

**BOROUGH OF OGDENSBURG
COUNTY OF SUSSEX
ORDINANCE 07-2024**

**AN ORDINANCE OF THE BOROUGH OF OGDENSBURG, COUNTY OF SUSSEX,
AND STATE OF NEW JERSEY AMENDING CHAPTER 18 OF THE BOROUGH CODE
ENTITLED “MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4), TIER A
COMMUNITY-WIDE ORDINANCES” TO ADD NEW SECTION 18-10 ENTITLED
“TREE REMOVAL AND REPLACEMENT”**

WHEREAS, in July 2022, the New Jersey Department of Environmental Protection (“NJDEP”) reassigned all New Jersey municipalities designated as “Tier B” under the Municipal Separate Storm Sewer System Permit Program (MS4 Permit Program) to “Tier A” effectively invalidating the “Tier B” permit program; and

WHEREAS, as a result of Tier A reassignment, the Borough of Ogdensburg (“Borough”) is required to satisfy additional permit conditions set forth in the Tier A MS4 New Jersey Pollutant Discharge Elimination System (“NJPDES”) Master General Permit renewed January 1, 2023; and

WHEREAS, Tier A NJPDES permit conditions require, among other things, that the Borough adopt and enforce community-wide ordinances regarding (1) Pet Waste, (2) Wildlife Feeding, (3) Litter Control, (4) Improper Disposal of Waste, (5) Containerized Yard Waste/Yard Waste, (6) Private Storm Drain Inlet Retrofitting, (7) Privately-Owned Salt Storage, (8) Tree Removal/Replacement, (9) Illicit Connection, and (10) Privately-Owned Refuse Container/Dumpster (optional); and

WHEREAS, the Borough desires to adopt the aforesaid ordinances throughout the course of the 2023-2024 calendar years for better legislative management and increased public participation, which ordinances shall appear in Chapter 18 of the Borough Code entitled “Municipal Separate Storm Sewer System (MS4), Tier A Community-Wide Ordinances.”

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Ogdensburg, County of Sussex, and State of New Jersey, that Chapter 18 of the Borough Code entitled “Municipal Separate Storm Sewer System (MS4), Tier A Community-Wide Ordinances” is hereby amended to add new Section 18-10 entitled “Tree Removal and Replacement” as follows:

SECTION 1. Section 18-10 entitled “Tree Removal and Replacement” is hereby added to Chapter 18 of the Borough Code as follows:

§ 18-10.1 Purpose.

The purpose of this Section is to establish requirements for tree removal and replacement in the Borough of Ogdensburg to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare,

§ 18-10.2 Definitions.

For the purpose of this Section, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Chapter 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

Any "person", as defined below, who applies for approval to remove trees regulated under this Section.

CRITICAL ROOT RADIUS ("CRR")

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 $CRR = 6" \times 1.5' = 9'$.

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 tree where the main trunk divides below the 4 ½ foot height, the DBH shall be measure at the highest point before any division.

HAZARD TREE

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

Any individual, resident, corporation, utility, company, partnership, firm, or association.

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.

PROPER JUSTIFICATION

Photos or statements from a New Jersey licensed tree expert as per N.J.S.A. 45:15C-11 or arborist.

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

§ 18-10.3 Regulated Activities.

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 Mayor and Council together with the applicable fee. No tree shall be removed until municipal officials have reviewed and approved the removal.

§ 18-10.4 Tree Replacement Requirements.

- a. Any person who removes one or more street tree(s) with a DBH of 2.5" or more, unless exempt under Section 18-10.5, shall be subject to the requirements of the Tree Replacement Requirements Table below.
- b. 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 18-10.5, shall be subject to the requirements of the Tree Replacement Requirements Table.

c. Replacement tree(s) shall:

1. Be replaced in kind with a tree that has an equal or greater DBH than the 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

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

5. Shall not include the following species of trees:

Scientific Name	Common Name
<i>Acer ginnala</i>	Amur maple
<i>Ailanthus altissima</i>	Tree of heaven
<i>Acer platanoides</i>	Norway maple
<i>Acer pseudoplatanus</i>	Sycamore maple
<i>Acer saccharinum</i>	Silver maple
<i>Akebia quinata</i>	Chocolate vine
<i>Albizia julibrissin</i>	Mimosa
<i>Alnus glutinosa</i>	European black alder
<i>Aralia elata</i>	Japanese angelica tree
<i>Broussonetia papyrifera</i>	Paper mulberry
<i>Fraxinus species</i>	Ash species
<i>Kalopanax septemlobus</i>	Castor aralia
<i>Koelreuteria elegans</i>	Golden rain tree
<i>Malus toringo</i>	Japanese crabapple

<i>Paulownia tomentosa</i>	Princess tree
<i>Phellodendron amurense</i>	Amur cork tree
<i>Populus alba</i>	White poplar
<i>Populus x canescens</i>	Gray poplar
<i>Prunus avium</i>	Sweet cherry
<i>Pyrus calleryana</i>	Callery pear (Bradford pear)
<i>Ulmus parvifolia</i>	Chinese elm
<i>Ulmus procera</i>	English elm
<i>Ulmus pumila</i>	Siberian elm

d. Replacement Alternatives.

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:

1. Plant replacement trees in a separate area(s) approved by the Borough.
2. Pay a fee of up to \$500 per tree removed. This fee shall be placed into a fund dedicated to tree planning and continued maintenance of the trees.

§ 18-10.5 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.

- a. Removal of 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 shall be 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. Replacement requirements shall apply beginning with the first tree over the exempt maximum for the property.
- b. Removal of trees on tree farms in active operation, nurseries, fruit orchards, and garden centers.
- c. Removal of trees on 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. Removal of trees as part of a Borough 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. Removal of trees pursuant to a New Jersey Department of Environmental Protection ('NJDEP'), U.S. Environmental protection Agency ('EPA') approved environmental clean-up, or NJDEP approved habitat enhancement plan.
- f. Removal of trees in accordance with approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.
- g. Removal of Hazard Trees.

§ 18-10.6 Enforcement.

This Section shall be enforced by the Ogdensburg Police Department and/or Municipal Officials of the Borough of Ogdensburg during the course of ordinary enforcement duties.

§ 18-10.7 Violations and Penalties.

Any person (s) who is found to be in violation of this Section shall be subject to a fine not exceeding \$1,000. Such person shall also be required to pay for the costs of acquiring and planting replacement trees as necessary to comply with applicable specification requirements.


SECTION 2. All other provisions unaffected by this Ordinance shall remain in full force and effect.

SECTION 3. All Ordinances or parts of Ordinances inconsistent herewith are repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or a portion of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. This ordinance shall become effective after second reading and publication as required by law.

Attest:



Robin Hough, Borough Clerk



George P. Hutnick, Mayor

NOTICE

TAKE NOTICE that the above-entitled ordinance was introduced at a regular meeting of the Borough Council of the Borough of Ogdensburg on April 8, 2024, and will be considered for final passage after public hearing at a regular meeting of the Borough Council of the Borough of Ogdensburg to be held on April 22, 2024 at 7:00PM in the Municipal Building, 14 Highland Ave., Ogdensburg, New Jersey, and shall take effect according to law.

Robin Hough

Robin Hough, Borough Clerk

Roll call vote for Introduction of Ordinance 07-2024

RECORD OF COUNCIL VOTES				
COUNCIL MEMBER	AYES	NAYES	ABSTAIN	ABSENT
Councilman Alvarez				✓
Councilman Ciasullo	✓			
Councilwoman Cowdrick	✓			
Councilman DeMeo	✓			
Councilman Poyer	✓			
Councilwoman Ruitenberg	✓			
Mayor Hutnick (Tie Only)				

Roll call vote for Adoption of Ordinance 07-2024

RECORD OF COUNCIL VOTES				
COUNCIL MEMBER	AYES	NAYES	ABSTAIN	ABSENT
Councilman Alvarez				✓
Councilman Ciasullo	✓			
Councilwoman Cowdrick	✓			
Councilman DeMeo	✓			
Councilman Poyer	✓			
Councilwoman Ruitenberg	✓			
Mayor Hutnick (Tie Only)				

**BOROUGH OF OGDENSBURG
LEGAL NOTICE
ORDINANCE 07-2024**

**AN ORDINANCE OF THE BOROUGH OF OGDENSBURG, COUNTY OF SUSSEX,
AND STATE OF NEW JERSEY AMENDING CHAPTER 18 OF THE BOROUGH CODE
ENTITLED "MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4), TIER A
COMMUNITY-WIDE ORDINANCES" TO ADD NEW SECTION 18-10 ENTITLED
"TREE REMOVAL AND REPLACEMENT"**

NOTICE is hereby given that the above Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Ogdensburg, in the County of Sussex, State of New Jersey, held in the Municipal Building on the 8th day of April, 2024, and the same came up for final passage at a meeting of the said Borough Council on the 22nd day of April, 2024, at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the borough according to law by order to the Borough Council of the Borough of Ogdensburg, County of Sussex and State of New Jersey.



Robin Hough, RMC/CMR