

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

**ORDINANCE NO. 1607-20**

**Introduced:** February 4, 2020

**Adopted:** February 18, 2020

**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 18<sup>th</sup> day of February, 2020. A copy of Ordinance 1607-20 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, ARTICLE II:**

**BE IT ORDAINED** by the Mayor and Council of the Borough of Emerson of the County of Bergen and State of New Jersey that the Code of the Borough of Emerson be amended as follows:

**§ 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; 2-7-2017 by Ord. No. 1537-17; 7-16-2019 by Ord. No. 1595-19]

**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 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 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 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 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 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 Land Use Board in accordance with § **266-12** of this chapter. Four copies of the plan shall also be submitted to the Shade Tree Commission at the time of submission to the Land Use Board.

**E.**

The developer shall submit three copies of the plan to the Borough Engineer at the time of submission to the Land Use Board to enable the Borough Engineer to make his or her recommendations to the 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 Shade Tree Commission to the site and assist the Commission in formulating its recommendations to the Land Use Board.

**F.**

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

**(1)**

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

**(3)**

The Land Use Board may request that members of the Shade Tree Commission appear before the Board to answer questions regarding the report and shall rely on the report and recommendations of the 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 Shade Tree Commission in accordance with the terms of this chapter. Failure of the 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 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 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 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 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 or, if the site is not suitable for such planting, shall submit a contribution in the amount of \$150 per replacement tree to the Borough's Tree Planting Fund, 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 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 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 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 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 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 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 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 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 Shade Tree Commission regarding the replacement of any trees illegally removed, harmed or destroyed.

**§ 266-12 Management plan information.**

[Amended 3-5-2002 by Ord. No. 1195;<sup>11</sup> 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, which shall include a listing of all tree species to be planted and a map showing the proposed location and species of each tree.

**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.*

**§ 266-15 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** and, if applicable, **I** 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.

| <b>DBH of Tree to be Removed<br/>(inches)</b> | <b>Number of Replacement Trees Required<br/>(minimum three-inch caliper)</b> |
|-----------------------------------------------|------------------------------------------------------------------------------|
| 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 Shade Tree Commission and shall reflect careful site evaluation, including:

[Amended 2-7-2017 by Ord. No. 1537-17; 7-16-2019 by Ord. No. 1595-19]

**(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 two years to ensure the health of the trees. If the replacement trees die within the two-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 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. The Borough's Code Enforcement Officer shall not issue a certificate of occupancy until he/she has confirmed that the developer has submitted all required tree replacement contributions to the Borough's Tree Planting Fund.

[Amended 3-16-2010 by Ord. No. 1402; 2-7-2017 by Ord. No. 1537-17; 7-16-2019 by Ord. No. 1595-19]

**§ 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; 7-16-2019 by Ord. No. 1595-19]

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 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. In the situation where the Land Use Board has determined that the developer is unable to plant the minimum number of trees, due to the size of the site or other limitations, then a contribution in an amount equal to the prevailing cost to the Shade Tree Commission of planting a tree, shall be submitted to the Tree Planting Fund for each tree that cannot be planted on site. All such contributions shall be administered solely for the purpose of planting trees or shrubbery on Borough property and rights-of-way.

**§ 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 Borough's Tree Planting Fund, based upon the DBH of any trees removed or destroyed without the prior approval of the Land Use Board. The amount owed shall be determined by multiplying \$150 by the number of replacement trees prescribed in the table under § 266-15 above.

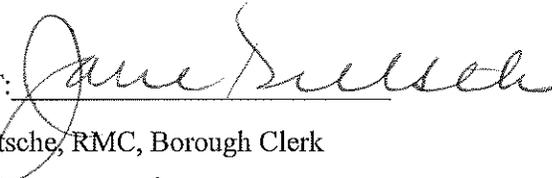
**C.**

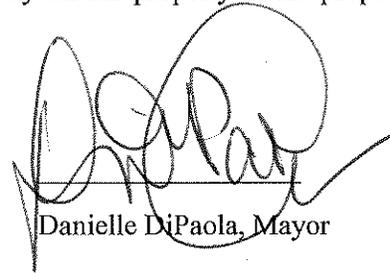
In addition to the foregoing, the Borough of Emerson may institute and maintain civil action for injunctive relief restraining the continuance of any unlawful tree removal project. Ignorance of the existence of this chapter or violation of this chapter through inadvertence shall not constitute a valid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

**§ 266-21 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; 7-16-2019 by Ord. No. 1595-19]

- A. 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, the Shade Tree Commission shall have the authority to plant a new tree or trees to replace the tree(s) removed. Should that person refuse to allow the Commission to replace the tree(s) removed, he or she shall be required to compensate the Borough for the full cost of removal, including grinding and/or removal of the stump. In the case where the tree is removed by the Borough's Department of Public Works, the amount of compensation shall be determined by multiplying \$75 by the number of inches DBH of the removed tree. In addition, the Commission shall have the authority to require a payment to the Borough's Tree Planting Fund, equivalent to the prevailing cost of planting a new tree.
  
- B. All decisions regarding the species and planting location of the replacement tree(s) shall rest with the 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.

ATTEST:   
 Jane Dietsche, RMC, Borough Clerk

  
 Danielle DiPaola, Mayor

| COUNCIL  | M<br>O<br>V<br>E<br>D | S<br>E<br>C<br>O<br>N<br>D<br>E<br>D | A<br>Y<br>E<br>S | N<br>A<br>Y<br>E<br>S | A<br>B<br>S<br>E<br>N<br>T | A<br>B<br>S<br>T<br>A<br>I<br>N |
|----------|-----------------------|--------------------------------------|------------------|-----------------------|----------------------------|---------------------------------|
| Bayley   |                       |                                      |                  |                       |                            |                                 |
| McGuire  |                       |                                      |                  |                       |                            |                                 |
| Dinallo  |                       |                                      |                  |                       |                            |                                 |
| Hoffman  |                       |                                      |                  |                       |                            |                                 |
| Gordon   |                       |                                      |                  |                       |                            |                                 |
| Argenzia |                       |                                      |                  |                       |                            |                                 |

*I hereby certify that the above Ordinance was duly adopted by the Borough of Emerson at a meeting held on February 18, 2020.*

Attest: \_\_\_\_\_  
*Municipal Clerk*