



**Township of Delaware  
Ordinance No. 2024-05**

**AN ORDINANCE TO AMEND CHAPTER 315 OF THE CODE OF THE TOWNSHIP OF DELAWARE ENTITLED "STORMWATER QUALITY", TO ADD ARTICLE XIV TREE REMOVAL AND REPLACEMENT**

**WHEREAS**, the Township of Delaware has a Municipal Separate Storm Sewer System (MS4) Permit from the State of New Jersey; and

**WHEREAS**, the Township of Delaware is subject to the Community-wide Ordinance requirements of the Tier A Municipal Stormwater Permit; and

**WHEREAS**, the Community-Wide Ordinance requirements in the Township of Delaware's new Tier A Municipal Stormwater Permit necessitate the adoption of the ordinance herein on or before May 1, 2024;

**NOW THEREFORE BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DELAWARE, COUNTY OF HUNTERDON AND STATE OF NEW JERSEY THAT CHAPTER 315 OF THE CODE OF THE TOWNSHIP OF DELAWARE, ENTITLED "STORMWATER QUALITY", IS AMENDED AS FOLLOWS:**

**Part One** – Chapter 315 of the Code of the Township of Delaware entitled "Stormwater Quality" shall be amended as follows:

**Chapter 315 – Stormwater Quality**

**Article XIV – Tree Removal and Replacement**

**§315-55. Scope and Purpose.**

An ordinance to establish requirements for tree removal and replacement in the Township of Delaware to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare.

**§315-56. 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.

**APPLICANT**

Means any "person", as defined below, who applies for approval to remove trees regulated under this ordinance.

**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'.

**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. 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**

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.

- A. Has an infectious disease or insect infestation;
- B. Is dead or dying;
- C. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
- D. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or

- E. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).

**PERSON**

Means any individual, resident, corporation, utility, company, partnership, firm, or association.

**PLANTING STRIP**

Means 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**

Means 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 ordinance is removed or proposed to be removed.

**STREET TREE**

Means 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**

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.

**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.

**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.

**§315-57. Regulated Activities.**

**A. Application Process:**

1. Any person planning to remove a street tree, as defined as Tree removal, 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 Delaware Township Director of Public Works. Tree removal(s) which are part of a development subject to review under Chapter 230, "Land Use" shall be reviewed as a part of the application to the Township Committee and shall not be subject to the application fees herein. No tree shall be removed until municipal officials have reviewed and approved the removal.
2. Applicants not subject to review under Chapter 230, "Land Use" will be subject to an application fee as per the Table below.

DBH of Tree To be Removed (inches)	Application Fee
DBH between 6 to 16 (2.5 to 16 for street trees)	\$10.00
16 to 18	\$20.00
18 to 21	\$20.00
21 to 24	\$20.00
24 to 27	\$40.00
27 to 30	\$40.00
30 to 33	\$40.00
33 to 36	\$50.00
36 to 40	\$50.00
Over 40	\$50.00

**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 315-59 58, shall be subject to the tree replacement requirements in §230-106E. A minimum of 1 replacement tree shall be planted for each street tree with a DBH of 2.5" or more.
2. ~~Any person, who removes one or more tree(s), as defined as Tree removal, with a DBH of 6" or more per acre, unless otherwise detailed under Section 315-59, shall be subject to the tree replacement requirements in §230-106E.~~
3. ~~The species type and diversity of replacement trees shall be selected in accordance with Chapter 230, Section 106G.~~
4. Replacement tree(s) shall:
  - a. Be replaced in kind with a tree that has an equal or greater DBH than tree removed or meet the Tree Replacement Criteria below;

Category	Tree Removed (DBH)	Tree Replacement Criteria
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
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed

- b. 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;
- c. 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
- d. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
- e. Shall be selected from the Hunterdon County list of native, non-invasive trees published by the Native Plant Society of New Jersey.

**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 in the amount of \$100.00 per unplanted tree to a fund established by the Township for environmental programs such as tree planting, tree maintenance or tree preservation on public lands or rights-of-way.

**§315-58. 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. Exemptions shall be granted at the discretion of the Delaware Township Director of Public Works upon review of the applications for tree removal.

- A. Tree removal(s) which are part of a development subject to review under Chapter 230, "Land Use" shall be reviewed as a part of the application to the Township Committee and shall not be subject to the Tree Replacement Requirements herein.

- B. 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.
- C. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
- D. 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;
- E. 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.
- F. Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental cleanup, or NJDEP approved habitat enhancement plan;
- G. ~~Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;~~
- H. Hazard trees may be removed with no fee or replacement requirement.

**§315-59. Enforcement.**

This ordinance shall be enforced by the Delaware Township Director of Public Works during the course of ordinary enforcement duties.

**§315-60. 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 not to be less than the amount required under Section 315-57C.1.b above.

**Part Two – Severability**

If any section, subdivision, paragraph, clause, or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to such section, subdivision, paragraph, clause, or provision and the remainder of this ordinance shall be deemed valid and effective. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

**Part Three** - This ordinance shall take effect upon the publication of notice of final adoption as provided by law.

ATTEST:

Diana Rumage  
Diana Rumage, Acting Clerk

James Waltman  
James Waltman, Mayor

Introduction: April 8, 2024  
Published: April 18, 2024  
Public Hearing/Adoption: May 13, 2024  
Published: May 16, 2024

Ordinance 2024-05 Adoption – Roll Call Vote						
Township Committee	Motion	Second	Yes	No	Abstain	Absent
David Bond						X
Chad Bower		X	X			
Susan Lockwood					X	
Joseph Vocke	X		X			
James Waltman, Mayor			X			

I hereby certify that the attached ordinance is a true and correct copy of an ordinance entitled **AN ORDINANCE TO AMEND CHAPTER 315 OF THE CODE OF THE TOWNSHIP OF DELAWARE ENTITLED “STORMWATER QUALITY”, TO ADD ARTICLE XIV TREE REMOVAL AND REPLACEMENT** which was introduced at the meeting of the Township of Delaware Township Committee on April 8, 2024 and adopted at the meeting of the Township of Delaware Township Committee on May 13, 2024.

Diana Rumage  
Diana Rumage, Acting Clerk