

BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY

ORDINANCE 2020-09

**AN ORDINANCE SUPPLEMENTING AND AMENDING
CHAPTER 24: “COMMISSIONS AND COMMITTEES”
AND CHAPTER 270: “LAND DEVELOPMENT” AND
CHAPTER 398: “STREETS AND SIDEWALKS” AND
CHAPTER 450: “ZONING” AND NEW CHAPTER 425:
“TREES” OF THE BOROUGH’S REVISED GENERAL
ORDINANCES TO REDEFINE AND DETAIL THE ROLE OF
THE BOROUGH’S SHADE TREE COMMISSION AND TO
PROTECT AND PROMOTE THE PLANTING OF TREES
WITHIN THE BOROUGH OF BRADLEY BEACH**

Mayor Engelstad offered the following Ordinance and moved its introduction:

WHEREAS, for nearly a year, across changing membership, the Mayor and Council of the Borough of Bradley Beach (the “Borough”) have engaged the public, the Borough’s employees and professionals, and each other in a comprehensive review of the Revised General Ordinances of the Borough in order to re-establish the Borough’s Shade Tree Commission and to better protect and promote the planting of trees within the limits of the Borough; and

WHEREAS, the Borough’s Mayor and Council have found that numerous benefits are associated with maintaining a healthy urban forest and tree canopy, including, but not limited to:

- Trees stabilize soil, reduce stormwater runoff and sedimentation, increase groundwater recharge, and reduce the potential for flooding and for water and wind erosion;
- Trees and wooded areas constitute a natural resource that boosts the economic value of property and promotes the general welfare of the community;
- Trees provide shade and decrease energy consumption through transpiration of water vapor, which lowers ambient temperatures;
- Trees reduce the impact of the sun’s UV rays, and they lower the temperature of concrete and asphalt ten degrees or more, thereby lessening heat-island-effect;
- Trees augment natural, scenic, and aesthetic values, creating desirable visual environments and streetscapes;
- Trees form a windbreak to slow and redirect the wind, lowering heating bills in cold weather;

- Trees sequester carbon and reduce the buildup of atmospheric carbon dioxide; trees increase oxygen, filter air pollution, and reduce dust;
- Trees serve as buffers, providing privacy, absorbing noise, and reducing nighttime glare;
- Trees act as heat shields on the south, east, and west sides of a home and thus may significantly cut cooling costs; and
- Trees produce food and habitat for wildlife.

WHEREAS, the Borough’s Mayor and Council recognize that trees and shrubs are a natural resource that provide aesthetic, economic, ecological, environmental and health benefits to Bradley Beach and its residents; and

WHEREAS, the Borough’s Mayor and Council find that the treatment of trees and shrubs on individual properties can have significant impacts not only on those individual properties, but also on neighboring properties, the streetscape, the tree canopy and the entire Borough; and

WHEREAS, the Borough recognizes the pressing need to provide adequate and consistent maintenance of trees on Borough property including residential planting strips and those shading Borough rights-of-way, as well as the need to prevent the removal of same without replacement;

WHEREAS, based on the foregoing benefits, and the other aesthetic, economic, ecological, health and environmental benefits of trees and shrubs, the Mayor and Council find it to be in the best interests of the Borough’s residents to supplement and amend the Borough’s Revised General Ordinances to redefine and detail the role of the Shade Tree Commission, and to update said Ordinances to better protect and promote the planting of trees within the Borough;

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Bradley Beach, County of Monmouth, and State of New Jersey as follows:

SECTION 1. Article VI entitled “Shade Tree Commission” of Chapter 24 entitled “Commissions and Committees” of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

ARTICLE VI SHADE TREE COMMISSION

§ 24-29 Intent and purpose.

- A. The intent of this article, together with Chapter 425, is to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the Borough of Bradley Beach.

- B. ~~The purpose of this article is to provide for the creation of a Shade Tree Commission in the Borough of Bradley Beach; define the powers of the Commission; impose penalties for the violation of the rules and regulations of said Commission; and establish a Tree Preservation Ordinance.~~ The purpose of this article is to provide for the creation of a Shade Tree Commission in the Borough of Bradley Beach and define the powers and duties thereof, including the control and prevention of the indiscriminate or excessive removal and destruction of trees and their canopies, and to establish and define the role of a "Certified Tree Expert" in the planning, management and enforcement of these critical resources.
- C. The goal of this article is to strike a balance between limiting the adverse impacts of tree removal without unduly interfering with the ability of a property owner to appropriately remove trees on private property.

§ 24-30 ~~Definitions.~~ Establishment of Shade Tree Commission; Membership; Terms.

- A. ~~As used in this article, the terms hereinafter set forth shall be defined and deemed to have the following meanings:~~

COMMISSION

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

HERITAGE TREE

~~A tree native to, or adapted to, climatic conditions of this area (e.g., oak, maple, sycamore), having a trunk diameter of 25 inches or more measured at four feet above the ground. For this area, such a tree would be at least 100 years old.~~

PERMIT

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

PERSON

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

PLANT CONSTRUCTION

~~Any public utility company's poles, wires, cables, subsurface conduits, pipes, manholes and appurtenant facilities installed in a street.~~

PLANTING STRIP

~~This land between the curb and the sidewalk. The planting strip is part of the Borough right-of-way.~~

STREET

~~Any road, avenue, street, or highway dedicated to the public use for street purpose. A "street" shall be deemed to include all portions lying between the dedicated or established right-of-way~~

~~and/or planting easement thereof, said lines being identical with the front property lines of lands abutting the street.~~

~~TREE~~

~~Any woody perennial plant having a main stem diameter minimum of one inch measured at a point six inches above the ground.~~

~~B. Any term or provision of this article 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 article, regardless of whether it is a deliberate, intentional or purposeful act, or a careless, negligent or unintentional act.~~

A. Under the authority of N.J.S.A. 40:64-1, et seq., there is hereby established a Commission which shall be known as the Shade Tree Commission of Bradley Beach. The Commission shall be comprised of five (5) members and two (2) alternates, all of whom shall be residents of the Borough and shall serve without compensation. The Mayor, after consultation with the Council, shall appoint all of the members and alternates of the Commission.

B. The terms of office of the Commission members shall be five (5) years; with the terms of those members first appointed beginning the day of appointment and expiring on the last day of December following respective initial terms of one, two, three, four and five years; the terms of said initial appointments to be designated in their respective appointments.

C. The terms of office of the Commission alternates shall be five (5) years, and each position shall be respectively designated "Alternate No. 1" and "Alternate No. 2"; with the terms of those alternates first appointed beginning the day of appointment and expiring on the last day of December following respective initial terms of four and five years; the terms of said initial appointments to be designated in their respective appointments.

D. All other appointments, except to fill vacancies, shall be made to take effect the first day of January of each year for a full term of five years.

E. Any vacancy occurring in the membership of the Commission by reason of death, resignation or removal shall be filled for the unexpired term by an appointment by the Mayor after consultation with the Council. With the consent of the remaining member(s) of the Commission, all new appointees should be designated as "Alternate No. 2", with the remaining members moving into open position(s) on a "seniority" basis.

F. In addition to the members and alternates, there shall be one non-voting liaison to the Commission annually selected from and appointed by the governing body to serve from January 1 to December 31 of each year.

G. The alternates shall serve during the absence or disqualification of any member(s). An alternate may participate in all proceedings, but may vote only in the event of the absence or disqualification of a member. A vote shall not be delayed so that a member may vote instead of an alternate, or vice versa.

§ 24-31 ~~Establishment of Shade Tree Commission; terms; membership; officers; powers. Organization; Officers; Employees.~~

- ~~A. The regulation, planting, care and control of shade and ornamental trees and shrubbery upon or in the Borough of Bradley Beach, except for county parkways, shall be exercised by and under the authority of a Commission of no less than five nor more than seven residents of the Borough of Bradley Beach. The Commission shall be known as the "Shade Tree Commission of Bradley Beach." The members of the Commission shall be appointed by the Mayor and shall serve without compensation.~~
- ~~B. The terms of office of the Commission members first appointed shall begin the day of appointment and continue for the respective periods of one, two, three, four and five years; the terms of said appointments to be designated in their respective appointments. All other appointments, except to fill vacancies, shall be made to take effect the first day of January of each year for a full term of five years. Any vacancy occurring in the membership of the Commission by reason of death, resignation or removal shall be filled for the unexpired term by an appointment by the Mayor with recommendations of the Commission.~~
- ~~C. The Shade Tree Commission shall organize annually by the election of one of its members as Chairperson and the appointment of a 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 and shrubbery now situate, or which may hereinafter be planted in or upon any public road or park 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 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 administer treatment to or remove any tree upon private property which is believed to harbor disease or insects readily communicable to neighboring healthy trees in the Borough 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 on behalf of the New Jersey Department of Agriculture or designee. Such treatment or removal will be at the homeowner's expense.~~
 - ~~4. To notice any resident where there is a tree on private property that presents a hazard to any Borough right of way. The noticed resident will have 30 days, unless it is deemed an emergency, to remediate the situation. If the resident does not remediate the hazard in the allotted time, the Borough will do so and assess the resident for the cost of the remediation in the resident's next tax bill.~~
 - ~~5. To call meetings and to fix agendas consistent with the powers and duties herein provided.~~

- ~~6. To review and make recommendations to the Planning Board or Zoning Board relative to any site plan, development application or variance application presented within the Borough of Bradley Beach consistent with the purpose of this article.~~
 - ~~7. To promote the recognition and care of heritage trees throughout the Borough of Bradley Beach.~~
- A. Within thirty (30) days after the initial appointment of its total membership for the remainder of the then calendar year, and thereafter annually within the first thirty (30) days of each year, the Commission shall organize and reorganize by:
1. Electing one of its members as Chairperson;
 2. Appointing a Secretary, who shall also be a member of the Commission and shall be responsible to make, keep, and preserve video or audio recordings of the Commission's meetings, and to timely file all recordings of the Commission's meetings with the Borough Clerk for public availability and record-keeping purposes.
 3. Recommending to the governing body regarding the retention of a Certified Tree Expert, who shall not be a member of the Commission and who, in addition to advising the Commission, shall serve as the "enforcement officer" under Chapter 425 of this Code. The Certified Tree Expert shall be appointed annually by the governing body by resolution. Notwithstanding the expiration of any term, the Certified Tree Expert shall continue to serve under the terms and conditions of his or her immediately preceding appointment until either re-appointed or his or her successor is appointed and qualified.
- B. The salaries of employee(s), if any, shall be fixed by the Commission in accordance with the Borough's prevailing Salary Ordinance, provided that the Commission shall not exceed the funds available and/or the appropriations authorized by the governing body for its purposes pursuant to Section 24-33 of this Code.

§ 24-32 Permit Requirements. Powers; Duties; Responsibilities

- ~~A. No person shall do any of the following acts to any tree on Borough property (i.e., right of way, public park) without obtaining a permit, at no cost, from the Shade Tree Commission:~~
- ~~1. Cut, prune, climb with spikes, break, damage, remove or kill.~~
 - ~~2. Cut, disturb or interfere in any way with any root.~~
 - ~~3. Spray with any chemical.~~
 - ~~4. Fasten any rope, wire, sign or other device.~~
 - ~~5. Remove or damage any guard or device placed to protect the tree.~~

- ~~6. Conduct razing, removal or renovation of any structure, including but not limited to sidewalks, if deemed by the Commission to be damaging to neighboring street trees.~~
- ~~7. Remove soil from the planting strip, either trenching or otherwise.~~
- ~~8. Cover all or any part of the planting strip with concrete or other impervious material.~~
- ~~9. Construct new sidewalks or driveways with any material whatsoever within 5 feet of a tree.~~
- ~~10. Plant any tree or any plant within the planting strip or any designated area under control of the Commission.~~

~~B. Required permits for all public utilities.~~

- ~~1. A public utility shall first obtain a permit from the Shade Tree Commission for the trimming or removal of any tree or other vegetation on any Borough street, Borough right-of-way or other Borough property.~~
- ~~2. The Shade Tree Commission may grant to a public utility a blanket permit for the installation and maintenance of subsurface and aboveground plant.~~
- ~~3. A public utility and/or the Public Works for the Borough of Bradley Beach may, during periods of emergency, and without first obtaining a permit from the Shade Tree Commission, make emergency pruning/removal, install temporary attachment to trees, and make emergency subsurface repairs.~~
- ~~4. All tree work done while trimming around utility lines in and along Borough rights-of-way shall be target pruning. All trimming is to be conducted with consideration for the health of any tree while allowing proper electrical line clearance. Any improper work will void the issued permit, and the violator will be subject to a fine of \$1,000 for each violation. Any work performed in accordance with current recommendations and approved standards of the National Arborist Association, American National Standards Institute (ANSI), ANSI-Z133.1 and 300A and the New Jersey Certified Tree Experts Board.~~

~~C. Permit process.~~

- ~~1. Any property owner or designee may make application for an appropriate permit to be issued by the Shade Tree Commission by submitting such application, which shall be available at the Bradley Beach Municipal Building, Public Library, or the web page www.bradleybeachonline.com.~~
- ~~2. Upon receipt of an application for an appropriate permit, the Shade Tree Commission shall forthwith review the application and issue the appropriate permit to the property owner or designee in an expedited fashion.~~
- ~~3. In the event inspection of the application raises issues concerning the care of a shade tree, the Commission may require the property owner to appear at a regularly~~

~~scheduled Shade Tree Commission meeting to explain the nature of the work to be performed before such a permit is issued by the Commission.~~

- ~~4. In the event a permit is denied, the property owner or designee may request a hearing before the full Commission and present any arguments in support of the requested permit.~~
- ~~5. The Commission shall retain copies of all permit applications, their resolutions, and the nature of any work performed.~~

The Shade Tree Commission shall have the following general powers and duties:

1. Advisory role in developing and effecting policy-making in the regulation, planting, care and control of trees and shrubs upon and in the streets, highways, public places, and parks of the Borough, with specific emphasis on the care and protection of trees located on public rights-of-way, including Main Street, provided that the Commission shall have responsibility for the regulation, planting, care and control of trees and shrubs upon and in State and County highways and county parks only to the extent authorized or permissions obtained according to law;
2. Responsibility to identify, retain with governing body approval, consult and advise with the Certified Tree Expert in all matters within its purview and jurisdiction;
3. Responsibility to develop a long-term plan to plant and maintain trees on Borough properties and rights-of-way.
4. All authority conferred to New Jersey municipal shade tree commissions pursuant to N.J.S.A. 40:64-1 *et seq.*, to the extent applicable;
5. Authority to review tree surveys, removal plans and planting plans submitted with land development applications referred to the Commission by the Planning Board or Zoning Board, pursuant to Section 450-21 of this Code or otherwise according to law. Within twenty (20) business days of any such referral, the Commission shall transmit a report of its findings and recommendations to the board of jurisdiction, or the Commission's assent may be presumed by said board;
6. Authority to prepare criteria, standards, guidelines, and recommendations, including recommendations as to specific appropriations, for the use of funds collected in the Bradley Beach Shade Tree Trust Reserve, provided however, that the expenditure of said funds shall be subject to final approval by the governing body;
7. Authority to develop a list of sites throughout the Borough that require the replacement of trees or the addition of new trees, and regularly update the list to reflect the replacement or removal of trees;
8. Authority to develop and maintain a recommended tree species list;
9. Authority to develop and maintain an inventory of trees and shrubs upon and in the streets, highways, public places, public rights-of-way and parks of the Borough;

10. Responsibility to develop and recommend tree removal standards for trees located on private property, with the approval of the governing body;
11. In the event of absence or incapacity of the “enforcement officer” under Chapter 425, authority to review permit applications for tree removal from private property, and grant approval according to defined tree removal guidelines, with any appeals therefrom being heard directly by the governing body pursuant to Subsection 425-12(B)(2);
12. Responsibility to annually establish a meeting schedule, with scheduled meetings of a quorum of the Commission at least twice monthly, provided that regular meetings may be adjourned from time-to-time depending upon the Commission’s agenda;
13. Responsibility to make, keep, and preserve minutes and records of its meetings and activities, and to make annual reports to the governing body. Copies of all minutes and records of its meetings and activities shall be filed with the Borough Clerk;
14. Responsibility to decide appeals and recommend informal resolution of complaints, as set forth in Sections 425-12 and 425-13 of this Code; and
15. Such additional functions as required by this chapter or within the law as may be delegated to it.

§ 24-33 ~~Protection of Shade Trees.~~Appropriations; Trust Reserve.

- ~~A. In the erection, alteration, or repair of any structure or building within the Borough of Bradley Beach, the owner or designee shall place such guards around all nearby public shade trees as will prevent injury or damage to such trees.~~
- ~~B. No person shall use or operate any power equipment, bulldozer or any other implement or tool in such a manner likely to cause injury or damage to any public shade tree within the Borough of Bradley Beach.~~
- ~~C. No person shall place or distribute, near a public tree, chemicals, including, but not limited to, oil or gasoline deleterious to tree health.~~
- A. There shall be established and maintained by the Chief Financial Officer of the Borough a segregated fund referred to as the Bradley Beach Shade Tree Trust Reserve, which shall be the depository for all tree replacement fees, service fees, and other funds collected under this article and Chapter 425 of this Code, except as may be otherwise provided by law.
- B. The governing body may authorize funds for use by the Commission from the General Fund and/or the Bradley Beach Shade Tree Trust Reserve, in its sole discretion in consultation with the Commission.

- C. The governing body shall take appropriate measures and appropriate funds for the retention of a Certified Tree Expert, who shall advise the Commission in all matters under its purview and shall serve as the “enforcement officer” under Chapter 425 of this Code.
- D. The governing body may further appropriate funds for the clerks and other employees of the Commission, as well as the purchase of trees and shrubbery, the purchase of necessary equipment and materials, and other expenses of the Commission.
- E. The Commission may appoint such clerks and other employees as it may require and as shall be in accordance with the prevailing Borough Salary Ordinance and within the limits of the funds so appropriated by the governing body for its use.
- F. In its annual report, the Commission shall make any and all requests for appropriations from the General Fund and/or expenditures from the Bradley Beach Shade Tree Trust Reserve by February 1 of each year.

§ 24-34 Violations and penalties; replacement assessment; disposition of funds. Interference Prohibited; Penalty.

- ~~A. Any person who violates any of the provisions of this article or who fails to comply with the terms and provisions of any permit issued pursuant hereto shall, upon conviction in Municipal Court thereof, pay a fine of not less than \$200 nor to exceed \$1,000 at the discretion of the court. Each day that a violation shall continue shall constitute a separate offense.~~
- ~~B. In addition to the penalties authorized in Subsection A, the Shade Tree Commission may impose an additional penalty of a replacement assessment to the Borough of Bradley Beach. This assessment is based upon the value of the tree as determined by a certified tree expert retained by the Commission for this purpose or by the formula of not exceeding \$27 per square inch of cross section of the trunk measured 4.5 feet above ground level. The tree's species variety, location and condition shall modify this amount at the time of damage or destruction.~~
- ~~C. All moneys or funds collected hereunder, either as fines, penalties or otherwise under any provision of this article or amendment thereto, shall be forthwith turned over to the Borough Chief Financial Officer, 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.~~
- A. No person shall prevent, delay or interfere with the Commission, or its authorized official(s) and/or agent(s), in carrying out their lawful work or lawfully administering the duties of the Commission under this article.
- B. A violation of this article is a separate and distinct offense from a violation of Chapter 425 of this Code only when the violator commits any overt act of concealment from or interference with lawful inquiries.

C. Any person who violates this article shall, upon conviction therefor, be subject to a fine of not less than \$1,000 to be determined at the discretion of the Municipal Court Judge, in addition to any restitution that may be ordered by the Municipal Court Judge for accrued or additional damages resulting from the violator's concealment or interference calculated in the same manner provided in Section 425-13(A)(1).

§ 24-35 Appeals. Construction.

~~Any person may appeal a denial of a permit by the Shade Tree Commission. Any appeal shall be made directly to the Mayor and Council, which appeal will be final and binding. Said appeal must be filed within 10 days after denial of the permit with the Borough Clerk.~~

This article shall be construed and interpreted consistently with the definitions and meanings set forth in Chapter 425 of this Code.

SECTION 2. Section 25 entitled "Shade trees and grass planting strips" of Chapter 270 entitled "Land Development" of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

§ 270-25 Shade trees and grass planting strips.

- A. A grass planting strip shall be provided between the curb and sidewalk along all streets in residential zones. The grass planting strip shall be from the back of curb to the edge of sidewalk and shall be used for the planting of required street trees. Artificial grass is not permitted. The Borough will not be liable for any damage accrued to the artificial grass while any work, snow/ice removal or Act of God transpires. No prior notification is required by the Borough or contractor for any work being performed. No other equipment or material, including, but not limited to, sprinkler systems, brick or concrete pavers, concrete, asphalt or stones, shall be placed in the planting strip, except that, for properties without driveways, a walkway not more than three feet wide may be placed within the grass planting strip as an extension of the walkway to the dwelling. For properties with driveways, walkways within the grass planting strip are grandfathered and permitted, but may not be enlarged, if said walkway was in place and aligned with a curb cut as of July 15, 2020. ~~Current properties without natural grass as of date of this adoption shall be grandfathered with the sole responsibility of the property owner,~~
- B. Current properties without natural grass between the curb and sidewalk in residential zones as of date of this adoption shall be grandfathered as the sole responsibility of the property owner, provided however, that no property with an artificial grass planting strip shall be issued:
1. A zoning permit, unless the application therefor includes provisions for the conversion of the non-conforming planting strip to natural grass, except that the Zoning Officer may grant such an application in his or her discretion upon the property owner's submission of proofs that the costs associated with the subject of the application are less than \$7,500, or the conversion of the planting strip is otherwise unreasonable, unfeasible, or impossible for reasons beyond the control of the property owner; or

2. A certificate of occupancy for transfer of the property, unless the application therefor includes provisions for the conversion of the non-conforming planting strip to natural grass, except that the Construction Official may grant such an application in his or her discretion upon the property owner's submission of proofs that the conversion of the planting strip is otherwise unreasonable, unfeasible, or impossible for reasons beyond the control of the property owner.
- B. Shade trees shall be provided in all major residential subdivisions. Trees shall be planted within the subdivision along each side of the street at proper intervals and in types, sizes and locations conducive to healthy growth with graded and seeded or sodded planting strips and according to any standards adopted by the governing body or the Shade Tree Commission so as not to interfere with street paving, sidewalks, or utilities.
- C. All trees should be of nursery stock of an approved species, a minimum of two-and-one-half-inch caliper, grown under the same climatic conditions as at the location of the development. They shall be of symmetrical growth, free of insect pests and disease, suitable for street use, durable under the maintenance contemplated, and approved by the Shade Tree Commission.

SECTION 3. Section 35 entitled "Shade trees" of Chapter 398 entitled "Streets and Sidewalks" of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

§ 398-35 Shade trees.

Whenever a property owner seeks to plant along the ground on Main Street, the planting must be in accordance with the tree specifications and planting requirements developed by the Shade Tree Commission and of the type of tree(s) approved by the standards for street and sidewalk development adopted by resolution of the Mayor and Council and, the most recent and updated version of which is available upon request from the Borough Clerk.

SECTION 4. Section 21 entitled "Removal of trees" of Chapter 450 entitled "Zoning" of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

§ 450-21 Removal of trees.

- A. It shall be unlawful for any person, firm or corporation ~~not explicitly exempted by this section~~ to remove or injure or otherwise destroy any live tree, the trunk of which exceeds three inches in diameter measured at a point two feet above the ground, in any zone, or to cause or permit the same to be done by any third-party contractor or subcontractor, without first obtaining approval to do so from the Planning Board complying with Chapter 425 of this Code.

~~B. A homeowner who wishes to remove trees from the lot on which he resides is exempted from this section. Removal of trees within a public right of way, since these trees are on Borough property, are exempt from this section, but are under the jurisdiction of the Shade Tree Commission and subject to the regulations and limitations under the authority of that Commission.~~

~~CB. Prior to taking any action on a request for any approval that requires removal of any tree(s) regulated by this section Chapter 425 of this Code, the Planning Board and Zoning Board shall seek and obtain a recommendation from the Shade Tree Commission as it pertains to removal of the regulated tree or trees require the applicant to comply with Chapter 425 of this Code as a condition of approval.~~

~~D. The Planning Board shall permit the cutting or removal of trees on public or private lands in the Borough under the following circumstances:~~

~~1. If their presence would cause hardship, or endanger persons or property, or substantially interfere with a permitted use of a property.~~

~~2. In areas to be occupied by buildings, driveways or recreation areas, and within a distance of 15 feet around the perimeter of such buildings, depending on tree species and conditions to be reasonably determined by the Planning Board or the Borough Construction Official.~~

~~EC. No zoning permit or building permit shall be issued by the Zoning Official or Construction Official until the Planning Board has approved a written plan of applicant has demonstrated compliance with Chapter 425 of this Code for any proposed tree removal(s). The applicant shall submit such a plan showing all proposed tree removal in relation to the survey stakes marking each dwelling, driveway or other land use requiring such removals. In addition, it shall be indicated on the plan or in an accompanying report which of the exceptions allowed herein are believed to apply to each removal.~~

~~F. No material, machinery or temporary soil deposits shall be placed within six feet of any existing tree trunk or stem. Any regrading shall require, where necessary, that all trees remaining as per Subsection E be welled to protect the root structure from damage.~~

~~G. Any applicant aggrieved by the provisions of this chapter shall have the right to appeal the decision of the Planning Board or the Zoning Officer to the Zoning Board of Adjustment.~~

~~D. Any tree removal from private property must comply with Chapter 425 of this Code.~~

SECTION 5. The Revised General Ordinances of the Borough of Bradley Beach are hereby supplemented to include *new* Chapter 425 entitled “Trees” as follows:

CHAPTER 425
TREES

ARTICLE I INTENT AND PURPOSE; DEFINITIONS.

§ 425-1 Intent and Purpose.

The intent and purpose of this chapter is to establish rules and regulations for the stewardship of trees and shrubs within the Borough of Bradley Beach, on both public and private property, and more specifically, for the care and protection of trees and shrubs, preservation of the maximum number of trees and shrubs, safeguarding of heritage, specimen and significant trees and replacement of removed or destroyed trees.

§ 425-2 Definitions.

As used in this chapter, the following terms shall have the following definitions:

BRADLEY BEACH SHADE TREE TRUST RESERVE

The fund established and maintained by the Borough pursuant to Section 24-33 of this Code.

CALIPER

The diameter of the trunk of a tree measured at a point six inches above ground level.

CANOPY

The upper and outermost part of a tree created by the tree’s crown and shall mean, in the case of contiguous trees, the upper and outermost parts of the trees’ crowns.

COMMISSION

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

CROWN

The upper mass or head of a tree created by its branches and leaves.

DECIDUOUS TREE

Any woody plant with a main stem or multiple stems with branches protruding above the root flare and that seasonally loses its leaves.

DESTROY

To kill or damage irreparably, which shall include, but not be limited to: damage inflicted to the root system by machinery, storage of materials, soil compaction or change of natural grade above or below the root system or around the trunk; damage inflicted on the tree permitting fungus, pests or other infestation; excessive pruning or thinning not in conformance with American

National Standards Institute (ANSI) standards, leading to a failure to thrive; paving over the root system with any impervious materials within such proximity as to be fatally harmful to the tree; or application of any substance toxic to the tree or causing the tree to be exposed to any such substance level.

DIAMETER BREAST HEIGHT or DBH

The diameter of the trunk of a tree measured at a point four and one-half feet about ground level on the downhill side of the tree.

DRIP LINE

An imaginary line on the surface and subsurface of the ground delineated by the outer limits of the branches of a tree and measured plumb from the branches to the ground. When the outer limits of the branches are indistinct or otherwise unclear, the drip line shall be presumed to be located one and one-half feet from the center of the trunk of a tree for each inch of the trunk DBH. For trees with multiple trunks, the drip line of each trunk shall be measured separately.

ENFORCEMENT OFFICER

A Certified Tree Expert appointed by the governing body pursuant to Section 24-31 of this Code for the purposes of advising the Shade Tree Commission and enforcing this chapter.

EVERGREEN TREE

A tree with foliage that remains green and functional throughout the year.

HERITAGE TREE

A tree native to, or adapted to, climatic conditions of this area (e.g., oak, maple, sycamore), having a trunk diameter of 25 inches or more measured at four feet above the ground. For this area, such a tree would be at least 100 years old.

ORNAMENTAL TREE

A tree whether single or multi-stemmed and growing to a maximum height of twenty-five feet.

PERMIT

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

PERSON

Any individual, firm, partnership, or corporation, or any combination thereof, which shall be construed to designate the plural as well as the singular.

PLANTING STRIP

The land between the curb and the sidewalk. The planting strip is part of the Borough right-of-way.

REPLACEMENT TREE

In the case of a deciduous tree, a tree which measures at least two and one-half inches in caliper, and in the case of an evergreen tree, a tree which measures at least six feet in height measured from grade. In all cases, the replacement tree shall be of a species and size appropriate for the premises on which it will be planted. Replacement nursery stock shall adhere to the American Standard for Nursery Stock (ANSI Z60.1).

SHRUB

Any woody plant with persistent stems protruding from grade level.

SIGNIFICANT TREE

A tree or grove of trees recognized as significant by the shade tree commission or enforcement officer on the basis of specimen, quality, historical significance, location, size or other unique characteristics.

SPECIMEN TREE

Any tree equal to at least eighty percent of the size of those listed on the “Champion Big Tree Register” of the New Jersey Community Forestry Program in the Department of Environmental Protection’s Division of Parks and Forestry, or any tree actually listed on the “Champion Big Tree Register.”

STREET

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

TREE

Any woody plant with a main stem or multiple stems with branches protruding above the root flare, which includes all deciduous, ornamental and evergreen trees.

TREE PROTECTION ZONE

The area within the “drip line” of a tree, as that term is defined hereinabove.

ARTICLE II PROTECTION OF TREES AND SHRUBS ON PUBLIC STREETS, HIGHWAYS, RIGHTS-OF-WAY, AND BOROUGH PROPERTIES.

§ 425-3 Approval Required.

A. No person shall do, or cause to be done, any of the following acts upon public streets, highways, rights-of-way or parks or other lands under the Borough’s jurisdiction, or cause or permit the same to be done by any third-party contractor or subcontractor, without obtaining the written approval of the enforcement officer, in accordance with subsection (B) below:

1. Cut, trim, break, climb with spikes, disturb the roots of or otherwise injure, remove or destroy any tree or shrub or injure, misuse or remove any structure or device placed to support or protect such tree or shrub.
 2. Plant any tree or shrub.
 3. Fasten, staple, nail, screw, or otherwise affix any rope, wire, electric attachment, sign or other device to a tree or shrub.
 4. Place or maintain, or cause to be placed or maintained, in or upon the ground, any stone, cement, sidewalk, mortar, building material, impervious material or other substance that shall impede or prevent the free access of water, air or fertilizer to the roots of any tree or shrub or within the drip line of a tree or shrub.
 5. Place or cause to be placed any chemical or substance harmful to tree life, including but not limited to gasoline or oil, on any tree or shrub or within the drip line of any tree or shrub.
 6. Hitch or fasten an animal to any tree or shrub, or to any guard or support provided for the same, or permit any animal to bite or otherwise injure any tree or shrub.
 7. Hitch or fasten a bicycle or other personal property to any tree or shrub, or to any guard or support provided for the same.
- B. A person may request in writing the approval of the enforcement officer to undertake an activity otherwise prohibited in subsection (A) above. In the absence or incapacity of the enforcement officer, such applications shall be heard directly by the Shade Tree Commission, with any appeals therefrom heard by the governing body pursuant to Subsection 425-12(B)(2). Within twenty (20) business days of said written request, the enforcement officer or the Commission shall, in their discretion, approve or deny the request. The failure of the enforcement officer or the Commission to approve or deny the request within twenty (20) business days shall constitute an approval of the request.
- C. Excepted from the requirements of this section are the following:
1. The treatment of trees and shrubs by the appropriate public agency with the consent of the enforcement officer; and
 2. The management, including integrated pest management, of Ash (*Fraxinus* spp.) trees to protect against damage and/or loss of the trees due to infestation by the Emerald Ash Borer (*Agrilus planipennis*), with the consent of the enforcement officer.

§ 425-4 Removal or Trimming by Borough when Interfering with Public Thoroughfare.

- A. If the limbs or branches of any trees or shrubs grown on any land in the Borough extend over or into any of the public streets, highways or rights-of-way of the Borough and interfere with the free and uninterrupted use of such public thoroughfares for any lawful purpose, the

enforcement officer shall notify and direct the owner or occupant of the property on which such trees or shrubs may stand, or the agent of such owner, to trim or detach, on or before a time to be fixed in such notice, any limbs, branches or parts of trees or shrubs so extending in the street, highway or right-of-way of the Borough.

- B. If the owner of any such trees or shrubs shall fail or neglect to comply with the terms of such notice, the enforcement officer is authorized and empowered to trim or detach, or cause to be trimmed or detached, any limbs, branches or parts of trees or shrubs so extending into such street, highway or right-of-way. Upon completion of such work, there shall be rendered, by the enforcement officer, to the owner or occupant of the property on which such trees or shrubs stood and for whom such work was done, a bill for such work, showing the money expended by the Borough therefor, and upon failure of the party for whom such work was done and such money expended to reimburse the Borough within sixty (60) days from the time of completion of such work, suit may be authorized by the governing body in the name of the Borough for the amount due in any court of competent jurisdiction.

§ 425-5 Removal of Substance, Material or Covering at Base of Trees and Shrubs.

- A. Where any tree or shrub in any public street, highway or right-of-way in the Borough may be surrounded at the base of its trunk by ground which is not open as required in Section 425-3(a)(4), or by open ground of less quantity or measurement than that herein required in Section 425-3(a)(4) above, it shall be the duty of the enforcement officer to notify the owner or occupant of the property in front of which any such tree or shrub may be to remove, within a time fixed in such notice, so much of the substance, material or other covering as may be necessary to give the space of open ground herein required.
- B. If the person so notified shall not remove the substance, material or covering by the time so fixed, the enforcement officer may do so, or cause the same to be done and, upon completion thereof, render a bill to the person so notified for the work done and the money expended therefor. If payment shall not be made within sixty (60) days from the time of completion of such work, suit may be authorized by the governing body in the name of the Borough for the amount due in any court of competent jurisdiction.

§ 425-6 Protection of Trees and Shrubs from Utility Wires.

Any person having control over any wire for the transmission of electric current or telephone, cable or any other utility service along a public street, highway or right-of-way shall at all times guard all trees and shrubs through which such wires pass against any injury from the wires or from the current carried by them. Prior to undertaking any work on the utility affecting any such tree or shrub, the utility company shall provide at least five (5) days prior written notice to the enforcement officer of same. The device or means used shall be subject to the approval of the enforcement officer.

**ARTICLE III REMOVAL OF TREES ON PRIVATE PROPERTY;
PERMIT REQUIREMENTS.**

§ 425-7 Intent and Purpose.

This article is intended to further the intent and purpose of this chapter, as set forth in Article I hereinabove. To that end, this article establishes tree removal standards for trees located on private property. The purpose of these specific standards is to encourage and further the protection and preservation of trees and their canopy as important public and environmental resources and to:

- A. Control and prevent the indiscriminate or excessive removal and destruction of trees and their canopy; and
- B. Control and prevent conditions that cause an increase in stormwater run-off, sedimentation, soil erosion, loss of wildlife habitat and air and noise pollution, or that inhibit aquifer recharge or impair the ambiance or physical appearance of neighborhoods, historic landscapes and streetscapes; and
- C. Strike a balance between limiting the adverse impacts of tree removal and not unduly interfering with the ability of a property owner to appropriately remove trees on private property.

§ 425-8 Trees Requiring Permit Before Removal.

It shall be a violation of this article for any person to remove or otherwise destroy any tree as set forth in this section, or to cause or permit the same to be done by any third-party contractor or subcontractor, without first obtaining a permit or approval as provided hereinbelow. Except as otherwise provided in Section 425-9, the following acts are hereby regulated and shall require a tree removal permit:

- A. Removal of or otherwise destroying a tree with a DBH of five (5) inches or more;
- B. Removal of or otherwise destroying an ornamental or evergreen tree with a height of ten (10) feet or more;
- C. Removal or otherwise destroying a tree with a canopy extending over a public right-of-way; and
- D. Removal of or otherwise destroying any heritage, specimen or significant tree, as defined in Section 425-2.

§ 425-9 Exceptions.

Excepted from the requirements of this article are the following:

- A. Any tree that poses imminent danger to life or property or where removal is in response to an emergency. To qualify under this exception, the tree shall only be removed to the extent necessary to abate the imminent danger or emergency. If notification of the removal of said tree pursuant to this article has not been given to the enforcement officer prior to removal, then notification must be provided by the next business day or as soon as practicable thereafter. Said notification shall include verification that the tree removal was necessary to abate the imminent danger or emergency;
- B. Any tree that has fallen solely as a result of storm damage, accident, or other *bona fide* casualty;
- C. Any dead tree or substantially diseased tree as a result of natural causes or storm damage where:
1. The tree is still standing;
 2. The person desiring to destroy or remove the tree is the owner of the land upon which the tree is located;
 3. The person notifies the enforcement officer of the desire to remove the tree; and
 4. The enforcement officer verifies in writing that the tree is dead or substantially diseased as a result of natural causes. The failure of the enforcement officer to approve or deny the request within twenty (20) business days shall constitute an approval of the request;
- D. The removal of any trees that are a part of an approved woodland management program pursuant to the provisions of the New Jersey Farmland Assessment Act of 1964.
- E. Tree removal as part of an application requiring preservation plan approval by a historic preservation commission or such a commission's administrative officer for properties that are subject to the commission's jurisdiction within the historic preservation zoning districts or historic preservation buffer zoning districts.

§ 425-10 Application for Tree Removal Permit.

- A. *General Application Requirements.* A person desiring to remove or otherwise destroy a tree or trees as provided for in Section 425-8 shall first apply to the enforcement officer for a permit, on forms provided by the Borough and containing the information required in Subsections (b), (c) and (d) of this Section. All filings and materials submitted to the Borough under this section shall be provided to the enforcement officer in both electronic and hard copy formats, to scale where appropriate.
- B. *Narrative.* The application required by subsection (a) above shall include a narrative specifying:
1. The location of the premises where the tree removal or destruction is to take place, by both street address and lot and block number;

2. The name and address of the owner of the premises;
3. The name and address of the applicant for the permit, if other than the owner, accompanied by the owner's consent to said application;
4. A list providing the species, DBH and number of trees to be destroyed or removed;
5. The reason or purpose for the destruction or removal of trees; and
6. A description of the applicant's tree replacement plan, in accordance with subsection (d) below.

C. *Sketch/Printed Plan.* The application required by subsection (a) above shall be accompanied by a sketch and/or printed plan showing the following:

1. The size of the lot;
2. All structures and their appurtenances, including but not limited to any building, garage, shed, deck, pool, driveway, walkway, patio or other impervious surface;
3. The location upon the lot where the destruction or removal of the tree or trees is proposed;
4. The identity and location of trees to be destroyed or removed;
5. The location of all streams and wetlands on the lot; and
6. The proposed location(s) for planting of replacement tree(s), as well as their species and DBH.

D. *Tree Replacement Plan.* The application required by subsection (a) above shall be accompanied by a narrative and/or sketch or printed plan showing a tree replacement plan, to include and comply with the following:

1. The tree replacement plan shall provide for replacing the removed or destroyed tree(s) in the same or contiguous location(s) on the premises, and in accordance with the following specific requirements. The tree replacement plan shall require that the applicant replace each removed or destroyed tree with one or more trees depending upon the DBH of the removed or destroyed tree, in accordance with Schedule A: "Tree Replacement Schedule."
2. Based on industry standards and site conditions on the premises, and in consultation with the enforcement officer, the applicant may, in lieu of on-premises planting of the required replacement tree(s), be permitted to plant the replacement tree(s) on one or more appropriate off-premises locations, or pay a tree replacement fee into the Bradley Beach Shade Tree Trust Reserve for each tree removed based on the foregoing Tree Replacement Schedule. The tree replacement fee shall represent the cost to replace the removed or destroyed tree(s), including administration and labor costs. At least fifty percent of the required replacement trees shall be planted either on the premises or in an appropriate off-premises location(s). As used

hereafter, the phrase “tree replacement plan” shall be deemed to include reference to the payment of a tree replacement fee.

3. The tree replacement plan shall identify the applicant’s proposal for compliance with this subsection (d), including specifying the species, size and quantity of replacement trees, the proposed location(s) for planting of replacement trees on and off the premises and the applicant’s acknowledgment of the required tree replacement fees. In order to maintain the existing canopy, preference shall be for the replacement of deciduous trees with deciduous trees and evergreen trees with evergreen trees.

SCHEDULE A – TREE REPLACEMENT SCHEDULE

<u>Tree Removed/Destroyed</u>	<u>Required Replacement Tree*</u>	<u>Tree Replacement Fee</u>
<u>Tree with DBH of 5” to 7.99”</u>	<u>One (1) Replacement Tree</u>	<u>\$250.00</u>
<u>Tree with DBH of 8” to 16.99”</u>	<u>One (1) Replacement Tree</u>	<u>\$500.00</u>
<u>Tree with DBH of 17” to 30.99”</u>	<u>Two (2) Replacement Trees</u>	<u>\$1,000.00</u>
<u>Tree with DBH greater than 31”</u>	<u>Three (3) Replacement Trees</u>	<u>\$2,000.00</u>

* Replacement trees must be on approved Shade Tree Commission species list and measure at least 2.5” in caliper.

E. Marking. The applicant shall conspicuously mark each tree to be removed or destroyed with a material which can be wrapped around the trunk of each tree, such as ribbon or string.

F. Fee. The fee for each permit application shall be fifty dollars (\$50.00).

§ 425-11 Review and Decision on Permit Application.

A. The enforcement officer, or in his or her absence or incapacity, the Commission, shall accept for filing the permit application referenced in Section 425-10 hereinabove. Said application shall be date and time stamped when received. Thereafter, the enforcement officer or the Commission shall within twenty (20) business days of receipt of the completed application:

1. Visit and inspect the location and inspect the land and trees that are the subject of the application;
2. If necessary, meet with the applicant to discuss the application; and
3. Grant or deny the requested permit in whole or in part, or make recommendations that would make the application acceptable to the enforcement officer, in writing and in accordance with the following considerations:

- a. Whether the removal or destruction of the tree or trees will cause or contribute to physical or environmental problems on the land and other property, including but not limited to flooding, soil instability and erosion.
 - b. Whether the destruction or removal of the tree or trees will have a negative impact on the contiguous canopy or on the growth and development of the remaining trees on the land and other property.
 - c. Whether the destruction or removal of the tree or trees will have a negative aesthetic or visual impact on the land and other property.
 - d. Whether the destruction or removal of the tree or trees will threaten or otherwise lead to a loss of wildlife habitat or tree species.
 - e. Whether the tree or trees are specimen or significant tree(s) as defined in Section 425-2.
 - f. Whether the destruction or removal of the tree or trees is under the jurisdiction of a New Jersey or Federal agency.
 - g. Whether the destruction or removal of the tree or trees is a part of an overall landscape plan for the property.
 - h. Whether a denial of the permit, in whole or part, would cause an undue hardship on the applicant.
 - i. Whether the applicant's tree replacement plan will mitigate the negative impact that the tree removal or destruction will have on the land and other property.
- B. A decision other than one to grant the requested permit in its entirety shall include the enforcement officer's written findings and reasons for said decision.
- C. The failure of the enforcement officer to grant or deny the application for a permit for the removal or destruction of a tree or trees within the twenty-business-day period shall constitute approval of said application and entitle the applicant to the permit requested unless an extension of the twenty-business-day period has been agreed upon between the applicant and the enforcement officer in writing before the period expires.
- D. The removal of trees and any tree replacement plan are to be implemented within one year from issuance of the permit. A permit shall expire and shall no longer be in effect twelve months after the date said permit was first granted, unless an extension of the twelve-month period has been agreed upon between the permittee and the enforcement officer in writing before the period expires.
- E. Permits may be transferred only within ninety (90) days of their date of issuance.

§ 425-12 Appeals.

- A. If an application for a permit is denied or otherwise not granted in whole, the applicant shall have a right to appeal the matter.
- B. The applicant may appeal to the Shade Tree Commission or may choose to appeal directly to the governing body. “Written notice” under this section may be provided electronically or in hard copy by the appellant and/or the Borough in connection with the processing of any appeals hereunder. Should the applicant choose to appeal to the Shade Tree Commission and is not thereafter satisfied with the Shade Tree Commission’s decision, the applicant shall have the right to appeal to the governing body. An applicant who appeals the enforcement officer’s decision directly to the governing body waives his or her right to appeal to the Commission.
1. *Appeal to Shade Tree Commission.* An appeal to the Shade Tree Commission is taken by submitting written notice to the Commission within ten (10) days of receipt of a full or partial denial from the enforcement officer. The applicant will be notified as to the date and time when his or her matter will be heard by the Commission. The Shade Tree Commission shall decide the matter anew and in accordance with the standards set forth in Section 425-11(a)(3) hereinabove. The Shade Tree Commission shall render its decision within forty-five (45) days of receipt of the written notice of appeal. The failure of the Shade Tree Commission to decide the appeal within forty-five days shall constitute reversal of the decision by the enforcement officer. In any event, the applicant shall be notified of the Shade Tree Commission’s action or failure to act by written notice from the Commission. If the applicant is not satisfied with the Shade Tree Commission’s decision, then the applicant shall have a right to appeal to the mayor and council as set forth in Subsection 425-12(B)(2) hereinbelow.
 2. *Appeal to Governing Body.* An appeal to the governing body is taken by submitting written notice to the Borough Clerk within ten (10) days of receipt of a full or partial denial from the enforcement officer or within ten (10) days of receipt of the Shade Tree Commission’s decision, as the case may be. The applicant will be notified as to the date and time when his or her matter will be heard by the governing body. The governing body shall decide the matter anew and in accordance with the standards set forth in Section 425-11(a)(3) hereinabove. The governing body shall render their decision within forty-five (45) days of receipt of the written notice of appeal. The failure of the governing body to decide the appeal within forty-five (45) days shall constitute reversal of the decision being appealed. In any event, the applicant shall be notified of the governing body’s action or failure to act by written notice from the Borough Clerk. If the applicant is not satisfied with the governing body’s decision, then the applicant shall have a right to pursue an appeal in a court of competent jurisdiction as permitted by law.

ARTICLE V GENERAL PROVISIONS.

§ 425-13 Violations and penalties; Enforcement procedures.

A person who removes or destroys a tree without a required permit or approval, or otherwise violates or causes to be violated any of the provisions of this chapter, shall be subject to the following informal resolution and formal complaint procedures, as applicable:

A. *Informal resolution.* Any person who removes or destroys a tree without a required permit or approval under this chapter shall have the opportunity to resolve the matter prior to the issuance of a summons and complaint. The following procedure shall apply:

1. The enforcement officer shall offer an electronic and/or hard copy written recommendation that is, in his or her judgment, sufficient to resolve the matter, which shall include either replacement of the removed or destroyed tree(s) or the payment of a replacement fee for removal or destruction of the tree(s), or both, in accordance with Schedule A above, the Tree Replacement Schedule. In addition to the planting of a replacement tree(s) and/or payment of a tree replacement fee(s) in accordance with Schedule A, there shall also be required the payment of an administrative service fee, which shall be charged per hour based on the anticipated staff time in investigating and resolving the matter, and which may include site visits and analysis, supervisory services and/or clerical services. The hourly rate shall be the hourly wage of the employee conducting the site visit(s) and analysis, supervisory services and/or clerical services as set by the governing body from time-to-time. The hourly wage of salaried personnel shall be calculated by dividing the employee's annual salary as set by twenty-six (weeks) and then dividing that biweekly pay by the number of hours worked in a biweekly period. The tree replacement and service fees shall be paid into the Bradley Beach Shade Tree Trust Reserve.
2. The person shall have ten (10) days following receipt of the enforcement officer's electronic and/or hard copy written recommendation to accept said recommendation. If the person, in an electronic and/or hard copy writing, accepts the enforcement officer's recommendation within the ten-day period, then any agreed-upon tree replacement or payment of a tree replacement fee, and payment of the service fee, shall be completed within ten (10) days of electronic and/or hard copy written acceptance of the recommendation. If not completed within this ten-day period, then the enforcement officer shall have the authority to cause the issuance of a summons or complaint returnable in the Municipal Court.
3. If the person does not accept the enforcement officer's recommendation, then during the initial ten-day period the person may request, in an electronic and/or hard copy writing, that the Shade Tree Commission review the enforcement officer's recommendation. If such request is timely submitted to the enforcement officer, then the person shall have the opportunity to bring the matter before the Commission during its next regularly scheduled meeting. The Shade Tree Commission shall have thirty (30) days after said meeting to issue its recommendation on the matter. The person seeking such review shall have ten (10) days after receipt of the Shade Tree Commission's recommendation to advise the Commission and enforcement officer in an electronic and/or hard copy writing as to whether he or she accepts the Commission's recommendation. Any agreed-upon tree replacement or payment of a tree replacement fee, and payment of the service fee, shall be completed within ten (10) days of the electronic and/or hard copy written acceptance of the Shade Tree Commission recommendation. If not completed within this ten-day period, the enforcement officer shall have the authority to cause the issuance of a summons and complaint returnable in the Municipal Court.

4. If the person does not accept the enforcement officer's initial recommendation or the Shade Tree Commission's recommendation within the applicable periods set forth above, then the enforcement officer shall have the authority to cause the issuance of a summons and complaint returnable in the Municipal Court.

B. Adjudication before Municipal Court. A person violating this chapter, who has not otherwise resolved the matter as set forth above in Subsection 425-13(A), upon conviction before the Municipal Court, shall be sentenced in accordance with Schedule B hereinbelow, with the violator having the option to pay a monetary fine and provide replacement tree(s) under Schedule B(1), or in the alternative, pay a double monetary fine under Schedule B(2). Each and every tree damaged, destroyed, or removed by the violator, even if located upon the same lot, shall be a separate and distinct offense under this chapter. In addition to the fine(s) assessed hereunder, the Municipal Court may order the violator to pay restitution to the Borough in the form of an administrative service fee, as provided in Section 425-13(A)(1). Any fines and/or restitution ordered by the Municipal Court shall be paid into the Bradley Beach Shade Tree Trust Reserve, except as otherwise provided by law.

SCHEDULE B – SHADE TREE PENALTY SCHEDULE

<u>Tree Removed/Destroyed</u>	<u>Penalty Schedule B(1)</u>	<u>Penalty Schedule B(2)</u>
<u>Tree with DBH of 5" to 7.99"</u>	<u>One (1) Replacement Tree and \$250.00</u>	<u>\$500.00</u>
<u>Tree with DBH of 8" to 16.99"</u>	<u>One (1) Replacement Tree and \$500.00</u>	<u>\$1,000.00</u>
<u>Tree with DBH of 17" to 30.99"</u>	<u>Two (2) Replacement Trees and \$1,000.00</u>	<u>\$2,000.00</u>
<u>Tree with DBH greater than 31"</u>	<u>Three (3) Replacement Trees and \$2,000.00</u>	<u>\$4,000.00</u>

* Replacement trees must be on approved Shade Tree Commission species list and measure at least 2.5" in caliper.

§ 425-14 Annual Report.

The enforcement officer shall make an annual report to the Shade Tree Commission, which shall then report to the governing body, as to permits granted and denied in each calendar year pursuant to this article. Said report shall include data concerning the quantity of complaints resolved, fees and assessments collected and disbursements from the Bradley Beach Shade Tree Trust Reserve. Such report shall be submitted by February 1 of each year regarding the preceding year's activities.

§ 425-15 Severance.

In the event that any portion of this chapter, or the application of this chapter to any specific situation, shall be declared invalid, such declaration shall not, in any manner, prejudice the enforcement of the remaining provisions, or the enforcement of this chapter in other situations.

SECTION 6. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 7. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Bradley Beach, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Bradley Beach are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 8. After introduction, the Borough submitted the within Ordinance to the Planning Board of the Borough of Bradley Beach for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64, whereupon the Planning Board adopted Resolution 2020-13 and transmitted same to the Borough's Mayor & Council prior to the adoption of this Ordinance.

SECTION 9. This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with the Monmouth County Planning Board pursuant to N.J.S.A. 40:55D-16.

SO ORDAINED as aforesaid.

ERICA KOSTYZ
Borough Clerk

GARY ENGELSTAD
Mayor

Introduced: May 26, 2020

Date of Hearing and Adoption: July 14, 2020