

Chapter 425. Trees

[HISTORY: Adopted by the City Council of the City of Englewood 6-13-2017 by Ord. No. 17-04^[1]; amended in its entirety 10-17-2017 by Ord. No. 17-12. Amendments noted where applicable.]

GENERAL REFERENCES

Environmental Commission — See Ch. 8, Art. II.

Removal of dead and dying trees — See Ch. 129, Art. I.

Trees damaged during moving of buildings — See Ch. 140.

Site plan review — See Ch. 250, Art. VI, § 250-36.

[1] *Editor's Note: This ordinance also superseded former Ch. 425, which consisted of Art. I, Protection of Trees, adopted 10-5-1978 by Ord. No. 2335 as §§ 15-1, 15-33 to 15-36 of the 1978 Revised General Ordinances, as amended; and Art. II, Removal of Trees, adopted 12-19-1995 by Ord. No. 95-22, as amended.*

Article I. Protection of Trees

§ 425-1. Permit required for certain actions.

No person shall do or cause to be done any of the following acts upon a street or public highway within the City without first obtaining a permit therefor from the City Engineer:

- A. Cut, trim, break, climb with spikes, disturb the roots of or otherwise injure or spray with any chemical any tree or shrub; remove any living shrub; injure, misuse or remove any structures or device placed to support or protect any tree or shrub.
- B. Plant any tree or shrub.
- C. Fasten any rope, wire, electric attachment, sign or other device to a tree or shrub or to any guard about a tree or shrub.
- D. Close or obstruct any open space provided about the base of a tree or shrub to permit the access of air, water or fertilizer to the roots of thereof.
- E. Pile any building material or install any mortar or cement within six feet of a tree or shrub.

§ 425-2. Conditions for issuance of permit.

No such permit shall be issued unless such requested action is necessary for properly authorized construction or other work and unless the City Engineer is satisfied that there is no other reasonable method of accomplishing same and that all precautions to eliminate any material soil erosion, drainage and/or similar problems have been implemented to minimize any potential damage or injury to trees, shrubs and that there will be no resultant damage to sidewalks, streets, or adjacent lots.

§ 425-3. Electric wires.

Every person having control over any wire for the transmission of electric current along a public highway shall at all times guard the trees through which or near which such wire passes against any injury from the wire or from the electric current carried by it.

§ 425-4. Injurious substances prohibited.

No person shall permit any brine, gas or injurious chemical to come in contact with the stem or roots of any tree or shrub upon any street or highway.

§ 425-5. Violations and penalties.

[Amended 10-23-2018 by Ord. No. 18-15]

- A. Any person who violates any provision of this article shall upon conviction thereof be punished by a fine not exceeding \$1,000 or by imprisonment for a term of not exceeding 90 days, or both.
- B. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Article II. Removal of Trees

§ 425-6. Purpose.

- A. The City Council of Englewood has determined that it is necessary to maintain and improve the City's tree because of the important role it plays in contributing to the aesthetic beauty of, and improving the quality of life within the City of Englewood by, without limitation:
 - (1) Removing carbon dioxide and other pollutants from the air;
 - (2) Replenish oxygen;
 - (3) Controlling drainage;
 - (4) Reducing stormwater runoff;
 - (5) Replenishing groundwater supplies;
 - (6) Preventing soil erosion;
 - (7) Restoring denuded soil;
 - (8) Providing shade;
 - (9) Conserving energy;
 - (10) Providing visual screen and sound attenuation;
 - (11) Maintaining the mature tree inventory; and
 - (12) Providing food and shelter for birds and other wildlife.
- B. This article preserves, improves, and perpetuates the City's tree stock by providing regulatory control over the removal of trees which have attained a specific minimum size and to provide for orderly replacement of said trees by property owners and/or their agents.

§ 425-7. Definitions.

For the purposes of this article, the below terms have the following defined meanings:

BALLED AND BURLAPPED (B & B)

A method of excavation in which the subject tree is removed along with soil surrounding its roots, and such soil and roots are wrapped and laced.

DIAMETER AT POINT OF MEASUREMENT or DPM

The diameter of a tree measured at a point on the trees six inches from ground level on the downhill side.

DRIP LINE

An imaginary line on the ground beneath a tree, the location determined by extending a vertical line from the outermost branches of a tree to the ground.

EMERGENCY REMOVAL

A removal which is necessitated by any event, whether natural or man-made, which requires the immediate removal of a regulated tree because it has been determined that such tree presents an imminent hazard to the public's safety. Such determination shall be made by a certified arborist or City official as authorized by the City Manager. Emergency removals may be authorized by the City Engineer prior to a permit; however, a permit and replacement plan shall be required within seven days of removal. If a permit application is not received within seven days of removal, the City may take the enforcement steps in this article.

LANDMARK TREE

Any tree designated and identified as such by the City Council pursuant to the standard set forth herein.

LANDMARK TREE REGISTRY

A register of all landmark trees within the City of Englewood which shall be promulgated by the City Council at a public hearing on public notice.

MAJOR TREE

A nursery-grown certified, balled and burlapped deciduous tree with a mature height of at least 50 feet and a DPM of 3 1/2 inches at the time of planting. All major trees shall be chosen from the following approved listing or other trees designated and approved by the City Arborist.

Common Name/Scientific Name of Acceptable Major Trees

Red maple/Acer rubrum

Sugar maple/Acer saccharum

Sweet gum/Liquidambar styraciflua

London plane/Platanus x acerifolia

American sycamore/Platanus occidentalis

White oak/Quercus alba

Pin oak/Quercus palustris

Red oak/Quercus rubra

American elm/Ulmus americana

Copper beech/Fagus sylvatica v. purpurea

PROJECT

Any undertaking whatsoever which would involve potential damage to or which may result in the planned or unplanned removal of one or more regulated trees. Such projects shall include, but not be limited to, new construction, modifications of existing structures, grade modification and drainage improvement works, except for those exempted in § 425-13 of this article.

REGULATED TREE

A deciduous or coniferous tree which has attained at least 30 feet in height or a DPM of at least eight inches prior to any pruning, limb removal or other such activity.

REMOVAL

Any activity which results in cutting down completely or substantially eliminating a regulated tree from the City's tree stock. "Removal" shall include, without limitation, the following:

- A. Soil compaction or damage inflicted to the root system of any tree;
- B. Change of the natural grade above or below the root system or around the trunk of any tree;
- C. Excessive pruning or thinning of any tree leading to a failure to thrive;
- D. Damage inflicted to any tree permitting fungus, pests or other infestation; or
- E. The application of any harmful or toxic substance.

REMOVAL PERIOD

A period of time consisting of 365 consecutive days after a permit is issued for a project which is regulated by this article.

REPLACEMENT PLAN

A plan developed in accordance with and conforming to the provisions of this article which has been approved by the City Engineer.

REPLACEMENT TREE

A nursery-grown certified, balled and burlapped tree bearing a durable label upon which the following data is set forth: genus, species, variety, watering and fertilization requirements. All replacement trees shall be chosen from the following approved tree listing or other trees designated and approved by the City Arborist. Replacement trees shall be selected within the same tree group as the removed tree(s) [i.e., a deciduous tree removed shall be replaced by deciduous tree(s)].

Common Name/Scientific Names of Acceptable Evergreen, Deciduous, and Ornamental Trees

| | |
|--|---|
| Birch/Betula | Dogwood/Cornus |
| Red Maple/Acer rebrum | Japanese Maple/Acer palmatum |
| Sugar Maple/Acer saccharum | Cherry/Prunus |
| Sweet Gum/Liquidambar styraciflua | Crabapple/Malus |
| London Plane/Platanus x acerifolia | Magnolia/Magnolia |
| American Sycamore/Platanus occidentalis | Ornamental Pear/Pyrus calleryana "Chantcleer" or "Redspire" |
| White Oak/Quercus alba | Cedar/Cedrus |
| Pin Oak/Quercus palustris | Cypress/Cupressus |
| Red Oak/Quercus rubra | Arbrevitae/Thuja |
| American Elm/Ulmus Americana | Cryptomeria/Cryptomeria |
| Copper Beech/Fagus sylvatica v. purpurea | Dawn Redwood/Metasequoia glyptostroboides |
| Fir/Abies | Larch/Larix |
| Spruce/Picea | Pine/Pinus |

SITE PLAN

A plan as defined by Chapter 250, Land Use, of the Code of the City of Englewood.

SPECIES

For the purpose of this article, the common name of the tree.

§ 425-8. Cutting or removal restricted.

- A. With the exception of the exemptions set forth in § 425-13 of this article, no person shall cut or remove, or cause to be cut or removed, any regulated tree upon any lands within the City of Englewood, unless a project permit or permit waiver has been obtained from the City Engineer for the removal of such regulated tree and such removal is performed in strict accordance with the provisions of this article.
- B. In addition to the foregoing, New Jersey State laws and regulations are hereby expressly incorporated by reference as they pertain to tree expert and tree operator licensing and the requirements and standards set forth in said state statutes and regulations, including but not limited to the Tree Experts and Tree Care Operator's Licensing Act^[1] and such implementing state regulations.

[1] *Editor's Note: See N.J.S.A. 45:15C-1 et seq.*

§ 425-9. Project permit required.

- A. A project permit is required for the removal of three or more regulated trees within a five-year period upon any land within the City of Englewood. Permit requirements are subject to the provisions of § 425-2.
- B. A permit waiver is required for the removal of less than three regulated trees within a five-year period upon any land within the City of Englewood. In such cases, a letter on the tree remover's letterhead shall be submitted to the City Engineer's office containing the number, size, species, and reason for tree removal.

§ 425-10. Project permit application process.

- A. Project permit application submission. Applications for tree removal project permit(s) shall be submitted to the City Engineer prior to the removal of any regulated tree hereunder.
- B. Application contents. An application for applying for and issuing a tree removal permit shall consist of the following:
 - (1) The name and address of the owner of the land;
 - (2) The name and address of the applicant for the permit, if other than the owner of the land, together with a copy of such owner's signed consent to such application;
 - (3) The description of the lands in question, including the lot and block numbers and street address of the land as shown on the current Tax Map of the City of Englewood;
 - (4) The purpose or reason for removing the tree(s);
 - (5) The quantity, caliper size and species of tree(s) to be removed, and whether any such tree(s) are landmark tree(s);
 - (6) The proposed dates for commencement and completion of the project;
 - (7) Name and address of the person having express charge, supervision, and/or control of the proposed removal of tree(s);
 - (8) A written statement of plans for the proposed replanting of trees as required herein;
 - (9) A statement granting permission to City officials or their employees to enter the premises and make surveys and inspections as the work progresses; and

- (10) A tree replacement plan that includes quantity, caliper size and species of tree(s) to be replanted.
 - (11) Submission of the tree expert and tree operator's license pursuant to New Jersey state law, including but not necessarily limited to the Tree Experts and Tree Care Operator's Licensing Act.^[1]
 - [1] *Editor's Note: See N.J.S.A. 45:15C-1 et seq.*
 - (12) A cash performance bond shall be posted with each application in an amount to be determined by the City Arborist or a certified tree expert retained by the City of Englewood to provide for restitution in the event that trees are improperly removed.
- C. Marking. The applicant shall place one-inch-wide ribbon around the trunk of each tree to be removed at a height of approximately four feet above the ground so that the proposed removal may be inspected in the field. Such markings shall remain in place until:
- (1) The removal of such tree; or
 - (2) The abandonment of the project.
- D. Notice to property owners. For any tree removal of more than two regulated trees within any five-year period, the applicant shall (i) provide written notification of the proposed tree removal to all adjacent property owners of the property in question, (ii) submit written evidence of such notification to the City Engineer at the time of application for the tree removal permit. The applicant shall also alert all owners within 200 feet of the property in question of the proposed tree removal.
- E. The City Engineer shall:
- (1) Review the application to determine whether the project complies with this article;
 - (2) Visit and inspect the project location;
 - (3) Ensure that all soil erosion and sediment guidelines have been satisfied; and
 - (4) Shall provide written notice to the applicant indicating one of the following determinations:
 - (a) The project permit is granted; stating the date on which such permit is granted and the date on which such permit shall become effective, subject to the provisions of § **425-11** hereof; or
 - (b) The project permit is granted subject to prescribed conditions attached to such notice; stating the date on which such permit is granted and the date on which such permit shall become effective, subject to the provisions of § **425-11** hereof; or
 - (c) The project permit is denied, in which event a written notice shall state the reasons for such denial.
- F. The City Engineer shall make the foregoing determination and prepare and furnish the foregoing notices within 30 calendar days following submission of a completed application.
- G. Failure of the City Engineer to make said determination within such thirty-day period, or within any extension of time granted by the applicant, shall constitute and have the same effect as a denial.
- H. Any proposed change in the approved project shall be submitted to the City Engineer for approval in the same manner as an original application for approval of a project.
- I. The applicant shall maintain a copy of the approved permit at the project location which shall be available for inspection.

§ 425-11. Tree replacement plan.

A. A tree replacement plan shall consist of the following:

- (1) A site plan, on a scale of one inch equals 30 feet or less, showing the location of existing trees and clearly marked property boundaries. There shall be a list identifying the number and species of trees inventoried. The site plan shall include the lot and block numbers, the street address, if assigned, and a certification of compliance with the requirements of this article.
- (2) Locations of streams and other watercourses.
- (3) Locations of slopes of greater than 10% where any tree removal is proposed.
- (4) The location(s) on the tract where tree removal is to take place.
- (5) The total acreage of the tract.
- (6) The total number, by species, of existing trees with a DPM of eight inches or greater on the tract, as well as any landmark tree(s).
- (7) The total number, by species, of trees with a DPM of eight inches or greater which are to be removed.
- (8) Proposed soil erosion and sediment control measures.

B. All specific plans for replacement of removed trees shall be based on the following requirements:

- (1) The replacement trees shall be planted on the property where the trees were removed or in a location designated by the City Arborist or a certified arborist to promote survival.
- (2) The species of trees that are to be replaced shall be selected from the City-approved tree listing or approved by the City Engineer in consultation with the City Arborist and comply with the definition of "replacement tree" set forth in § 425-7 hereof.
- (3) The applicant shall provide a two-year survival guarantee for all replacement trees, after the completion of any project or planting. During the guarantee period, any dead or dying replacement tree(s) shall be replaced by the applicant within six months.
- (4) Replacement trees, including the size and number of trees, shall be planted in accordance with the following table. All removal trees with a DPM greater than 12 inches shall be replaced by a major tree and comply with the definition of "major tree" set forth in § 425-7 hereof.

**Size of Tree Removed
(inches DPM)**

**Number of Replacement Trees with a DPM
of at Least 3 1/2 Inches**

8 but less than 12

1

12 but less than 18

2

18 but less than 24

3

24 but less than 36

4

36 or greater

To be determined in consultation with the City
Engineer after consideration of the project,
but in any event, not less than 6

- * The removal of any regulated tree within the minimum planting areas set forth in Chapter 250, Land Use, of the Code of the City of Englewood, is not permitted. Any such removal shall require a number of replacement trees not less than twice the required number of replacement trees reflected in the above table and a fine set forth in § 425-5 hereof.

§ 425-12. Contribution to Tree Fund in lieu of planting.

In certain circumstances, the City Engineer may authorize a contribution to the City's Environmental Commission Tree Fund in lieu of planting replacement trees on site where he determines that the purposes of this article would be furthered thereby. Such contribution shall bear a reasonable relationship to the cost of planting trees which would otherwise be required under § 425-11 of this article, but in no case shall it be less than \$300 per required replacement.

§ 425-13. Exemptions.

The following shall be exempt from the requirements of this article:

- A. Commercial nurseries.
- B. Pruning within the right-of-way by utility companies for maintenance of utility wires or pipelines. The utility company shall notify the City Engineer prior to commencing such work.
- C. Trees that are deemed to be removed by the City that are on or over a public right-of-way.
- D. Public parklands owned by the City of Englewood or Flat Rock Brook Nature Center.
- E. Any projects that have received building permits prior to enactment of this article.
- F. Trees that are deemed to be removed as part of a municipal project.
- G. Emergency removals.

§ 425-14. Restrictions.

- A. No permit shall be issued for the removal of any tree within the minimum planting areas set forth in Chapter 250, Land Use, of the Code of the City of Englewood unless such removal is deemed necessary by a New-Jersey-licensed arborist and with the written consent of the City Engineer.
- B. Removal of regulated trees shall be limited to the area of an existing or proposed structure to a distance of 15 feet from exterior walls or eaves of porches and new swimming pools; and a distance of five feet from site structures such as walks, parking areas, driveways, courts, patios and other related structures.

§ 425-15. Fees.

An application for a tree removal permit shall be accompanied by the required fee as set forth below:

- A. Permit for each tree removal: as provided for in Chapter 191, Fee Schedule.
- B. (Reserved)
- C. An escrow shall be established in the amount of \$250 per replacement tree which shall be retained until the tree replacement plan is completed. Engineering review fees in connection with the implementation of a tree replacement plan shall be paid from the escrow at the rate established for engineering review fees in connection with site plan approval. In addition, in the event the tree replacement plan is not completed within the time specified by the City Engineer, the City may use such escrow to complete the tree replacement plan or, in lieu thereof, deposit said escrow in the Tree Replacement Fund. Upon completion of the tree replacement plan, the balance remaining in said escrow after payment of the foregoing fees, if any, shall be returned to the applicant.

§ 425-16. Violations and penalties.

- A. Any person, including but not limited to owners, tenants, operators, and their agents or representatives, who violates any provisions of this article shall be liable for a fine of \$1,000 per tree over the permitted number of trees or imprisonment for a term not in excess of 90 days, or both.
- B. In the event that, in any instance, three or more regulated trees have been removed from a tract without a tree removal permit, and it is unknown how many such regulated trees were removed, then the number of trees requiring mitigation hereunder shall be computed as follows:
 - (1) By assuming that regulated trees greater than six inches in caliper existed 30 feet on center; and
 - (2) By plotting the maximum number of such trees on such tract as circles having a radius of 15 feet and without such circles overlapping or extending beyond the boundary lines of such tract or the drip lines of existing regulated trees.
 - (3) An escrow shall be established for the calculated replacement tree amount as set forth in § 425-15 hereof.
- C. In addition to the penalties set forth above, the City may require a person who removes or otherwise destroys a tree in violation of this chapter or state law and regulations to pay a replacement assessment to the municipality. The replacement assessment shall be the value of the tree as determined by the appraisal of the City Arborist or a certified tree expert retained by the City of Englewood for that purpose.

§ 425-17. Appeal process.

Appeal of a decision by the City Engineer:

- A. In the event that an applicant does not agree with either the rejection of an application or the conditions imposed by the City Engineer, or the applicant believes that the standards set forth in this article constitutes a hardship, the applicant may present an appeal to the City Manager, who at his discretion may request assistance from a representative of the Englewood Environmental Commission and/or the City Arborist, to render a decision or forward the appeal to the Planning Board, within 30 days of the submittal.
- B. In the event that the decision of the City Engineer is so appealed, then:
 - (1) The effective date of such permit shall be stayed until the decision of the City Manager or Planning Board with respect to such permit shall have been rendered.
 - (2) The issuance of such permit, and the terms thereof, shall be subject to the decision of the City Manager or the Planning Board.
- C. In the event that a notified property owner objects to the removal of any regulated tree or the decision of the City Engineer under this article, solely on the grounds that the removal or decision violates the City Tree Ordinance, then such property owner(s) may appeal the removal or the decision of the City Engineer to the Planning Board. Such appeal must satisfy all Board and City Land Use Code requirements.

§ 425-18. Time of completion.

Any and all trees required to be planted by the applicant pursuant to § 425-11 of this article shall be planted within six months after the completion of the project for which the permit was issued. The applicant may submit a written request to the City Engineer for an extension of time of up to three months due to unforeseen circumstances, including weather conditions, which request shall not be unreasonably denied.

§ 425-19. Protection of existing trees.

- A. In connection with any development/home improvement, six-foot portable chain link fencing or other protective barrier acceptable to the City Engineer shall be placed around trees that are not to be removed.
- B. The portable chain link fencing or other protective barriers referred to in Subsection A of this section shall be placed at a distance of at least 10 feet from the trunk of each tree or the tree's drip line, whichever distance shall be greater, and shall remain in place until all construction activity on the property has terminated. Should the applicant be unable to place the fencing under the dripline, the City Engineer may require a six-inch layer of woodchips to decrease compaction of the soil. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
- C. No person shall remove, damage, injure or disfigure any tree to be saved in connection with any project. The action of any person shall be deemed willful if an existing tree to remain is removed as defined in § 425-7 hereof.
- D. Any excavation within the dripline of any tree to be saved in connection with any project regulated hereunder, whichever is greater, shall be done by airspade or hand-operated equipment. No grade changes shall take place within 10 feet of the trunk of a regulated tree slated to remain as part of a project.

§ 425-20. Protection of landmark trees.

- A. Upon the recommendation of the City Engineer, City Arborist and/or the Englewood Environmental Commission, the City Council shall determine whether any tree qualifies as a landmark tree. A tree may qualify as a landmark tree if it meets one or more of the following criteria:
 - (1) The tree species is rare;
 - (2) The tree is more than 100 years old and healthy;
 - (3) The tree is of an abnormal height or has an abnormal trunk diameter or drip line for a tree of its species; or
 - (4) The history, location, fragrance, aesthetic features or scenic enhancement of such tree is of special importance to the City of Englewood.
- B. All trees designated as landmark trees by the City Council shall be included in the Landmark Tree Register with appropriate code marks signifying each tree's designation, location, number, species, age, size and other distinguishing characteristics for ready reference and periodic monitoring. If and when any landmark tree is removed, the City Council shall arrange for the necessary changes to be made to the Landmark Tree Register.
- C. The City of Englewood may identify any landmark tree by the placement of a suitable marker thereon if the owner(s) of the property on which such landmark tree is located consents thereto.
- D. No person shall remove any landmark tree, whether such tree is located on public or private property (i) without first obtaining the approval of the City Council and (ii) a tree removal permit issued pursuant to the terms of this article.