

## **BOROUGH OF EATONTOWN – NOTICE OF ORDINANCE ADOPTION**

NOTICE is hereby given that **Ordinance 14-2023** - Ordinance of the Borough of Eatontown Entitled “**AN ORDINANCE OF THE BOROUGH OF EATONTOWN CONCERNING TREE REMOVAL AND AMENDING CHAPTER 89 ARTICLE I SECTION 3 AND CHAPTER 307 ARTICLES I AND II**” was passed after a public hearing at the regular meeting of May 24, 2023 by the Governing Body of the Borough of Eatontown, at 47 Broad Street, Eatontown, NJ 07724. Borough of Eatontown - Julie Martin, RMC, Borough Clerk

### **ORDINANCE 14-2023**

#### **BOROUGH OF EATONTOWN**

#### **COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

### **AN ORDINANCE OF THE BOROUGH OF EATONTOWN CONCERNING TREE REMOVAL AND AMENDING CHAPTER 89 ARTICLE I SECTION 3 AND CHAPTER 307 ARTICLES I AND II**

**WHEREAS**, the Borough Council seeks to update the Borough Code to ensure that it is consistent with N.J.S.A. 40:64-1 through N.J.S.A. 40:64-14 by deleting Chapter 89 Section 3 (c)(3) and amending Chapter 307 Articles I and II of the Code of the Borough of Eatontown; and

**WHEREAS**, Chapter 89 Section 3 (c)(3) is duplicative of the Tree Removal sections of Chapter 307.

**NOW THEREFORE BE IT ORDAINED**, by the Borough Council of the Borough of Eatontown, County of Monmouth and State of New Jersey, hereby amends the Borough Code as follows:

Chapter 89 Section 3 (c)(3) is hereby stricken.

Chapter 307-1 through Chapter 307-22 is hereby stricken and amended to read as follows:

- A. Purpose. The Borough Council of the Borough of Eatontown does herein decide and find that the indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon lots and tracts of land within the Borough has resulted in increased municipal drainage costs, drainage control costs, and has further caused increased soil erosion, decreased fertility of soil and increased dust, which has deteriorated property values and has further rendered land unfit and unsuitable for the most appropriate use, with the result that there has been and will result in the future a deterioration of conditions affecting the health, safety and general well-being of the inhabitants of the Borough and has caused the passage of this article to regulate and control the indiscriminate and excessive cutting of trees in the Borough.
- B. Definitions. As used in this subsection, the following terms shall have the meanings indicated:

**DO NOT PLANT LIST** a promulgation of the Shade Tree Commission that identifies trees which are not permissible to be planted as a replacement tree or part of a Planning Board or Zoning Board application. The DO NOT PLANT LIST shall be posted on the Borough webpage, filed with the Zoning Officer and may be amended from time to time. Deviations from this list are subject to the approval of the Shade Tree Commission or Planning or Zoning Board depending upon the issue being addressed and their respective jurisdiction.

**ENVIRONMENTALLY CRITICAL AREAS.** An area or feature which is of significant environmental value, including but not limited to wetlands, floodplains, important farm lands, agricultural development areas, steep slopes, endangered or threatened species and their designated habitats, important aquifer recharge areas, coastal areas, stream corridors, parks and preserves.

**PLANTING GUIDE** a promulgation of the Shade Tree Commission that identifies trees which are permissible to be planted as a replacement tree. The Planting Guide shall be posted on the Borough webpage, filed with the Zoning Officer and may be amended from time to time. Other trees may be planted which are not included on the list subject to the approval of the Shade Tree Commission or Planning or Zoning Board depending upon the issue being addressed and their respective jurisdiction.

**PUBLIC RIGHT-OF-WAY.** Any street or road shown upon a map or plan filed in the Monmouth County Clerk's office or on the Official Map of the Borough of Eatontown.

**SHRUB.** Native or volunteered laurel and wild azaleas having a root crown (the diameter of the trunk just prior to its spreading into roots) of three inches or greater at the soil or surface level.

**SITE.** Any lot, tract, parcel, or parcels of land within the Borough.

**SITE PLAN.** A development plan of one or more lots on which is shown:(1) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains, marshes and waterways;(2) The location of all existing and proposed building, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility

services, landscaping, structures and signs, lighting, and screening devices;(3) The location of all existing and proposed soil erosion and sedimentation control measures;(4) The location of existing and proposed surface water runoff control measures; and (5) Any other information that may be reasonably required in order to make an informed determination with regard to application for approval of site plans.

**SUBDIVISION.** 1.The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this chapter, if no new streets are created: (a) Divisions of land found by the Planning Board or Subdivision Committee thereof appointed by the Chairman to be for agricultural purposes where all resulting parcels are five acres or larger in size; (b) Divisions of property by testamentary or intestate provisions; (c) Divisions of property upon court order including but not limited to judgements of foreclosure;(d) Consolidation of existing lots by deed or other recorded instrument; and (e) The conveyance of one or more adjoining lots, tracts, or parcels of land owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the Borough Municipal Land Use Ordinance and are shown and designated as separate lots, tracts or parcels on the Tax Map of the Borough of Eatontown. (2) The term "subdivision" shall also include the term "resubdivision."

**TREE.** Any of the following living trees having a trunk of a diameter greater than as set forth below, measured at one foot above ground level:(a) Deciduous tree: six inches (or circumf. 19 inches).(b) Coniferous tree: six inches (or circumf. 19 inches). (c) American holly tree (Ilex opaca), dogwood (Cornus florida), and broadleaf evergreens: one inch.

**TREE REMOVAL AND SITE CLEARING PERMIT.** A certificate issued by the Zoning Officer of the Borough to remove or destroy trees or shrubs as defined in this subsection.

**UNDISTURBED AREA.** An area in which trees, shrubs and undercover will not be disturbed by filling, cutting, or by any other means.

C. Permit requirements. For purposes of this ordinance, all properties will be divided as residential or commercial. Commercial properties shall mean all properties other than residential properties.

a. Commercial Properties:

- i. Tree removal as part of a Site Plan or Subdivision will be referred to the Shade Tree Commission. The Shade Tree Commission may prepare a memorandum to make recommendations to the Planning Board and/or Zoning Board. The Shade Tree Commission shall serve as advisory body to the Planning and Zoning Boards pursuant to N.J.S.A. 40:64-1. The Planning and Zoning Board secretary shall advise the Shade Tree Commission, Environmental Commission, and Fire Prevention Commission of all Site Plan or Subdivision applications.
- ii. Tree removal which is not part of a Site Plan and where the property owner wishes to clear cut vacant land of trees shall be applied for with the Zoning Officer and referred to the Borough Engineer who, after consultation with the Shade Tree Commission, shall determine what may be clear cut. In rendering such a determination, the Borough Engineer may require the applicant to make payment into the tree fund and replant elsewhere on the property. The applicant shall pay monies into escrow in an amount to be determined by the Land Use Administrator for the Borough Engineer to review such an application. The Site Clearing Permit shall be issued by the Zoning Officer. Failure to apply for a Site Clearing Permit is a violations and subject to penalties enforced by the Code Enforcement Officer

b. Residential Properties:

- i. Where residential properties are less than one acre and the resident seeks to remove trees on their property:
  1. If the tree(s) are on a public easement or right-of-way, referral to the Shade Tree Commission whose process shall be defined below.
  2. If the tree(s) are not on a public easement or right-of-way, no municipal approval shall be required.
- ii. Where residential properties are equal or greater to one acre:
  1. If the tree(s) are on a public easement or right-of-way, referral to the Shade Tree Commission whose process will be defined below.

2. If the tree(s) are not on a public easement or right-of-way, referral to the Borough Engineer with the property owner being required to place money into escrow to pay for the Borough Engineer's review, who in consultation with the Shade Tree Commission shall determine what Trees may be cut down, or whether the property owners shall make payment into a tree fund and/or replant elsewhere on the property. In rendering this review, the Shade Tree Commission shall make a clear explanation to address the harm, if any, of clear cutting Trees and drainage issues.
    - iii. Stipulations for all residential properties:
      1. If the tree is on a public easement or right-of-way, the Department of Public Works alone has the authority to determine whether the tree is a hazard and in need of pruning or removal. The Department of Public Works shall have the authority to make the decision without consultation with the Shade Tree Commission.
- D. Application Process. Any person seeking to cut or remove trees shall follow the within process:
  - a. Commercial Properties:
    - i. For those applying for Site Plan or Subdivision approval to the Planning Board or Zoning Board, such applications shall be part of the application process.
    - ii. For those seeking a site clearing permit, application shall be made to the Zoning Officer and Land Use Administrator, who must receive an escrow fund payment and survey from the applicant, and who shall work in consultation with the Borough Engineer and the Shade Tree Commission to consider a site clearing plan.
  - b. Residential Properties:
    - i. All residential applications shall be made to the Zoning Officer and Land Use Administrator. The Zoning Officer and Land Use Administrator shall refer the application to the Department of Public Works if the tree is on a public easement or right-of-way. If the tree is on a public easement or right-of-way, the Department of Public Works shall determine if there is an emergent need to remove or cut the tree.
    - ii. If the Department of Public Works determines that there is no emergent need to remove or cut the tree, the resident shall be referred to the Shade Tree Commission for a public hearing.
    - iii. If there is an emergency, and the tree is located on a public easement or right-of-way, the Department of Public Works may act without regard to the Shade Tree Commission. The Department of Public Works may notify the Shade Tree Commission of any requirements to replant the tree, or, if the land cannot sustain a replacement tree, the resident may pay into the tree fund.
    - iv. If there is an emergency, the decision to remove a tree on a public easement or right-of-way shall be delegated to the Department of Public Works.
- E. Shade Tree Commission. The powers, duties, and authorizations of the Shade Tree Commission are set forth in Section 7-12 through 25 of the Code of the Borough of Eatontown.
- F. Fines and Penalties.
  - a. Commercial Properties: All allegations of code violations shall be referred to the Zoning Officer. The Zoning Officer shall determine site plan conformity.
    - i. In consultation with the Borough Engineer, the Zoning Officer shall have the authority to determine if the property is in violation of Site Plan approval.
    - ii. If the property is in violation of Site Plan approval, the property shall be returned to the Planning Board or Zoning Board for resolution.
    - iii. If a violation is found to exist which does not require appearance at the Planning Board or Zoning Board, the matter shall be referred to the Shade Tree Commission, who in conjunction with the Borough Engineer shall recommend replacement trees or payment to the tree fund. Commercial Properties who disagree with this decision may appeal to the Planning or Zoning Board, as appropriate for final resolution.
  - b. Residential Properties: All residential properties whose owners cut a non-hazardous tree without permission shall be subject to the following penalties.
    - i. Trees on a public easement or right-of-way: The owner shall meet with the Shade Tree Commission to determine whether a replacement tree must be planted. If a replacement tree is not plausible due to

issues with topography and roots, the owner shall be required to make a payment to the tree fund. Failure to do so will result in a violation of the ordinance and the issuance of a summons to Court by the Code Enforcement Officer.

ii. Trees outside a public easement or right-of-way:

1. On properties an acre or larger, the matter shall be referred to the Borough Engineer who, in consultation with the Shade Tree Commission, shall determine the penalty including but not limited to replanting; if replanting is not plausible, a payment to the tree fund shall be made. Failure to do so will result in a violation of the ordinance and the issuance of a summons to Court by the Code Enforcement Officer.
2. On properties measuring less than one acre are not subject to this code section.

G. Tree Fund. The Borough of Eatontown Tree Fund shall hold funds with which to replace trees on residential and commercial properties throughout the Borough.

- a. The Shade Tree Commission shall have the authority to cause trees to be planted using funds held in the Tree Fund.
- b. The Fund shall set aside the following funds for the following tree sizes:
  - i. Small trees, whose height at maturity is under 25 feet: \$150.
  - ii. Medium trees, whose height at maturity is between 25 feet and 40 feet: \$250.
  - iii. Large trees, whose height at maturity is over 40 feet: \$350.