS, the Governing Body is desirous of amending its land use and development regulations to amend certain design and performance standards, in the Borough of Seaside Park, to establish requirements for tree removal and replacement within the Borough of Seaside Park to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public, health, safety and welfare; and

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Seaside Park, County of Ocean, State of New Jersey:

SECTION I.

A. The Borough Code of Seaside Park, shall be amended and supplemented to as to create new Chapter 200 titled "Tree Removal and Replacement", which shall read as follows:

§ 200-56.1(I). Purpose.

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

§ 200-56.1(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 adjacent to 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 anywhere in the verge) 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.

§ 200-56.1(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 Borough Zoning Officer, together with prepayment of an application fee of ten (\$10.00) dollars per tree. No tree shall be removed until municipal officials have reviewed and approved the removal.
2. An application for tree removal shall consist of:

- a. The name, address, phone number and email address of the owner of the premises;
 - b. The name, address, phone number and email address of the applicant for the permit, if other than the owner, accompanied by the owner's consent to said application;
 - c. A description by street address, lot and block number of the premises for which the permit is sought;
 - d. A brief statement describing the reason for the requested tree removal.
 - e. A sketch or tree survey accurately depicting the location and dimensions of the property in question and showing the location of the trees in question and setting forth the lot and block number. The existing vegetation shall also be shown.
3. The tree(s) to be removed must be flagged and identified by the applicant prior to the field visit by Zoning Officer or his designee.
 4. Within ten business days of receipt of the completed application package, Zoning Officer or his designee shall:
 - a. Visit and inspect the location of the application;
 - b. Meet with the applicant to discuss the application as necessary;
 5. Within 20 business days of the date of the application the Zoning Officer shall evaluate the requested permit in accordance with but not limited to the following considerations and issue a decision on the request:
 - a. Whether the condition or continued presence of the tree or trees sought to be removed is likely to cause hardship or will endanger the public or any other adjoining property owner by reason of its being diseased or dead or for some other adequate reason within the intent of this ordinance. If there is a difficulty in making a determination, a licensed tree expert may be consulted.
 - b. Proximity to existing or proposed structures and interference with utility services.
 - c. Comments provided by any interested parties.
 6. After visiting the site and considering the relevant conditions of the foregoing section, the Zoning Officer shall grant or deny the application by setting forth in writing his or her relevant observations and the reasons for the issuance or refusal to issue the tree removal permit. Failure to issue a decision within 30 days will result in the permit being automatically approved.

7. Any permit issued pursuant to this section may be issued with conditions, specifically tree replacement of trees removed trees pursuant to Subsection 200-56.1(III)(B) below. Failure to comply with the conditions of the permit will be a violation of this section.
8. A permit shall expire and shall no longer be valid 12 months after the date said permit was first granted.
9. The applicant shall prominently display on the site the permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work done as authorized on the permit and for ten days thereafter.

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) 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.
3. The species type and diversity of replacement trees shall be in accordance with Appendix A of this ordinance that shall not be used as replacement trees.
4. Replacement tree(s) shall:
 - (a) 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;
 - (b) 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;
 - (c) 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
 - (d) Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

5. Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria	Application Fee
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		(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 1.5" for each tree removed	\$10
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$10
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$10
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	\$10

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 \$10 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

§ 200-56.1(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 may include an informed third party opinion on the tree removal by a licensed tree expert at the applicant's expense:

- 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, 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.

§ 200-56.1(V). Enforcement.

This ordinance shall be enforced by the Borough Zoning Officer or his designee during the course of ordinary enforcement duties.

§ 200-56.1(VI). Violations and Penalties.

Any person who violates any one or more of the provisions of this section, shall be subject to a fine as set forth in Section 200-19 of these Ordinances, which fine shall not be less than the amount of the required replacement tree(s) and cost of planting. Any person who cuts down a tree without a permit shall be responsible for replacing that tree as required by Subsection 200-56.1(III)(B). The planting of additional trees in lieu of a fine may be permitted on recommendation of the Zoning Officer.

SECTION II.

All ordinances or parts thereof, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of their inconsistencies.

SECTION III.

In the event any section, part or provision of this Ordinance shall be held unconstitutional or invalid by any Court, such holding shall not affect the validity of this Ordinance or any remaining part of this Ordinance other than the part held unconstitutional or invalid.

SECTION IV.

This ordinance shall take effect upon its passage and publication and filing with the Ocean County Planning Board, and as otherwise provided for by law. However, subsequent to first reading, this ordinance must be referred to the Borough Planning Board for review, which shall be based on whether the proposal is substantially consistent with the Master Plan. The Planning Board has a period of thirty-five (35) days after referral to report on the proposed ordinance.



Approved this ___ day of _____, 2024:
Borough of Seaside Park
Honorable John A. Peterson Jr., Mayor

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and approved on first reading at the regular meeting of the Governing Body of the Borough of Seaside Park, in the County of Ocean, held on the 21st day of March, 2024 and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the 18th day of April, 2024 at 7:00 p.m. in the Council Chambers, located at 6th & Central Avenues, Seaside Park, New Jersey, at which time and place any person desiring to be heard will be given an opportunity to be so heard.



Jenna Jankowski, RMC
Municipal Clerk, Borough of Seaside Park

APPENDIX A

List of tree species that shall not be used as replacement trees.

Tree Species
Bamboo - The plant species commonly known as bamboo and shall include both running (monopodial) bamboo and clumping (sympodial) bamboo.