

**BOROUGH OF EMERSON
COUNTY OF BERGEN
NOTICE OF ADOPTION**

Introduced: April 2, 2019

Adopted: April 16, 2019

NOTICE IS HEREBY GIVEN that the following ordinance was adopted on the second reading after a Public Hearing at the Regular Meeting of the Borough Council of the Borough of Emerson on the 16th day of April, 2019. A copy of Ordinance 1590-19 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

ORDINANCE 1590-19

**AN ORDINANCE REESTABLISHING A SHADE TREE COMMISSION IN THE
BOROUGH OF EMERSON**

WHEREAS, the Mayor and Council wish to reestablish the Shade Tree Commission of the Borough of Emerson; and

WHEREAS, revisions to Chapter 89 will enable the Shade Tree Commission to operate more efficiently.

Chapter 89

**SHADE TREE
COMMISSION**

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| § 89-1. | Creation; membership. | § 89-9. | Certification of anticipated expenditures, |
| § 89-2. | Appointments. | § 89-10. | Violations and penalties; enforcement. |
| § 89-3. | Organization; salaries of employees. | § 89-11. | Disposition of penalties, |
| § 89-4. | Vacancies. | § 89-12. | Disclaimer of liability, |
| § 89-5. | Powers. | § 89-13. | Promulgation of ordinances, rules and regulations. |
| § 89-6. | Costs of trees and improvements to be lien upon property, | § 89-14. | Public notice. |
| § 89-7. | Planting and removal of trees. | § 89-15. | Severability. |
| § 89-8. | Public improvements affecting trees, | | |

§ 89-1. Creation; membership. [Amended 2-20-2001 by Ord. No. 1159]

The regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways, public places, parks and parkways of the Borough of Emerson, except state highways unless the State Highway Department shall assent thereto, and except county highways, parks and parkways if a County Shade Tree Commission is operative and unless it gives assent thereto, shall be exercised by and under the authority of the Borough of Emerson Shade Tree Commission, which is hereby created, The Commission shall consist of seven members appointed by the Mayor, who shall be residents of the municipality and shall serve without compensation except as hereinafter provided.

§ 89-2. Appointments.

The Shade Tree Commission shall consist of seven members with initial terms of one for one year, one for two years, one for three years, two for four years and two for five years, respectively.

The Shade Tree Commission shall have two alternate members, they shall be designated at the time of appointment as "Alternate No. 1" and "Alternate No. 2" and shall serve during the absence or disqualification of any regular member or members. The term of each alternate member shall be five years commencing on January 1 of the year of appointment; provided, however, that in the event two alternate members are appointed the initial term of "Alternate No. 2" shall be four years and the initial term of "Alternate No. 1" shall be five years. The terms of the first alternate members appointed pursuant to this section shall commence on the day of their appointment and shall expire on the fourth or fifth December 31 next ensuing after the date of their appointments, as the case may be. An alternate member may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

§ 89-3. Organization; salaries of employees,

The Commission shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually by the election of one of its members as Chairman and the appointment of a Secretary, who need not be a member. The salary of the Secretary, who may be compensated even if a member of the Commission, shall be fixed by the governing body of the municipality. The salary of all other employees shall be fixed by the Commission. All salaries shall be fixed as nearly as practicable in accordance with the salary schedule, if any, of the municipality for corresponding positions.

§ 89-4. Vacancies.

Any vacancy occurring by reason of the death, resignation or removal of any Commissioner shall be filled for the unexpired term by the Mayor.

§ 89-5, Powers.

The Shade Tree Commission organized under this chapter shall have power to:

- A. Exercise full and exclusive control over the regulations, 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 § 89-1 of this chapter, including the planting, trimming, spraying, care and protection thereof.
- B. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection.
- C. Move or require the removal of any tree, part thereof, dangerous to public safety.
- D. Care for and control such parks and parkways; encourage arboriculture; make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the governing body of the municipality, any and all ordinances necessary or proper for carrying out the provisions hereof.

- E. Administer treatment to, or remove, any tree situated upon private property, which tree is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the municipality and enter upon private property for that purpose, with the consent of the owner thereof, provided that the suspected condition is first confirmed by certificate issued by or on behalf of the New Jersey Department of Agriculture.

§ 89-6. Costs of trees and improvements to be lien upon property.

- A. Except as hereinafter provided, the initial cost of all trees planted by the Commission, the cost of planting the same, the cost of posts and boxes or guards used for the protection thereof and 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 the 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 tax bill rendered to the owner or owners thereof and shall be collected in the same manner as other taxes against that property.
- B. The provisions of this section shall not apply to:
 - (1) A planting to replace a tree or trees theretofore planted by the Commission.
 - (2) A planting in connection with Arbor Day exercises or other educational demonstrations.

§ 89-7, Planting and Removal of trees.

- A. In every case where the property of an abutting owner will be chargeable with the cost of the planting of any shade tree or trees, the Commission shall give notice of the meeting at which it is proposed to consider said planting by publishing the notice at least once, not less than 20 days before the meeting, in a newspaper circulating in the municipality or by personal service of a copy of the notice upon the abutting owner at least 10 days before the meeting. The notice shall specify the street, streets or portions thereof on which such planting is proposed and require all persons who may object thereto to present their objections in writing at the office of the Commission at or before the meeting. Before final action shall be taken, all objections so filed shall be considered.
- B. The Commission shall give reasonable notice of its intention to remove or cause the removal of a tree or part of a tree dangerous to public safety unless public safety requires immediate removal, in which case no notice shall be necessary,

§ 89-8, Public improvements affecting trees.

- A. No statute which gives any person or state, county or municipal board, body or official power or authority to lay any sidewalk along any street or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to a highway shade tree without the consent of the Shade Tree Commission within whose jurisdiction such tree shall be located, In all cases such Commission shall reasonably cooperate with such person, board, body or official for the general public good.
- B. Nothing in this chapter contained shall be held to take away or diminish any of the powers or authority of any County Park Commission over the trees or shrubbery in any county

park or parkways within its jurisdiction nor to give any other commission or board any power or authority with respect to such trees or shrubbery.

§ 89-9. Certification of anticipated expenditures.

- A. During the month of December in each year, the Shade Tree Commission shall certify to the governing body of the municipality the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made for:
 - (1) Payment of wages and salaries of employees.
 - (2) Expenses of Commission members in discharging official duties, including expenses incident to attendance at professional meetings.
 - (3) Purchase of trees and shrubbery.
 - (4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.
- B. The governing body of the municipality shall annually appropriate such sum as it may deem necessary for said purposes.

§ 89-10. Violations and penalties; enforcement.

- A. The Commission may prescribe a fine for violation of its ordinances in an amount not exceeding \$1,500 for each violation, and the Municipal Court of Emerson shall have jurisdiction over actions for the violation of such ordinances. **[Amended 8-7-2001 by Ord. No. 1182]**
- B. The ordinances shall be enforced by like proceedings and process, and the practice for the enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the municipality in which the Commission exists.
- C. The officers authorized by law to serve and execute process in the aforesaid courts shall be the officers to serve and execute any process issued out of any court under this chapter.
- D. A copy of any ordinance of the Commission, certified to under the hand of its Secretary or Chairman, shall be received in any court of this state as full and legal proof of the existence of the ordinance and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary shall be shown.
- E. In addition to the penalties authorized by Subsection A of this section, the Commission may require a person who removes or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment to the municipality. **[Added 8-7-2001 by Ord. No, 1182]**
- F. The replacement assessment for removing or destroying a tree in violation of a municipal ordinance shall be the value of the tree as determined by the appraisal of a trained forester or certified tree expert retained by the Commission for that purpose. In lieu of an appraisal, the Commission shall adopt a formula and schedule 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 estimated diameter at breast height 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 purposes of this section "diameter at breast height" shall mean the diameter of the tree taken at a point 4.5 feet above ground level. The Commission shall

modify the value of the tree upon its species variety, location and its condition at the time of removal or destruction. [Added 8-7-2001 by Ord. No. 1182]

- G. Any public utility or cable television company that clears, moves, cuts or destroys any trees, shrubs or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures necessary for the supply of electric light, heat or power, communication, or cable television services upon any lands in which it has acquired an easement or right-of-way shall not be subject to any penalty imposed by a commission pursuant to Subsections A through F of this section. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions. [Added 8-7-2001 by Ord, No. 1182]

§ 89-11. Disposition of penalties.

All moneys collected in any municipality, either as fines or penalties, for any violation of a rule or regulation of a Shade Tree Commission or as a charge against real estate, under any provision of this chapter, shall be forthwith paid over to the municipal officer empowered to be custodian of the funds of the municipality.

§ 89-12. Disclaimer of liability.

Nothing in the chapter contained shall be construed to make the Commission or any member thereof responsible for the death or injury of any person or for any injury to any property or highway tree or shrub.

§ 89-13, Promulgation of ordinances, rules and regulations.

The Shade Tree Commission is hereby authorized and empowered to promulgate such ordinances and written rules and regulations as may be necessary pursuant to statute and for the proper interpretation of this basic chapter, administration and enforcement, provided that such ordinances and regulations do not conflict with this chapter and conform to the general standards prescribed by this chapter.

§ 89-14. Public notice. [Added 8-7-2001 by Ord. No. 1182]

All regulations adopted by the Shade Tree Commission shall be filed with the Municipal Clerk for inspection by the public during regular business hours.

§ 89-15. Severability, [Added 8-7-2001 by Ord, No. 1182]

If any section, subsection, paragraph, sentence, clause, phrase or word contained in this code shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code which shall remain in full force and effect, and to this end the provisions of this amendment are hereby declared to be severable.

ATTEST:

Jane Dietsche, RMC, Borough Clerk

Danielle DiPaola, Mayor

COUNCIL	M O V E D	S E C O N D E D	A Y E S	N A Y E S	A B S E N T	A B S T A I N	<p><i>I hereby certify that the above Ordinance 1590-19 was duly adopted by the Borough of Emerson at a meeting held on April 16, 2019.</i></p> <p><i>Attest:</i> _____ <i>Municipal Clerk</i></p>
Bayley					X		
Hoffman			X				
McGuire			X				
Falotico			X				
Knoller	X		X				
Gordon		X	X				