

**BOROUGH OF SUSSEX
COUNTY OF SUSSEX
ORDINANCE NO. 2024-06**

**AN ORDINANCE TO ADD CHAPTER 28, TO BE ENTITLED “TREES”
TO THE CODE OF THE BOROUGH OF SUSSEX, COUNTY OF SUSSEX
AND STATE OF NEW JERSEY.**

BE IT ORDAINED by the Borough Council of the Borough of Sussex, in the County of Sussex and State of New Jersey, as follows:

SECTION 1. The Code of the Borough of Sussex is hereby amended to add a new Chapter 28, entitled “Trees” which shall read as follows:

Chapter 28. Trees.

Section 28-1. Definitions.

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 by 1.5 feet. For example: a tree with a 6” DBH would have a CRR = 6”x1.5’ = 9’.

DIAMETER AT BREAST HEIGHT (DBH)

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. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.

HAZARD TREE

A tree or limbs thereof that meet(s) one or more of the criteria:

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 Licensed Tree Expert.

Trees that do not meet any of the above criteria and are proposed to be removed solely for development purposes are not hazard trees.

PERSON

Any individual, resident, corporation, utility, company, partnership, firm or association who or which has an ownership interest in, control over or responsibility with regard to a parcel on which tree removal occurs.

PLANTING STRIP

The part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

RESIDENT

An individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this Chapter is removed or proposed to be removed.

STREET TREE

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

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. Tree removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

Section 28-2. Applicability.

- a. Any person who shall perform tree removal on a property within the Borough of a street tree with a DBH of 2.5” or more that does not qualify for an exemption under Section 28-6 of this Chapter, shall plant a tree on said property in accordance with this Chapter.
- b. Any person who shall perform tree removal on a property within the Borough of a tree with a DBH of 6” or more that does not qualify for an exemption under Section 28-6 of this Chapter, shall plant a tree on said property in accordance with this Chapter.

Section 28-3. Replacement Trees. Each removed tree shall be replaced in kind with a tree that has an equal or greater DBH than the removed tree or meet the Tree Replacement Requirements of Section 28-4 of this Chapter. Each replacement tree:

- a. Shall be planted within 12 months after the date of removal of the original tree(s) or at an alternative date as may be specified by the Borough;
- b. Shall be monitored by the person for a period of two years to ensure survival and be replaced as needed within 12 months after determination that the replacement tree shall not survive; and
- c. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
- d. Shall not include the following species of trees:

Scientific Name	Common Name
Acer ginnala	Amur maple
Ailanthus altissima	Tree of heaven
Acer platanoides	Norway maple
Acer pseudoplatanus	Sycamore maple
Acer saccharinum	Silver maple
Akebia quinata	Chocolate vine
Albizia julibrissin	Mimosa
Alnus glutinosa	European black alder
Aralia elata	Japanese angelica tree
Broussonetia papyrifera	Paper mulberry
Fraxinus species	Ash species
Kalopanax septemlobus	Castor aralia
Koelreuteria elegans	Golden rain tree
Malus toringo	Japanese crabapple
Paulownia tomentosa	Princess tree
Phellodendron amurense	Amur cork tree
Populus alba	White poplar
Populus x canescens	Gray poplar
Prunus avium	Sweet cherry
Pyrus calleryana	Callery pear (Bradford pear)

Ulmus parvifolia	Chinese elm
Ulmus procera	English elm
Ulmus pumila	Siberian elm

Section 28-4. Tree Replacement Requirements Table.

Category	Tree Removed (DBH)	Tree Replacement Criteria
1	DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99”	Plant 1 tree with a minimum tree caliper of 1.5” for each tree removed
2	DBH of 13” to 22.99”	Plant 2 trees with minimum tree calipers of 1.5” for each tree removed
3	DBH of 23” to 32.99”	Plant 3 trees with minimum tree calipers of 1.5” for each tree removed
4	DBH of 33” or greater	Plant 4 trees with minimum tree calipers of 1.5” for each tree removed

S
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28-5.
Replace
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Alterna
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the
Borough
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nes that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the person shall do one of the following:

- a. Plant replacement trees in a separate area(s) approved by the municipality; or
- b. Pay a fee of \$250 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

Section 28-6. Exemptions.

- a. All persons shall comply with Sections 28-3, 28-4 and 28-5 of this Chapter, except as follows:
 1. Residents who remove less than four 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 three trees from Category 1 are removed in July 2023, the ‘count’ resets to zero in July 2028. However, if one 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.
 2. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
 3. 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;
 4. 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.
 5. 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;
 6. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
 7. Hazard trees which may be removed with no fee or replacement requirement.
- b. To receive the benefit of an exemption set forth in this Section 28-6, documentary proofs shall first be provided to the Borough Clerk and shall require a determination by the Borough that the exemption applies.

Section 28-7. Enforcement. This Chapter shall be enforced by the Sussex Borough Code Enforcement Officer.

Section 28-8. Violations and Penalties. A person who violates a provision of this chapter shall, on conviction, be subject to the consequences set forth in Section 3-9 of the Code of the Borough of Sussex and shall be fined not less than \$100 per violation, which may be waived or reduced on application to the governing body for reasonable cause on condition that the person has abated the condition. Each day a violation occurs shall constitute a separate violation. Any fine imposed hereunder shall constitute a lien upon the subject real estate until paid; and, in addition thereto, the fine shall be collectible pursuant to any other remedies provided by law.

SECTION 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough, the provisions hereof shall be determined to govern. All other ordinances of the Borough are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 4. This Ordinance shall take effect immediately upon final passage and publication according to law.

Attest:

Antoinette Smith, Borough Clerk

Robert Holowach, Mayor

NOTICE

NOTICE IS HEREBY GIVEN that the attached Ordinance 2024-06 was introduced at a regular meeting of the Mayor and Council of the Borough of Sussex, Sussex County, New Jersey, held on March 19, 2024 and passed on first reading, and that such Ordinance will be further considered for final passage and adoption at the regular meeting of the Mayor and Council to be held on April 2, 2024 at Borough Hall, 2 Main Street, in the Borough of Sussex at 7:00 p.m. and after all persons present were given the opportunity to be heard concerning the same, it was finally passed and adopted and will be in full force and effect according to law.

Antoinette Smith, RMC