

ORDINANCE NO. 1174

Tree Removal-Replacement Ordinance

SECTION I. Purpose:

An ordinance to establish requirements for tree removal and replacement and penalties for noncompliance in **the Borough of Barrington** to protect the environment, public health, safety and welfare.

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. "Applicant" means any "person", as defined below, who applies for approval to remove trees regulated under this ordinance.
- B. "Diameter at Breast Height (DBH)" means the diameter of the trunk of a tree generally measured at a point four and a half feet above ground level from the downhill side of the tree.
- C. "Tree of Significance" means any tree that is recognized by the municipal governing body or local historical organization(s) as being of significance due to its size, unique value, age, rarity, or the aesthetic, botanical, ecological, and historical value.
- D. "Homeowner" means a person(s) who owns a residence.
- E. "Nuisance tree" means any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; is causing obvious damage to structures (such as building foundations, sidewalks, etc); or threatens public health, safety, and welfare.
- F. "Person" means any individual, corporation, company, partnership, firm, association, political subdivision of this State and any state, interstate or Federal agency.
- G. "Planting strip" means the part of a street right-of-way between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.
- H. "Street Tree" means a tree planted in the sidewalk or a planting strip in the public right-of-way.
- 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 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, and improper grading and/or soil compaction 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 tree treatments intended to manage invasive species.

SECTION III. Regulated Activities:

A. Optional Application Process:

1. Any person planning to remove a street tree 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 *[Municipal Officials]*. ***No tree shall be removed until municipal officials have reviewed and approved the removal.***

[The municipality may choose to impose application fees. If so, the following language may be used, with revisions as deemed appropriate.]

[Optional for municipalities: Applicants will be subject to an application fee as per Table 1 below.]

B. Tree Replacement Requirements

1. Within a five-year period, 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. For applicants, other than "Homeowners":
Within a five-year period, any person, other than a homeowner, 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 below.
3. For Homeowner applicants:
Within a five-year period, any person that removes more than three (3) trees per acre that fall into categories 1, 2, or 3, combined, or anyone (1) tree in categories 4 or 5 in the Tree Replacement Requirements table below, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.

The species type and diversity of replacement trees shall be in accordance with (*insert municipality provided tree list*). *[The municipality shall provide a list of approved trees that are acceptable to be planted as replacement trees, or at a minimum develop a list of trees that shall not be used as replacement trees. It is permissible for a municipality to include a procedure for approval of a tree not on the approved list.]*

Replacement tree(s) shall meet the Required Actions in Table below and shall be planted within twelve (12) months of the date of removal of the original tree(s). Replacement tree(s) shall 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. Trees planted in temporary containers or pots do not count towards tree replacement requirements.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Required Action	Application Fee <i>[Municipality may choose to include and determine appropriate fees.]</i>
1	DBH of 2.5" (for street trees) or 6" (for other trees) to 12.99"	Replant 1 tree in accordance with Appendix A, with a minimum DBH of 1.5" for each tree removed	<i>TBD by town</i>
2	DBH of 13" to 22.99"	Replant 2 trees in accordance with Appendix A, with minimum DBHs of 1.5" for each tree removed	<i>TBD by town</i>
3	DBH of 23" to 32.99"	Replant 3 trees with minimum DBHs of 1.5" for each tree removed	<i>TBD by town</i>
4	DBH of 33" or greater	Replant 4 trees with minimum DBHs of 1.5" for each tree removed	<i>TBD by town</i>
5	Tree of Significance*	Replant 5 trees with minimum DBHs of 1.5" for each tree removed	<i>TBD by town</i>

*Tree of Significance removals shall be approved by the **Governing Body**.

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 (amount to be set by municipality) per tree removed. This fee shall be placed into a fund dedicated to tree planting.

SECTION IV. Exemptions:

All persons shall comply with the tree replacement standard outlined above, except in the following cases. Proper justification shall be provided, in writing, to the municipality by all persons claiming an exemption [the municipality shall define what "proper justification" is such as photos, statements from licensed tree expert or arborist]:

- A. Clearing, cutting, and/or removal of trees which is necessary to service, maintain, or ensure the continued safe use of a lawfully existing structure, right- of-way, field, park, and/or garden.
- 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;

- 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;
- F. Nuisance trees may be removed with no fee or replacement requirement.

SECTION V. Enforcement:

This ordinance shall be enforced by the *[Police Department and/or other Municipal Officials of insert name of municipality]* during the course of ordinary enforcement duties.

SECTION VI. 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 \$ [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] [Municipalities may require the planting of additional trees in lieu of a fine]. The removal of a tree of significance is not subject to a fine limit.

SECTION VII. 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 VIII. 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.

BOROUGH OF BARRINGTON

Date of introduction: June 13, 2023

Date of adoption:

By: _____
Patti Harris, Mayor

Attest: _____
Terry Shannon, Borough Clerk