

ORDINANCE 2347-24

AN ORDINANCE TO REPEAL AND REPLACE IN ITS ENTIRETY CHAPTER 488 OF THE CODE OF THE BOROUGH OF HAWTHORNE, TREE REMOVAL

BE IT ORDAINED by the Governing Body of the Borough of Hawthorne, New Jersey that it does hereby amend and supplement the Code of the Borough of Hawthorne as follows:

SECTION 1. Chapter 488 Tree Removal, is hereby repealed and replaced in its entirety with the newly adopted Ordinance to read as follows:

Chapter 488 TREE REMOVAL

§ 488-1. Findings. 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.

§488-2. 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" mean 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 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 as determined by a certified arborist or Licensed Tree Expert (LTE), or in the case of Street Trees, by the Arborist or other designee of the Shade Tree Commission of the Borough of Hawthorne. 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 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.

§ 488-3. Regulated Activities:

1. Any person requesting permission to remove a street tree, as defined as constituting Tree removal, shall make application to the Shade Tree Commission of the Borough of Hawthorne for approval to make such removal and shall take no action regarding such street tree absent issuance of a permit issued by the Shade Tree Commission or its designee. No such street tree shall be removed unless the Shade Tree Commission has granted approval for the same. The Commission shall not be required to grant approval and may, in its sound discretion, deny the same based upon its review of the request and following input from its Arborist.
2. Any person planning on removing a non-street tree with DBH of 6” or more on their property shall submit a Tree Removal Application to the Construction Code Official. No person shall remove a non-street tree with DBH of 6” or more until such time as municipal officials have reviewed and approved the Removal Application. which again may be denied based upon the exercise of sound discretion by the municipal official.

3. In the event the Construction Official or other municipal officer determines that review of an application for tree removal requires review by the Municipal Engineer, the same may be referred for such purpose with the cost thereof to be borne by the applicant. Any project involving Site Plan Review, Subdivision Review or where there is large scale clearing involving the removal of 5 or more street trees or non-street trees shall, in addition to any requirements set forth in any applicable Zoning and Land Use Development, comply with the terms of this section and shall submit as part of any application for development a tree survey identifying the number, sizes, and species of all trees scheduled to be removed.
4. Any person who receives approval and 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.
5. Any person, who removes one or more trees on private property, 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. For lots containing less than one acre of land, removal of any tree with a DBH of 6” or more shall require compliance with the Tree Replacement Requirements Table.
6. The species type and diversity of replacement trees shall be in accordance with Appendix A. 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.

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	\$10

2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 2” for each tree removed	\$20
3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 2.5” for each tree removed	\$25
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 3.0” for each tree removed	\$25

7. Replacement Alternatives:

In the event it is determined by the municipal official 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 based upon the value most recently set by way of tree planting contract award as determined by the Borough Administrator or his designee per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

§ 488-4. 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 such as photographs or a statement from a certified arborist of LTE.

1. Residents who remove less than four (4) trees per acre, or one (1) tree per year for lots of less than one acre, that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a five-year period.
2. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
3. 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;
4. 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.
5. 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;
6. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;

7. Hazard trees may be removed with no fee or replacement requirement.

§488-5. Enforcement:

This ordinance shall be enforced by the Construction Code Official of the Borough of Hawthorne or his designee during the course of ordinary enforcement duties.

§488-6. 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 up to \$2,500 plus the cost of tree replacement in accordance with this ordinance. The planting of one or more replacement trees, in accordance with this Ordinance, may be ordered in lieu of or in addition to any other penalty imposed by the Court.

SECTION 2. 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 3. Effective Date:

Section 3. This Ordinance shall take effect twenty (20) days after final adoption and publication as provided by law.

Frank E. Matthews, Council President

Attest: Lori Fernandez, RMC, CMC

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, held on August 14, 2024. It will be further considered for final passage after public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 445 Lafayette Avenue, in said Borough on September 4, 2024 at 7:00 p.m., at which time and place all interested members of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Borough of Hawthorne website, www.hawthornenj.org and through the Clerk's Office in said Municipal Building at no cost to the members of the general public who shall request the same.

Lori Fernandez, RMC, CMC, Borough Clerk

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HAWTHORNE AT A REGULAR MEETING ON SEPTEMBER 4, 2024.