

Ordinance 1293
Tree Removal & Replacement

Chapter 30-66.1 Tree Removal-Replacement

Trees play a critical, often overlooked, role in the water cycle and in the mitigation of stormwater runoff issues such as soil erosion, pollutant reduction, infiltration, quantity reduction, and thermal effects. This ordinance is intended to ensure that permittees are considering these undervalued assets in their stormwater management efforts.

The 2023 Tier A MS4 permit renewal requires permittees to, at a minimum, adopt and enforce a community-wide ordinance to control tree removal and replacement for all types of properties where the municipality has jurisdiction. This model ordinance, developed by the Department, can be used by each municipality for consideration in reviewing and/or updating their existing tree ordinance, or adopting a new tree ordinance. This model may also be modified by the municipality to meet the needs of their community.

SECTION 30-66.2 Purpose:

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

SECTION 30-66.2.1 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 1/2 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.

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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.

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.

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SECTION 30-66.2.2 Establishment of Conservation Officer:

There shall be appointed and designated, an official whose formal title shall be that of Conservation Officer or designee of the Borough of Deal. This official shall be charged with the inspection of sites upon which there is an application for site plan approval in regard to the provisions of this section, and with the inspection and enforcement of the tree removal and protection requirements of this section.

SECTION 30-66.3.1 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 Conservation Officer. No tree shall be removed until the Conservation Officer has reviewed and approved the removal.

For any clearing greater than (3) three acres, a representative five (5%) percent of the wooded areas proposed to be cleared shall be inventoried. The representative five (5%) percent shall be determined by agreement between the Conservation Officer and the Applicant. Where less than (3) acres is proposed to be cleared, all trees to be removed shall be inventoried.

2. Upon application for a tree removal permit, the Applicant shall be charged the following fees:
 - a. See Replacement Requirement Table.

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 30-66.4, shall be subject to the requirements of the Tree Replacement Requirements Table.
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 30-66.4, 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.

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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)	Tree Replacement Fee if not Replaced	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	\$240.00	\$155.00
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$660.00	\$155.00
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$2,440.00	\$275.00
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	\$3,680.00	\$275.00

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 Tree Replacement Requirement Table per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

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SECTION 30-66.4. 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. Proper justification shall include 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 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.

SECTION 30-66.5 Enforcement:

This ordinance shall be enforced by the Police Department and/or the Conservation Officer of the Borough of Deal during the course of ordinary enforcement duties.

SECTION 30-66.6 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 the amount per tree to be established by municipality but shall not be less than the amount of the required replacement tree(s) and cost of planting.

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SECTION 30-66.7 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 30-66.8 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.

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Board of Commissioners on first reading at a special meeting of the Board of Commissioners of the Borough of Deal held on the 5th day of September, 2024 and will be considered for second reading and final passage at a regular meeting of the Board of Commissioners to be held on the 7th day of October, 2024 at 9:00 am in the Court Room of Borough Hall, 190 Norwood Avenue, Deal, 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.

INTRODUCED: September 5, 2024

ADOPTED: October 7, 2024

ATTEST:

Ronen Neuman Acting Clerk

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Appendix A

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

Residents and contractors shall select tree species by utilizing the NJ Shade Tree Federation Publication “Trees for New Jersey’s Streets” and the “Street Trees Factsheets”.