

ORDINANCE NO. 2024-05

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 31-2, SHADE TREE COMMISSION, OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BELMAR, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, ENACTING TREE REMOVAL PROVISIONS FOR PURPOSES OF COMPLIANCE WITH MS4 TIER A MUNICIPAL STORMWATER GENERAL PERMIT REQUIREMENTS, AMENDING SECTION 31-2.3, SECTION 31-2.4, SECTION 31-2.6 AND SECTION 31-2.12

WHEREAS, the Borough Council of the Borough of Belmar has caused its ordinances of a general and permanent nature to be compiled and revised and embodied in a revision and codification known as "The Revised General Ordinances of the Borough of Belmar, 1994"; and,

WHEREAS, pursuant to N.J.S.A. 40:69A-120, All legislative power of the Borough shall be exercised by the Borough Council except as may be otherwise provided by general law; and,

WHEREAS, pursuant to N.J.A.C. 7:14A et seq., the Borough of Belmar, as with all other municipalities in New Jersey, has been designated as an MS4 Tier A designated municipality under the provisions of the regulations promulgated by New Jersey Department of Environmental; and

WHEREAS, under such a designation, the Borough of Belmar is required to make application to the New Jersey Department of Environmental Protection for a New Jersey Pollutant Discharge Elimination System permit to be allowed to operate its stormwater discharge system; and

WHEREAS, the New Jersey Department of Environmental Protection has made amendments to the permitting requirements to include an obligation for the Borough to include tree removal requirements for the removal and replacement of trees on all properties within the Borough; and,

WHEREAS, the Borough Ordinances presently charge the Shade Tree Commission with the regulation of trees in public spaces; and

WHEREAS, the Mayor and council find it efficient and proper to administer the State's mandate under the auspices of the Shade tree Commission;

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF BELMAR IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY, AS FOLLOWS:

SECTION I. That Borough Ordinance 3.2-3 shall be amended as follows.

Duties.

a.

1. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted, in any public highway, park or parkway, except such as are excluded pursuant to N.J.S.A. 40:64-10 in the Borough, including the planting, trimming, spraying, care and protection thereof;

2. Administer to the removal and replacement of all trees as required under the Municipal Stormwater MS4 permitting process.

b. Regulate and control the use of the ground surrounding all shade and ornamental trees referenced in Paragraph No. 1 above, the same, so far as may be necessary for their proper growth, care and protection;

j. ~~Until such time as a Municipal Arborist is engaged by the Mayor and Borough Council, the~~ The Shade Tree Commission or its designated agent shall:

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1. Supervise or inspect all work done under a Permit issued in accordance with the terms of this Chapter.

2. Affix reasonable conditions and fees to the granting of a Permit in accordance with the terms of this Chapter.

SECTION II That Borough Ordinance 31.3 shall be amended to add required definitions as follows;

Definitions.

APPLICANT

Shall mean any "person", as defined below, who applies for approval to remove trees regulated under this ordinance.

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CRITICAL ROOT RADIUS (CRR)

Shall mean the 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"x1.5' = 9'.

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DIAMETER AT BREAST HEIGHT (DBH)

Shall mean 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.

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HAZARD TREE

Shall mean a tree or limbs thereof that meet one or more of the following criteria; has an infectious disease or insect infestation; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective; is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).

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PERSON

means any individual, resident, corporation, utility, company, partnership, firm, or association.

PLANTING STRIP

Shall mean 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.

RESIDENT

Shall mean 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.

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STREET TREE

Shall mean 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

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Tree

Shall mean 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.

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Tree Caliper

Shall mean 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.

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TREE REMOVAL

Shall mean the physical removal of all parts of the tree in question, including but not limited to, the removal of the tree stump below the surface of the ground so that no part of the tree shall project above the surface of the ground. Tree removal shall also include and mean to kill or to cause irreparable damage that leads to the decline and/or death of a tree and this shall include, 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. Tree removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

SECTION III That Borough Ordinance 31.6 shall be amended to add required provisions as follows;

Permits Required.

a. Planting, Maintenance and Removal.

1. No person shall plant, prune, ~~remove~~, or otherwise disturb any tree on any street or Borough-owned property without first filing an application and procuring a Permit from the Shade Tree Commission. No person shall remove any tree from any property without first filing an application and procuring a Permit from the Shade Tree Commission, or its designated agent, as may be required. The person receiving the Permit shall abide by the Arboricultural Specifications and Standards of Practice adopted by the Shade Tree Commission.

2. Application for Permits must be made at the Office of Code Enforcement not less than 72 hours in advance of the time the work is to commence. No work shall commence unless and until a permit is issued or a determination that no permit is necessary is made by the Shade Tree Commission or its designated agent.

b. Standards of Issuance. The Shade Tree Commission or its designated agent shall issue a Permit provided for herein for work on public property or places if, in the judgment of the Shade Tree Commission, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any Permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the Permit and the manner as therein described. Any Permit shall be void if its terms are violated. If the Permit is denied, the applicant may appeal in writing to the Borough Council within seven days of the denial.

A Permit shall finally be issued upon the payment of a fee by the applicant in an amount of \$10 for each tree affected by the activity as specified in Subsection **a1** hereof.

Notice of completion shall be given to the Borough Clerk in writing within five working days to allow for inspection by the Shade Tree Commission or its designated agent.

c. Planting.

1. The application shall state the number of trees, location, grade, species, cultivar or variety of each tree, methods of planting; and such other information as the Shade Tree Commission finds necessary to a fair determination as to whether a Permit should be issued.

2. Whenever any tree shall be planted or set out in conflict with the provisions of this section, it shall be lawful for the Shade Tree Commission or its designated agent to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of assessments, pursuant to N.J.S.A. 40:64-8 and 9.

d. Removal, Replanting and Replacement.

1. Whenever it is necessary to remove a tree or trees from areas controlled by this Chapter in connection with the paving of a sidewalk, or the paving or widening of the portion of a public street or highway used for vehicular traffic, the Borough shall replant such trees or replace them.

2. No person or property owner shall remove a tree from areas controlled by this Chapter for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the Shade Tree Commission, and without replacing the removed tree or trees in accordance with the adopted Arboricultural Specifications **and the requirements of this Chapter**. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the Shade Tree Commission. The person or property owner shall bear the cost of removal and replacement of all trees removed.

3. In the event the Shade Tree Commission shall determine a tree to be dead or nonviable, the property owner shall be responsible for removing said tree within a period of 30 days from the date of written notice. This applies to any tree located between the sidewalk and curb area. As per N.J.S.A. 40:64-8, the cost of the removal of any tree or part thereof dangerous to public safety shall, if the commission shall so determine, in accordance with uniform rules and regulations promulgated for this purpose, be a charge upon the real estate in front of which such tree or trees shall be planted or removed as an improvement thereof. Such cost if it is so determined that it is to be paid by the owner shall, unless paid directly to the commission be certified by it to the collector of taxes of the municipality, shall thereupon become and be a lien upon said real estate, shall be included in the next bill rendered to the owner or owners thereof, and be collected in the same manner as other taxes against that property.

The provisions of this section shall not apply to:

(a) A planting to replace a tree or trees theretofore planted by the commission;

(b) A planting in connection with Arbor Day exercises or other educational demonstrations.

4. The Borough will continue to keep the public thoroughfare free from all fallen limbs and trees; however, the property owners will be responsible for other fallen limbs and trees.

5. **Additional Requirements required by Stormwater Permitting Process**

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A. **Tree Replacement Requirements.**

(i) Any person who removes one or more street tree(s) with a DBH of 2.5” or more, unless exempt under Paragraph number 6, shall be subject to the requirements of the Tree Replacement Requirements Table below.

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(ii) 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 IV, shall be subject to the requirements of the Tree Replacement Requirements Table.

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B. **Types of Trees.**

The species type and diversity of replacement trees shall be as determined by the Shade Tree Commission pursuant to Ordinance 312.2-13(a).

C. **Replacement tree(s) shall:**

(i) 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;

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(ii) Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the municipality;

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(iii) 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

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

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| <u>Tree Replacement Requirements Table: Category</u> | <u>Tree Removed (DBH)</u> | <u>Tree Replacement Criteria (See Appendix A)</u> | <u>Alternative Replacement Fee</u> |
|--|-----------------------------|---|------------------------------------|
| <u>1</u> | <u>DBH of 1 to 4.99</u> | <u>Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed</u> | <u>\$500.00</u> |
| <u>2</u> | <u>DBH of 5" to 22.99"</u> | <u>Replant 2 trees with minimum tree calipers of 1.5" for each tree removed</u> | <u>\$1,000.00</u> |
| <u>3</u> | <u>DBH of 11 to 16.99"</u> | <u>Replant 3 trees with minimum tree calipers of 1.5" for each tree removed</u> | <u>\$1,500.00</u> |
| <u>4</u> | <u>DBH of 17 or greater</u> | <u>Replant 4 trees with minimum tree calipers of 1.5" for each tree removed</u> | <u>\$2,000.00</u> |

D. Replacement Alternatives:

If the municipality 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: Plant replacement trees in a separate area(s) approved by the municipality. Pay a fee of as above per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

6. Exemptions to Stormwater Permitting Requirements as found at Paragraph 5. Above, 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 which may include certifications, photos or statements from NJ licensed tree expert or arborist.

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(i) Residents who remove 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 calculated on a rolling basis.

(ii) Tree farms in active operation, nurseries, fruit orchards, and garden centers;

(iii) 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;

(iv) 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.

(v) 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;

(vi) Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;

(viii) Hazard trees may be removed with no fee or replacement requirement.

SECTION IV. That Borough Ordinance 31.2-12 shall be amended as follows.

Notification, Violation and Penalty.

Any person violating or failing to comply with any of the provisions of this section shall be duly notified by the Shade Tree Commission, or its designated agent, of each violation and instructed to correct ~~it~~ the violation if possible. If correction is required, each specific item must be addressed within 10 working days of notification. Any person who fails to take corrective action or is otherwise guilty of violation of this section, if corrective action cannot be taken, shall be fined a sum no less than \$20 nor more than ~~\$200~~ the maximum allowed under the law for each day the violation is allowed to remain. In matters involving tree replacement, the fine shall not be less than the amount of the required replacement tree(s) and cost of planting, subject to the maximum fine allowable under the law. This section shall be enforced pursuant to N.J.S.A. 40:64-12. Should the violation be in reference to the failure to

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SECTION V. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudicated and the remainder of the Ordinance shall be deemed valid and effective.

SECTION VI. All Ordinances or parts of ordinances inconsistent with or in conflict with the ordinance are hereby repealed to the extent of such inconsistency.

SECTION VII. This Ordinance shall take effect 20 days after final passage, adoptions and publication according to law.