

Ordinance

No. 13-2023

AN ORDINANCE ESTABLISHING REQUIREMENTS FOR TREE REMOVAL AND REPLACEMENT AND PENALTIES FOR NON-COMPLIANCE IN THE BOROUGH OF WESTVILLE TO PROTECT THE ENVIRONMENT, PUBLIC HEALTH, SAFETY AND WELFARE

SECTION I: Purpose

This ordinance establishes requirements for tree removal and replacement and penalties for non-compliance in the Borough of Westville 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" 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. "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.

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- 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. 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 Street 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 street tree(s) with a DBH of 6” or more per acre, unless exempt under Section IV, shall be subject to the requirements of the Street Tree Replacement Requirements Table below.
3. For Homeowner applicants:
Within a five-year period, any person that removes more than three (3) street trees per acre that fall into categories 1, 2, or 3, combined, or anyone (1) street tree in categories 4 or 5 in the Street Tree Replacement Requirements table below, unless exempt under Section IV, shall be subject to the requirements of the Street Tree Replacement Requirements Table below.

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 street 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.

Street Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Required Action
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
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

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3	DBH of 23" to 32.99"	Replant 3 trees with minimum DBHs of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum DBHs of 1.5" for each tree removed
5	Tree Significance*	Replant 5 trees with minimum DBHs of 1.5" for each tree removed

*Tree of Significance, removals shall be approved by the *Borough of Westville*

B. 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.

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.

- 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 Borough of Westville Police and Public Works Department during the course of ordinary enforcement duties.

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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. 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.

Introduced: June 26, 2023

Adopted:

BOROUGH OF WESTVILLE

**Fritz H. Sims, Jr.
MAYOR**

ATTEST:

**Kathleen Carroll
DEPUTY MUNICIPAL CLERK**