

## **ORDINANCE NO. 2099**

### AN ORDINANCE AMENDING CHAPTER IX OF THE "REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF OCEAN, 1965" ENTITLED "SOIL AND TREE REMOVAL"

BE IT ORDAINED by the Township Council of the Township of Ocean, County of Monmouth, State of New Jersey as follows:

#### **SECTION I**

1. Chapter 9, Soil and Tree Removal Ordinance of the Township of Ocean is hereby amended and supplemented to read as follows:

#### **SECTION II**

2. Section 9-2, Tree Removal is hereby amended in its entirety to read as follows:

##### 9-2 Tree Preservation

##### 9-2.1 Purpose

The purpose of this chapter is to prevent indiscriminate, uncontrolled, and excessive destruction, removal, and clear cutting of trees upon lots and tracts of land within the Township of Ocean in order to maintain the aesthetic character of the Township of Ocean, prevent erosion, control action that will substantially change drainage patterns, and restrict actions that will cause a hazard to persons or property.

##### 9-2.2 Definitions

Clear Cutting – the removal of all standing trees on a site or portion of a site.

Emergency –any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger or hazard to person or property.

Public Right-of-Way –any street or road shown upon a map or plan filed in the Monmouth County Clerk's office or on the Official Map of the Township of Ocean.

Removal –the actual removal of trees, or direct or indirect actions resulting in the effective removal of trees through damage or poison, or similar actions directly or indirectly resulting in the death of trees subject to the provisions of this ordinance. Moving a tree to a different location on the same property does not constitute removal. Removal shall not include pruning for maintenance purposes.

Significant Specimen Trees –any tree with a diameter at breast height (DBH) exceeding 60% of that of the largest similar tree listed in either the 'Monmouth County's Largest Trees', prepared and annually updated by the Monmouth County Shade Tree Commission or 'New Jersey's Big Trees', prepared and updated bi-annually by the Division of Parks & Forestry of the New Jersey Department of Environmental Protection.

Site –any lot, tract, parcel or parcels of land within the Township.

Tree –any living deciduous or evergreen tree with a single trunk at a height of one foot above the root crown, with a normally anticipated mature height of thirty feet or greater. (Including, but not limited to: Norway; Silver and Sugar Maple; Sweetgum; London Plane; American Sycamore; White and Red Pin Oak; American Elm; Yellow and White Poplar; Copper Beech; Cedar; Spruce; Pine; and Fir.)

Tree Removal Permit – a certificate issued by the Construction Official of the Township to remove trees as defined in this section.

Undisturbed Area –an area in which trees, shrubs, and understory will not be disturbed by filling, cutting or by any other means

### 9-2.3 Tree Removal Prohibited

No person shall remove, or cause to be removed, an existing tree with a diameter of nine inches or greater, upon any lands within the Township of Ocean except as follows:

1. Trees that are to be removed as the direct result of a Development Application that has been approved by the Township of Ocean Planning Board or Zoning Board of Adjustment;
2. Any trees cut or removed in accordance with a "management plan" developed by the New Jersey Department of Environmental Protection, Bureau of Forestry, filed with the Construction Official of the Township;
3. Trees directed to be removed by municipal, county, state or federal authority;
4. Trees that are to be removed as the result of the issuance of a Tree Removal Permit.

9-2.4 Tree Removal Permit. A Tree Removal Permit shall be required for the removal of any tree as follows:

1. Any tree growing on or over a public right-of way or public land that, as determined by a N.J. Certified Tree Expert or a competent public authority (construction official, Township Engineer, etc.), is dead, dying, or has resulted in the heaving of sidewalks to the point where removing the roots and replacing the sidewalk would severely damage or kill the tree.
2. Trees that are: dead; severely damaged by natural causes or accident to the point that the natural habit of the tree can not be restored as determined by a N.J. Certified Tree Expert or a competent public authority (construction official, Township Engineer, etc.); trees that are severely diseased and require removal as certified by an N.J. Certified Tree Expert; or trees that pose an imminent public safety hazard as determined by a N.J. Certified Tree Expert or a competent public authority (police, construction official, Township Engineer, etc.)
3. Trees required to be removed subject to a construction permit as issued by the construction official for construction of new residences, additions to residences, or the construction of swimming pools or other accessory buildings or structures that are not the subject of Planning Board or Zoning Board of Adjustment application approvals. Such trees shall clearly be shown on the construction plans and identified by size and the removal of same shall, in the opinion of the construction official or his designee, clearly be necessary for the construction of the subject building or structure.
4. Individual residential lots that remove no more than 3 trees or 25% of the total number of trees, whichever is less, per 12 month period. Trees removed as a result of 1 through 3 above shall not be counted towards these 3 trees. If trees are pruned or damaged due to activities within the dripline of the tree, e.g., the piling of soil or placement of large equipment, those trees will be counted toward this 3 or 25% allowance.
5. Golf courses, whether privately owned or municipally owned, may remove no more than 25% of the total number of trees per twelve-month period under the auspices of a facility management plan whose goal is to encourage the health of the remaining tree stock while maintaining the viability of the playing surfaces.

### 9-2.5 Tree Removal Permit Requirements:

Application Form: An application form can be obtained from the Construction Official and shall include the following information:

1. Name and address (street and lot and block) of the owner of the premises and status of legal entity (individual, partnership, corporation).
2. Description of the premises where removal is to take place, including lot and block numbers, and street address as assigned if different than the address of the owner.
3. Purpose of tree removal.
4. In addition to the application form, a sketch showing the approximate location and size of all trees with a diameter at breast height of nine inches or greater that exist on the lot, and identifying those trees to be removed.
  - a. For all lots that are 1/2 acre in area or less, all such trees shall be shown on the sketch.
  - b. For lots that exceed 1/2 acre in area, the sketch shall show all trees to be removed as well as all individual trees within 30' of any trees to be removed. Trees that are not within 30' of any tree to be removed shall be inventoried and shown on the plan as groupings of trees, with the number and size of trees indicated on the plan, but need not be individually shown on the plan.
5. Whether the tree is a Significant Specimen Tree.
6. If a tree is removed under the requirements of Section 9-2.4.3, a mitigation plan must be submitted which will provide for the replacement of all removed trees by planting a tree of 3" to 3 1/2" caliper or a contribution to the Township Shade Tree Fund in the amount of \$350.00 for each tree removed.

9-2.6 Fees. Upon the filing of an application to the Construction Official for a tree removal permit under the terms of this section, the applicant shall pay an application fee of \$10.00 plus \$10.00 for each tree to be removed.

#### 9-2.7 Permit Approval

1. Time limits for action
  - a. The Construction Official shall act on an application for tree removal permit within thirty (30) days of the receipt of an application. Failure to act within thirty days shall be deemed to be an approval of the application and thereafter, a tree removal permit shall be issued.
2. Duration of Permits.
  - a. If granted for a lot or parcel of land for which no building permit is required - 3 months from the date of issuance.
  - b. If granted for a lot or parcel of land for which a building permit is required but for which no variance, subdivision, or site plan approval is required or has been approved by the Planning Board or Zoning Board of Adjustment, until expiration of building permit granted with such tree removal permit.

#### 9.2.8 Inspection

1. The holder of a tree removal permit shall notify the Construction Official in writing at least five (5) business days in advance of when the tree removal activity will commence.
2. The notice shall include information as to the manner of disposal of the removed trees.

3. After the notice of removal the Construction Official will inspect the site to confirm removal conforms to permit requirements.

#### 9-2.9 Significant Specimen Trees

It is presumed that Significant Specimen Trees should only be removed in the most compelling and extraordinary circumstances. Removal will be permitted only after approval by a Hearing Panel, as described in Section 9-2.10 of this ordinance. The loss of lot yield, building area, or profitability of developmental layout shall be deemed neither compelling nor extraordinary.

#### 9-2.10 Appeals.

Whenever any application for a tree removal permit shall be denied by the Construction Official, the applicant may appeal the denial to the Township Manager by filing a written notice of appeal with the Township Clerk within ten days after receiving notice of the denial. Upon receipt of the notice of appeal, the Township Manager shall appoint a hearing panel consisting of three members: A member of the Environmental Commission, an employee of the Department of Public Works, and any other designee of the Township Manager. This panel shall proceed to hear the appeal upon notice to the applicant within thirty (30) days of the filing of such notice of appeal. This panel shall have the discretion, after interviewing both the applicant and the Construction Official, to reverse, affirm, or modify the aforesaid decision.

#### 9-2.11 Protection of Existing Trees

In connection with any construction, subsequent to tree clearing but prior to the start of other construction, snow fencing or other protective barrier acceptable to the Construction Official and/or Township Engineer, shall be placed around trees that are not to be removed. The protective barriers shall be placed at the dripline or canopy line of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits, or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

#### 9-2.12 Emergency Action

In the event of an emergency, any person otherwise subject to this section, having responsibility, jurisdiction and/or authority to cure, remedy or mitigate dangerous, hazardous, inconvenient, unhealthy or obnoxious conditions resulting from the emergency, may, without first applying for and obtaining a permit under this section, take any lawful action which is otherwise a regulated activity. However, such person or the agent or designee of such person, shall apply for a Tree Removal Permit not later than the end of the second succeeding business day after any regulated activity takes place and may not proceed with non-emergency work including restoration, until a permit is obtained.

#### 9-2.13 Penalties

When regulated trees are removed without a tree removal permit, the affected areas shall be replanted as required by the Construction Official. Any such replanting shall be in accordance with the requirements of Section 21-55.2.a. of the Township of Ocean Land Development Ordinance. In addition to any reforestation as required by Section 21-55.2.a, any person found guilty of violating any of the provisions of this section shall be subject to a fine not exceeding \$1,250.00 or an imprisonment for a term of 90 days or both. Each and every day that such violation continues shall be considered a separate violation. Each tree removed or destroyed in violation of this section shall be considered a separate violation.

### SECTION III

3. All other ordinances or parts of ordinances inconsistent hereof are hereby repealed to the extent of such inconsistencies.

SECTION IV

4. If any section, paragraph, subparagraph, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subparagraph, clause or provision so adjudged and the remainder of this ordinance shall be deemed valid and effective.

SECTION V

5. This Ordinance shall take effect upon its final passage and publication as provided by law.

**CERTIFICATION**

*I hereby certify that this is a true copy of a Ordinance adopted by the Township of Ocean Governing Body at their meeting held on **September 15, 2008**.*

---

Vincent Buttiglieri, RMC/CMC  
Township Clerk