

CITY OF ABSECON

ORDINANCE 15-2024

AN ORDINANCE AMENDING THE CODE OF THE CITY OF ABSECON CREATING CHAPTER 323 TREE REMOVAL AND REPLACEMENT

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Absecon, County of Atlantic, State of New Jersey, that Chapter 323 – Tree Removal and Replacement is created as follows:

§323 1. Purpose:

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

§323-2. 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.

- A. "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.
- B. "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.
 - 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 (LTE).

- C. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.
- D. "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.
- E. "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.
- F. "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.
- G. "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.
- H. "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.
- K. "Tree removal" means to kill or 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 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.

§323-3. Regulated Activities:

A. Tree Replacement Requirements

1. Any person who removes one or more tree(s) with a DBH of 6" or more, unless exempt under §323-4, shall be subject to the Tree Replacement Requirements Table below.

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria
1	DBH of 6" to 22.99"	Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed
2	DBH of 23" or greater	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed

2. Replacement tree(s) shall:

- a. Be planted within twelve (12) months of the date of removal of the original tree(s).
- b. Be monitored by the resident 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.

B. Replacement Alternatives:

- 1. If the City determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, the replacement tree(s) shall be planted at a separate location(s) approved by the City.

§323-4. 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.

- A. Trees within the buildable area of a property, at or beyond the building setback line as defined in Chapter 224 Land Use and Development.
- B. Trees indicated to be removed on plans approved by the Absecon Planning Board or Absecon Zoning Board of Adjustment for any development application.
- C. Any trees removed as part of a municipal capital improvement project.
- D. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
- E. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the City
- F. 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.
- G. 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;
- H. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- I. Hazard trees may be removed with no replacement requirement.

- J. Residents who remove less than four (4) trees per acre within a five-year period. The number of trees removed is a rolling count across a five-year period. For example, if 3 trees are removed in July 2023, the count resets to zero in July 2028. However, if 1 tree 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. The acreage for the count shall be the total acres of the resident's property. Trees removed that are otherwise exempt pursuant to one or more of the criteria above shall not be included in the count.

§ 323-5. Enforcement:

This chapter shall be enforced by the municipal official(s) designated by the City of Absecon during the course of ordinary enforcement duties.

§ 323-6. Violations and Penalties:

Any person(s) who is found to be in violation of the provisions of this chapter shall have 72 hours to complete corrective action. Repeat violations and/or failure to complete corrective action shall be punishable by a fine not exceeding \$500 per occurrence.

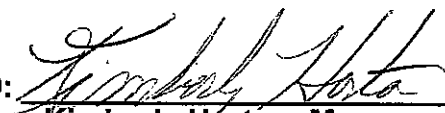
§ 233-7. Severability:

Each section, subsection, sentence, clause, and phrase of this chapter 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.

§ 323-8. When Effective:

This chapter shall take effect upon its final passage and publication as required by law.

DATED: June 20th, 2024

SIGNED: 
Kimberly Horton, Mayor

ATTEST: 
Carie A. Crone, RMC, Municipal Clerk

Passed on first reading at a regular meeting of the Municipal Council held on June 6th, 2024.
Laid over and advertised for public hearing and final adoption on June 20th, 2024. Notice is
hereby given that the foregoing Ordinance was approved for final adoption by the Municipal
Council of the City of Absecon at a regular meeting held on June 20th, 2024.