

## **ORDINANCE NO. 2024-4 OF THE BOROUGH OF PEMBERTON AMENDING THE CODE TO ADD THE NEW CHAPTER “TREE REMOVAL REPLACEMENT”**

**WHEREAS**, the New Jersey Department of Environmental Protection (“NJDEP”) requires the Borough as the holder of a MS4 Tier A stormwater permit to adopt regulations for tree removal replacement; and

**WHEREAS**, the Borough Engineer and Borough Attorney have reviewed the NJDEP model tree removal replacement ordinance and recommend adoption to regulate tree removal.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Pemberton as follows:

### **SECTION I. Purpose:**

An ordinance to establish requirements for tree removal and replacement in the Borough of Pemberton to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and 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. “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.
- D. “Hazard Tree” means 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.

- 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 adjacent to the portion of the street reserved for vehicular traffic 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 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 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.

### **SECTION III. Regulated Activities:**

#### **A. 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 the Borough Clerk. No tree shall be removed until municipal officials have reviewed and approved the removal.

2. For larger scale clearing projects, a tree protection management plan must be submitted at the time of site plan or subdivision application. A tree protection management plan shall contain the following information on a plot plan:
  - a. Location of all existing or proposed buildings, driveways, grading, septic fields, easements, underground utility lines, rights-of-way, and other improvements.
  - b. Location of existing wetland buffers, natural features, including wooded areas, watercourses, wetlands, and floodplains.
  - c. The limits of the tree protection zone.
  - d. Location of all existing live street tree with DBH of 2.5" or more or any non-street tree with DBH of 6". Each tree shall be noted by its species, size and general health condition. Whenever possible, the actual canopy spread shall be shown.
  - e. Each tree, or mass of trees, to be removed or transplanted shall be clearly marked.
  - f. A chart tabulating the diameter inches being removed, and the required compensatory trees.
  - g. Specifications for the removal of existing trees and for the protection of existing trees to be preserved, including detail(s) of tree protection fencing, as required.
  - h. Location of compensatory proposed trees.

Applicants will be subject to an application fee as per the Table below.

## **B. Tree Replacement Requirements**

1. 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. Any person, other than a resident, 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.

The species type and diversity of replacement trees shall be in accordance with Appendix A.

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 Borough;
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.

**Tree Replacement Requirements Table:**

<b>Category</b>	<b>Tree Removed (DBH)</b>	<b>Tree Replacement Criteria (See Appendix A)</b>	<b>Application Fee</b>
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	<i>\$100.00</i>
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	<i>\$100.00</i>
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	<i>\$100.00</i>
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	<i>\$100.00</i>

**C. Replacement Alternatives:**

1. If the Borough 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 according to the schedule below. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

**Tree Replacement Fees Table:**

<b>Category</b>	<b>Tree Removed (DBH)</b>	<b>Replacement Tree Value (See Sub-Section C(1)(b))</b>
1	DBH of 2.5" (for street trees) or 6" (for non-street trees) to 12.99"	\$350
2	DBH of 13" to 22.99"	\$700
3	DBH of 23" to 32.99"	\$1,050
4	DBH of 33" or greater	\$1,400

## **SECTION IV. 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 Borough by all persons claiming an exemption. Proper justification shall consist of submissions such as photos and/or statements from NJ licensed tree expert as per N.J.S.A. 45:15C-11 or arborist.:

- A. Residents who remove less than four (4) trees per acre that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a five-year period. The number of trees removed is a rolling count across a five-year period. For example, if 3 trees from category 1 are removed in July 2023, the 'count' resets to zero in July 2028. However, if 1 tree from category 1 is removed in July 2023 and another in July of 2025 the first tree will come off the count in July 2028 and the second in July 2030.
- 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 that is active and on file with the Borough;
- D. 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.
- E. 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;
- F. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- G. Hazard trees may be removed with no fee or replacement requirement.

## **SECTION V. Enforcement:**

This ordinance shall be enforced by **the Code Official, Zoning Officer and Building Inspector** 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 \$350.00 per replacement tree.

## **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.

Adoption Date: \_\_\_\_\_

Approved By: \_\_\_\_\_

## **Appendix A**

### Approved list of Replacement tree Species and Planting Standards for Pemberton Borough

Proper planting standard procedures shall be in accordance with the American Association of Nurseryman Standards and ANSI A300 "Tree Care Management Practices".

Tree Species	Planting Season	Planting Procedure
Flowering dogwood (white) tree form	Fall Dig Hazard; April to Mid-June	May be planted under wires
Flowering dogwood (pink) tree form	Fall Dig Hazard; April to Mid-June	May be planted under wires
Washington Hawthorne (tree form)	Fall Dig Hazard; April to Mid-June	May be planted under wires
Sentry ginkgo (male grafted only)	April to Mid-June; and Sept-October	May be planted where no wires overhead
Shademaster locust	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Sunburst locust	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Panicled goldenrain tree	Fall Dig Hazard; April to Mid-June	May be planted under wires
Sweetgum	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Japanese flowering crab	Fall Dig Hazard; April to Mid-June	May be planted under wires
Sourwood	April to Mid-June; and Sept-October	May be planted under wires
Amur corktree	April to Mid-June; and Sept-October	May be planted under wires, must be high branched 6-7 ft
White pine	April to Mid-June; and Sept-October	May be planted where no wires overhead
London plane	Fall Dig Hazard	May be planted where no wires overhead
American plane	Fall Dig Hazard	May be planted where no wires overhead
Kwanzan (Japanese flowering cherry)	Fall Dig Hazard; April to Mid-June	May be planted under wires
Northern red oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Scarlet oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Shingle oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead

Tree Species	Planting Season	Planting Procedure
Burr oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Chestnut oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Black oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Pagoda tree	April to Mid-June; and Sept-October	May be planted under wires
American linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
European littleleaf linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
Greenspire linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
Silver linden	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
European linden	April to Mid-June; and Sept-October	May be planted where no wires overhead
American elm	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Red maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Columnar red maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Sugar maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Columnar sugar maple	April to Mid-June; and Sept-October	May be planted where no wires overhead
European hornbeam	Fall Dig Hazard; April to Mid-June	May be planted under wires
Pyramidal European hornbeam	Fall Dig Hazard; April to Mid-June	May be planted under wires
Katsura tree	April to Mid-June; and Sept-October	May be planted where no wires overhead
Japanese zelkova	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Willow oak	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
October Glory Red maple	Fall Dig Hazard; April to Mid-June	May be planted where no wires overhead
Ruby red horsechestnut (parking areas)	April to Mid-June; and Sept-October	May be planted where no wires overhead
Amur maple	April to Mid-June; and Sept-October	May be planted where no wires overhead



