

BOROUGH OF CLOSTER
ORDINANCE NO. 2023:1312

ORDINANCE AMENDING CHAPTER 59 ENTITLED SHADE TREE COMMISSION

WHEREAS, Chapter 59 of the Borough of Closter Code established a Shade Tree Commission to control, regulate and care for the shade and ornamental trees and shrubbery located within the public rights of way and public places within the Borough; and

WHEREAS, N.J.S.A. 40:64-1 empowers the Governing Body, as the body having charge of the finances of the Borough, to determine and provide for the regulation of planting, care and control of shade and ornamental trees and shrubbery (collectively “Shade Trees”) upon and in the streets, public rights of way, public places, parks and parkways of the Borough; and

WHEREAS, it is the desire of the Governing Body that such activity be vested in Borough officials and agencies, rather than a Shade Tree Commission; and

WHEREAS, it is in the best interest of the Borough to dissolve the Shade Tree Commission and empower other Borough agencies and officials to control and regulate Shade Trees with the said public rights of way, streets and places, consistent with this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Governing Body of the Borough of Closter, County of Bergen, State of New Jersey that Chapter 59 is hereby amended as follows:

§ 59-1. Establishment.

REPEALED.

§ 59-2. Powers.

The Superintendent of Public Works or his/her designee shall have the following powers:

- A. Exercise full and exclusive control over the planting and care of shade and ornamental trees and shrubbery now located or which may hereafter be planted in any public rights-of-way within the Borough of Closter, including County roads, the planting, trimming, spraying, growth, 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. Move or require the removal of any tree, or part thereof, dangerous to public safety.
- D. Encourage arboriculture; make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the Mayor and Council of the Borough of Closter, any and all ordinances necessary or proper for carrying out the provisions hereof.
- E. Enter upon private property, with the consent of the owner, for the purpose of determining whether the trees are healthy and administer treatment to, or remove, any tree situated upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the municipality, provided the suspected condition is first confirmed by certificate issued by or on behalf of the Department of Agriculture.

§ 59-3. Costs; exemptions.

REPEALED

§ 59-4. Planting and removal of trees.

- A. Protection of trees in the Borough right-of-way. No individual or officer or employee of a corporation shall, without the written permission of the Superintendent of Public Works or his/her designee, cut, prune, break, climb, injure or remove any living tree in the public right-of-way; cut, disturb or interfere in any way with the roots of any tree on the public right-of-way; spray with any chemical or insecticide any tree in the public right-of-way; place any rope, sign, poster, or other fixture on a tree in the public right-of-way; or injure, misuse or remove any device placed to protect such trees on the public right-of-way.
- B. Planting trees. Any person, company or organization henceforth constructing or performing major alterations to any residences, commercial and/or office building, dwelling, apartment, or multiple-family dwelling within the Borough shall, at its expense, plant shade trees along

the right-of-way upon which the building fronts and abuts in accordance with the provisions of this chapter. The Superintendent of Public Works or his/her designee shall designate where such trees are to be planted and the variety of trees to be used. The person, company or corporation shall post a bond of \$1,500 per tree, such money to be deposited with the Borough Administrator, pursuant to the provisions of this chapter, and held for up to two years and 11 months (i.e., the money, if returned, shall be returned at the end of the third calendar year from the date the bond was posted). Should any of the trees not be in satisfactory condition, in the sole discretion of the Superintendent of Public Works or his/her designee, at that time, after notice to the owner, the moneys shall be used to replace those trees deemed to be unsatisfactory. At the end of two years, any funds not used to replace unsatisfactory trees shall be refunded to those who posted the bond(s). If construction is taking place on property with street trees, see § 181-7 of the Borough Code.

- C. Shade trees and shrubs in right-of-way: approval required. No shade tree or ornamental shrub shall be planted on the public right-of-way of the Borough until such tree or shrub shall first have been approved and the place where it shall be planted is designated by the Superintendent of Public Works or his/her designee.

D. notice and hearing; emergencies REPEALED

§ 59-5. Annual appropriation; estimate; amount.

REPEALED

§ 59-6. Violations and penalties and enforcement; replacement assessment.

- A. The Code Enforcement Official may prescribe a fine for the violation of the provisions of this Chapter 59 each in an amount not exceeding \$1,500 for each violation (each tree is a separate violation) or a maximum amount determined by subsequent amendments to the state statute, N.J.S.A. 40:64-1. The ordinances of this Chapter shall be enforced by the Code Enforcement Official who shall serve and execute any process issued out of any court under this article.
- B. In addition to the penalties outlined in the above subsection, the Borough may require a person who removes or otherwise destroys a tree in violation of this chapter to pay a replacement assessment to the municipality. The replacement assessment shall be the value of the tree as determined by the Borough's Code Enforcement Official – Trees. In lieu of an appraisal, the Borough may use the formula based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed \$27 per square inch. The square inch cross section shall be calculated from the diameter at 4 1/2 feet above ground level and, if there is a multiple stem tree, then each trunk shall be measured and the largest trunk shall be used to determine the fine for the tree. The Borough shall modify the value of the tree based on its species, variety, location and its condition at the time of removal or destruction.

§ 59-7. Disposition of penalties.

All moneys collected in the municipality, either as fines or penalties, assessed by the Code Enforcement Official for any violation of a rule or regulation herein, or as a charge against real estate, under any provision of this article, shall be forthwith paid over to the municipal officer empowered to be custodian of the funds of the municipality. Said moneys shall be dedicated to the Tree fund.

§ 59-8. Repealer.

If any sentence, section, clause or other portion of this chapter or the application thereof to any person or circumstance shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or repeal the remainder of this chapter. All ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency.

§ 59-9. When effective.

This chapter shall become effective immediately upon final passage and publication as required by law.

BE IT FURTHER ORDAINED by the Governing Body of the Borough of Closter that the remaining Sections of Chapter 181 shall remain in full force and affect.

This Ordinance shall take effect upon final passage and publication in accordance with law.

Councilperson	Motion	Second	Yes	No	Absent	Abstain
Councilwoman Amitai						
Councilwoman Chung						
Councilman Devlin						
Councilwoman Latner						
Councilwoman Witko						
Councilman Yammarino						

Introduced: February 22, 2023

Adopted: March 8, 2023

ATTEST:

APPROVED BY:

Stephanie Evans, Borough Clerk

John C. Glidden, Mayor

Certified to be a true copy of Ordinance adopted by the Mayor and Council of Borough of Closter at the Regular Meeting held on March 8, 2023.

Stephanie Evans, Borough Clerk