

**BOROUGH OF RED BANK
COUNTY OF MONMOUTH
STATE OF NEW JERSEY**

ORDINANCE NO. 2024-14

**ORDINANCE REPLACING CHAPTER 665: "TREES" WITH NEW REGULATIONS
REQUIRING PERMITS FOR CERTAIN TREE REMOVALS AND REQUIRING TREE
REPLACEMENTS IN ACCORDANCE WITH NJDEP STORMWATER REGULATIONS.**

WHEREAS, the Borough of Red Bank (the "Borough"), pursuant to recently revised stormwater regulations promulgated by the New Jersey Department of Environmental Protection, seeks to implement new regulations within Borough Code Chapter 665: "Trees" in order to provide permitting procedures for the removal and replacement of certain trees within the Borough; and

WHEREAS, trees play a critical 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; and

WHEREAS, this Ordinance seeks to ensure that the Borough protects trees as an asset to its stormwater management and mitigation efforts; and

WHEREAS, the Borough's 2023 Tier A MS4 Permit Renewal requires permittees to adopt and enforce a community-wide ordinance to control tree removal and replacement for all types of properties where the Borough has jurisdiction; and

WHEREAS, the Mayor and Council hereby amend the Borough Code to implement regulations pertaining to tree removal and replacement procedures;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Red Bank, County of Monmouth, State of New Jersey, that Chapter 665: "Trees" of the Borough's Revised General Ordinances is hereby REPLACED IN ITS ENTIRETY as follows:

CHAPTER 665: "TREES"

§ 665-1 Purpose.

This Chapter establishes requirements for tree removal and replacement in the Borough of Red Bank to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and to protect the environment, public health, safety, and welfare.

§ 665-2 Definitions.

For the purpose of this Chapter, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Chapter 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.

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APPLICANT

Any "person", as defined below, who applies for approval to remove trees regulated under this Chapter.

CRITICAL ROOT RADIUS ("CRR")

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 in inches by 1.5 feet. For example: a tree with a 6" DBH would have a CRR = 6" x 1.5' = 9'.

DIAMETER AT BREAST HEIGHT ("DBH")

The diameter of the trunk of a mature tree generally measured at a point 54 inches above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 54-inch height, the DBH shall be calculated as 60% of the sum of the diameters of all leaders at the point of bifurcation.

HAZARD TREE

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. Determination shall be made by a Licensed Tree Expert (LTE) at the expense of the applicant.

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, etc.); or
5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or LTE.

PERSON

shall mean any person, firm, partnership, association, corporation, company, or public or private organization of any kind other than those exempted from the provisions of this section.

PLANTING STRIP

The land between the curb and the sidewalk. The planting strip is part of the Borough right-of-way.

STREET TREE

A tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to 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.

TREE

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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TREE CALIPER

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.

TREE REMOVAL

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.

§ 665-3 Regulated Activities.

- A. *Tree Removal Prohibited.* No person shall remove, or cause to be removed, any deciduous tree with a DBH of six inches or greater or a coniferous tree with a height of 10 feet or more upon any lands within the Borough of Red Bank except as follows:
 1. Trees that are to be removed as the direct result of a development application that has been approved by the Borough of Red Bank Planning Board or Zoning Board of Adjustment. No tree on an approved site plan or subdivision should be removed without authority from the Borough;
 2. Trees directed to be removed by municipal, county, State or Federal authority;
 3. Trees that are to be removed as the result of the issuance of a Tree Removal Permit.
- B. No person shall remove, trim, or cause harm to any tree growing on or over a public right of way or public land without complying with this Chapter.

§ 665-4 Tree Removal Permit.

All tree removal and development permit applications shall be submitted to the Planning and Zoning Department. Applications that require Planning Board or Zoning Board approval shall have the tree removal permit application as part of the submittal to the Planning Board or Zoning Board and said plans provided to the Planning and Zoning Department for review and approval in accordance with this Chapter. Every tree removal permit application shall contain the following:

- A. The name and address of the applicant.
- B. The name and address of the owner of the property from which the trees are to be removed.
- C. The lot and block of the property.

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D. The shape and dimensions of the lot or parcel, including the location of all existing and proposed easements. If the tree removal permit is for a single-family residence, the plan shall consist of a tree location sketch containing the minimum amount of pertinent information to enable the determination of compliance with the regulations in this chapter. The plan for any other property shall include a survey prepared by a licensed land surveyor that contains tree locations. The survey shall contain, at a scale of no less than one inch equals 50 feet the following information:

1. The existing and proposed tree preservation limits.
2. The installation and limits of a temporary existing tree protection fence along the limits of the proposed tree removal shall be designated on the plan.
3. A proposed tree replacement plan, if required, in accordance with this chapter. A tree replacement plan shall be considered the proposed landscaping plan required for all subdivision and site plan approvals.
4. A North arrow.
5. The location of existing and proposed structures and improvements, if any.

§ 665-5 Term of Permit.

Any and all permits approved by the Planning and Zoning Department shall be declared null and void if the tree removal is not completed within a reasonable time, not to exceed 36 months, from the date of approval unless extended by the Zoning Officer. Permits not used within this period will require a new application and the payment of new fees. For purposes of this Chapter, a permit shall no longer be valid when the work authorized by the permit is completed.

§ 665-6 Criteria for Issuance of Tree Removal Permit.

Upon completion of the review by the Planning Board, Zoning Board or the Planning and Zoning Department, as applicable, the permit will be approved, provided:

- A. The tree removal permit is compliant with Section 665-4;
- B. The tree replacement plan is approved by the applicable municipal authority;
- C. At least one of the criteria as follows has been satisfied:
 1. The tree is located in an area where a structure or improvements will be placed in accordance with the approval of Planning/Zoning Boards.
 2. The tree is dead, diseased, injured in danger of falling, is too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision of clearance or conflicts with other ordinances or regulations.

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§ 665-7 Fees.

- A. *Application.* The applicant, at time of filing the application, shall pay the application fee of \$50. No application shall be considered without the payment of the required fees. An inspection fee of \$25 will be applied to all applications requiring on-site verification.
- B. Replacement fee(s) will be in accordance with Tree Replacement Requirements Table and shall be paid prior to the release of any performance guarantee.

§ 665-8 Tree Replacement Requirements.

- A. Any person who removes one or more street tree(s) with a DBH of 2.5" or more, unless exempt under Section 665-9, shall be subject to the requirements of the Tree Replacement Requirements Table below, which requirements shall be in addition to any other landscaping or tree planting requirements under Borough Code Section 490-81.
- B. Any person, who removes one or more tree(s) with a DBH of 6" or more, unless exempt under Section 665-9, shall be subject to the requirements of the Tree Replacement Requirements Table.
- C. The species type and diversity of replacement trees shall be in accordance with Appendix A Tree Species Recommendation.
- D. Replacement tree(s) shall:
 1. 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;
 2. 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;
 3. 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
 4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

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Tree Replacement Requirements Table

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Mitigation 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 3.0" for each tree removed	\$300 per tree that is not replaced
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 3.0" for each tree removed	\$600 per tree that is not replaced
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 3.0" for each tree removed	\$900 per tree that is not replaced
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 3.0" for each tree removed	\$1,200 per tree that is not replaced

E. 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 or a combination thereof:
 - a. Plant replacement trees in a separate area(s) approved by the municipality; and/or
 - b. Pay the mitigation fee of the tree size based on the fee schedule referenced above. This fee shall be placed into the Shade Tree Trust Fund.

§ 665-9 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.

- A. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
- B. 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;

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

§ 665-10 Appeals.

Whenever any Application for a Tree Removal Permit shall be denied by the Director of Community Development or his/her designee, the applicant may appeal the denial to the Borough Manager by filing a written notice of appeal with the Borough Clerk within ten (10) days after receiving notice of the denial. Upon receipt of the notice of appeal, the Borough Manager shall appoint a hearing panel consisting of three members: A member of the Shade Tree Committee, Director of Public Works, and any other designee of the Borough Manager. This panel shall proceed to hear the appeal upon notice to the applicant within thirty (30) days of the filing of such notice of appeal. This panel shall have the discretion, after interviewing both the applicant and the Director of Community Development or his/her designee, to reverse, affirm, or modify the aforesaid decision.

§ 665-11 Emergencies.

In the event of an emergency, any person otherwise subject to this Chapter, having responsibility, jurisdiction and/or authority to cure, remedy or mitigate dangerous, hazardous, inconvenient, or unhealthy conditions resulting from the emergency, may, without first applying for and obtaining a permit under this Chapter, take any lawful action which is otherwise a regulated activity. However, such person or the agent or designee of such person, shall apply for a Tree Removal Permit not later than the end of the second succeeding business day after any regulated activity takes place and may not proceed with non-emergency work including restoration, until a permit is obtained.

§ 665-12 Shade Tree Trust Fund.

There is hereby established a Shade Tree Trust Fund which shall receive contributions in accordance with § 490-81D of the Borough Code. The Shade Tree Trust Fund shall be administered in accordance with applicable local government finance laws and be used for the purposes of planting new shade trees and maintaining existing shade trees on public property within the Borough of Red Bank. The Red Bank Shade Tree Committee shall administer the Shade Tree Trust Fund.

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§ 665-13 Enforcement.

This Chapter shall be enforced by the Zoning Officer and the Code Enforcement Officer in the ordinary course of their respective duties.

§ 665-14 Violations and Penalties.

Any person(s) who is found to be in violation of the provisions of this Chapter shall be subject to a fine of up to \$2,000.00. Each tree removed without compliance with the provisions of this Chapter shall be considered a separate and distinct violation hereof.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Red Bank that any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Red Bank that if any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Red Bank that this Ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

INTRODUCTION						COUNCILMEMBER	FINAL ADOPTION				
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.
	x	x				KRISTINA BONATAKIS			x		
		x				DAVID CASSIDY			x		
x		x				NANCY FACEY-BLACKWOOD	x		x		
		x				BEN FOREST		x	x		
		x				LAURA JANNONE			x		
		x				KATE TRIGGIANO			x		
		x				MAYOR WILLIAM PORTMAN			x		
Introduced: May 9, 2024			I hereby certify the above ordinance was adopted by the Borough Council of the Borough of Red Bank, County of Monmouth, State of New Jersey on the aforementioned date.								
Final Adoption: May 23, 2024			<i>Bonnie K. Thomas</i> Bonnie K. Thomas, Deputy Borough Clerk								