

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

ORDINANCE NO. 1595-19

Introduced: June 25, 2019

Adoption: July 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 July, 2019. A copy of Ordinance 1595-19 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

AN ORDINANCE AMENDING Chapter 266 Trees and Shrubbery, Articles I and II:

Chapter 266 Trees and Shrubbery

[HISTORY: Adopted by the Mayor and Council of the Borough of Emerson as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Environmental Commission — See Ch. 27.

Brush, grass and weeds — See Ch. 118.

Emerson Woods Preserve — See Ch. 200, Art. II.

Site plan review — See Ch. 236.

Soil movement — See Ch. 244.

Chapter 266 Trees and Shrubbery

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Article I General Provisions

[Adopted 5-28-1974 by Ord. No. 628 as Sections 102-14 through 102-18 of Chapter 102 of the 1966 Code of the Borough of Emerson]

§ 266-1 Definitions.

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

PERSON

Every person, firm, association, partnership and corporation.

PLANT CONSTRUCTION

As applied to public utility companies shall mean poles, wires, cables, subsurface conduits, pipes, manholes and appurtenant facilities of such companies installed in a street.

PUBLIC UTILITY COMPANY

A public utility as defined in N.J.S.A. 48:2-13.[1]

SHADE TREE COMMISSION — The Shade Tree Commission of the Borough of Emerson.

STREET

A.

Any public street, designated by the governing body, to be within the jurisdiction of the ~~Environmental Commission~~ Shade Tree Commission (and Subsections B, C and D, if applicable).
[Amended 2-7-2017 by Ord. No. 1537-17]

B.

Municipal parks and parkways.

TREE

Trees and shrubs.

[1]

Editor's Note: The definition of "Shade Tree Commission," which immediately followed this definition, was repealed 2-7-2017 pursuant to Ord. No. 1537-17.

§ 266-2 Permit required for certain acts.

[Amended 2-7-2017 by Ord. No. 1537-17]

No person shall do any of the following acts to any tree on a street without the prior permit of the Shade Tree Commission:

A.

Cut, prune, climb with spikes, break or damage or remove or kill.

B.

Cut, disturb or interfere in any way with any root.

C.

Spray with any chemical.

D.

Fasten any rope, wire, sign or other device. Nothing herein shall prevent any governmental agency from affixing in a manner approved by the ~~Environmental Commission~~ Shade Tree Commission a public notice upon a tree in connection with administering governmental affairs.

E.

Remove or damage any guard or device placed to protect any tree or shrub.

F.

Conduct razing, removal or renovation of any structure if deemed by the Commission to be damaging to neighboring street trees.

G.

Place or distribute chemicals, including but not limited to salt, deleterious to tree health.

H.

Maintain a stationary fire or device which vaporizes noxious fumes deleterious to tree health.

I.

Remove soil, either for trenching or otherwise.

J.

Construct new sidewalks and/or driveways with any material whatsoever within five feet of a tree.

K.

Plant a tree or shrub.

§ 266-3 Permit required for utility operations; exceptions.

A.

The ~~Environmental Commission~~ Shade Tree Commission may grant to public utility companies a blanket permit for:

[Amended 2-7-2017 by Ord. No. 1537-17]

(1)

Tree pruning for line clearance.

(2)

The installation and the maintenance of subsurface and aboveground plant construction if there is interference with or endangerment to street trees.

B.

Public utility companies may, during periods of emergency, without specific prior permit:

(1)

Install temporary attachments to trees.

(2)

Make emergency subsurface repairs.

C.

Each public utility company shall exercise reasonable diligence in the maintenance of its plant construction so as to avoid damage to trees under the jurisdiction of the Borough of Emerson ~~Environmental Commission~~ Shade Tree Commission.

[Amended 2-7-2017 by Ord. No. 1537-17]

§ 266-4 Requests for permits.

[Amended 2-7-2017 by Ord. No. 1537-17]

Requests for permits required by the provisions of this article for the performance of work should shall be directed in writing to the ~~Environmental Commission~~ Shade Tree Commission, Administration Building, Emerson, New Jersey.

§ 266-5 Violations and penalties.

[Amended 2-18-2003 by Ord. No. 1218; 3-16-2010 by Ord. No. 1403]

A.

Any person found guilty of the violation of any provisions of this article shall, upon conviction thereof by the Municipal Court of Emerson, pay a fine as fixed by the Judge of said Court of not less than \$250 and not to exceed \$500 per Borough shade tree or be imprisoned for not more than 90 days, or both, for each offense.

B.

In addition to the penalties authorized by Subsection A above, the ~~Environmental Commission~~ Shade Tree Commission may require that a person who removes or otherwise destroys a tree in violation of this chapter pay a replacement assessment to the municipality of \$350 for each tree removed. The ~~Environmental Commission~~ Shade Tree Commission may modify the assessment based upon the species, location or condition of the tree at the time of removal or destruction.

[Amended 2-7-2017 by Ord. No. 1537-17]

Article II Tree Preservation and Woodlands Management

[Adopted 5-16-1995 by Ord. No. 1053[1]]

[1]

Editor's Note: This ordinance superseded former Article II, Shade Trees on Subdivided Land, adopted 5-28-1974 by Ord. No. 628 as Ch. A135 of the 1966 Code of the Borough of Emerson; see § 266-23.

§ 266-6 Legislative intent.

A.

It is the intent of this chapter to promote the general welfare of the people of the Borough of Emerson by providing for the protection, regulation, planting and cutting of trees in such a way as to protect and preserve the environment by controlling the tree life in the Borough of Emerson. Shade and ornamental trees must be protected since they provide shade, beauty and grace to our Borough, serve as essential food, shelter and breeding sites for native animal species and protect against the adverse effects of sun, cold and wind. Trees also act as barriers to surface water flow and soil erosion, helping to reduce flood damage, excess sedimentation and non-point source pollution, which, without the proper control, could become a serious problem in the Borough.

[Amended 3-5-2002 by Ord. No. 1195]

B.

It shall further be the policy of the Borough to improve and coordinate the plans for the protection, regulation and planting of trees with the overall tree management and environmental plans of the Borough in cooperation with the federal and state governments.

[Amended 3-5-2002 by Ord. No. 1195]

C.

It shall further be the policy of the Borough in implementing this chapter for the protection, regulation, planting and cutting of trees to foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other and achieve social, economic and technical progress for present and future generations for the citizens of the Borough of Emerson.[1]

D.

It shall not be the intent of this article to deny the Shade Tree Commission any of its authority over the removal, maintenance and planting of trees and shrubbery on Borough land or rights-of-way, for emergent situations as set forth in the Borough's applicable shade tree ordinances.

[1]

~~Editor's Note: Former Subsection D, regarding authority of the Shade Tree Commission, added 9-24-2002 by Ord. No. 1212, which immediately followed this subsection, was repealed 2-7-2017 by Ord. No. 1537-17.~~

§ 266-7 Legislative findings.

A.

It is absolutely essential to our citizens to remove pollution from our air. It takes approximately 20 mature trees to clean the air of gases produced from vehicular traffic consuming five gallons of gasoline. Healthy trees greatly assist in this battle against air pollution since moist tree foliage traps dust and soot particles until the rain washes them away.

B.

Properly planted and nurtured trees are also needed to create sound barriers to help in the reduction of the noise level made by vehicular traffic, trains and ultimately the noise which will be created by the air traffic.

§ 266-8 Definitions and word usage.

A.

Whenever used in this article, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this article, the following terms shall have the meanings indicated:

AESTHETIC IMPROVEMENT CUT

The removal, to the extent possible, of the minimum number of smallest and poorest specimens of trees so as to permit land development while retaining the maximum number of larger and better specimens of trees.

CLEAR-CUTTING

The removal of all standing trees on a lot or portion of a lot.

DIAMETER BREAST HEIGHT

The diameter of a tree measured at a point on the tree 4 1/2 feet from ground level. This phrase may appear in this chapter as the abbreviation "DBH."

[Amended 3-5-2002 by Ord. No. 1195]

DRIPLINE

A limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree.

[Added 3-5-2002 by Ord. No. 1195; amended 9-24-2002 by Ord. No. 1212]

MANAGEMENT PLAN

The written information required in this chapter and containing the proposed methods and procedures to be employed in conjunction with a tree removal project.

PERSON

Any individual, firm, copartnership, association, corporation or developer other than the Borough and public corporation.

SELECTIVE CUTTING

The removal of larger trees on an individual basis while leaving trees of lesser size for future harvest.

SHADE TREE or REPLACEMENT TREE

A nursery-grown, certified, deciduous tree, properly balled, marked with a durable label indicating genus, species and variety, and satisfying the standards established for nursery stock and installation thereof set forth by the American Association of Nurserymen.

[Added 9-24-2002 by Ord. No. 1212]

SILVICULTURE

The management of any forested tract of land to ensure its continued survival and welfare whether for commercial or noncommercial purpose pursuant to a plan approved by the New Jersey Bureau of Forestry.

SLASH

The forest debris remaining after a tree removal operation.

SUBDIVISION

The division of a tract of land into two or more approved building lots.

THINNING

The removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of remaining trees on a lot.

TOPPINGS

The uppermost 20% of a tree constituting its crown.

TREE

(1)

The term "tree" shall include:

(a)

Any living deciduous or coniferous tree having a DBH of three inches or greater;

(b)

Any living flowering dogwood (*Cornus florida*) or American holly (*Ilex opaca*) having a DBH of one inch or greater;

(c)

Any woody plant species listed by the State of New Jersey as threatened or endangered at the time of application to the ~~Planning and Zoning Board~~ Land Use Board.

(2)

Any species not qualifying as a tree under this definition shall be considered a stem and shall not fall within the purview of this chapter.

TREE INSPECTOR

The Tree Inspector of the Borough of Emerson, as appointed by the ~~Environmental Commission~~ Shade Tree Commission at its annual reorganization meeting or whenever the position is vacant. [Added 9-24-2002 by Ord. No. 1212; amended 2-7-2017 by Ord. No. 1537-17]

B.

"May" indicates a permissive direction; "shall" indicates a mandatory direction.

§ 266-9 ~~Environmental Commission~~ Shade Tree Commission duties.

[Amended 2-20-2001 by Ord. No. 1163; 3-5-2002 by Ord. No. 1195; 9-24-2002 by Ord. No. 1212; 4-26-2005 by Ord. No. 1280; 2-7-2017 by Ord. No. 1537-17]

The ~~Environmental Commission~~ Shade Tree Commission shall provide to the ~~Planning and Zoning Board~~ Land Use Board review and comments on any application for development pending before the Board where there is a tree management plan, or where the Board feels that shade trees may be impacted by the development. Said comments and review shall be provided on an advisory basis.

§ 266-10 Exemptions.

[Amended 3-5-2002 by Ord. No. 1195; 4-26-2005 by Ord. No. 1280]

The following shall be exempt from the requirements of this article:

A.

Commercial nurseries and fruit orchards;

B.

Christmas tree plantations;

C.

Properties devoted to the practice of silviculture;

D.

Any residential lot or any lot located in a residential zone of one acre or less in area, provided that no more than 75% of existing trees are removed. This exemption, however, shall not apply where the property is part of a minor or major subdivision;

E.

Removal of trees on private property which are dead, dying or diseased or trees which have suffered severe damage or any tree or trees whose angle of growth makes it a hazard to structures or human life, as determined by the Tree Inspector of the Borough of Emerson or by a tree care expert approved by the ~~Planning and Zoning Board~~ Land Use Board to do such an inspection;

F.

Pruning and removal of trees by utility companies to provide for line clearance of utility wires;

G.

Approved game management practice, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.

H.

Although exempt from the approval and permit requirements of this chapter, any projects being performed by the Borough of Emerson, its agents or its contractors shall comply with the general intent of the chapter and provide replacement plantings and supplemental landscaping for any projects that require the cutting and removal of existing trees.

§ 266-11 Management plan approval; procedures for exempt lots of one acre or less.

[Amended 3-5-2002 by Ord. No. 1195; 9-24-2002 by Ord. No. 1212; 4-26-2005 by Ord. No. 1280]

A.

Except for the exemptions set forth in this article, no tree shall be cut or otherwise removed from any lands in the Borough of Emerson unless a management plan as described in this article has been approved by the ~~Planning and Zoning Board~~ Land Use Board and a permit based thereon issued by the Code Enforcement Officer of the Borough. The application for such a permit shall indicate the name and address of the owner of the premises, the name and address of the applicant for the permit, if other than the owner, accompanied by the owner's consent to said application and a description by lot and block numbers of the premises for which the permit is sought. The form of said application shall be determined by the ~~Planning and Zoning Board~~ Land Use Board and shall be obtainable from the Building Department. A complete application for a tree removal permit consists of the following:

(1)

A fully completed application form.

(2)

A management plan as described in this article.

B.

In the case of a person developing his or her property as a subdivision, site plan, planned unit development, multiresidential development or single-family lot where fewer than six healthy trees exist on site, said person may request an exemption from the requirement of a tree management plan. Upon receipt of such request, the ~~Planning and Zoning Board~~ Land Use Board shall direct the Borough's Tree Inspector, or a tree expert so approved, to do an inspection of the property to determine which trees are dead, dying or diseased, have suffered severe damage or whose angle of growth make them a hazard to structures or human life. The Tree Inspector, or tree expert so approved, shall submit his/her written report to the Board, noting how many healthy trees exist on site by number, up to five, or by the words "more than five." Should fewer than six healthy trees remain, the ~~Planning and Zoning Board~~ Land Use Board may choose to exempt the applicant from the requirements of a tree management plan. However, all healthy trees that will remain after construction shall be appropriately marked in a manner so designated by the ~~Planning and Zoning Board~~ Land Use Board. The Code Enforcement Officer shall be responsible for confirming that the owner/builder has not removed the trees designated for preservation. In the event any tree or trees are removed, the Building Department shall not issue a certificate of occupancy until the owner/builder replants trees to replace the trees which were illegally removed to the satisfaction of the Code Enforcement Officer and pays any fines imposed by the municipality for violation of the chapter.

C.

A person developing his/her property as a subdivision, site plan, planned unit development, multiresidential development or single-family lot exceeding one acre in area, unless granted an exemption under Subsection B above, shall be required to submit a management plan indicating proposed locations of roads, lots, improvements and existing trees in accordance with § 266-12 of this chapter, such plan to be prepared by a licensed architect or professional engineer in the State of New Jersey. The proposed plan shall indicate which trees are to be removed and the trees which will remain.

D.

Ten copies of said management plan shall be submitted to the ~~Planning and Zoning Board~~ Land Use Board in accordance with § 266-12 of this chapter. Four copies of the plan shall also be submitted to the ~~Environmental Commission~~ Shade Tree Commission at the time of submission to the ~~Planning and Zoning Board~~ Land Use Board.

[Amended 2-7-2017 by Ord. No. 1537-17]

E.

The developer shall submit three copies of the plan to the Borough Engineer at the time of submission to the ~~Planning and Zoning Board~~ Land Use Board to enable the Borough Engineer to make his or her recommendations to the ~~Environmental Commission~~ Shade Tree Commission. The Borough Engineer shall reject the submitted plan if it fails to meet all the requirements set forth in § 266-12 of this chapter. The Borough Engineer may accompany the ~~Environmental Commission~~ Shade Tree Commission to the

site and assist the Commission in formulating its recommendations to the ~~Planning and Zoning Board~~ Land Use Board.

[Amended 2-7-2017 by Ord. No. 1537-17]

F.

The procedures for reviewing the submitted tree management plan shall be the following:

[Amended 2-7-2017 by Ord. No. 1537-17]

(1)

The ~~Planning and Zoning Board~~ Land Use Board shall act on the application within 45 days of its acceptance by the Borough Engineer or within such additional time as is consented to by the applicant. The application and management plan shall not be accepted if they fail to meet the requirements set forth in § 266-12 of this chapter.

(2)

The ~~Planning and Zoning Board~~ Land Use Board shall refer the accepted management plan to the ~~Environmental Commission~~ Shade Tree Commission for its written report and recommendations.

(3)

The ~~Planning and Zoning Board~~ Land Use Board may request that members of the ~~Environmental Commission~~ Shade Tree Commission appear before the Board to answer questions regarding the report and shall rely on the report and recommendations of the ~~Environmental Commission~~ Shade Tree Commission in reaching its decision to approve the management plan, disapprove the management plan or approve the management plan subject to such conditions as have been recommended by the ~~Environmental Commission~~ Shade Tree Commission in accordance with the terms of this chapter. Failure of the ~~Planning and Zoning Board~~ Land Use Board to act within 45 days of the date of the application's acceptance by the Borough Engineer or any extension thereof shall be deemed to be an approval of the management plan and, thereafter, the Code Enforcement Office of the Borough of Emerson shall issue a tree removal permit based thereon.

G.

The developer, as a condition of approval from the ~~Planning and Zoning Board~~ Land Use Board, shall be required to follow the conditions imposed by that Board. The manner of designating the trees to be saved shall be left to the discretion of the Borough Engineer or the ~~Planning and Zoning Board~~ Land Use Board. If at any time after receiving approval the developer changes the road pattern, lot layout or site improvements, then he/she shall submit a revised tree management plan to ~~Planning and Zoning Board~~ Land Use Board for approval.

H.

Prior to the issuance of a building permit, the developer shall designate on each building lot the trees to be retained based upon the management plan approved by the ~~Planning and Zoning Board~~ Land Use Board, which designation shall be based upon the proposed location of the house or building, driveway and other accessory uses and structures, it being understood that in that area and within a fifteen-foot perimeter of any structure, the developer need not designate any tree for preservation.

I.

Prior to the issuance of the certificate of occupancy, the Code Enforcement Officer shall determine that all trees designated for preservation are, in fact, in existence. In the event that the developer has removed any trees designated for preservation without prior approval, or has caused any trees so designated to be harmed or destroyed due to accident, negligence or any other reason, the developer shall plant replacement trees according to the table under Subsection D of § 266-15 and shall be subject to the fines and penalties set forth in § 266-19 herein. The replacement of all trees illegally moved or destroyed shall be subject to all other requirements set forth in § 266-15 herein.

J.

All action taken by the ~~Planning and Zoning Board~~ Land Use Board pertaining to a management plan shall be in the form of a resolution to which the tree removal permit issued by the Code Enforcement Officer shall refer. Any such tree removal permit shall be valid for the time proposed by the applicant to complete the project; provided, however, that no permit shall be valid for a period of more than two years

from the date of approval. The ~~Planning and Zoning Board~~ Land Use Board, upon showing of good cause by the applicant, may recommend the extension of any such permit for an additional period of one year, provided that the applicant submits an updated management plan to show tree removal activities to date. Further, the ~~Planning and Zoning Board~~ Land Use Board may require as a condition of such extension that the applicant employ current techniques and procedures incorporated into this chapter since the date of original approval.

K.

Where the ~~Planning and Zoning Board~~ Land Use Board has given approval to a subdivision or site plan which contains, as a condition of such approval, a tree management plan, the developer shall be responsible for the preservation of designated trees and the planting of trees as shown on the approved plan. The developer shall plant at least one shade tree for every 50 feet of frontage on any proposed or existing right-of-way. All types and locations of shade trees to be planted shall be shown on the management plan approved by the ~~Planning and Zoning Board~~ Land Use Board and shall be planted in accordance with the specifications for planting shade trees as provided by that Board.

L.

Where by reason of weather, season or other circumstances it is impossible for the developer to plant a tree in accordance with this article, a person shall deposit in escrow with the Borough Clerk an amount to be determined and specified by the Borough Engineer to cover the cost of purchasing and planting a tree. No street shall be accepted for dedication by the Borough Council until the Borough Engineer notifies the Borough Council that the developer has complied with this article.

M.

In the case of an applicant before the ~~Planning and Zoning Board~~ Land Use Board seeking site plan approval who seeks to remove trees from a single-family lot of one acre or less in area where a tree removal permit and management plan is not required, as exempt under § 266-10 herein, the ~~Planning and Zoning Board~~ Land Use Board shall require, as a condition of any approval granted, that the applicant remove not more than 75% of the existing trees from the tract. The applicant shall be required to identify which trees shall remain after construction and shall mark such trees after the ~~Planning and Zoning Board~~ Land Use Board has approved the project. The Code Enforcement Officer shall be responsible to confirm that the owner/builder has not removed or caused to be harmed or destroyed, due to accident, negligence or any other reason, any of the trees designated for preservation. In the event excessive trees are either removed, harmed or destroyed by the owner/builder, the Building Department shall not issue a certificate of occupancy until the owner/builder replaces the trees which were illegally removed, harmed and/or destroyed with trees of equal quality and size to the satisfaction of the Code Enforcement Officer and pays any fines imposed by the municipality for violation of this chapter. The Code Enforcement Officer may consult with the Borough's ~~Environmental Commission~~ Shade Tree Commission regarding the replacement of any trees illegally removed, harmed or destroyed.

[Amended 2-7-2017 by Ord. No. 1537-17]

§ 266-12 Management plan information.

[Amended 3-5-2002 by Ord. No. 1195; [1] 9-24-2002 by Ord. No. 1212; 4-26-2005 by Ord. No. 1280]

The management plan submitted in conjunction with a tree removal permit application shall contain the following information:

A.

A description of the premises upon which tree removal is to take place by street address and Borough Tax Map lot and block number.

B.

The acreage of the lot upon which tree removal is to take place.

C.

A survey and map of the species and quantity of trees, setting forth the location, species and DBH of each tree to be removed and the location, species and DBH of each tree to be preserved. On timber harvesting and/or silviculture projects involving more than 10 acres, the application may make an estimate of the total quantity of trees to be removed based on the number upon one typical acre.

D.
Specific proposals for replanting or reforestation, if applicable.

E.
A description of the type of tree removal project, that is:

(1)

Thinning;

(2)

Selective cutting;

(3)

Clear-cutting;

(4)

Aesthetic improvement cutting.

F.

Location of streams and watercourses.

G.

Location of slopes greater than 10% where any tree removal is proposed.

[1]

Editor's Note: This ordinance combined former Subsections C and D and also provided for the redesignation of former Subsections E through H as Subsections D through G, respectively.

§ 266-13 Preparation of management plan.

[Amended 4-26-2005 by Ord. No. 1280]

A.

All management plans submitted pursuant to this article dealing with the harvesting of timber and/or silviculture shall be based upon and be in accordance with the standards and recommendations of the New Jersey State Bureau of Forestry pertaining to the type of tree removal project proposed.

B.

The ~~Planning and Zoning Board~~ Land Use Board shall be available for informal discussions and consultations with any applicant proposing a tree removal project which shall be nonbinding upon either.

§ 266-14 Criteria for approval of management plan and/or removal.

[Amended 3-5-2002 by Ord. No. 1195; 4-26-2005 by Ord. No. 1280]

The following shall be the criteria to be applied in determining which trees may be removed:

A.

Any area to be occupied by a building, driveway, drainage field, septic tank, recreation area (tennis courts, swimming pools or similar facilities) may have all trees removed within 15 feet around the perimeter of such facilities.

B.

If the area has a cut or fill deemed injurious or dangerous to trees, the trees affected by such cut or fill may be removed.

C.

The ~~Environmental Commission's Shade Tree Commission's~~ site review committee and the Code Enforcement Official shall view the land where the tree or trees are to be removed, as well as drainage or other physical conditions existing on subject or adjoining property.

[Amended 2-7-2017 by Ord. No. 1537-17]

D.

There shall be no clear-cutting permitted on slopes of 10% or greater in grade; however, selective cutting or thinning may be permitted subject to the ~~Planning and Zoning Board~~ Land Use Board's approval.

E.

There shall be no clear-cutting permitted within major subdivisions where the existing lots will be on one acre or less, unless otherwise permitted.

F.

The permit shall be granted if there is a finding that the removal and destruction will not impair the health, growth, development or stability of remaining trees on the property of the applicant or on adjacent properties and would not cause erosion of soil, impair existing drainage, lessen property values in the neighborhood, impair the aesthetic values of the area or significantly harm the ecological health and integrity of on-site or adjacent environmentally sensitive areas.

G.

The spirit of the provisions of this section will be to grant permits with the understanding that it is the goal of the governing body to maintain aesthetic values, preserve privacy and drainage control, and protect natural resources.

§ 266-15 Tree removal standards; replacement trees; tree planting fund.

[Amended 3-5-1002 by Ord. No. 1195; 9-24-2002 by Ord. No. 1212; 4-26-2005 by Ord. No. 1280]

A.

No soil shall be deposited or removed nor shall any building materials be stored within the dripline or within eight feet, whichever is greater, of any existing tree trunk.

B.

Trees shall be removed in such a manner so as not to destroy or damage the roots, trunk or branches of any adjacent trees designated for preservation. Where a tree designated for preservation is severely damaged and unable to survive, tree replacement shall occur as provided in the table under Subsection D below.

C.

All toppings and slash that are generated by the felling of individual trees shall be removed from the site for disposal.

D.

The replacement of removed trees, with the exception of those trees exempt under § 266-10 of this chapter, shall occur as prescribed in the table below.

DBH of Tree to be Removed (inches)	Number of Replacement Trees Required (minimum three-inch caliper)
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Less than 6	1
Less than 12	2
Less than 18	3
Less than 21	4
Less than 24	5
Less than 27	6
Less than 30	7
Less than 33	8
Less than 36	10
Less than 39	12
Less than 42	14
42 or greater	15

E.

Replacement trees shall be of nursery grade quality, balled and burlapped and at least three-inch caliper. They shall be nursery grown within the same USDA hardiness zone as the lot or tract.

F.

The species and cultivars of replacement trees shall be determined by the ~~Environmental Commission~~ Shade Tree Commission and shall reflect careful site evaluation, including:

[Amended 2-7-2017 by Ord. No. 1537-17]

(1)

Existing and proposed site conditions and their suitability for tree species, based on geology, hydrology, soil and microclimate.

(2)

Specific functional and design objectives, including replacement of wooded areas, enhancement of existing wooded areas, streamside and landscape buffering, visual screening, noise abatement, energy conservation, wildlife habitat and maximization of aesthetic values.

(3)

Maintenance considerations, such as hardiness, resistance to insects and disease, and longevity.

(4)

Environmental considerations, such as the invasiveness of nonnative species and the benefits of indigenous native species.

G.

The planting of all replacement trees shall be done or supervised by a person with horticultural training in tree care and planting methods.

H.

Newly planted replacement trees shall be monitored for a period of one year to ensure the health of the trees. If the replacement trees die within the one-year period, the developer shall replace the dead tree to the satisfaction of the Borough's Tree Inspector.

I.

Where replacement trees are required but not suitable for the particular site due to the size of the site or other special limitations, a contribution in the amount of \$150 per replacement tree shall be submitted to the Borough's Tree Planting Fund. The fund shall be administered by the Borough's ~~Environmental Commission~~ Shade Tree Commission solely for the purpose of planting trees or shrubbery on Borough property and rights-of-way and shall not be utilized for tree removal or any other purpose.

[Amended 3-16-2010 by Ord. No. 1402; 2-7-2017 by Ord. No. 1537-17]

§ 266-16 Planting requirement for off-street parking spaces.

[Amended 3-5-2002 by Ord. No. 1195; 4-26-2005 by Ord. No. 1280; 2-7-2017 by Ord. No. 1537-17]

Where a building permit has been requested from the Emerson Building Inspector for the construction of a building requiring off-street parking for 10 or more vehicles, then the owner or builder shall be required to plant shade trees around the perimeter of such parking space so that at least one shade tree is planted for every two parking spaces abutting the perimeter, such trees having a diameter breast height at planting time of two inches or more. The Building Inspector shall rely on the recommendations of the Borough's ~~Environmental Commission~~ Shade Tree Commission and Tree Inspector regarding the selection, planting and placement of suitable trees. Where the season or weather prevents such planting, the owner or builder may deposit with the Clerk of the Borough of Emerson a sum sufficient to guarantee the planting of such trees.

§ 266-17 Fees.

[Amended 4-26-2005 by Ord. No. 1280]

There shall be a fee of \$100 payable for the processing or issuance of a tree removal permit. In addition, the applicant shall escrow sufficient funds with the Borough Clerk for payment of the fees of all professionals whose services are required, including but not limited to the Borough Engineer and Borough Attorney. There shall be no fee required where development is planned on a single-family lot of one acre or less in area.

§ 266-18 Appeals.

[Amended 3-5-2002 by Ord. No. 1195; 4-26-2005 by Ord. No. 1280]

A.

An applicant may appeal to the Emerson Borough Council from a decision of the ~~Planning and Zoning Board~~ Land Use Board denying a tree removal permit or from any other action or requirement of the ~~Planning and Zoning Board~~ Land Use Board under the terms of this chapter. Said appeal shall be made within 30 days of the date upon which notice of denial or other action of the ~~Planning and Zoning Board~~ Land Use Board is served upon the applicant.

B.

The Borough Council shall hold a public hearing on the matter to consider the findings of the ~~Planning and Zoning Board~~ Land Use Board and the testimony of the applicant within 30 days after the notice of appeal has been filed and may take one of the following actions:

(1)

Affirm the decision of the ~~Planning and Zoning Board~~ Land Use Board .

(2)

Overrule the decision of the ~~Planning and Zoning Board~~ Land Use Board and direct that a tree removal permit be issued.

(3)

Overrule the decision of the ~~Planning and Zoning Board~~ Land Use Board denying the permit but conditioning the issuance of said permit upon the satisfaction of such conditions as the Borough Council shall impose.

(4)

In special circumstances and upon a showing of good cause by the applicant, waive a requirement of this chapter where said waiver will not frustrate the basic intent and purpose of this article.

§ 266-19 Violations and penalties.

[Amended 3-5-2002 by Ord. No. 1195]

A.

Any person that shall violate the provisions of this chapter shall be liable to a fine of not more than \$1,500 or a penalty of imprisonment in a county jail for a term not exceeding 90 days, or both. The illegal removal of each tree in violation of this section shall be deemed a separate violation carrying with it a separate fine. The judge before whom any person is convicted of violating any of the above provisions of this chapter shall have the power to impose any fee or term of imprisonment not exceeding the maximum herein. Each and every day such a violation continues shall be deemed a separate and distinct offense.

B.

In addition to the fine referred to in Subsection A above, the judge may impose an additional penalty of an assessment paid to the municipality based upon the value of the tree as determined by a certified tree expert or trained forester or by the formula of not exceeding \$27 per square inch of a cross section of the trunk measured at diameter at breast height. This amount shall be modified by the tree's species variety, location and its condition at the time of removal or destruction.

C.

In addition to the foregoing, the Borough of Emerson may institute and maintain civil action for injunctive relief restraining the continuance of any unlawful tree removal project. Ignorance of the existence of this chapter or violation of this chapter through inadvertence shall not constitute a valid defense in either a civil or criminal proceeding.

§ 266-20 Permit revocation.

The Borough Council, through the Building Inspector or Code Enforcement Officer of the Borough, may revoke a permit where there has been a false or misleading application or there is noncompliance with the approval management plan.

§ 266-21 Replacement of trees.

[Amended 3-5-2002 by Ord. No. 1195; 7-10-2012 by Ord. No. 1445; 2-7-2017 by Ord. No. 1537-17]

In the event that a person receives approval to remove one or more trees from the area of the property within 10 feet of a Borough, county or state roadway, that person may be required by the ~~Environmental Commission~~ Shade Tree Commission of the Borough of Emerson to replace that tree either entirely at his or her expense or by entering into an agreement with the Tree Partnership for replacement under the criteria then existing under that program. All decisions regarding the species and planting location of the replacement tree(s) shall rest with the ~~Environmental Commission~~ Shade Tree Commission. If it is determined that the replacement tree dies from neglect or mistreatment, another tree shall be planted in the right-of-way on the property at the property owner's expense.

§ 266-22 Severability.

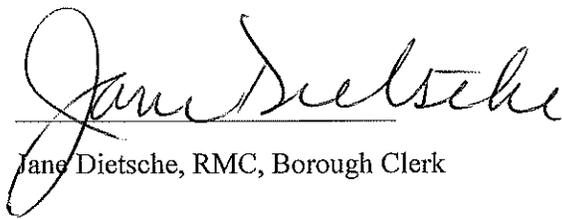
The various parts of this chapter, including articles, sections, sentences, clauses, phrases and words, are severable; and if any part is held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this chapter.

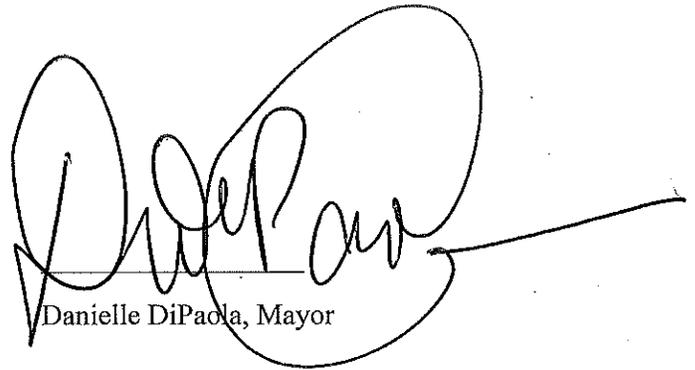
§ 266-23 Supersession of previous ordinance.

Article II of Chapter 266 of the Emerson Code, adopted by the Mayor and Council on May 28, 1974, by Ord. No. 628 as Chapter A135 of the 1966 Code is hereby superseded by this article, which, among other things, covers the same subject matter as that Ordinance.

Privacy Policy Terms of Use

ATTEST:

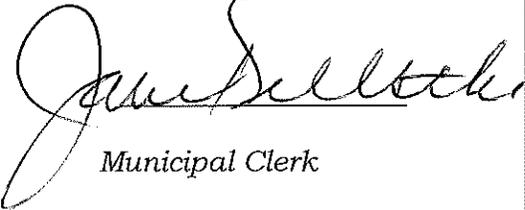

Jane Dietsche, RMC, Borough Clerk


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
Bayley			X			
Hoffman	X		X			
McGuire			X			
Falotico			X			
Knoller		X	X			
Gordon			X			

I hereby certify that Ordinance 1595-19 was duly Adopted by the Borough of Emerson at a meeting held on July 16, 2019.

Attest:


Municipal Clerk