

## **MS4 Tree Removal/Replacement Ordinance Frequently Asked Questions**

### **1. What is the MS4 Tree Removal/Replacement Ordinance?**

Trees play a critical, but often overlooked, role in the water cycle and in the mitigation of stormwater runoff issues such as soil erosion, pollutant reduction, and infiltration. This ordinance was introduced as an effort to ensure that these undervalued assets are considered throughout the State.

### **2. Why was this ordinance added as a new requirement?**

This ordinance was introduced in the 2023 Tier A permit renewal due to stakeholder engagement during 2019 regarding improvements to the Stormwater Management program and rule language. It was agreed upon by stakeholders and the Department that there is an ongoing need for enhanced stormwater management strategies, specifically ones that will aid in reducing flooding throughout the State.

### **3. Who needs to adopt the Tree Removal/Replacement Ordinance?**

Every municipality in New Jersey that is regulated under the MS4 Tier A permit is required to adopt this ordinance. This ordinance must be applicable for all types of properties that the municipality has jurisdiction over, which includes private properties such as residences, apartment complexes, affordable housing, public lands, and rights-of-way.

### **4. Does this apply to both public and private property? Should there be a separate ordinance?**

Yes, this ordinance would apply to both public and private property. It is up to each municipality's discretion whether to adopt one or two ordinances; however, if they are separated, they must still address removal and replacement for the entire community combined.

### **5. When does this need to be adopted? What happens if my municipality cannot adopt this ordinance in time?**

This ordinance must be adopted by May 1, 2024. If a municipality cannot pass an ordinance resolution before the May 1, 2024 deadline, they may reach out to their County Case Manager. To find a list of County Case Managers, visit our website at: [NJDEP| Bureau of NJPDES Stormwater Permitting and Water Quality Management | MS4 Case Manager List](#)

**6. What is required in the Tree Removal/Replacement Ordinance?**

The ordinance must address both the removal of trees and the replacement of those trees that are removed in order to reduce stormwater runoff and pollutants and to promote infiltration of rainwater into the soil. This ordinance must be applicable to **ALL** areas of your community including private properties. There should not be any exemptions that would broadly exclude areas of the municipality such as private properties or lots of a certain size.

**7. Do I NEED to use the Department's provided model?**

No, you are not required to use the Department's model, but it can be used as a starting point for your town if a tree ordinance is not already in place. It can also be used by municipalities for consideration in reviewing and/or updating an existing tree ordinance. It is important to note that the model can be modified to meet the needs of each individual community. The only guidelines your ordinance must follow is that there is some type of removal **and replacement** element, and that it is applicable to **ALL** areas of your community including private properties.

If you wish to use the Department's model, it can be found on our MS4 website here: [NJDEP| Bureau of NJPDES Stormwater Permitting and Water Quality Management | Example Ordinances](#)

**8. Can a municipality change the replacement requirements that are found in the Department's model?**

Yes, the requirements for a specific municipality can be changed to fit the needs of their community. Each municipality's ordinance still must include a replacement element and it must still be applicable to ALL areas of the community.

**9. What if we already have an existing tree ordinance? How do I know if it's acceptable to use?**

If your town already has an existing Tree Ordinance of some kind and you're not sure whether it meets the standards set forth in the permit, you can always send a copy of the existing ordinance to your county case manager who can do a review. You can find the name of your County Case Manager here: [NJDEP| Bureau of NJPDES Stormwater Permitting and Water Quality Management | MS4 Case Manager List.](#)

**10. If I already have a tree ordinance for major development, do I need another one to meet the MS4 permit requirements?**

Yes, if there is already some type of ordinance in place only pertaining to major developments, a new one will need to be created to cover non-major development activities that impact trees, as the MS4 permit requirement is not intended to apply only to major developments.

**11. Are there any situations where tree replacement does not apply?**

Yes! There are multiple situations where you may not need to replace a tree that was removed. For example, if a tree is being removed because it is dead, that does not need to be replaced. Similarly, if a tree is posing a physical threat to your community or to a building, that can also be removed with no replacement necessary. Justification must be provided and approved by the municipality for these exemptions. A list of exemptions is included in the Department's model in Section IV.

**12. Do I have to replant a tree, or is there another way to meet the replacement requirement?**

If replanting of a tree is not possible, your municipality can set up a Tree Fund, where people who are removing trees but don't want to replace them or are not able to replace them, can pay a fee into. This should be a fund that is dedicated to tree plantings and tree maintenance.

**13. What if my municipality already has an accredited NJ Urban Community Forestry Program, do I still need to adopt an ordinance?**

Yes, even if a municipality already has an accredited NJ Urban Community Forestry Program, an ordinance still needs to be adopted. The ordinance can simply refer to the NJ Urban Community Forestry Program. However, if the Forestry Program does not address both removal and replacement of trees or is only subject to certain portions of the municipality, then the ordinance must include language to supplement the deficiency.

**14. Do Pinelands communities have different requirements?**

Pinelands communities are subject to the same community-wide ordinance requirement. Any municipality's ordinance may be more stringent than the Department's model.

**15. Can wood be cut for personal use be exempted from the ordinance? For example, can I cut firewood to use throughout the winter?**

Wood can be cut for personal use; however, even if trees are being cut for personal use, there still needs to be some type of replacement component. For example, depending on what your specific ordinance states, you may be able to cut 3 trees over a 5-year period, but once you cut down a 4<sup>th</sup>, the replacement requirements would come into effect.

**16. If the DPW removes a tree, do they need to replace it?**

Yes, the municipality should be subject to the same standards as the rest of the community. If the tree the town is removing is not a hazard tree, they should be replacing it.