

BOROUGH OF GARWOOD

ORDINANCE NO. 23-21

Adopted: _____

Introduced:	
Motion:	
Seconded:	

Public Hearing:	
Motion:	
Seconded:	

AN ORDINANCE AMENDING THE BOROUGH CODE OF THE BOROUGH OF GARWOOD BY AMENDING CHAPTER 138, ENTITLED "SHADE TREES".

WHEREAS, the Borough of Garwood (the "Borough") has previously adopted Chapter 138, Shade Trees, which is intended to encourage the protection of trees on Borough owned property; and

WHEREAS, the Buildings and Grounds Committee worked with the Shade Tree Officer in reviewing the current code and making updates to same; and

WHEREAS, the Borough Council seeks to adopt the amendments to the Code as recommended by the Buildings and Grounds Committee; and

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Borough of Garwood that Chapter 138 (Shade Trees) of the Borough Code of the Borough of Garwood is hereby amended as follows (additions underscored, deletions ~~struck through~~):

Chapter 138
Shade Trees

Article I
Title, Purpose and Definitions

§ 138-1 **Short title.**

This chapter shall be known and cited as the "Municipal Shade Tree Ordinance of the Borough of Garwood."

§ 138-2 **Purpose and intent.**

[Amended 3-25-2003 by Ord. No. 03-04]

- A. It is the intent and purpose of this chapter to provide for and encourage the protection of trees on Borough-owned property, and Borough easements, to provide for public health, safety and general welfare and to promote and preserve the Borough aesthetic and economic vitality.
- B. It is in the best interests of the Borough and public thereof that a comprehensive Master Plan for the planting, maintenance and removal of plantings on Borough property be adopted and that uniform and standard laws be adopted for the purpose of promoting this interest as it relates to any public place, street or park in the Borough in order to advance the roles of trees to promote the cooling of our environment, reduce energy consumption, prevent soil erosion, promote stormwater control, ameliorate noise pollution, remove pollutants from the air, provide wildlife habitat, provide carbon sequestration, produce oxygen and maintain and protect Borough property values. Thus, it is hereby stated that it is the intent and purpose of the Garwood to provide for the planting/maintenance of at least one shade tree for every 40 linear feet of public street. Design standards for subdivisions and site plans as set forth in § **106-125** et seq. of this Code shall conform with these requirements.

§ 138-3 **Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

BOROUGH

The Borough of Garwood, County of Union, State of New Jersey.

DIAMETER BREAST HEIGHT (DBH)

The diameter of the tree taken at a point 4 feet (4') above ground level.

BOROUGH TREE

Any tree within the Borough Right of Way, on publicly owned land, or Borough Parks.

PARK

Includes any and all properties owned and maintained by the Borough for the present or future purpose of passive or active recreation.

PERMIT

The written permission of the Shade Tree Officer to perform actions pursuant to the provisions of this chapter.

PERSON

Any individual, association of individuals, partnership, corporation or organization or combination of organizations thereof.

PUBLIC PLACES

All other properties owned by the Borough of Garwood or under its control or supervision whether owned, leased or under contract of the Borough.

PUBLIC UTILITY COMPANY

A public utility as defined in the revised statutes of the State of New Jersey (N.J.S.A. 48:2-13)

SHADE TREE OFFICER

The person holding the office created by § 5-51.1.

STREET

The entire width of every public right-of-way when any part thereof is open to the use of the public as a matter of right for purposes of vehicular and pedestrian traffic. This definition does not include public rights-of-way owned and maintained by county, state or federal jurisdictions.

~~TREE GUARD~~

~~A minimum of four, six-foot stakes driven into the ground, a minimum of three feet from a tree with a collar of half-inch wire mesh six feet in height connected to it surrounding the tree trunk.~~

TOPPING

The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

TREES

All single trunked woody vegetation capable of growing to a height of 15 feet or greater now or hereafter growing on any public place, street or park.

Article II Regulations

§ 138-4 **Required permits.** **[Amended 3-25-2004 by Ord. No. 03-04]**

- A. No person except those specifically exempted under § **138-6** shall perform, undertake or cause to be performed or undertaken any of the following in any public place, street or park without first applying and procuring a permit from the Shade Tree Officer. The Garwood Department of Public Works (DPW) is exempt from obtaining permits for standard urban forestry maintenance, but is encouraged to consult the Shade Tree Officer.

- (1) Climb with spikes, damage, remove, destroy, kill or interfere harmfully in any manner with any tree.
 - (2) Cut, remove, destroy or interfere harmfully with any tree root.
 - (3) ~~Intentionally spray~~ Spray with any chemical on any tree so as to cause injury or death to any tree.
 - (4) Fasten any rope, wire, sign or device to a tree.
 - (5) Fill, pave or render impermeable any open space provided within a two-foot radius of a tree or in any manner disturb or remove any soil about the aforementioned area of any tree. This area is necessary for the access of air, water and fertilizer to the roots of trees; disturbance within this area could result in the death of the tree.
 - (6) Plant a tree.
- B. ~~Nothing herein shall prevent any governmental agency from affixing, in a manner approved by the Shade Tree Officer, a public notice upon a tree in connection with the administering of governmental affairs. Such public notices are to be removed within applicable time periods by Borough ordinance.~~

§ 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, alter, repair 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 Development Land Use Boards:
 - (1) ~~Tree guards (see definition) shall be installed around all Borough trees adjacent to and within 10 feet of the subject property so as to effectively protect the tree trunks from damage as a result of construction activities. 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) ~~All construction debris, equipment, materials and fill shall be stored other than on Borough property. 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 \$350.00 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 ordinance 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 (40') intervals along the ROW; and

(b) Shade trees 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, shall have single and straight trunks, and be tree- not shrub-form (all branching shall be above five foot (5') 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 40' 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 \$350.00 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.

- 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 (5') 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.

**§ 138-6 Exceptions to required permits.
[Amended 3-25-2003 by Ord. No. 03-04]**

- A. Nothing contained herein shall prevent the Borough Department of Public Works (DPW), or its designated agents, from tree pruning, removing or the undertaking of other measures to protect public health, safety and welfare during times of emergency. ~~At all other times, the Department shall, however, coordinate such activities with the Shade Tree Officer prior to undertaking such actions.~~ The DPW is authorized to perform routine, standard, pedestrian and vehicular clearance and maintenance of all Borough trees.
- B. Public utility companies.
 - (1) Public utility companies may, during periods of emergency, install temporary attachments to trees and make emergency subsurface repairs as required without specific prior permit from the Shade Tree Officer.
 - (2) Public utility companies may undertake tree pruning for line clearance and for the installation and

maintenance of subsurface and above ground physical plant construction if there is interference with or endangerment to street trees ~~without special prior permit~~ but must inform the Shade Tree Officer of this undertaking in writing a minimum of two weeks prior to commencement to allow joint inspection, consultation and review of such proposed work by the Shade Tree Officer. No tree pruning shall be undertaken without consultation with the Shade Tree Officer or Shade Tree Advisory Board member.

(3) The public utility company shall exercise reasonable diligence in the maintenance of its physical plant construction so as to avoid damage to trees. This diligence shall include consideration of a tree's overall growth, habit, height and purpose. When a public utility company determines their review prior to tree line maintenance and after consultation with the Shade Tree Officer that a Borough tree must be removed, the public utility company and Shade Tree Officer shall determine the best course of action for proper new tree planting and the bearer of costs therein.

(C) This section does not prohibit the planting or pruning of street trees by adjacent property owners, provided that the owner obtain approval from the Shade Tree Officer or Shade Tree Advisory Board for such pruning, tree selection, planting and planting location prior to such work being undertaken in accordance with this Chapter.

(D) The Borough Clerk shall notify the public utility companies providing service within the Borough municipal limits of this ordinance within two weeks of the date of adoption.

§ 138-7 Interference with Shade Tree Officer.

No person or agency shall prevent, delay or in any way interfere with the Shade Tree Officer or any other employee of the Borough of Garwood in the lawful execution or enforcement of this chapter.

Article III Enforcement

§ 138-8 Police to enforce.

It shall be the duty of the Police Department of the Borough of Garwood to enforce the rules and regulations of this chapter. The Police shall take enforcement action – including warnings and summonses - upon the request of the Shade Tree Officer.

§ 138-9 Violations and penalties.

Any person who violates any of the provisions of this chapter or who fails to comply with the terms of any permit issued pursuant hereto shall, upon conviction in Municipal Court, be subject to a ~~fine~~ fine of up to \$1,500 for each violation. Each day any violation of this chapter shall continue shall constitute a separate offense.

§ 138-10 Liability for damage.

In addition to the penalties prescribed in § 138-9, any person who removes or otherwise destroys a tree in violation of this chapter shall pay a replacement assessment to the Borough of Garwood. The replacement assessment shall be the value of the tree. The value of the tree shall be fixed and determined by the Shade Tree Officer using either of the following methods:

- A. By the appraisal of a trained forester or certified tree expert retained by the Mayor and Council for that purpose. The replacement assessments shall also include the cost to the Borough of Garwood for the aforementioned appraisal.
- B. By use of a formula and schedule promulgated by the Shade Tree Officer based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed \$27 per square inch. The square-inch cross section shall be calculated from the diameter at breast height DBH and, if there is a multiple-stem tree, then each trunk shall be measured and an average shall be determined for the tree. ~~For the purpose of this section, "diameter at breast height" shall mean the diameter of the tree taken at a point 4 ½ feet above ground level.~~ The Shade Tree Officer shall modify the value of the tree based upon its species variety, location and its condition at the time of removal or destruction.

Article IV
Shade Tree Advisory Board

§ 138-11 Shade Tree Advisory Board.

A. Establishment; membership; purpose

(1) There is hereby created and established a Shade Tree Advisory Board (Board) of the Borough of Garwood, which shall consist of seven members appointed by the Mayor. Six members shall be citizens and residents of the Borough, and one member shall be the Borough Shade Tree Officer.

(2) The purpose of the Shade Tree Advisory Board is to provide recommendations and advice to the Mayor and Council, Planning Board, and other Borough Departments for regulations and actions for the protection of trees and shrubbery upon public lands, easements and rights-of-way in the Borough of Garwood. The Board shall prepare, in consultation with the Borough Administrator and DPW Foreman, a set of standard procedures whereby property owners can submit requests for shade tree work – including tree planting, pruning, removal and sidewalk interference- to be undertaken and for those requests to be reviewed and acted upon in a timely manner. The Board shall maintain this master list as a public record.

B. Term of office. The term of office of the seven members to be appointed by the Mayor will be three years. In the event that a vacancy shall occur during the term of any member, this successor shall be appointed for the unexpired portion of the term. The appointment of members to the Shade Tree Advisory Board shall initially be as follows: two members for one-year terms, two members for two-year terms and three members for three-year terms. Thereafter, appointments will be for three-year terms and terms shall expire on December 31.

C. Compensation. Members of the Board shall serve without compensation.

D. Duties and Responsibilities:

1. The Board shall study, investigate and develop and/or update annually and administer, a written plan for the care, preservation, pruning, removal or disposition of trees in parks, along streets and other public areas. Such plan shall be updated and presented annually to the Mayor and Council, and, upon its acceptance and approval, shall constitute the Official Comprehensive Tree Master Management Plan for the Borough.
2. It shall consider, investigate, make findings and report recommendations upon any special matter or question coming within the scope of its work.
3. The Board shall review requests for planting and removal of Borough trees in consultation with the Shade Tree Officer. The Board shall maintain a master list of such requests as part of its annual plan to the Mayor and Council.
4. The Board shall have the responsibility to locate trees of historic value, BIG TREES, endangered species and those unique to Garwood. The Board shall develop an inventory of such trees and post it in the office of the Borough and Planning Board Engineers. Property owners shall be encouraged to nominate trees to be included in the list, and, with consent of any owners, the Tree Advisory Board may designate such trees on private property by marker or device.

E. Organization; quorum. The Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. All members are voting members.

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:

APPROVED:

Catherine D. Cameron, R.M.C.
Borough Clerk

Jennifer Blumenstock, Mayor

RECORDED VOTE

INTRODUCTION:

ADOPTION

**COUNCILWOMAN HERZ
COUNCILMAN KEARNEY
COUNCILMAN LAZAROW
COUNCILWOMAN NOLDE
COUNCILWOMAN SALMON
COUNCIL PRESIDENT GRAHAM**