

**BOROUGH OF OAKLAND
BERGEN COUNTY, NEW JERSEY
ORDINANCE 22-CODE-883**

**AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 19 TREE REMOVAL AND
PROTECTION**

19-1 TITLE.

This Chapter shall be known as the "Tree Removal, Protection and Replacement Ordinance of the Borough of Oakland."

19-2 FINDINGS AND PURPOSE.

The Borough Council of the Borough of Oakland finds that the preservation, maintenance, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces storm water runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; provides protection against severe weather; mitigates the urban heat island effect; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; protects and increases property values; preserves and enhances the Borough's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare.

19-3 DEFINITIONS.

The following definitions shall apply to this Chapter:

Applicant shall mean the individual or entity filing for a tree removal permit.

Deforestation shall mean N.J.S.A. 13:1L-14.2 as any clearing of a wooded areas greater than 5,000 square feet.

Footprint shall mean the square area of ground surface covered by a structure. For these purposes the footprint also includes: walkways, driveways, parking areas, and any other aesthetic concerns of the Planning Board, Zoning Board or the Shade Tree Commission of the Borough of Oakland.

Landmark Tree. The Shade Tree Commission shall determine whether a Borough tree qualifies as a "Landmark Tree." A tree may qualify as landmark if it meets one (1) or more of the following criteria:

- a. If the species is rare, as determined by the Commission, then procedures found in N.J.A.C. 7:5C-1.1, et seq. shall be implemented.
- b. The tree is more than eighty (80) years of age.
- c. The tree is of extraordinary height, has an unusual trunk diameter or drip line for a tree of its species, or has extraordinary foliage.

- d. The tree has historic significance, shade value, fragrance, erosion control, functions, or significant aesthetics.
- e. Features or scenic enhancement of such a tree is of special importance to the Borough.

All Borough trees that are designated as Landmark Trees shall be shown on the official Landmark Tree Register managed and maintained by the Shade Tree Commission with a duplicate copy on file with the Building Department, Planning Board and Zoning Board.

Ornamental tree shall mean a small tree species of at least (6') feet but not typically exceeding twenty-five (25) feet at a mature height (e.g., Kousa Dogwood, Japanese maple, cherry, crabapple, magnolia).

Owner shall mean owner as defined in §1-2 of the Code.

Source documentation shall mean trees for New Jersey Streets published by the New Jersey Shade Tree Federation and in accordance with the recommended planting specification standards established by the American Association of Nurserymen. Diversity in species composition shall be required to reduce the risk of widespread loss of trees to a single insect or disease infestation.

Structure shall mean a combination of materials to form a construction for use or ornamentation installed on a parcel of land.

Tree shall mean a deciduous or evergreen tree with an anticipated mature height of twenty-five (25) feet or more.

Tree drip line shall mean a line where rainwater drips off the leaf foliage onto the ground. The drip line is a circle found at the extreme point of foliage from the trunk of the tree.

19-4 SAFETY PERMIT REQUIRED.

For safety reasons no person shall cut down or remove any Landmark Tree, Ornamental tree or any tree of a diameter of six (6") inches measured at a DBH (Diameter at Breast Height) which is four and one-half (4-1/2') feet above the ground without first obtaining a tree removal permit as required by Section 19-5 of this Chapter.

To determine the circumference of a tree when it is on a slope, the DBH shall be made from the lowest point of the hillside angle upon which the tree is located.

Any firm involved with tree removal or tree trimming shall have a valid Licensed Tree Care Operation ("LTCO") license issued by the State of New Jersey.

19-5 REQUIREMENT FOR PERMIT; EXCEPTIONS.

Except as provided for herein, no person, firm or corporation shall cut, remove, injure or damage any tree as defined in Section 19-4 3 upon any property within the Borough of Oakland.

An applicant must first obtain a permit in accordance with the regulations and provisions of this Chapter. Excepted from this Chapter shall be:

- a. All land-clearing operations shall be authorized in accordance with a final site plan approval, or subdivision approval. Applicable conditions shall be imposed with respect to tree

removal and planting, being granted by the Borough of Oakland Planning Board, Zoning Board of Adjustment and in cooperation with the Shade Tree Commission. Under no circumstances shall deforestation be permitted on any property except in accordance with a reforestation plan and approved by appropriate land use agency pursuant to the Municipal Land Use Law.

If an incident of deforestation occurs a reforestation plan shall be developed and a Tree Replacement Factor (TRF) shall be based upon accepted forestry research and practices.

- b. Trees located on a commercial nursery or orchard.
- c. Any tree cut or removed for purposes of logging or tree farming in accordance with a management plan of the New Jersey Department of Environmental Protection, shall be reviewed and approved by the Planning Board and Zoning Board of Adjustment in cooperation with the Shade Tree Commission. The management plan shall be kept on file and recorded in the office of the Borough Clerk.
- d. The cutting, pruning or trimming of trees in a manner which is not harmful to the health of the tree. The applicable standards are the ANSI-A300 Primary Standards and standards provided by the New Jersey Tree Federation. All State-licensed tree removal companies, or property owners, performing the cutting, pruning or trimming of trees in the Borough shall be required to provide the Oakland Shade Tree Commission of the Borough of Oakland a minimum of ten (10) days' notice prior to any work being performed. If a utility company, the utility company shall be required to provide notice in accordance with applicable statute and regulations.
- e. The cutting, removal or destruction of a tree as necessary to construct or protect any structure pursuant to an order of or directive of any court, municipal, County, or State agency.
- f. Activities involving trees within cutouts in the paved area of the public highways, public right-of-way or publicly owned properties. The Shade Tree Commission shall review and approve the trees that are to be removed in the public right-of-way, public highway or publicly owned properties in areas that are not to be paved.

19-6 UTILITY COMPANIES, TREE MAINTENANCE AND TREE CARE.

- a. *Utility Companies.* Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication, or cable television services upon any lands in which it has acquired an easement or right-of-way, shall not be subject to any penalty imposed by this chapter. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions.
- b. *Tree Maintenance.* A property owner shall be required to provide for the maintenance of trees extending over the Borough right-of-way within thirty (30) days' notice to the property owner. If the property owner fails to perform maintenance, then the DPW is authorized to perform maintenance and assess the cost thereof to the property owner.
- c. *Tree Care.* The Borough, or its designee, can perform maintenance to prune, maintain etc. trees within right-of-way lines for streets, public grounds, etc.

19-7 APPLICATION PROCEDURE.

a. Application for a tree removal permit shall be made by submission of the following:

1. An application form provided by the Borough containing the following information: the name and address of the applicant; their e-mail address and phone number, the street address of the property in question and the number of tree(s) to be removed.

2. The reason(s) for removing the trees.

3. Any tree removal application, with an approved Planning Board site plan or subdivision, shall post a guaranty equal to one hundred twenty (120%) percent of the estimate to plant or replace same. The guaranty is applicable where the project is for new development or construction or where the Shade Tree Commission deems it is appropriate to do so.

4. A tree removal application shall include a tree removal plan with a diagram showing the location of all trees to be removed, the species of such trees, their diameter, the drip line of the trees to be removed and location of all existing and proposed structures on the property, and property lines. A reproduction of the tax map or an existing survey modified to provide this information would be acceptable.

5. *A Tree Replacement Mitigation Plan.* If replacement mitigation is required as determined by the Oakland Shade Tree Commission then a to-scale plan shall be developed, and reviewed and approved by the Shade Tree Commission or the Shade Tree Commission delegate. The mitigation plan shall include a diagram as described above showing the location of all trees to be planted, the species of such trees and their diameter, which shall have a minimum of one (1") to one and a half (1.5") inch caliper to replace trees removed on primary residential lots due to septic work or building additions, two (2") to two and one-half (2 1/2") inch caliper for all other residential applications and three (3") to three and one-half (3 1/2") inch caliper for all commercial applications and are to be a species as per the Approved Shade Tree replacement list noted below (19-7 6e). As a condition to any permit to remove any shade tree which is not overtly hazardous as determined by the Borough, the Shade Tree Commission shall require that the applicant plant, at the applicant's expense, another tree in the place of the one removed according to the Tree Replacement Mitigation Schedule. In cases where the planting of a new shade tree(s) in place of the one removed is not feasible, the applicant shall be required to pay to the Borough of Oakland an amount equal to two hundred fifty (\$250.00) dollars per tree for all residential applications less than thirty-six inches (36") in diameter of trees removed and three hundred fifty (\$350.00) dollars per tree greater than thirty-six inches (36") of tree removed, and three hundred fifty (\$350.00) dollars for all commercial applications. The Shade Tree Commission will then release the applicant from the requirement of planting a new tree on that site.

6. A fee schedule for processing a tree removal permit shall be charged. The fee schedule is:

One (1) to five (5) trees: \$50.00

Six (6) trees or more: ten (10) \$10.00 per tree.

For a subdivision or major site plan development application, the fee to be charged will be determined either by the above formula or at a fee of one thousand eight hundred sixty (\$1,860.00) dollars per acre.

b. The applicant shall place a one (1") inch wide yellow ribbon around the trunk of each tree to be removed at a height of four and one-half (4-1/2') feet above the ground so that the proposed tree removal may be inspected in the field.

c. Shade Tree Replacement

As a condition to any permit to remove any shade tree, the Shade Tree Commission shall require that the applicant plant, at the applicant's expense, another tree in the place of the one removed according to the Tree Replacement Mitigation Schedule. In cases where the planting of a new shade tree(s) in place of the one removed would not be suitable for the particular site prescribed, due to the size of the site or location of other shade trees or be found to prevent the necessary and reasonable use of a street, sidewalk or abutting property, the Shade Tree Commission may release the applicant from the requirement of planting a new tree, provided that the applicant pays a fee-in-lieu, in an amount approved by resolution of Borough Council, for each tree.

d. Tree Replacement Mitigation Schedule

(i) Tree Replacement Mitigation Schedule (Residential – Primary Residence)

DBH of Existing Tree to Be Removed (inches)	Number of Replacement Trees (Minimum 2 inch Caliper)
Between 6 and 12 inches	1
Between 12 and 24 inches	2
Between 24 and 36 inches	3
36 inches or greater	4

(ii) Tree Replacement Mitigation Schedule (Commercial and Non-Primary Residential)

DBH of Existing Tree to Be Removed (inches)	Number of Replacement Trees (Minimum 3 inch Caliper)
Between 6 and 12 inches	2
Between 12 and 18 inches	4
Between 18 and 24 inches	6
Between 24 and 36 inches	8
36 inches or greater	10

e. Below is a list of species generally available in the nursery trade which would be suitable for use as replacement trees. The list was developed based on size at maturity, ability to withstand insect, disease, and storm damage. This is a list of species within each species are many varieties Dwarf and weeping varieties of these species are not suitable as replacement trees.

Approved replacement species

- Acer rubrum (Red Maple)
- Acer x freemanii (Armstrong Maple)
- Acer saccharum (Sugar Maple)
- Celtis (Hackberry)

- Fagus (Beech)
- Ginkgo
- Gleditsia (Honey Locust)
- Gymnocladus (Kentucky Coffee Tree)
- Koelreuteria (Goldenrain Tree)
- Liquidambar (Sweet Gum)
- Liriodendron (Tulip Tree)
- Metasequoia (Dawn Redwood)
- Nyssa (Black Gum)
- Ostrya (Hophornbeam)
- Picea abies (Norway Spruce)
- Pinus strobus (White Pine)
- Platnus (Planetree)
- Quercus (Oak)
- Saphora (Pagodatree)
- Tillia (Linden)
- Taxodium (Bald Cypress)
- Ulmus (Elm)
- Zelkova

Species not approved for use as replacement trees

- Acer palamatum (Japanese Maple)
- Acer platanoides (Norway Maple)
- Acer saccharinum (Silver Maple)
- Betula sp. (Birch)
- Carpinus (Hornbeam)
- Cornus (Dogwood)
- Fraxinus (Ash)
- Magnolia
- Malus (Crabapple)
- Prunus (Cherry, Plum)
- Pyrus (Pear)
- Salix (Willow)
- Thuja (Arborvitae)
- Tsuga (Hemlock)

19-8 THE SAFETY STANDARDS FOR APPLICATION REVIEW.

a. Upon receipt of an application for cutting or removal of trees or ornamental trees, a Shade Tree Commission representative shall inspect the site on which the trees sought to be cut down any other physical conditions existing on the subject property and adjoining properties. The Shade Tree Commission representative shall consider the following factors in deciding whether to issue a permit.

1. The proposed cutting or removal would impair the growth and redevelopment of the remaining trees on the applicant's and adjacent properties.
 2. The proposed cutting or removal would change existing drainage patterns resulting in soil erosion. If a soil erosion concern is found by the Shade Tree Commission, then it is the Commission's responsibility to immediately inform the Borough Construction Official.
 3. The proposed removal would constitute a horticultural advantageous thinning of an existing overgrown area of the removal of dead or diseased trees.
 4. The overall effect of removal of such tree(s) on the physical and aesthetic value of the property and the neighborhood.
 5. The area where such tree(s) are located will be occupied by a building or structure, a driveway, a roadway, or a sewer line, or septic system, or whether such area is within fifteen (15') feet of any of the foregoing.
 6. The proposed changes in the topography of the area where such tree(s) are located will have depressed land configuration or fill of land which shall be deemed injurious to the tree or other trees located nearby so as to require welling, construction of an "aerification" system, or tree or ornamental tree, removal or replacement.
 7. The proposed removal would remediate a safety hazard to persons or structures.
- b. Permission will be granted for the removal of trees, without a mitigation plan and are exempt from all requirements except for a permit and fee for the permit:
1. On existing primary residential lots, the first 36" of tree caliper located within the building footprint of a proposed new principal building, additions to a principal building, driveway, walkway, patio, septic systems or new accessory structures, including, but not limited to, pools;
 2. Trees that are dead, diseased or pose a safety hazard; the cutting, destruction or removal of trees which are diseased or dead or which endanger public safety, to be determined by the Shade Tree Commission. Diseased trees are to be disposed of properly per State regulations.
 3. Specifically permitted to be removed in a site plan, subdivision or variance approved pursuant to the Municipal Land Use Law.
- c. *Mitigation Plan & Escrow.* With respect to the removal of all other trees not described in paragraph b. above, the Shade Tree Commission shall require a mitigation plan showing the replacement of trees at other locations on the said property according to the Tree Replacement Mitigation Schedule above (19-6 c), or may require a fee of two hundred fifty to three hundred fifty (\$250.00 - \$350.00) dollars per tree removed as deemed appropriate.
- d. *Conflict with Other Laws.* Notwithstanding anything in this Chapter to the contrary, no tree removal shall be permitted where prohibited by Zoning Ordinance (e.g. buffer zones and landscaping provisions) or any other municipal, State or Federal statute, ordinance or regulation.

e. *Action.* The Borough Shade Tree Commission representative must respond to all applications within twenty (20) business days. This time period may be extended at the discretion of the Shade Tree Commission upon evidence of extenuating circumstances or other just cause. Notice must be given to the applicant.

f. *Right of Appeal.* Any citizen has the right of appeal from any decision made by the Shade Tree Commission, the Planning Board or Zoning Board of Adjustment. In the event that an applicant disputes the standards set forth in paragraph a. above or constitute(s) a hardship which prohibits a reasonable use of all or substantially all of the property in question, an applicant shall appeal to the Shade Tree Commission as follows.

1. Appeals Process.

A. An applicant may appeal any Shade Tree Commission decision on a tree removal permit application without any type of formal application or notice. Applicant can appeal in writing, by e-mail, or by attending a regular Shade Tree Commission meeting and speaking during the open to the public portion of the meeting. Any application which is associated with a Planning Board or Board of Adjustment hearing cannot be appealed to the Shade Tree Commission.

B. The Shade Tree Commission and applicant will work to arrive at a mutually acceptable binding solution during a regular or special Shade Tree Commission meeting. If further information, research or site visits are required the final vote on the application may be carried to the following regular or special Shade Tree Commission meeting. The Commission must act on appeals at the first regular scheduled meeting provided a quorum is present.

C. Any appeal shall be decided within forty-five (45) days of receipt by the Shade Tree Commission unless the applicant consents in writing to an extension of such period. Failure of the Shade Tree Commission to consider the appeal and to render a decision within the forty-five (45) day period shall constitute a decision that the appeal is granted.

19-9 PROTECTION OF EXISTING TREES.

a. In connection with any construction, subsequent to tree clearing but prior to the issuance of a building permit or start of construction, snow fencing or other protective barrier acceptable to the Shade Tree Commission representative official in charge with administration and enforcement of this Chapter, shall be placed around trees that are not removed. The protective barriers shall be placed at least nine (9') feet from the trunk of any tree and shall remain in place until all construction has been completed. All construction materials shall be placed outside any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

b. No person shall:

1. Cut down or remove any tree except as permitted by this Chapter or allow or cause such cutting or removal.

2. Cause or allow any willful damage, injury or disfigurement of any tree growing within the Borough. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as the result of but not limited to the following: cutting, gashing or slitting of any tree, or on the nearby ground, the construction or

placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; placement or removal of any soil from within nine (9') feet of any tree or ornamental tree as defined in Section 19-3 above.

3. Place a rope, wire, sign etc. upon any tree upon any Borough street, right-of-way etc., except as may be approved by the Commission.
4. Fasten or attach an animal to cause or allow an animal to injure a tree upon any Borough street, right-of-way, etc.
5. Without prior approval, spray a tree or an area adjacent to a tree with any chemical so as to cause injury or death of said tree.
6. Remove or damage any guard or device placed to protect a tree.
7. Store or pile building material or temporary soil deposits or debris or place construction equipment within nine (9') feet of any tree or ornamental tree as defined in Section 19-3.

19-10 ADMINISTRATION AND ENFORCEMENT.

- a. This Chapter shall be administered and enforced by the Construction Code Official and the Shade Tree Commission. The Construction Code Official shall be responsible for the enforcement of this Chapter and is authorized to issue a stop work order in conjunction with that enforcement.
- b. A Shade Tree Commission member may be designated from time to time by resolution of the Borough Council in order to enforce the provisions of this Chapter.

19-11 VIOLATIONS AND PENALTIES.

Any person who violates any provision of this Chapter shall, upon conviction thereof, be subject to a fine not exceeding one thousand (\$1,000.00) dollars replacement cost of the tree or both for each tree removed or damaged in violation of this Chapter.

Each tree shall be deemed a separate offense.

ATTEST:


Lisa M. Duncan, Borough Clerk


Linda H. Schwager, Mayor

This is to certify that this is a true copy
as adopted by the Mayor and Council
of the Borough of Oakland at a meeting
held on April 27, 2022

Borough Clerk 