

**BOROUGH OF HAWORTH
ORDINANCE #2024-10**

**AN ORDINANCE TO ESTABLISH REGULATIONS FOR THE MANAGEMENT
AND MAINTENANCE OF ALL TREES IN THE BOROUGH OF HAWORTH**

Section 1. Purpose.

The purpose of this section is to preserve and protect trees and plantings within the Borough by controlling, regulating and prohibiting certain activities on and along streets, roadways, rights-of-way, parks, recreation areas and other public and private property which may adversely impact upon those trees and plantings. Furthermore, the purpose of this article is to:

- preserve the beauty and character of Haworth
- encourage conditions and practices which prevent increased surface drainage, sedimentation and soil erosion, decreased soil fertility, post construction mortality
- communicate the shared benefits to the community including more aesthetically pleasing landscapes, increased property value, decreased cooling costs, enhanced air quality and reduce the borough's carbon footprint
- provide adequate revegetation of the area with appropriate species after construction and
- discourage indiscriminate and excessive removal, cutting and destruction of trees

Section 2. Definitions.

As used in this Ordinance, the following terms shall have the meanings indicated:

BOROUGH EASEMENT

This easement gives the Borough the right to use the grantor's property for a specific purpose. It gives the Borough a non-possessory interest in the grantor's land.

BOROUGH TREE

Shall mean any tree of which at least 50% when measured at four and one-half (4 1/2) feet above the surrounding ground (Diameter at Breast Height (DBH)) is located in or upon any street, park, recreation area or other Borough property and shall include park trees and shade trees. A tree shall be defined as any living woody perennial plant having a

trunk diameter of at least four inches measured at four and one-half feet above the natural ground level.

BUILDER

A person or a company who constructs something by putting parts or materials together over a period of time.

CLEAR CUTTING

Cutting down six (6) or more trees or 60% of the total trees on the property (whichever is less), of at least 8" diameter at the same time or within a two-year period. If there are 15 or more trees of at least 8" diameter, then Clear Cutting shall be defined as 50% of the total trees.

CONTRACTOR

A person or company that enters into or undertakes a contract to provide materials and/or labor to perform a service or job.

COMMISSION

Shall mean the Haworth Shade Tree Commission which has been established in the Borough of Haworth pursuant to the authority of N.J.S.A. 40:64-1 et seq.

DETERMINATION OF BOROUGH TREES

A tree that has at least half of the trunk at DBH on Borough property including within the Right of Way (ROW). To determine if a tree is in the ROW, take the street width from the tax maps and subtract the actual paved width at the tree. This difference is then divided by 2 to determine how far the ROW extends beyond either curb (the ROW zone)."

DEVELOPER

Shall mean any person who, directly or through an agent, employee or independent contractor, intends to engage in development of any land within the Borough of Haworth.

DEVELOPMENT

Shall mean the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building, structure or improvement on an individual property, and any other activity for which a soil permit is required

pursuant to Chapter 24 of the Haworth Borough Code. Development shall also be deemed to include redevelopment.

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.

ENFORCEMENT OFFICIAL

Shall mean the individual currently employed as the Building Code Official/ Zoning Officer of the Borough of Haworth

HAZARD TREE

A tree or limbs thereof that meet one or more of the criteria below as determined by a Tree Professional. 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 Hazard Tree identified as:

- a. Having an infectious disease or insect infestation;
- b. Dead or dying;
- c. Obstructing the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
- d. Causing obvious damage to structures (such as building foundations, sidewalks, utilities, etc.); or
- e. Determined to be a threat to public health, safety, and/or welfare by a certified arborist, Licensed Tree Expert (LTE), Certified Tree Expert (CTE), or DPW Superintendent/Foreman.

MUNICIPAL RIGHT OF WAY

Shall refer to the surface of, and the space above or below, any public street, road, lane, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Borough as an easement or in fee simple ownership. This term also includes rights-of-way held by the County of Bergen where the Borough's approval is required for the use of same.

PARK TREE

Shall mean a tree, shrub, bush and all other woody vegetation in public parks and recreation areas within the Borough of Haworth and all other property owned by the Borough.

PERMITTING AUTHORITY

Shall mean any municipal board, agency, department or official which has the authority to issue an approval or permit to allow construction on land within the Borough of Haworth.

PERSON

Shall mean any person, firm, association, corporation, limited liability company, partnership or similar entity or any combination thereof. This term may be construed to designate the plural as well as the singular.

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.

PROPERTY OWNER TREE

Any tree on private property that is not a Borough Tree or in the right-of-way. This ordinance is intended to cover Property Owner Trees as well as Borough Trees.

PUBLIC UTILITY

Shall mean a regulated public utility as defined in the Revised Statutes of the State of New Jersey (N.J.S.A. 48:2-13).

REPLACEMENT TREE

Shall mean a tree to be planted as a replacement for the removal of an existing tree. The Commission shall develop and maintain a list of desirable replacement trees, in accordance with the guidelines set forth in this section.

SHADE TREE

Shall mean a tree planted along a public road within or adjoining the municipal right-of-way. The Commission shall develop and maintain a list of desirable shade trees, in accordance with the guidelines set forth in this section.

STREET

Shall mean any road, avenue, street or highway dedicated to the public use for street purposes, regardless of whether it has been formally accepted by the Borough of Haworth. A street shall be deemed to include all portions lying between the dedicated or established public right-of-way lines and/or planting strip thereof, said lines being identical with the front property lines of lands abutting the street.

TREE PROFESSIONALS

Shall mean any Licensed Tree Expert, Certified Tree Expert, Arborist, or Certified Municipal Professional.

Section 3. Regulated Activities.

- a. Prohibited Activity: No person shall do or cause to be done by others, either purposely, carelessly or negligently, any of the following acts upon any public streets, parks, recreation areas, right of ways or easement, or any Borough property.
 1. Plant or trim any tree on Borough property.
 2. Fasten any rope, wire, electric attachment, sign or other device to a tree, or any structure or device placed to support or protect the tree.
 3. Do any excavating within four feet of a public tree unless as deemed necessary by the Construction Code Official relating to utility work.
 4. Cut, break, climb with spikes, destroy, remove or substantially injure any tree, or injure, misuse or remove any structure or device placed to support the tree.
 5. Place or maintain upon the soil any salt or other substance which is injurious to tree growth or which would impede the free access of air, water or fertilizer to the roots of any tree.
 6. Apply any chemical or other injurious substance to any part of a tree, including roots, in such a manner as to injure or destroy the tree.
 7. Build fires or station any tar kettle, compaction roller, fuel dispensing truck or other engine or device in any street or other public place in such a manner that the heat, vapors, fuel or fumes may injure a tree.

8. Pile any building material or make any mortar or cement within six feet of a tree. Portable sanitary facilities, such as Port-O-Sans, shall be kept a minimum of six feet from a tree.

9. No motorized vehicle or trailer shall be parked on unpaved surfaces within eight (8) feet of a Borough Tree.

b. Protection of Trees During Construction.

1. Any person proposing to engage in development on land within the Borough of Haworth, which requires a permit from the Building Department, shall submit to the Permitting Authority along with the permit application a tree plan showing: (i) the species, location, caliper and height of all existing shade trees; (ii) markings indicating every tree being requested for removal; (iii) existing and proposed final elevations of the property within the drip line of all existing shade trees; and (iv) the species, caliper and location of all replacement shade trees. This process is required for all building demolition, additions, renovations and/or new construction which will affect any trees on the subject property, both Borough Trees and Property Owner Trees.

The Borough must respond to the applicant within 30 days of receipt of application with a decision. The Permitting Authority shall forward the tree plan to the Commission which shall review the tree plans and render a report to the permitting authority, within 14 days of receipt, indicating whether the tree plan conforms to the requirements of this section. If the Commission determines that any part of the tree plan does not conform to the requirements of this section, it shall advise the Permitting Authority the manner in which the tree plan does not conform and shall recommend to the Permitting Authority appropriate revisions in order to bring the tree plan into conformance. The Commission shall also recommend to the Permitting Authority the amount which should be included in the performance and/or maintenance guaranties to be posted by the Developer in order to insure the protection of existing trees and/or the planting of new trees. The failure of the Commission to render a report to the Permitting Authority within 14 days of receipt of the tree plan will not prevent the Permitting Authority from issuing the permit, provided that all other requirements for the permit have been met. The Commission then forfeit its right to enforce the penalties within this ordinance if their report has not been submitted in 14 days.

2. The Developer shall protect all trees from damage during construction, in accordance with the requirements of this section and the developer shall use all other necessary and appropriate tree preservation methods. Extreme care should be taken by

developers, their engineers, architects and contractors, in specifically protecting the root zone of existing trees during all construction on the property.

3. Where any shade tree is proposed to be surrounded by pavement of stone, cement, asphalt or any other substance tending to impede the free access of air and/or water to the tree root system, no portion of that pavement shall be placed nearer than two feet to the base of the trunk of the shade tree, nor shall the elevation of the existing ground be changed more than one foot.

4. During construction, the owner, Developer, Contractor or person in charge of the job site shall place adequate guards around all trees as to effectively protect them from damage or injury.

5. No person shall operate excavation and/or earthmoving equipment in such a manner as to injure any shade tree.

c. Replacement of Borough Trees Destroyed or Damaged During Construction.

The Developer shall be responsible for replacing any and all trees destroyed during construction or damaged to the extent that the Commission determines that the tree will not survive as a result of the damage, or that the tree poses an imminent danger to life or property. Replacement Trees shall conform to the requirements of this section. In addition to the penalties authorized by this section, a person who removes or otherwise destroys a tree in violation of this section will be required to pay a replacement assessment to the Borough. The replacement assessment shall be the value of the tree as determined by the appraisal of a trained forester or certified tree expert retained by the Commission for that purpose. In lieu of an appraisal, the Commission may adopt a formula and schedule based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch based upon the replacement rate established by the International Society of Arboriculture (ISA). The square inch cross section shall be calculated from the diameter at breast height and, if there is a multiple stem tree, then each trunk shall be measured and an average shall be determined for the tree. The Commission shall modify the value of the tree based upon its species variety, location and its condition at the time of removal or destruction.

d. Wires, Cables, Electric Current.

1. Every person having control over any wire for the transmission of electric current along a public highway shall at all times guard all trees through which or near which the wires pass against any injury from the wires or from the electric current

carried by them. The device or means used shall be subject to approval of the Commission.

2. Every person having control over any wire for the transmission of electric current along a public highway shall temporarily remove any wires or the electricity therefrom when it shall be necessary in order to remove or trim any trees within a public highway within 24 hours after service upon the owner of the wire or wires, or the owner's agent, of a written notice to remove the wire or wires or the electricity, signed by two members of the Commission, or by its secretary, upon the order of the Commission.

e. Guidelines

1. The Commission shall utilize the following guidelines when implementing this section:

(a) Replacement Trees should be taken from the approved list found on the Borough website. The Commission will review and comment on alternative tree types when submitted for individual properties.

2. If Replacement Trees are proposed in connection with development of an individual property, they shall be planted within an overall landscaping plan and not solely used for shielding along property boundaries.

f. Private Trees

1. Property Owners, Developers, Contractors and/or Builders that wish to remove Property Owner Trees with a DBH of 6" or greater not in conjunction with building construction shall file a tree removal permit with the Borough. The Borough must respond to the applicant within 30 days of receipt of application with a decision. Within that time frame, the Borough shall have the Commission review the permit within 14 days of its submission. The Commission shall respond to the Borough, indicating whether the tree permit conforms to the requirements of this section. If the Commission determines that any part of the tree removal permit does not conform to the requirements of this section, it shall advise the Enforcement Officer the manner in which the permit does not conform and shall recommend to the Permitting Authority appropriate revisions in order to bring the permit into conformance. The Commission shall respond to the Permitting Authority within 14 days of receipt of application. The failure of the Commission to render a report to the Permitting Authority within 14 days of receipt of

the tree plan will not prevent the permitting authority from issuing the permit, provided that all other requirements for the permit have been met. Clear cutting of Property Owner Trees shall not be permitted.

2. Such permit shall include the below information:

(a) Name, address, phone number and email address of the owner of the premises. Signature will show consent by Owner, hereby certifying that he or she is the owner of the property which is affected by the application and hereby consents to the application.

(b) Name, address, phone number, email address and license and registration number of the party performing the removal;

(c) Description of the premises where removal is to take place, including lot and block numbers, and street address if assigned;

(d) The tree species, size, quantity and diameter at a point of measurement (DBH).

(e) Total number of trees removed from this lot, including this request, within the 24 months prior to the date of application;

(f) Purpose for tree removal (construction; street or roadway; driveway; dead, diseased or potentially hazardous, etc.)

(g) Evaluation Letter from Certified Arborist or Licensed Tree Expert;

(h) A plan showing the location of all structures and improvements on the property in relation to the proposed trees to be removed, including building foundation, garages, driveways and other paved areas, outbuildings, swimming pools, tennis courts.

(i) The name and address of the person having express charge, supervision and/or control of the proposed removal of trees.

(j) A grant of express, written permission to Borough officials, employees, and consultants to enter upon the property to inspect the trees to be removed and to inspect the tree removal project as the work is in process.

(k) Applicants shall be required to protect from damage all trees which are not to be removed and shall install fencing at least ten feet from the trunks of said trees.

(l) Such other information as may be required from time to time by the Enforcement Officer.

g. Tree Removal Fees

1. The fee for a Tree Removal Permit shall be as follows:

(a) \$50 per tree of diameter of at least 6” up to 12”

(b) \$100 per tree of diameter greater than 12” up to 24”

(c) \$200 per tree of diameter greater than 24” up to 30”

(d) \$500 per tree of diameter greater than 30”

2. Notwithstanding the above fee schedule, no permit fee shall be required for the removal of a dead or Hazardous Tree, provided the applicant and/or property owner provides a certification from a Tree Professional confirming the condition of the tree, or has the consent of the Commission regarding the condition of such tree.

h. Notice or Consent of Adjoining Property Owner (if required)

1. In the case of any tree shown on a survey plan located on a property line, the applicant shall be required to obtain written consent from the adjacent property owner to remove said tree and said written consent shall be submitted by the applicant at the time of application for a tree removal permit.

2. If within 30 days, an applicant fails to secure consent or gets no response to his request, the Enforcement Officer will send a certified letter informing the neighbor if the tree permit application has been approved and notification for commencement of work. If the neighbor is opposed to the proposed work, they will inform the Borough in writing, at which time the Enforcement Official will act as arbiter between the two parties and work to come to a mutually agreed upon plan. The

neighbor's right to object shall be waived if they fail to respond to Enforcement Officer's notice.

i. Tree Removal Plan

1. Attach an original plan of tree removal consisting of a lot map showing the location of all trees with all trees of diameter 6" or greater at DBH, and the location of all trees to be removed, the species of such trees, and their caliper.

j. Fines

1. Should a Homeowner remove a Homeowner Tree without a permit, the Homeowner shall pay a fine equal to five (5) times the cost of the permit fee as defined in Sec. 3.g.1. for any trees of diameter 24" or less, and ten (10) times the cost of the permit fee for any tree greater than 24".

k. Tree Replacement Requirements

Any person, who removes one or more tree(s), with a DBH of at least 6", shall be subject to the requirements of the Tree Replacement Requirements Table. The species type and diversity of replacement trees shall be in accordance with the current list as posted on the Haworth Shade Tree Commission website. An approved tree replacement schedule sanctioned by the Planning or Zoning Board as part of a land use application shall overwrite the requirements of the Tree Replacement Requirements Table (as continues in Section 3 below.) There is no replacement necessary when removing a hazard tree.

m. Replacement Tree(s) shall:

1. 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;

(a) 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;

(b) Be monitored by whomever planted the trees for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12)

months; and

(c) Shall not be planted in temporary containers or pots, as these shall not count towards tree replacement requirements.

Tree Replacement Requirements Table:

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

n. Replacement Alternatives

If the Enforcement Officer or DPW Superintendent /Foreman determines that some or all required Replacement Trees cannot be planted on the subject 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 \$400 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.
3. Plant a larger caliper tree in equal wholesale value to the tree required for restitution.

Section 4. Exemptions.

a. The requirements of this section shall not apply to:

1. Activities in or along State highways and/or County highways and parks, with the consent of the New Jersey Department of Transportation and/or the Bergen County Department of Parks;
2. Activities conducted by regulated public utilities on land in which the public utility has obtained an easement or right-of-way;
3. Activities conducted by the Borough Department of Public Works, Borough Construction Code Official, or other municipal agencies as deemed necessary for the public safety;
4. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
5. 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;
6. 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;
7. 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;
8. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;

9. The removal of any tree as ordered by the Enforcement Officer;
10. Any tree located on publicly owned land and removed by the appropriate public agency with the consent of the Enforcement Officer.
11. Any tree that poses imminent danger to life or property in the opinion of the Borough Engineer, Construction Official, certified arborist or LTE. If prior notification of the removal of said tree pursuant to this chapter is not given to the Enforcement Officer prior to removal, then notification must be provided within three days of such removal. Hazard trees may be removed with no fee or replacement requirement.
12. Any dead tree or substantially diseased tree as a result of natural causes or storm damage where:
 - (a) The person desiring to destroy or remove the tree is the owner of the land upon which the tree is located;
 - (b) The person notifies the Enforcement Officer of the desire to remove the tree. The initial application will include a letter from a Licensed Tree Professional, LTE or Certified Arborist with their determination as to the validity of the tree.
 - (c) A public utility determines the tree may impair their provision of service.
13. Accident- or storm-damaged trees where removal is in response to an emergency.
14. Tree removal and restitution plans approved by the Planning or Zoning Board in conjunction with Site Plan, Soil Movement, or Zoning Appeal Approval.

Section 5. Enforcement.

- a. The Enforcement Officer will have the enforcement authority to issue Summonses pertaining to the violation of the Ordinance.
- b. Any person who is found to be in violation of the provisions of this section shall, upon conviction thereof, be punished for a first-time offense by a fine of not less than \$1,000 nor more than fifteen hundred (\$1,500.00) dollars, as determined by the

Municipal Court Judge. For a second or subsequent offense, a fine of not less than fifteen hundred (\$1,500.00) dollars nor more than \$2,000, shall be imposed. A separate offense shall be deemed committed on each day during, or on which, a violation occurs or continues.

- c. In addition to the penalty set forth above, any person who removes or otherwise destroys a tree in violation of this section shall pay a replacement assessment to the Borough of Haworth, which shall be calculated in accordance with N.J.S.A. 40:64-12.
- d. Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication or cable television services upon any lands in which it has acquired an easement or right-of-way, shall not be subject to any penalty under this section. This paragraph shall not, however, exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions.

SECTION 6. Appeals

If a Tree Removal Permit request is denied by the Enforcement Officer, the applicant shall have the right to appeal the decision within 45 days of receipt of the permit denial. The appeal shall be heard by the Shade Tree Council Committee which will be chaired by the Council Liaison as of the date of the hearing of the appeal. The Committee will consider all submitted evidence, including but not limited to, records, videos, verbal testimony, briefs, and legal argument. The Council Committee will provide a decision on the appeal in writing and a copy thereof shall be provided to the applicant and filed with the Shade Tree Commission.

SECTION 7. Repeal of Certain Sections.

Section 16-7, Subsections 16-7.1 to 16-7.13, inclusive, be and are hereby repealed.

SECTION 8. 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 9. 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.

HEATHER WASSER, Mayor

Date

Interim Borough Clerk

Date

Introduced:

Adopted:

Approved: