

**BOROUGH OF GARWOOD  
ORDINANCE NO. 24-36**

Introduced:	December 5, 2024
Motion:	Councilman Foley
Seconded:	Councilman Lazarow

Public Hearing:	December 19, 2024
Motion:	Councilman Lazarow
Seconded:	Councilman Foley

**AN ORDINANCE OF THE BOROUGH CODE OF THE BOROUGH OF GARWOOD BY AMENDING CHAPTER 138, ENTITLED "SHADE TREES", ARTICLE II "REGULATIONS", SECTION 138-5 "PROHIBITED ACTIONS".**

**WHEREAS**, the Borough of Garwood (the "Borough") previously adopted Chapter 138 of the Code of the Borough of Garwood which established and governs restrictions and regulations on Shade Trees in the Borough; and

**WHEREAS**, the Borough Shade Tree Officer has recommended amendments to the Code, specifically, Chapter 138, Section 138-5, "Prohibited Actions"; and

**WHEREAS**, the Borough Council has determined it appropriate to amend said Borough Code as the recommendation of the Shade Tree Officer; and

**NOW, THEREFORE, BE IT ORDAINED** by the governing body of the Borough of Garwood that Chapter 138 of the Borough Code of the Borough of Garwood entitled, "Shade Trees", Article II "Regulations", Section 138-5 "Prohibited Actions" is hereby amended as follows (additions underscored, deletions ~~struck-through~~):

**§ 138-5 Prohibited actions.**

A. No person shall build any fire, or station any tar kettle, road roller or other equipment on a public place, street or park in such a manner that the heat, vapor or fumes therefrom may injure any tree or shrub growing thereon.

B. No person shall place salt or other substances injurious to plant growth in any public place, street or park in such a manner as to willfully or maliciously injure any tree or shrub.

C. No person shall erect, construct, or remove any structure in the Borough without complying with the following to protect Borough trees, except where specifically permitted in final site plan approval granted by Borough Land Use Boards:

(1) No vehicles, equipment, or material of any kind shall be located within the drip line of a Borough tree during construction. This line is to be established in consultation with the Shade Tree Officer prior to any such undertaking, and is subject to individual site conditions. This line shall be delineated by temporary fencing during the entire construction period.

(2) Any Borough tree subject to the above protection that dies within two years of the issuance of a certificate of occupancy (CO) post construction of a new development shall be replaced at an inch-inch equal ratio as measured at the DBH of the dead tree. If the number of requisite trees cannot be located within the ROW adjacent to the subject site, the Shade Tree Officer shall determine the tree locations, commencing within the same street block. The site contractor is required to post a bond or cash guarantee equal to \$350 per three-inch diameter of the tree at DBH to the Borough Clerk prior to construction commencement to guarantee such planting. The bond will be returned to the contractor upon the two-year anniversary defined above or the delivery of said number of trees to the Garwood DPW.

(3) Where a Land Use Board or Shade Tree Officer has determined the requisite number of trees to be planted

based upon applicable right-of-way (ROW) frontage, but that physical conditions within the ROW do not allow the safe and effective planting of all of the required trees, the applicant in that specific application shall obtain Shade Tree Officer authorization to plant the trees at other Borough locations under the Shade Tree Officer jurisdiction or make a cash contribution to the Borough of Garwood Shade Tree Trust hereby established under this chapter to be used solely for the planting and preservation of Borough trees. In determining the cash contribution, the Shade Tree Officer shall utilize the following standards:

(a) Shade trees are to be planted at forty-foot intervals along the ROW; and

(b) Shade trees shall be a minimum size of three-inch caliper measured at DBH, and 10 feet to 12 feet in height. Shade trees are to be nursery grown, of substantially uniform size, shall have single and straight trunks, and be tree, not shrub, form (all branching shall be above five feet from the tree base).

(4) If at any time during the approval or construction process of a land use application, it is realized that the development may require the removal of a Borough shade tree either due to the location of site improvements or damage caused to the tree during construction (physical or soil compaction), the applicant shall contact the Shade Tree Officer to determine if the tree must be removed, and at whose expense. If it must be removed, the tree shall be replaced at an inch-inch equal ratio as measured at the DBH of the tree to be removed. This tree replacement is in addition to the trees that are required to be planted at forty-foot intervals as standard procedure. If the number of requisite trees cannot be located within the ROW width confines of the subject site, the Shade Tree Officer shall determine the additional tree locations commencing within the same street block. The site contractor is required to post a bond or cash guarantee equal to \$350 per three-inch diameter of the tree at DBH to the Borough Clerk to guarantee such planting. The bond will be returned to the contractor upon the two-year anniversary defined above.

(5) When an application for development (zoning application) is submitted for construction of new development such as new one- and two-family development that does not require Land Use Board approval, but does require zoning review, the Zoning Officer shall contact and work with the Shade Tree Officer to ensure that one tree is required to be planted in accordance with the above standards.

(6) Where a Land Use Board or Shade Tree Officer has determined the requisite number of trees to be planted in the public right-of-way as part of a land use board application approval based upon applicable right-of-way (ROW) frontage, and any tree dies or has substantial dieback, the property owner of the property adjacent to the tree planting in the right-of-way shall be responsible for the tree replacement. Shade trees to be planted shall be a minimum size of three-inch (3") caliper measured at DBH, and 10-12' in height. Shade trees are to be nursery grown, of substantially uniform size, have single and straight trunks, and be tree-not shrub-form (all branching shall be above five feet (5') from the tree base.

(7) Where a Land Use Board or Shade Tree Officer has determined a requisite number of trees to be planted on a subject property as part of a land use board application approval, and a tree dies or has substantial dieback, the property owner is required to replace the tree. The Shade Tree Officer is authorized to require the property owner to replace the tree if the owner fails to do so in a time (six months) manner from the date of initial advisement of the adjacent property owner.

D. No person shall have or maintain public utility lines or wires in a public place, street or park in such a manner as to cause damage to a shade tree except signage placed by the DPW.

E. No street tree shall be planted closer than 25 feet to any street corner, measured from the point of the nearest intersecting curb or curb line. No street tree shall be planted closer than five feet to any fireplug or utility pole.

F. It shall be unlawful as a normal practice for any person, firm, public utility company or Borough employee to top any

street tree, park tree or other tree on public property.

G. No person shall operate, or cause to have operated, a lawnmower, string trimmer, weed wacker or other piece of equipment in such a manner as to be injurious to the health of a Borough shade tree. Any damage to the base of a Borough tree caused by such equipment resulting in the death of a tree can result in a summons being issued to the responsible adjacent property owner or landscape contractor causing such damage. Fines may be assessed up to the cost of full tree replacement. The DPW is exempt from this provision.

**BE IT FURTHER ORDAINED**, that if any section, paragraph, subsection, clause, or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

**BE IT FURTHER ORDAINED**, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

**BE IT FURTHER ORDAINED**, that this Ordinance shall take effect after final passage and publication in accordance with applicable law.

**ATTEST:**

  
Nennette Perry, R.M.C.  
Municipal Clerk

**APPROVED:**

  
Jennifer Blumenstock  
Mayor

<u>RECORDED VOTE</u>	<u>INTRODUCTION:</u>	<u>ADOPTION</u>
COUNCILWOMAN BOTO	AYE	ABSENT
COUNCILMAN FOLEY	AYE	AYE
COUNCILMAN LAZAROW	AYE	AYE
COUNCILWOMAN NOLDE	AYE	AYE
COUNCILWOMAN SALMON	AYE	AYE
COUNCIL PRESIDENT KEARNEY	AYE	AYE

