

BOROUGH OF INTERLAKEN

ORDINANCE NO. 2019-7

**AN ORDINANCE OF THE BOROUGH OF INTERLAKEN AMENDING
AND SUPPLEMENTING CHAPTER XXII "PROTECTION OF TREES"**

BE IT ORDAINED by the Borough Council of the Borough of Interlaken, in the County of Monmouth and State of New Jersey, that:

SECTION ONE. Chapter XXII "Protection of Trees" of the Code of the Borough of Interlaken is amended and supplemented as follows:

22-1 ESTABLISHMENT OF THE SHADE TREE COMMISSION.

22-1.1 Intent and Purpose.

- a. The intent of this section is to enhance the Borough's aesthetic environment and quality of life; aid in the stability of the soil by the prevention of erosion and sedimentation; reduce storm water runoff and the resulting costs of same; help the air quality in the Borough with the production of oxygen and the removal of carbon dioxide; provide a buffer and screen against noise; provide shade; aid in the control of drainage; provide a haven for wildlife; protect and increase property values and conserve and enhance the Borough's unique qualities.
- b. It is the purpose of this section to provide for the creation of a Shade Tree Commission in the Borough of Interlaken; definition of the powers of the Commission; penalties for violation of the rules and regulations of the Commission and the establishment of a Tree Preservation Ordinance.

(Ord. No. 286 § 1)

22-1.2 Short Title.

This section shall be known and cited as "The Shade Tree Commission and Tree Preservation Regulations of the Borough of Interlaken." (Ord. No. 286 § 2)

22-1.3 Shade Tree Commission Established.

- a. The regulation, planting, care and control of shade and ornamental trees upon or in the Borough of Interlaken, except County parks, parkways and rights-of-way shall be exercised by and under the authority of a Commission consisting of no less than five (5) nor more than seven (7) residents of the Borough of Interlaken, unless otherwise

prescribed by State Statute, which Commission shall be known as "The Shade Tree Commission of the Borough of Interlaken." The members of the Commission shall be appointed by the Mayor and shall serve without compensation.

- b. All appointments, except to fill vacancies, shall be made to take effect upon the first day of January of each year for a full term of five (5) years. Any member appointed to fill a vacancy occurring in the membership of the Commission by reason of death, resignation or removal shall be designated for the unexpired term by the Mayor.
- c. The Shade Tree Commission shall organize annually by the election of one of its members as Chairman and the appointment of Secretary.
- d. The Shade Tree Commission shall have the power:
 - 1. To exercise full, sole and exclusive control over the regulation, planting and care of shade and ornamental trees now situate, or which may hereinafter be planted in or upon any public right-of-way, highway, road, park or parkway except County rights-of-way, parks or parkways of the Borough and including the planting, trimming, spraying, care and protection of the same for the public good; the right to regulate and control the use of the ground surrounding the same so far as may be necessary for their proper growth, care and protection; the right to remove or require the removal of any tree or part thereof dangerous to public safety.
 - 2. To encourage arboriculture.
 - 3. To propose the passage, alteration, amendment and repeal of ordinances by the Governing Body of this Borough, any and all rules and regulations necessary or proper for carrying out the provisions of this chapter.
 - 4. To arrange, administer treatment to, or remove any tree situate upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the Municipality and enter upon private property for that purpose, with the consent of the owner thereof, provided the suspected condition is first confirmed by certificate issued by or on behalf of the New Jersey State Department of Agriculture. All reasonable costs of same shall be the responsibility of the homeowner.
- e. A copy of any rule, rules, regulation or regulations of the Shade Tree Commission, certified to under the hand of the Chairman or Secretary of the Commission, shall be taken in any court of this State as full and legal rule, rules, regulation or regulations.
- f. Except as herein provided, the initial cost of all trees planted by the Commission, the costs of planting the same, the costs of the posts, boxes or guards used for the protection of the same, and the cost of the removal of any tree on Borough property dangerous to the public safety shall be paid for by the Shade Tree Commission.
- g. During the month of December in each year, the Shade Tree Commission shall certify to the Borough Council 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 items as it is anticipated expenditure will be made, including payment of any wages or salaries authorized hereunder, expenses incurred in discharging official

duties of the Commission and the purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work hereunder. The Borough Council shall annually appropriate such amount as it may deem necessary for the above purposes.

(Ord. No. 286 § 3)

22-1.4 Definitions.

As used in this chapter:

Borough property shall mean any and all land designed by the Borough Tax Map as land owned solely and exclusively by the Borough of Interlaken, including but not limited to Borough parks and Borough property or rights-of-way located between the sidewalks and curbs.

Circumference at breast height shall mean the circumference of the main stem of a tree measured at a point on the stem four and one-half (4 1/2) feet above ground.

Tree shall mean any woody perennial plant having a single stem diameter minimum of two (2) inches measured at a point six (6) inches above the ground.

(Ord. No. 286 § 4)

22-1.5 Prohibited Acts.

No person shall do or cause to be done any of the following acts on Borough-owned property, right-of-way, street, road, highway, park or parkway without the recommendation and approval of the Shade Tree Commission:

- a. Cut, trim, break, remove, climb with spikes, disturb the roots or otherwise intentionally injure, misuse or spray with harmful chemicals any tree two (2) inches or more in diameter measured six (6) inches above the ground or remove any device installed to support or protect such trees.
- b. Plant any tree.
- c. Fasten any rope, wire, electrical equipment, sign or other device to a tree or install any guard about such a tree.
- d. Pile, heap or store any building materials, soil, debris or other matter or make mortar or cement within a distance of three (3) feet of a tree.
- e. Cause any oil, gas or other injurious chemical to come in contact with the trunk or roots of any tree.

(Ord. No. 286 § 5)

22-1.6 Exemptions.

Reasonable pruning of trees by utility companies necessary to provide for line clearance for utility wires shall be exempt from the provisions of this chapter. (Ord. No. 286 § 6)

22-1.7 Violations.

- a. Any person, firm, association or corporation who violates the terms of this chapter or any rule or regulation promulgated hereunder shall, upon conviction, be liable for the penalty established in Chapter I, Section 1-5. In addition to the foregoing, the Borough of Interlaken may institute and maintain a civil action for injunctive relief restraining the continuance of any unlawful tree removal project.
- b. All monies or funds collected hereunder, either as fines, penalties, grants or otherwise under any provision of this chapter or any amendment thereto, shall be forthwith paid over to the Borough Treasurer, shall be placed to the credit of the Shade Tree Commission of the Borough, and shall be subject to be drawn upon by the Commission for the conduct of its performance hereunder.
(Ord. No. 286 § 7)

22-1.8 Rights of Other Authorities and Contractors.

No Statute giving an individual or State or Municipal Board, body or official, power or authority to lay any sidewalk along, or to open, construct curb or pave any street or do any like act shall be held or construed to permit or authorize any interference with or injury to a highway shade tree without the consent of the Shade Tree Commission; provided that, in all cases the Commission shall reasonably cooperate with such individual board, body or official for the general public good; and provided further, that nothing herein contained shall be held to take away or diminish any of the powers or authority of any County Park Commission over the trees or shrubbery in any County park or parkway within its jurisdiction or to give the Shade Tree Commission any power or authority with respect to such trees or shrubbery.
(Ord. No. 286 § 10)

22-1.9 Liabilities.

Nothing in this chapter shall be construed to hold the Shade Tree Commission or any member thereof responsible for the death or injury of any person or for an injury to any property or highway tree or shrub. (Ord. No. 286 § 11)

22-2 Tree Preservation and Removal

22-2.1 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 Borough of Interlaken in order to maintain the aesthetic character of the Borough of Interlaken, prevent erosion, and control actions that will substantially change drainage patterns, and restrict actions that will cause a hazard to persons or property.

22-2.2 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.

Heritage Tree- shall mean any tree with a circumference of 40 inches or more.

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 Borough of Interlaken.

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.

Site - any lot, tract, parcel or parcels of land within the Borough.

Tree Removal Permit - a certificate issued by the Borough 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

22-2.3 Tree Removal Prohibited

No person shall remove, or cause to be removed, any heritage tree upon any lands within the Borough of Interlaken except as follows:

1. Trees that are to be removed as the direct result of a Development Application that has been approved by the Borough of Interlaken Planning Board;
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 Borough;
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.

No person shall remove any tree growing on or over a public right of way or public land without the express written consent of a competent municipal authority (Code Enforcement Officer, Borough Engineer, etc.) or Commission.

22-2.4 Tree Removal Permit

A Tree Removal Permit shall be required for the removal of any heritage tree, as follows:

1. Heritage Trees that are dead, severely damaged or in an advanced state of decline by natural causes or accident to the point that the natural habit of the heritage tree cannot be restored as determined by a N.J. Licensed Tree Expert or competent public authority (Borough Engineer); heritage trees that are severely diseased and require removal as certified by a N.J. Licensed Tree Expert; or heritage trees that pose an imminent public safety hazard as determined by a N.J. Licensed Tree Expert or a competent public authority (police, Borough Engineer, etc.).
2. Heritage 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 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.
3. Heritage trees may only be removed for compelling reasons based on the totality of the circumstances. The Code Enforcement Officer or his/her designee shall use best efforts to reach a determination that fairly takes into account the objectives of this ordinance and the

concerns of the applicant. In evaluating a tree removal permit application, the Code Enforcement Officer or his/her designee may consider, without limitation, the following factors:

1. The health of the tree;
2. Impact of tree removal on ecological systems;
3. Impact of tree removal on wildlife;
4. Topography of the area and drainage impact;
5. Impact of tree removal on noise, light or air quality;
6. Density of tree area;
7. Overall effect of tree removal on the physical and aesthetic value of the property;
8. Whether the continued presence of the tree or trees is likely to cause danger to a person or property.

22-2.5 Tree Removal Permit Requirements:

Application Form: An application form can be obtained from the Code Enforcement Officer or Borough Clerk 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 heritage tree removal.
4. In addition to the application form, a survey or diagram showing the approximate location and size of heritage trees exist on the lot and identifying those trees to be removed.

5. If a heritage tree is removed under the requirements of Section 22-2.4.2, a mitigation plan must be submitted which will provide for the replacement of all removed heritage trees by planting a tree of 3" to 3 1/2" caliper with a similar mature height or a fee to the Borough of Interlaken in the amount of \$500.00 per tree removed.
6. For any heritage trees to be removed under the requirements of Section 22-2.4.3, a replacement plan must be submitted showing the planting of trees for any heritage tree removal. The replacement trees must be a minimum caliper of 3" to 3 1/2" with a similar mature height or a fee to the Borough of Interlaken in the amount of \$500.00 for each tree may be made. These plans must be submitted and approved by the Code Enforcement Officer or his/her designee prior to the issuance of any permits.

22-2.6 Fees

Upon the filing of an application with the Code Enforcement Officer for a tree removal permit under the terms of this section, the applicant shall pay an application fee of \$25.00. An application may include more than one heritage tree within a single application fee.

22-2.7 Permit Approval

1. Time limits for action.
 - a. The Code Enforcement Officer or his/her designee shall act on an application for tree removal permit within thirty (30) days of the receipt of a complete 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, until expiration of building permit granted with such tree removal permit.

22-2.8 Completion

The holder of a tree removal permit shall notify the Code Enforcement Officer when the tree removal has been completed and when replacement trees as required under sections 22-2.5 (5) or 22-2.5 (6) have been planted.

22-2.9 Appeals

Whenever any application for a tree removal permit shall be denied by the Code Enforcement Officer or his/her designee, the applicant may appeal the denial to the Borough Administrator by filing a written notice of appeal with the Borough Clerk within ten days after receiving notice of the denial. Upon receipt of the notice of appeal, the Borough Administrator shall appoint a hearing panel consisting of three members: The Borough Engineer or his/her designee, and any other two designees of the Borough Administrator. 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 Code Enforcement Officer or his/her designee, to reverse, affirm, or modify the aforesaid decision.

22-2.10 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 Borough 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.

22-2.11 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.

22-2.12 Penalties

When regulated trees are removed without a tree removal permit, the affected areas shall be replanted as required by the Code Enforcement Officer or his/her designee. Any such replanting shall be in accordance with the requirements of Site Plan Ordinance. Any person found guilty of violating any of the provisions of this section shall be subject to a fine not exceeding \$1250.00 per removed tree. Each heritage tree removed or destroyed in violation of this section shall be considered a separate violation.

SECTION TWO. If any section, subsection, paragraph, sentence or other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION THREE. All ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby replaced to the extent of such inconsistencies.

SECTION FOUR. This Ordinance shall take effect immediately upon its final passage and publication according to law.

APPROVED:

MICHAEL NOHILLY
Mayor

ATTEST:

LORI REIBRICH, Borough Clerk

ORDINANCE READING	DATE
1ST READING BY TITLE:	November 13, 2019
2ND READING BY TITLE:	December 18, 2019

I, Lori Reibrich Clerk of the Borough of Interlaken, do hereby certify that the foregoing is a true copy of a Resolution adopted by the Borough Council of the Borough of Interlaken at a regular meeting held on December 18, 2019.

Lori Reibrich, RMC
Borough Administrator/Clerk

Record of Vote	Mayor Nohilly	Councilman White	Councilwoman Horowitz	Councilman Butler	Councilman Watson	Councilwoman Maloney	Councilman Fama
Motion to Approve		X	X	X		X	X
Motion to Second		X					
Approved							X
Opposed							
Not Voting/Recuse							
Absent/Excused					X		