

**ORDINANCE NO. 2024-07
FRANKLIN TOWNSHIP
HUNTERDON COUNTY, NEW JERSEY**

**Ordinance to Amend Chapter 298 of the Code of the Township of Franklin Entitled
“Stormwater Quality” to add Article XI – Tree Removal and Replacement.**

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

WHEREAS, the Township of Franklin 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 Franklin’s Tier A Municipal Stormwater Permit necessitate the adoption of the ordinance herein;

**NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE
TOWNSHIP OF FRANKLIN, COUNTY OF HUNTERDON AND STATE OF NEW
JERSEY THAT CHAPTER 298 OF THE CODE OF THE TOWNSHIP OF FRANKLIN,
ENTITLED “STORMWATER QUALITY”, IS AMENDED AS FOLLOWS:**

Part One – Chapter 298 of the Code of the Township of Franklin entitled “Stormwater Quality” shall be amended as follows:

Chapter 298 – Stormwater Quality

Article XI – Tree Removal and Replacement

§298-56. Scope and Purpose.

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

§298-57. 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) in inches of the tree by 1.5 (Result expressed in 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.

§298-58. 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 Franklin Township Zoning Officer or other designated Municipal Official. Tree removal(s) which are part of a development subject to review under Chapter 310 "Subdivision of Land and Site Plan Review" shall be reviewed as a part of the application to the Township Council 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 310 "Subdivision of Land and Site Plan Review" will be subject to an application fee per tree to be removed in accordance with the Tree Replacement Requirements Table below.
3. Applicants may be required to post an escrow deposit in the event that the Tree Removal Application and subsequent review requires the Township to engage a Licensed Tree Expert to review the requested trees to be removed. The escrow amount shall be determined at the time of the Application. Applicants shall be notified in writing at the time of application filing.

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 298-59, shall be subject to the requirements of the Tree Replacement Requirements Table below.
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 298-59, shall be subject to the requirements of the Tree Replacement Requirements Table.
3. The species type and diversity of replacement trees shall be in accordance with the list of native tree species published by the Native Plant Society of New Jersey (<http://www.npsnj.org/>).
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 in the table below;
 - 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.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Application 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 1.5" for each tree removed	<i>\$10.00/ Tree</i>
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	<i>\$20.00/ Tree</i>
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	<i>\$40.00/ Tree</i>
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	<i>\$50.00/ Tree</i>

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 \$100.00 per tree replacement planting not completed in accordance with the Tree Replacement Requirements Table above. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

§298-59. 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 by the Franklin Township Zoning Officer upon review of the applications for tree removal.

- A. Tree removal(s) which are part of a development subject to review under Chapter 310, "Land Use" shall be reviewed as a part of the application to the Township Council 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 Application Fees 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 clean-up, 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.

§298-60. Enforcement.

This ordinance shall be enforced by Franklin Township Zoning Officer or other designated Municipal Official during the course of ordinary enforcement duties.

§298-61. 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 298-58C.1.b above.

Article XI – Severability.

The various parts, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Article XII – More Stringent Restrictions to Prevail

This Chapter is not intended to repeal, abrogate, or impair any existing ordinance. However, wherever this chapter and any other ordinance conflict or overlap, whichever imposed the more stringent restrictions shall prevail.

Article XIII – Effective Date.

This Ordinance shall take effect upon final passage and publication as provided by law.

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

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Committee of the Township of Franklin held on July 11, 2024, and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Committee to be held on August 22, 2024, at 7:30 p.m. or as soon thereafter as the Township Committee may hear this Ordinance at the Franklin Township Municipal Building, 202 Sidney Road, Pittstown, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

Christine Burke
Township Clerk

**FRANKLIN TOWNSHIP
HUNTERDON COUNTY**

PUBLIC NOTICE is hereby given that the following titled Ordinance was introduced by the Franklin Township Committee at a regularly scheduled meeting held on Thursday, July 11, 2024.

ORDINANCE 2024-07

**Ordinance to Amend Chapter 298 of the Code of the Township of Franklin Entitled
“Stormwater Quality” to add Article XI – Tree Removal and Replacement.**

SUMMARY AND EXPLANATION

The Township of Franklin, County of Hunterdon, State of New Jersey has a Municipal Separate Storm Sewer System (MS4) Permit from the State of New Jersey. The Township has obtained a new five (5) year Municipal Stormwater Permit from the State of New Jersey in 2023 to cover the five-year period commencing on January 1, 2023, and expiring on December 31, 2027. The Township was classified as a Tier B municipality prior to the renewal of its five (5) year municipal stormwater permit in 2023. However, the New Jersey Department of Environmental Project recently reclassified the Township as Tier A municipality. Following such reclassification, the Township is now subject to the Community-Wide Ordinance requirements of the new Tier A Municipal Stormwater Permit, which prompted the adoption of the Ordinance 2023-08 prior to January 1, 2024. Such requirement is imposed upon the Township by the Department of Environmental Protection.

The State is now requiring that language be placed in the ordinance regarding the removal and replacement of trees in the municipality. This ordinance supplies that language by adding Article XI.

Provided by Christine Burke, Township Clerk

With language from the Summary and Explanation provide by Igor Bykov, Township Attorney
regarding Ordinance 2023-08.

I, Christine Burke, Clerk for the Township of Franklin, hereby certify that Ordinance #2024-05 was introduced on first reading by the governing body of the Township of Franklin, County of Hunterdon, on July 11, 2024.

Public hearing and consideration for adoption was held on August 22, 2024, at which time the Ordinance was finally adopted.


Christine Burke, Township Clerk



Introduction : July 11, 2024
Published : July 18, 2024
Amended : N/A
Published : N/A
Public Hearing : August 22, 2024
Adopted : August 22, 2024
Published : August 29, 2024

MEMORANDUM

TO: Catherine Innella, Franklin Township Land Use Board

FROM: Roger W. Thomas

DATE: July 11, 2024

RE: Amendment to Chapter 198, Article XI – Tree Removal and Replacement

The Land Use Board met on July 10, 2024 and reviewed the above Ordinance for informal discussion as requested by the governing body, who referred it to the Land Use Board.

Adam Wisniewski, the Town Engineer, gave an extensive discussion regarding the nature of this Ordinance. He made it clear that this is an Ordinance that is part of a series of stormwater quality Ordinances that are being required by the NJDEP to be imposed on all Municipalities as part of their MS-4 Permit, the requirements of which were revised in 2023. He indicated clearly that Franklin Township, which had been a Tier B community, is now a Tier A community. The NJDEP has now eliminated Tier B communities and all Municipalities in the State are Tier A.

He further indicated that this is a model Ordinance that had been introduced by the NJDEP in the summer of 2023 for public comment. Because of the rather substantial reaction to this proposed model Ordinance, there are three (3) changes that were recommended by the NJDEP and this is the final iteration of the proposal. Adam further acknowledged that this affects all property owner within the Township in terms of tree removal. There are exemptions to this Ordinance by way of individuals removing trees. They are found in Ordinance §298-59 and he outlined those to the Board and to the public.

He further indicated that the NJDEP found that water quality, water quantity and other water aspects are impacted by trees and therefore found that this Tree Replacement Ordinance is necessary to protect water quality in the State of New Jersey.

When the Board members were asked regarding their comments, the general consensus was that this was an overreach by the NJDEP since it affects virtually every tree in the State of New Jersey. While there was some sense that the general concept of preservation of trees is an admirable goal, it was felt that the method by which the NJDEP was proposing to do that and to preserve water quantity and quality was an unnecessary burden on residents, particularly of rural residents of a community like Franklin Township.

There was also concern by members of the Board who happen to have experience in dealing with trees on their property. They indicated that they are already dealing with rather expensive maintenance requirements that can be in the thousands of dollars. It was felt that this would add unnecessary costs because they believe that their activities in terms of tree removal

and/or replacement was already being done in an environmentally sensitive and aesthetically pleasing manner. All this Ordinance was doing was adding additional costs to an already burdened homeowner.

It was agreed that these comments should be forwarded to the governing body.

ORDINANCE NO. 2024-07

ORDINANCE TO AMEND CHAPTER 298 OF THE CODE OF THE TOWNSHIP OF FRANKLIN ENTITLED “STORMWATER QUALITY” TO ADD ARTICLE XI – TREE REMOVAL AND REPLACEMENT.

PUBLIC NOTICE is hereby given that on 11th day of July, 2024, Ordinance No. 2024-07 was introduced for first reading. The Ordinance will be considered for second reading and final passage at 7:30 PM on the 22nd day of August, 2024, at the Franklin Township Municipal Building, located at 202 Sidney Road, Pittstown, New Jersey 08867, wherein all persons interested shall be given an opportunity to be heard concerning the subject Ordinance. Copies of the Ordinance may be obtained from the Office of the Township Clerk on Monday to Friday, between the hours of 9:00 AM and 4:30 PM, without cost, by any member of the general public who wants a copy thereof.

The purpose of said Ordinance is to establish certain stormwater quality requirements imposed by the New Jersey Department of Environmental Protection, which will reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare for the Township and its residents. Specifically, the Ordinance amends Chapter 298 entitled “Stormwater Quality” by creating Article XI entitled “Tree Removal and Replacement - which includes the following six (6) sections, listed in seriatim as follows:

§ 298-56 – Scope and Purpose, outlining the purpose of the Ordinance and its applicability;

§ 298-57 – Definitions, defining the relevant terms, phrases, words, and their derivations used in the Ordinance;

§ 298-58 – Regulated Activities, outlining the application process, the scope of the Ordinance and when same is invoked, and the process by which trees are to be replaced;

§ 298-59 – Exemptions, outlining the list of exempt activities that fall outside the scope of the Ordinance;

§ 298-60 – Enforcement, providing the enforcement officer, tasked with the enforcement of the subject Ordinance; and

§ 298-61 – Violations and Penalties, establishing a penalty for noncompliance with the Ordinance.

This Notice is published pursuant to N.J.S.A. 40:49-2.

(s) Christine Burke

Christine Burke, Township Clerk
Township of Franklin
County of Hunterdon
State of New Jersey

**FRANKLIN TOWNSHIP
HUNTERDON COUNTY
FINAL PASSAGE**

PUBLIC NOTICE is hereby given that the following titled Ordinance was duly considered for final passage and adopted by the Franklin Township Committee upon conclusion of the public hearing held on Thursday, August 22, 2024.

ORDINANCE NO. 2024-07

**Ordinance to Amend Chapter 298 of the Code of the Township of Franklin Entitled
“Stormwater Quality” to add Article XI – Tree Removal and Replacement.**

By Order of the Township Committee

**Christine J. Burke, RMC
Municipal Clerk**

EMAIL TO THE HUNTERDON COUNTY DEMOCRAT

LEGAL NOTICE, ONE PUBLICATION ONLY, THURSDAY, AUGUST 29, 2024

NO AFFIDAVIT NEEDED