

**BOROUGH OF PENNINGTON
ORDINANCE 2024-5**

**AN ORDINANCE REGULATING REMOVAL OF
TREES ON PRIVATE PROPERTY AND
AMENDING THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, trees play a critical often overlooked role in the water cycle and in the mitigation of storm water runoff issues such as soil erosion, pollutant reduction, infiltration, quantity reduction, and thermal effects;

WHEREAS, the New Jersey Department of Environmental Protection, as part of the 2023 Tier A MS 4 permit renewal process, requires permittees to adopt and enforce a community-wide ordinance to control tree removal and replacement on all types of properties where the municipality has jurisdiction;

WHEREAS, the within ordinance is based on the model ordinance promulgated by NJDEP;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that the Code of the Borough of Pennington, is hereby amended by the insertion of a new Chapter 197 concerning Tree Removal and Replacement, which shall read as follows:.

SECTION I. Purpose.

The purpose of this ordinance is to establish requirements for tree removal and replacement on private property in the Borough of Pennington.

This ordinance shall be construed in conjunction with Article I of Chapter 13 of the Borough Code, which establishes a Shade Tree Committee and provides standards and procedures affecting the planting, care and removal of shade and ornamental trees and shrubbery upon and in the streets, highways, public rights-of-way and public property of the Borough.

This ordinance incorporates by reference the Community Forestry Management Plan of the Borough, as approved by the New Jersey Department of Environmental Protection, Division of Parks and Forestry, New Jersey Forestry Service.

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. "Approving Authority" means the official or agency of the Borough responsible for review and approval of applications for building permits and land-use applications.
- B. "Diameter at Breast Height" or "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 4½ foot height, the DBH shall be measured at the highest point before any division.
- C. "Department" means the Borough Department of Public Works.
- 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 as determined by a Licensed Tree Expert;
 - 2. Is dead or dying as determined by a Licensed Tree Expert;
 - 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 Licensed Tree Expert, or is otherwise subject to removal in accordance with Section 13-5C and 13-6D of the Borough Code.

- E. “Licensed Tree Expert ” means a person licensed to provide tree expert services in New Jersey pursuant to N.J.S.A. 45:15C-11, et seq.
- F. “Person” means any individual, resident, corporation, utility company, partnership, firm or association owning or residing on property where a tree regulated by this ordinance is removed or proposed to be removed. Person also includes any contractor hired by the individual or entity owning or residing on the property.
- G. “Tree” means a woody perennial plant, typically having a single stem or trunk bearing lateral branches a distance from the ground.
- H. “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.

SECTION III. Regulated Activities.

A. Regulated Tree Removals.

- 1. No Person shall remove or cause or permit the removal of any tree having a DBH of 6 inches or more unless the removal has been registered with the Department of Public Works in accordance with this ordinance. Replacement of removed trees shall be required unless the removal is exempt from replacement under Section IV of this ordinance.
- 2. Any planned removal of a tree in connection with construction or other development of land requiring a building permit, site plan, subdivision or other land use application must also be approved by the approving authority and registered with the Department of Public Works as part of a tree removal and replacement plan compliant with this ordinance.

B. Tree Replacement Requirements

- 1. Any person who removes one or more trees with a DBH of six inches (6”) or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.
- 2. The species, type and diversity of replacement trees shall be in accordance with Appendix A and as otherwise required by this ordinance. Deviation from requirements governing species, types and diversity of replacement trees shall require prior written approval of the Department of Public Works.
- 3. Replacement tree(s) shall:
 - a. Be replaced in kind with a tree that has an equal or greater DBH than the 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 Department of Public Works.
 - c. Be monitored by the owner or resident as applicable for a period of two (2) years to ensure the tree(s) 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 toward tree replacement requirements.

4. Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	
1	DBH of 6” to 12.99”	Replant 1 tree with a minimum tree caliper of 1.5” for each tree removed	
2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 1.5” for each tree removed	
3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 1.5” for each tree removed	
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 1.5” for each tree removed	

C. Replacement Alternatives.

If the Department or Approving Authority determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the

owner or resident as applicable shall plant replacement trees in separate area(s) approved by the Department or Approving Authority.

SECTION IV. Exemptions.

All Persons shall comply with the tree registration and replacement standards outlined above except the following tree removals shall be exempt from requirements pertaining to replacements:

- A. Removal of trees in categories 1, 2 and 3 in the Tree Replacement Table on properties that within a five-year period have had fewer than a rolling count of four (4) such trees removed per acre, prorated in accordance with acreage. In maintaining the rolling count, for example, if 3 trees from category 1 are removed in July 2023 and there are no further tree removals in the next five years, the count resets to zero in July 2028. However, if one tree from category 1 is removed in July 2023 and another in July 2025, the first tree will come off the count in July 2028 and the second in July 2030. Replacement requirements shall apply beginning with the first tree over the exempt maximum for the property.
- B. Removal of trees on tree farms in active operation, nurseries, fruit orchards, and garden centers, with respect to activity on those properties only. . .
- C. Removal of trees on properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the Borough.
- D. Removal of trees 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. Removal of trees 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. Removal of trees in accordance with approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.
- G. Removal of Hazard Trees.

SECTION V. Enforcement.

This ordinance shall be enforced by the Borough of Pennington Police Department.

SECTION VI. Violations and Penalties.

Any person(s) found to be in violation of this ordinance, upon conviction thereof, shall be subject to a fine not exceeding \$1,000. Such person also shall be required to pay for the costs of acquiring and planting replacement trees as necessary to comply with applicable specifications and requirements. These costs may be charged to the property owner as appropriate pursuant to Section 13-6F of the Borough Code.

SECTION VII. Severability.

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be independent, such that a finding or holding that any such portion of the Ordinance is 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 upon adoption and publication as required by law.

Introduced: March 4, 2024

Advertised: _____

Public Hearing: _____

Adopted: _____

Published: _____

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

James Davy, Mayor

Appendix A

Approved list of Replacement Tree Species and Planting Standards for Pennington Borough

Tree Species	Planting Season	Planting Procedure (soil type, watering, pruning, staking, wrapping, exposure, depth, mulching, etc)
ELM		
MAPLE		
OAK		
FLOWERING CHERRY		
FLOWERING DOGWOOD		
RED BUD		

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RECORD OF COUNCIL VOTE ON INTRODUCTION

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante		X		
Chandler	M				Stern	S			
Gnatt				absent	Valenza	X			
Mayor Davy	X								

Mayor Davy voted to break the tie vote.

RECORD OF COUNCIL VOTE ON ADOPTION

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone					Marciante				
Chandler					Stern				
Gnatt					Valenza				