

ORDINANCE NO. 3392-16

**AN ORDINANCE CREATING AN ORDINANCE ENTITLED
"SHADE TREE COMMISSION" UNDER CHAPTER 95
OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF RUTHERFORD,
COUNTY OF BERGEN AND STATE OF NEW JERSEY**

BE IT ORDAINED by the Mayor and Council of the Borough of Rutherford, County of Bergen and State of New Jersey that Chapter 95, entitled "Shade Tree Commission" of the Code of the Borough of Rutherford is hereby created as follows:

Chapter 95

Shade Tree Commission

§95-1. PURPOSE

The Mayor and Council of the Borough of Rutherford finds that the preservation, protection, and planting of trees and other plants conserves and enhances the Borough's physical and aesthetic appearance, and generally protects the public health and safety and general welfare.

The intent of this Ordinance is to limit the adverse impact of damage and removal of Borough trees associated with construction. This Ordinance preserves and perpetuates the Borough's tree stock located on public property within the public right of way through the establishment of regulatory controls for the preservation of street trees.

This chapter contains Shade Tree Commission rules and regulations for the planting, control, protection and improvement of shade trees upon streets and highways in the Borough of Rutherford and providing penalties for the violation thereof.

§95-2. DEFINITIONS

As used in this chapter, the terms hereinafter set forth shall have the following meanings:

COMMISSION

The Shade Tree Commission of the Borough of Rutherford, including any of its duly appointed members and any of its duly authorized agents, representatives, or employees.

DRIP LINE

A boundary on the soil surface delineated by the outer branch spread of the tree or group of trees.

LANDMARK TREE

Any tree designated and identified as such by the Shade Tree Commission as to be of rare species, or of significant age, or of superior height or trunk or dripline diameter to be considered an outstanding specimen for a tree of its species, or of significant local history.

PERMITS

Written permission of the Commission. Whenever, pursuant to any provision of this chapter, the Commission shall have occasion to deny an application for a permit, it shall, in determining whether or not to approve such permit, take into consideration the nature, species, size, age and condition of any tree involved; the location thereof in the street, park and Borough property; the planting, care, protection, maintenance, or removal procedures involved: the public safety and welfare; and the improvement and advancement of the shade tree program of the Commission.

PERSON

Any individual, firm, partnership or corporation, or any combination thereof and/or agents of the same. Where, in the proper context, it is so required, this term may be construed to designate the plural as well as the singular.

REPLACEMENT ASSESSMENT

The value of a tree as determined by the appraisal of a trained forester or Licensed Tree Expert retained by the Commission for that purpose.

SHADE TREE

Any deciduous tree with an erect perennial trunk at least 2 inches in diameter 4 inches from root flare, definitely formed crown of foliage and a height of at least 15 feet at maturity within the borough's right-of-way and/or within ten feet of the curb line, but not including private property or Borough Parks.

STREET

Any road, avenue, street or highway dedicated to the public use for street purposes. A street shall be deemed to include all portions lying between the dedicated or established right-of-way lines and/or planting easement thereof, said lines being identical with the front property lines of lands abutting the street.

TREE

Any shade tree, shrub or plant, or any root, branch, flower or other part thereof that is located in or upon any street, except those located or planted on county or State parks, parkways and highways.

Any term or provision of this chapter that contemplates, directs, regulates or prohibits the doing of any act may, in applicable cases and where the context so requires, be construed to include the causing, allowing, permitting or suffering of such act to be done by others under the direction, control or supervision of the person charged therewith. Every such act shall be deemed to be within the scope of this chapter regardless of whether it is a deliberate, intentional or purposeful act, or a careless, negligent or unintentional act.

TREE PROTECTION ZONE

The area designated by the Rutherford Shade Tree Commission to be free of equipment, supplies or building materials and to be delineated by an orange construction fence.

§95-3. COMMISSION; PERSONNEL; APPOINTMENT

The regulation, planting and care and control of shade and ornamental trees and shrubbery upon and in the streets and, highways of the Borough of Rutherford, except State highways, unless the State Department of Transportation shall assent thereto, and except county highways, parks and parkways, unless a county shade tree commission or county department of parks and recreation is operative and shall assent thereto, shall be exercised by and under the authority of the Rutherford Shade Tree Commission, which is hereby created. The Commission shall be appointed by the Mayor with the advice and consent of the Council. The membership of the Shade Tree Commission shall consist of:

- A. Five residents of the Borough of Rutherford, one of whom may also be a member of the Borough of Rutherford's Department of Public Works Shade Tree Division. Each of these members shall serve without compensation, except as hereinafter provided, and shall have the right to vote on matters properly before the Shade Tree Commission; and
- B. One member of the Borough Council who shall serve as a nonvoting liaison between the Shade Tree Commission and the Mayor and Council and the citizens of Rutherford.

§95-4.COMMISSIONER'S TERM LENGTHS; SUBSEQUENT APPOINTMENTS

The first Commission members shall be appointed within 60 days after the effective date of this ordinance and the terms shall commence upon the day of their appointment and shall be for the respective periods of one, two, three, four and five years. The initial term of each appointee shall be designated in his or her appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January 1st next succeeding each appointment. Any vacancy occurring during the term of any Commissioner shall be filled in the manner provided herein for the unexpired term only. In the event that membership of any Commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing.

§95-5. ALTERNATE MEMBERS

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

§95-6. ORGANIZATION; SALARY OF SECRETARY

The Commission shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually, by the election of one of its members as Chairperson and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated, even if a member of the commission shall be fixed by the Borough of Rutherford Mayor and Council.

§95-7. POWERS OF COMMISSION

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

- A. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted in any public street or highway, except such as are excluded pursuant to §95-3, including planting, trimming, spraying, care and protection thereof;
- B. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection;
- C. Remove, or require the removal of any tree or shrub or part thereof, that is dangerous to public safety.
- D. Make recommendations to the governing body regarding the creation, alteration, amendment and repeal of any and all ordinances, written rules and regulations, as may be necessary or proper for carrying out the provisions of this Chapter provided that the

ordinances, written rules and/or regulations do not conflict with this article and conform to applicable State statutes.

E. Care for and control such streets; encourage arboriculture (and/or regulate and provide recommendations to the Department of Public Works Shade Tree Division in matters pertaining to the removal and enforcement of tree removal on all lands);

F. Designate Landmark Trees.

§95-8. ANNUAL REPORT OF COMMISSION; APPROPRIATIONS.

A. During the month of December each year, the Commission shall render to the Borough of Rutherford Mayor and Council an annual report of the work it has accomplished in the prior year and the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made:

- (1) Expenses for service of a Licensed Tree Expert;
- (2) Expenses of Commission members in discharging official duties, including expenses incident to attendance at professional meetings;
- (3) Purchase of trees and shrubbery;
- (4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.
- (5) Other maintenance expenses (including stump work, crane work needed by outside contractors, etc.);

B. The Borough of Rutherford Mayor and Council shall annually appropriate such sum as it may deem necessary for the proper conduct of the work of the Shade Tree Commission.

§95-9. PERMITS

No person shall, without first having obtained a permit from the Shade Tree Commission, do any of the following acts:

Tree Injury

- A. Cut, prune, break, injure, remove, disturb, or interfere in any way with any tree, including the root system;
- B. Spray with any chemical any tree or near a tree that is deleterious to tree health;

C. Place salt, brine, oil or any other substance injurious to plant growth in any street, park or any public property in such a manner as to injure any tree;

D. Fasten any rope, wire, sign or other device to a tree or to any guard around such tree; provided however, that nothing herein shall prevent any agency of government from affixing, in a manner approved by the Shade Tree Commission, public notices upon a tree in connection with the administration of governmental affairs;

E. Remove or damage any guard or device placed to protect any tree;

F. Close or obstruct any open space provided about the base of a tree to permit the access of air, water and fertilizer to the roots of such trees;

Construction Protection

G. Build any fire or station any tar kettle, road roller, fuel oil dispensing truck, or other engine in any street or any other place in such a manner that the heat, vapors, fuel, or fumes therefrom may injure any tree as determined by a licensed tree expert;

H. Store equipment, supplies or building materials in the tree protection zone or pile any debris such as soil and rocks against any shade tree;

I. Excavate, change grade or pave within four (4) feet of any tree;

J. Use or operate any power equipment or any other implement or tool in such a manner as to damage or destroy any tree;

K. Make any site improvement, erection, alteration, or repair of any structure or building without placing required protection around all street trees and nearby trees as will effectually prevent injury to such trees as directed by the Shade Tree Commission; (the owner, contractor, or other person in charge thereof)

Planting

L. Plant any tree in any park, street or public property;

Obstructions

M. Place or maintain in any street or park any stone, cement, sidewalk or other substance within four (4) feet of any tree which shall impede the free access of air or water to the roots;

N. Where any tree is to be surrounded by pavement of stone, cement, asphalt or any other substance tending to impede the free access of air and water to the roots of the tree,

no portion of such pavement shall be nearer to any portion of the base of the trunk than four (4) feet;

O. Shade Tree permits shall not be required for any necessary work performed by the Department of Public Works during normal work operations.

§95-10. WIRES AND UTILITY TRIMMING

A. No person or utility company shall string any wires in or through a public park or property or prune any trees without a permit.

B. Every person having or maintaining any electric, telephone, telegraph, cable TV, or other wires running in or through a street, public property, or park shall securely fasten and maintain such wires in such manner as will safeguard all trees against any damage therefrom and shall make periodical adjustments whenever necessary to prevent damage to all trees.

C. No person shall, without a permit, attach or fasten any wires, insulator or any other device for holding any wire to any tree.

D. Whenever the Commission shall deem it necessary to prune or remove any tree, any persons having a wire running in or through any street, park or public property shall temporarily remove such wire within 24 hours after the service upon the owner or their agent, of a written notice to do so.

E. Any public utility or its agents may not proceed to prune or remove trees for line clearance of utility wires in non-emergency situations pursuant to a line clearance program without submitting a work plan 30 days in advance of work and obtaining a permit.

F. All tree work done while trimming around utility lines in and along the Borough's streets, parks and parkways shall be by target pruning. All trimming is to be conducted with consideration for the health of any tree while allowing for proper utility line clearance, as determined by the Rutherford Shade Tree Commission. Any improper work will void the issue permit. Any work performed under permit from the Shade Tree Commission shall be performed in accordance with current recommendations and approved standards of the National Arborist Association, American National Standards Institute ("ANSI"), ANSI-Z133.1 & 300A, and the New Jersey Certified Tree Experts Board.

G. Any public utility or its agents may undertake emergency tree work to restore electrical service or limited spot work to prevent interruption of electrical, telephone, telegraph, cable TV or other wire services. In such event the utility will notify the Commission and the DPW of said work within three (3) business days of its occurrence.

H. A public utility company shall exercise reasonable diligence in the installation and maintenance of its facilities, including underground and overhead utility lines so as to avoid damage to trees. Periodic adjustments may be required whenever necessary to protect the tree.

I. The Shade Tree Commission may grant to a public utility a blanket permit for the installation and the maintenance of subsurface and aboveground plant construction.

§95-11. PLANTING AND REMOVAL OF TREES; NOTICE AND HEARING; EMERGENCIES

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

§95-12. PUBLIC IMPROVEMENTS AFFECTING TREES AND CONSENT OF COMMISSION

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

§95-13. HINDRANCE

No person shall prevent, delay or in any manner interfere with the Commission or its authorized agents in the performance of their lawful duties.

§95-14. PENALTIES, RESTITUTION AND ENFORCEMENT

A. Any person who violates any provisions of this chapter or who fails to comply with the terms and provisions of any permit issued pursuant hereto shall, for a first offense, pay a fine of \$200.00. For all subsequent offenses, upon conviction in the Municipal Court, any person who violates any provisions of this chapter or who fails to comply with the terms and provisions of any permit issued pursuant hereto, shall pay a fine of not less than \$200.00 nor more than \$1,500.00 for each violation. Each day that a violation shall continue shall constitute a separate offense. This chapter shall be enforced by the Superintendent of the Department of Public Works or its duly authorized agents or employees with the advice and consent of the Executive Secretary by like proceedings and process consistent with the practice for the enforcement of ordinances of the Borough of Rutherford.

B. A copy of any ordinance of the Commission, certified under the hand of its Secretary or Chairperson, shall be received in any court of this state as full and legal proof of the existence of the ordinance, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

C. In addition to the penalties authorized by §95-14A of this chapter, the Commission requires that a person who removes, damages, or otherwise destroys a tree in violation of a municipal chapter to pay RESTITUTION or a REPLACEMENT ASSESSMENT to the municipality, to be placed in the Shade Tree Commission Trust Fund account to be set aside for use pertaining to trees. The replacement assessment shall be the value of the tree as determined by the appraisal of a trained forester or Licensed Tree Expert ("LTE") retained by the Commission for that purpose. The cost of hiring said LTE is part of the replacement assessment cost being paid by the person being penalized. In lieu of an appraisal, the Commission will use a formula and schedule based upon the Council of Tree & Landscape Appraisers Guide for Plant Appraisal, 9th Edition (or latest edition) guidelines. The Commission shall evaluate the value of the tree based upon its species, variety, location and its condition at the time of removal or destruction and based on the current value per sq. inch at Diameter Breast Height (DBH).

D. "Stop work orders" on behalf of the Commission may be issued in writing by the following, in order of hierarchy for any tree work or other activity which he/she believes is carried on in violation of any provision of this chapter : 1) the Superintendent of the Department of Public Works or its duly authorized agents or employees, but if unavailable or impractical then 2) a duly authorized police officer; but, if unavailable, or impractical then 3) the Executive Secretary. A copy of the order shall be served upon any person engaged in such tree work or such other activity. If no such person is present upon the property, then the order shall be served upon the owner of the property in question. Thereafter, any further work shall comply with the terms and conditions of any permit

issued by the Commission or its designee with respect to such property and the provisions of this chapter.

§95-15. DISPOSITION OF PENALTIES AND RESTITUTION

A. All monies collected, either as fines or penalties, for any violation of a rule or regulation of a Shade Tree Commission or as a charge against real estate, under any provision of this Chapter, shall be forthwith paid over to the Custodian of the Municipal Funds.

B. Restitution shall be paid to the Rutherford Shade Tree Commission as set forth in Section 95-14C for the value of a tree removed, destroyed or damaged and for the value of labor and materials required. The Rutherford Shade Tree Commission shall administer the Shade Tree Commission Trust Fund for the care, protection, and enhancement of Borough trees, parks and public properties.

§95-16. APPEAL TO COMMISSION AND BOROUGH COUNCIL

Any person aggrieved by an action, decision or directive of the Commission, shall have the right within 14 days to appeal such action, decision or directive by submitting a written request to the full Commission setting forth the reasons for the appeal. Any person aggrieved by the Commission's action, decision or directive on such appeal shall then have the right within 21 days to appeal to the Borough Council. The appeal to the Borough Council must be in writing with a copy sent to the Commission. The Borough Council shall by resolution, within 30 days of the submission date of the appeal, modify, affirm, or deny the Commission's decision with such conditions as may be appropriate. If the Borough Council fails to act within the thirty day period, then the decision of the Commission shall stand.

§95-17. LIABILITY

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

§95-18. FEE SCHEDULE

The Shade Tree Commission shall adopt, from time to time, a fee schedule for permits and services. The Commission shall review it periodically and shall amend same by a majority vote.

§95-19. REPEALER

All other provisions of this chapter which are not affected by this amendatory Chapter are hereby ratified and confirmed and shall remain in full force and effect. However, all ordinances or parts of ordinances, which are inconsistent with the provisions of this amendatory Ordinance, are hereby repealed to the extent of such inconsistency.

§95-20. SEVERABILITY

If any portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this Ordinance, but shall be confined in its effect to the provision directly involved in the controversy in which such judgment shall have been rendered.

§95-21. EFFECTIVE DATE

This ordinance shall take effect after final passage and publication as required by law.

ATTEST:

BOROUGH OF RUTHERFORD

Margaret M. Scanlon

Joseph DeSalvo Jr.

Margaret Scanlon, Borough Clerk

Joseph DeSalvo Jr., Mayor

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Mayor and Council at a meeting held on March 14, 2016.

Margaret M. Scanlon

Margaret Scanlon, Borough Clerk