

**AN ORDINANCE OF THE BOROUGH OF ISLAND HEIGHTS, OCEAN COUNTY, NEW JERSEY ESTABLISHING A TREE STEWARDSHIP ORDINANCE**

**SECTION 1. Intent and Purpose.**

The purpose of this Chapter is to regulate the cutting of trees in order to:

- A. Help preserve the wooded character of the Borough of Island Heights and protect the community forest;
- B. Lessen the impact of tree removal by requiring that trees are replaced at an appropriate and sustainable level for the Island Heights environment;
- C. Ensure that newly planted trees are an appropriate species for the given environment;
- D. Aid in the reduction of soil erosion as trees stabilize the soil with their roots;
- E. Reduce stormwater runoff and ensure replenishment of ground water supplies;
- F. Aid in the removal of pollutants, carbon dioxide and generation of oxygen in the atmosphere;
- G. Provide a visual buffer and screen against traffic and noise pollution;
- H. Enhance energy savings in homes where feasible;
- I. Conserve and protect the Borough's physical and aesthetic environment; and
- J. Generally protect and enhance the quality of life and contribute to a positive image of Island Heights and protect the unique identity of our Borough.

**SECTION 2. Definitions: word usage.**

A. Usage. For the purpose of this chapter certain rules of word usage apply to the text as follows:

- (1) Words used in the present tense include the future tense, and the singular includes the plural, unless the context clearly indicates the contrary.
- (2) The term "shall" is always mandatory and not discretionary, and the word "may" is permissive.
- (3) The word or term not interpreted or defined shall be used with a meaning of common or standard utilization.

B. Definitions. The following definitions shall apply in the interpretation and enforcement of this chapter, unless otherwise specifically stated:

**Applicant** means any person, corporation, or other public or private entity that has applied for a tree removal permit, as regulated by this chapter.

**Arborist** means a tree professional certified as an arborist by the International Society of Arboriculture or as a New Jersey Licensed Tree Expert.

**Borough** is Island Heights.

**Community Forest** shall mean the population of trees within the Borough.

**DBH (Diameter Breast Height)** shall mean the diameter of a tree measured at a point 4.5 feet from uphill ground level.

**Diseased tree** means any tree with a structural defect and/or health condition, which makes it an unacceptable risk.

**Heritage tree** shall mean a tree prized for its age, size, beauty, species, or value as to its location, shade, erosion control, or aesthetic features, or value as an historic resource. A stated goal of tree replacement in the Borough shall be to ensure that the Community Forest is composed of trees of various ages so that future generations may also enjoy Heritage and Significant Trees (see below).

**Land** is any ground, soil or earth, including marshes, swamps, drainage ways, and areas not permanently covered by water, within the Borough.

**Land Clearing** shall mean the removal of all standing trees 4 inches DBH or greater on a lot.

**Land Disturbance** is any activity involving the clearing, grading, transporting, trenching, excavating, filling and any other activity which causes land to be exposed to the danger of erosion.

**Mulching is** the application of plant residue or other suitable materials to the land surface to conserve moisture, hold soil in place and aid in establishing plant cover, and offer protection from machinery and soil compaction.

**Non-Heritage Trees** are all trees that have not been classified as a Heritage Tree.

**Permit** is a certificate issued to perform work under this chapter.

**Private Tree** is any tree not located on property owned or controlled by the Borough.

**Public Tree** is any tree located on property owned or controlled by the Borough, Ocean County, or the State of New Jersey..

**Removal** is the actual removal or causing the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a tree.

**Replacement Tree** shall mean a nursery grown tree, either balled or burlapped or containerized and marked with a label or receipt which indicates genus, species and variety, having a minimum caliper of two (2) inches and having a typical trunk diameter at maturity of four (4) inches DBH or greater.

**Significant Tree** shall mean a tree, that is a non-Heritage Tree, greater than 16 DBH, or any tree that, regardless of size or age, is a valued example of its species, or that is considered a community resource for scientific, scenic, historic or environmental reasons.

**Stripping** is any activity which significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grubbing operations.

**Tax Lot** is a number given to identify a certain parcel or block of land within in the Borough.

**Tree** is any woody perennial plant having a single trunk diameter greater than four (4) inches measured at a point four and one-half (4.5) feet above the ground.

**Tree Protection Zone (TPZ)** is a conceptual and operational zone, usually circular, around a tree to be preserved. These shall be one foot in radius from the tree's exterior for every inch of tree (as DBH). Thus, a 10" DBH tree to be protected is typically at the center of a circular TPZ 20' in diameter.

**Tree Removal Permit** is a permit which shall be issued for tree removal from any single family residential lot, duplex, condominium, multifamily dwelling, or commercial property in the Borough.

### **SECTION 3. General regulatory authority.**

(1) **Administrative Responsibility.**

The Borough Code Enforcement Official shall have the authority and responsibility to administer all provisions of this chapter. The Code Enforcement Official will inspect or require adequate inspection as needed to comply with this ordinance.

(2) **Enforcement.**

It shall be unlawful for any person to hinder, prevent, delay or interfere with the Borough while engaged in the lawful execution or enforcement of this chapter. This shall not be construed as an attempt to prohibit the pursuit of any legal or equitable remedy in a court of competent

jurisdiction for the protection of personal or property rights by any property owner within the Borough of Island Heights.

#### **SECTION 4. Heritage trees.**

A heritage tree is any tree that because of its age, size, unique type, or historical association are of special importance to the Borough. The Borough acknowledges that preserving such trees is beneficial, and has set forth the procedure below to preserve and protect these heritage trees.

##### **A. Application for designation.**

In order for a tree to be designated as a heritage tree, a person must submit a written request to the Borough Environmental Committee. The request shall include a signed declaration by the land owner approving of this declaration; a site map showing the lot, any structures on site, and the current use of the site; the species and size of tree; a narrative explaining why the applicant wishes to designate that tree as a heritage tree.

##### **B. Criteria for designation.**

No tree standing on private property shall be designated a heritage tree without the consent of the property owner. No tree on Borough-owned property shall be designated a heritage tree without the consent of the Mayor and Council. Upon receiving a complete and valid request for heritage tree status, the Borough Environmental Committee may opt to obtain an arborist's report evaluating the condition of the tree prior to approval. The arborist's report shall include an evaluation of the tree's health, growing space and environment, typical longevity of the species, and suitability for long-term retention.

##### **C. Adoption of Heritage Tree.**

The Borough Environmental Committee shall present to the Mayor and Council all information including the application, any arborist's report, and any additional information discovered by the committee. Mayor and Council will vote to designate the tree a Heritage Tree.

##### **D. Protection of Heritage Tree.**

When a tree is designated as a heritage tree, a plaque so signifying shall be placed near the tree. The Borough shall place a notice in the land records of the Borough for all properties upon which a heritage tree is located, stating that the heritage tree is protected by the provisions of this Chapter. The restrictions placed on a heritage tree shall bind all successors, heirs and assigns. It shall be unlawful to remove or damage in any way a heritage tree, its plaque, or any protective measures for that tree, subject to the provisions stated herein. It shall be unlawful to prune, trim, remove any limb,

disturb the ground within the Tree Protection Zone, or undertake any activity which may cause harm to a heritage tree, except as otherwise provided in Section 8.

**E. Maintenance.**

The Borough shall maintain all heritage trees that are located on Borough property or on public rights of way within the Borough. It shall be the duty of every owner of property upon which a heritage tree is standing to maintain that tree to the best of their ability. The Borough may give advice and assistance to property owners regarding proper maintenance of heritage trees.

**F. Removal of designation.**

Criteria for removal: In order to remove the designation of Heritage Tree the homeowner must notify the Borough and provide evidence that some part following criteria is met:

- a. The tree is hazardous or dead.
- b. The tree no longer meets the criteria for designation as stated in section B: Criteria for Designation.
- c. The tree, including the TPZ, is in the path of any proposed improvements and presents an insurmountable impediment to such proposed improvements.

**SECTION 5. Other Tree types defined.**

- A. Non-Heritage trees** are all trees that have not been classified as a Heritage Tree.
- B. Significant Tree** shall mean a tree, that is a non-Heritage Tree, greater than 16 DBH, or any tree that, regardless of size or age, is a valued example of its species, or that is considered a community resource for scientific, scenic, historic or environmental reasons.

**SECTION 6. Tree Removal Permit required.**

Except as otherwise provided in Section 8 (A-C), it shall be unlawful for any person to remove any tree within the Borough without having first obtained a valid tree removal permit. A tree removal permit shall be issued for tree removal from any single family residential lot, duplex, condominium, multifamily dwelling, or commercial property in the Borough.

- A. Application.**  
Any person desiring to remove a tree or trees shall submit an application to the Borough. The Borough may require an arborist's

report, at the applicant's expense, prior to making a determination to grant the permit.

B. Tree removal subject to Borough review.

Upon receipt of the application, and any time during the approval process, or during the permit duration, the Borough shall inspect the site in question and evaluate the application with respect to the visible condition of the tree(s), proximity to existing structures, proposed land disturbance to the intent and purpose of this chapter, and interference with utility services. The Borough shall approve the removal of trees unless removal could cause damage to adjacent properties, as reasonably determined by the Borough Code Enforcement Official or Borough engineer.

C. Annual Limit on tree removals.

The Borough may approve tree removal permit applications after receiving a completed application, provided not more than 2 (two) trees are requested for removal in a calendar year.

D. Fee.

A tree removal permit shall not be issued until such time as the applicant has paid the fee established in Section 10. A fee shall not be required if the Borough gives written notice to a property owner that trees on their property must be removed.

E. Expiration.

A tree removal permit issued pursuant to this ordinance shall expire twelve (12) months from date of issuance, or following completion of the removal activity, whichever is longer.

F. Revocation.

A tree removal permit may be revoked because of incorrect information submitted by the applicant, or for any action in violation of the permit or this chapter.

G. Appeal.

Any person who objects to the decision of the Borough under this section may file an appeal as established in Section 13.

**SECTION 7. Replanting.**

All holders of a tree removal permit shall be required to replace removed trees per the chart below, up to the amount that land can reasonably sustain. Replacement trees required by a permit shall be at least 4' tall, and may be subject to approval by the Borough Environmental Committee. The species of Replacement Trees shall be selected to reasonably approximate a native tree population of the site, pre-disturbance. Emphasis shall be on the use of species historically native to the area, and the control of noxious, invasive or poorly adapted ones. To assist applicants in the planning process, a list of Barnegat Bay Friendly trees for use in the Borough will be available to the homeowner.

Trunk Diameter <4"	Trunk Diameter From >4" to <6"	Trunk Diameter from >6" to <10"	Trunk Diameter > 10" and Larger
No Replacement Required	One to One Replacement Required	Two to One Replacement Required	Three to One Replacement Required
	Must use replacement trees at least 4' tall	Must use replacement trees at least 4' tall	Must use replacement trees at least 4' tall

**SECTION 8. Tree Removal Permit exemptions.**

The following activities are specifically exempt from this chapter:

- A. Use of land for purposes of gardening in which the produce is grown primarily for home consumption.
- B. Any tree growing in a public right-of-way
- C. The cutting of any dead, diseased or other tree that is likely to endanger life or property, which action may be taken without securing a permit under this chapter.

**SECTION 9. Protection of public and private trees.**

Injury or disfigurement of any public or private tree growing within the Borough shall be a violation of this chapter. In order to protect all public and private trees, the following provisions shall apply:

**A. Prohibited actions.**

No person shall:

- 1. Attach any sign, notice or other object to any tree or fasten any wires, cables, nails or screws to any tree in a manner that is reasonably likely to be harmful to the tree;

2. Pour any material on any tree or on nearby ground which could be harmful to the tree;
3. Cause or encourage any fire or burning near or around any tree;
4. Pile building material, stockpile dirt, or equipment around any tree so as to cause injury thereto;
5. Prune or limb a tree which results in the loss of that tree;
6. Violate any term or condition of a tree removal permit.

#### **B. Protection during construction.**

1. Trees to be preserved during significant land disturbance shall be protected by a delineated Tree Protection Zone (TPZ). Because compaction of soil is likely to damage or kill affected trees where the size or shape of the lot requires that machinery or equipment cross a TPZ, alternative designs and technologies must be considered. These may include: a dedicated traffic corridor constructed of a layer of landscape fabric covered by 6" of wood chips with plywood or its equivalent on top, or other designs and technologies as may be indicated by the Borough.
2. A protective barrier shall be placed around retained trees prior to approved land disturbance or construction activities, and shall remain in place until all such activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within the protective barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
3. Tree protection barriers shall be a minimum of four (4) feet high, constructed of chain link, polyethylene laminar safety fencing or similar material, subject to approval by the Borough.
4. The Code Enforcement Official is authorized to require any measures necessary to protect significant trees during construction.

#### **SECTION 10. Fees**

- A. The following fees shall be charged under the provisions of this chapter.

Initial application: twenty-five (25) dollars per tax lot or part thereof for maximum of 2 trees.

An additional fee of fifty (50) dollars may be charged if the services of an arborist are needed to determine health/welfare of the tree.

#### **SECTION 11. Hazardous trees.**

If, in the best judgment of the Borough, a tree, whether standing on public or private property, has become a hazard, an arborist's report shall be obtained evaluating the condition. The arborist shall evaluate the condition of the tree and recommend a suitable course of action. With the Borough's approval the recommended course of action shall be carried out by the owner of the tree.

#### **SECTION 12. Inspection and enforcement.**

A. The requirements of this chapter shall be enforced by the Code Enforcement Official who shall also inspect or require adequate inspection of the work. If the Code Enforcement Official finds existing conditions not as stated in the applicant's tree removal plan, he may refuse to approve further work.

#### **SECTION 13. Appeals.**

A. Appeals from decisions under this chapter may be made to the governing body in writing within ten (10) days from the date of such decision. The appellant shall be entitled to a hearing before the governing body within thirty (30) business days from the date of appeal.

#### **SECTION 14. Violations and penalties.**

- A. If any person violates any of the provisions of this chapter, any standard promulgation pursuant to the provisions of this chapter, or fails to comply with the provisions of a certified plan, the Borough may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations, and said court may proceed in a summary manner.
- B. Any person who violates any of the provisions of this chapter, any standard promulgation pursuant to this chapter or fails to comply with the provisions of a certified plan shall be liable to a penalty of not more than one-thousand (1000) dollars for the first offense. Second offense shall be no more than twelve-hundred (1200) dollars; third or subsequent offense shall be no less than twelve-hundred (1200) dollars. All to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.). The Superior Court, County Court, County District Court and Municipal Court shall have jurisdiction to enforce said Penalty Enforcement Law.
- C. Each tree damaged, removed or destroyed in violation of this ordinance shall be deemed to be a separate and distinct violation, and the violation shall be continuing for each day of noncompliance regardless of whether a new summons is issued.
- D. If any violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

**SECTION 15. Emergencies.**

In cases of emergencies involving, but not limited to, hurricanes, windstorms, floods, freezing, or other natural disasters, the requirements of this chapter may be waived by the Mayor.

**SECTION 16. Non-liability of the Borough.**

Nothing in this chapter shall be deemed to impose any liability upon the Borough nor upon any of its officers or employees nor to relieve the owner and occupant of any private property from the duty to keep trees and shrubs upon private property or under his control in a safe condition.

**SECTION 17.** This Ordinance repeals Section 20-4 of the Island Heights Code and any other tree removal requirements of Chapter XX.

**SECTION 18.** This Ordinance repeals any inconsistent ordinance or ordinances or part or parts thereof.

**SECTION 19.** This Ordinance shall take effect immediately upon its final passage and publication as required by law.

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing Ordinance was introduced and passed on first reading at the regular meeting of the Borough Council of the Borough of Island Heights, in the County of Ocean, held on the 19 day of July, 2011 and will be considered for second reading and final passage at a regular meeting of said governing body to be held on the 19 day of August , 2011 at 7:00 p.m. at , Island Heights New Jersey at which time and place any person desiring to be heard upon the same will be given an opportunity to be so heard.

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ELLIE ROGALSKI, Clerk

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**AN ORDINANCE OF THE BOROUGH OF ISLAND HEIGHTS, OCEAN COUNTY, NEW JERSEY ESTABLISHING A TREE STEWARDSHIP ORDINANCE**

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was duly introduced and passed upon first reading at a regular meeting of the governing body of the Borough of Island Heights on the 19<sup>th</sup> day of July 2011. **FURTHER NOTICE** is hereby given that said ordinance was considered for final passage and was adopted after a public hearing thereon, at a regular meeting of said governing body held at the Island Heights Municipal Building, East End & Van Sant Avenues, Island Heights, New Jersey on August 16<sup>th</sup>, 2011.

  
Ellie Rogalski, RMC/CMC