

Ordinance # [2023-09] – 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 Audubon Park 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 the Borough Clerk. No tree shall be removed until municipal officials have reviewed and approved the removal.

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 a list of suitable species list that shall be published on the municipal website.

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
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	\$0
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	\$0
3	DBH of 23” to 32.99”	Replant 3 trees with minimum DBHs of 1.5” for each tree removed	\$0
4	DBH of 33” or greater	Replant 4 trees with minimum DBHs of 1.5” for each tree removed	\$0

5	Tree of Significance*	Replant 5 trees with minimum DBHs of 1.5" for each tree removed	\$0
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*Tree of Significance removals shall be approved by the Borough.

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 \$0 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.

- 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 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 \$500.00 per tree, but not less than the amount of the required replacement tree(s) and cost of planting. 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.

Attest:

BOROUGH OF AUDUBON PARK

LAWRENCE E. PENNOCK, MAYOR

DAWN M. PENNOCK,
MUNICIPAL CLERK

Introduced: June 5, 2023
Adopted: August 7, 2023

Certified to be a true copy of an Ordinance adopted by the Mayor and Borough Council of the Borough of Audubon Park at a regular meeting held on August 7, 2023.

DAWN M. PENNOCK, MUNICIPAL CLERK