

**ORDINANCE NO. 2024-18**

**AN ORDINANCE OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING CHAPTER 215, "LAND USE AND DEVELOPMENT", ARTICLE XII, "IMPROVEMENT STANDARDS", §215-12.7 OF THE TOWNSHIP CODE OF THE TOWNSHIP OF LITTLE EGG HARBOR, ENTITLED "TREES"**

**BE IT ORDAINED**, by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey, as follows:

**SECTION 1.** The Township Code of the Township of Little Egg Harbor is hereby amended and supplemented so as to amend Chapter 215, "Land Use and Development," Article XII, "Improvement Standards," §215-12.7, entitled "Trees," so as to delete it in its entirety and replace it as follows:

**§215-12.7 Trees**

**Section I Purpose.**

An ordinance to establish requirements for tree removal and replacement in the Township of Little Egg Harbor to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, and protect the environment, public health, safety, and welfare.

**Section II. Definitions.**

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" means the requirement is always mandatory and not merely directory.

- A. "Alter" means to take action by cutting or pruning any tree, or by filling, surfacing, grading, compacting or changing the drainage pattern of the soil around any tree in a manner that threatens to diminish the vigor of the tree; provided that, as used in this chapter, the term "alter" does not include normal seasonal trimming, shaping, thinning or pruning of a tree necessary to its health and growth.

B. “Applicant” means any “person”, as defined below, who applies for approval to remove trees regulated under this ordinance.

C. “Critical Footprint Area” shall mean any area to be occupied by a building, driveway, drainage field, septic tank or recreation area (tennis courts, swimming pools or similar facilities).

B. “Critical Root Radius (CRR)” – means the zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example, a tree with a 6” DBH would have a CRR = 6”x1.5’ = 9’.

C. “Diameter at Breast Height (DBH)” means the diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.

D. “Hazard Tree” means a tree or limbs thereof that meet one or more of the criteria below. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees. [Municipalities may choose to require a Licensed Tree Expert to make all Hazard tree determination]

1. Has an infectious disease or insect infestation;
2. Is dead or dying;
3. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;
4. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or
5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).

E. “Natural Habitat” shall mean an undisturbed natural area and its wild-growing plant life and vegetation, which may be in a field, the undergrowth in a stand of trees, or a forest

floor, and may consist of trees, shrubs, bushes, vines, etc. Particular emphasis and preservation consideration is to be accorded holly trees and mountain laurel, which are native to the Township of Little Egg Harbor.

F. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.

F. "Planting strip" means the part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

G. "Resident" means an individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.

H. "Street Tree" means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.

I. "Specimen Tree" means any living deciduous or coniferous tree(s) that has superior characteristics and quality when compared to trees of the same species or other trees in its vicinity within the Township of Little Egg Harbor. Such a tree must also have a circumference that is 50% of the registered circumference of the same species as noted in New Jersey's Record Trees. The determination of a "specimen tree" can be made by the Department of Community Development and Planning with the assistance of the Township Landscape Architect and Environmental Commission as needed.

I. "Tree" means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

J. "Tree Caliper" means the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.

K. "Tree removal" means to kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, over-mulching or improper mulching, and improper

grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

L. “Woodland Management Plan” means a plan prepared in accordance with criteria set forth in Woodland Management Plan N.J.A.C. 18:215-2.10 and which is required to be filed with the assessor and the DEP by an owner of the woodland as set forth in N.J.A.C. 18:215-2.7.

### **Section III. Regulated Activities.**

#### **A. Application Process.**

1. Any person planning to remove a street tree, as defined as Tree removal, with DBH of 2.5” or more or any non-street tree with DBH of 6” or more on their property shall submit a Tree Removal Application to the Department of Community Development and Planning. No tree shall be removed until municipal officials have reviewed and approved the removal.

Unauthorized clear-cutting is strictly prohibited.

No person, entity, or contractor, including the property owner shall remove, destroy, or cause to be removed or destroyed, any tree(s), holly or mountain laurel, on land that is to be developed as part of a major or minor subdivision or site plan within the Township, unless a permit is first obtained for such removal, and such removal has specifically been authorized by the Township, or there is an exemption for the property under Section IV.

A tree clearing permit shall be required for all work within the right-of-way, easements and stormwater management areas. A separate permit for each individual building lot and/or site plan shall also be required. Under no circumstances shall clearing of individual lots occur until all right-of-way, easements, stormwater management areas clearing has been completed and an individual lot clearing permit, including a building specific tree clearing plan has been submitted to and approved by the Department of Community Development and Planning.

2. Permit application. Application for a permit shall be made to the Department of Community Development and Planning and shall contain the information required as follows:

- a. Location on the property, of the trees, mountain laurel, and/or holly on the removal plan. For any major or minor subdivisions, and all site plans, the tree location plan shall be indicated on a survey prepared by a licensed Land Surveyor.
    - i. The plan shall indicate the number and location of tree(s), mountain laurel, and/or holly to be preserved.
    - ii. The plan shall indicate a limit of disturbance line.
    - iii. All trees greater than six (6) inches in caliper (DBH), American Holly greater than eight (8) feet in height, Mountain Laurel masses greater than four hundred (400) square feet, or any specimen tree (i.e. any unique or remarkable tree or species) to be removed shall be indicated on the plan.
  - b. Any other information, which may reasonably be required to enable the application to be properly evaluated (i.e. Woodland Management Plan).
  - c. Minor or Major Subdivision Plans or Site Plans as approved by the Planning Board or Zoning Board of Adjustment in accordance with this section 215-12.7.
3. Application Fee. A tree removal permit application must be obtained from, and filed with, the Department of Community Development and Planning.

For new construction or residential building sites, a filing fee of twenty-five dollars (\$25) will be required for each building lot, or buildable lot, and twenty-five dollars (\$25) per acre for non-residential development.

4. Issuance of Tree Removal Permits. Where an application is made in connection with the construction of a building or other improvements, no building permit shall be issued until the tree removal permit has been granted.
- a. New Development. If the application is for a new development (subdivision or site plans), trees may be removed as permitted by subsection 6 (Standards for Removal) of this ordinance for the purpose of clearing for roads, utilities, storm water management areas, building envelopes and driveways, provided a Performance Guarantee is posted pursuant to N.J.S.A. 40:55D-53 for the trees to be replanted as required by this section.
  - b. Non-residential development. All existing non-residential development shall be required to obtain a removal permit prior to any removal of trees, mountain laurel, and/or holly.
5. Removal Plan. Where the application is in conjunction with an application for a subdivision, or site plan approval, a removal plan shall be submitted and shall include the following:
- a. Total acreage of the tract.
  - b. A site plan, on a scale of one (1) inch equals fifty (50) feet or less, showing the location of existing wooded areas. The site plan shall include the lot and block numbers, the street address, if assigned, and a statement of compliance with the requirements of this section.

- c. The location of streams and watercourses.
- d. The location of slopes greater than ten percent (10%) where any removal is proposed.
- e. The location(s), species, and caliper of all trees six (6) inches or greater in caliper (DBH) or greater than eight (8) feet in height for evergreens to be removed on a survey drawing and/ or site plan. The location, species, size of existing trees shall be established by onsite survey and may be accomplished by a representative 10,000 square foot sample (100' x 100') taken at one sample area per two acres of disturbance area or portion thereof.
- f. The location of specimen trees and all trees greater than twelve (12) inches in caliper (DBH), or any American Holly ten (10) feet in height, or Mountain Laurel masses four hundred (400) square feet in area, if any.
- g. The location of existing and proposed structures including parking areas, detention basins and other stormwater facilities.
- h. The location of replacement trees, including a replacement schedule indicating species, quantities and size in accordance with Section N, Mitigation Required.
- i. The removal plan shall include a schedule for compliance with this §215-12.7 for the protection, removal and reforestation of trees.
- j. The following information may be required, at the discretion of the reviewing entity, for approval of tree removal:
  - i. The quality, quantity and limits of vegetation on the remainder of the site.
  - ii. The location, species and caliper of each tree within the drip line of each tree to be removed.
  - iii. Existing contours and proposed grading.
  - iv. Proposed preservation methods of trees to remain, if necessary.

6. Standards for removal.

- a. Existing landscape. The intent of this section is to encourage the preservation of existing deciduous and coniferous trees, mountain laurel, and holly.
- b. Any area occupied by the Critical Footprint Area, such as a building, driveway, stormwater management areas, swales, areas requiring grading to improve stormwater flow on the site, utility lines, drainage field, septic tank or recreation area (tennis courts, swimming pools or similar facilities) may have the trees removed for a distance of not more than fifteen (15) feet around the perimeter of such facilities, provided that the same does not violate any buffer requirements within the zone.
- c. The permit shall be granted if there is a finding by the Township Zoning Officer and/or Township Landscape Architect or Engineer that the removal and destruction will not impair the growth and development of remaining trees on the property of the applicant or adjacent properties and would not cause erosion of soil.

- d. The Township Zoning Officer and/or Township Landscape Architect or Engineer shall view the land where the tree or trees are to be removed, as well as drainage, grade and other physical conditions existing on the subject or adjoining property, and will consider any reports from the Environmental Commission when issuing a permit.
  - e. Protection of trees, mountain laurel and/or holly.
    - i. No structure, equipment or movable machinery, shall be permitted to be stored, parked, or operated within the dripline of any tree, which is to be saved, in order not to disturb the soil and injure the tree, except when the dripline of the tree is within the fifteen-foot area set forth in Subsection 6b herein.
    - ii. If the removal of, or destruction of trees, will impede or hamper the growth and vigor of the remaining trees, removal will not be permissible unless a stump grinder is utilized.
    - iii. No soil material, equipment, temporary buildings, work areas, fuels, and other construction items shall be placed within the dripline of trees.
    - iv. Trees not subject to removal under the permit granted shall be fenced or heavily marked with ribbon so as to prevent injury or removal. The fence installation or ribbon markings must be approved by the Township Engineer prior to clearing.
    - v. All planting shall follow the guidelines as set forth in the Landscaping Ordinance Sections 215-11.8.
    - vi. Any tree of historical or environmental significance or any tree that is significant by reason of its rarity, as determined by the Township Engineer, shall not be cut or removed unless applicant shows substantial evidence as to the necessity of the cutting or removal. The determination as to whether to cut or remove such a tree shall be in the discretion of the Township Engineer. Specimen trees shall be protected in accordance with the provisions of Subsection M herein.
7. Buffer. It is a requirement of this ordinance that, natural habitat buffer zones shall be preserved as per §215-11.7 of the Township Code.
8. Permit revocation. The administrative office may revoke a permit when there has been a false or misleading application or for noncompliance with an approved replacement plan.

## **B. Tree Replacement Requirements**

- 1. Any person who removes one or more street tree(s) with a DBH of 2.5” or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.

2. Any person, who removes one or more tree(s), as defined as Tree removal, with a DBH of 6” or more per acre, unless otherwise detailed under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table.

The species type and diversity of replacement trees shall be in accordance with §215-12.6.

Replacement tree(s) shall:

1. Be replaced in kind with a tree that has an equal or greater DBH than tree removed **or** meet the Tree Replacement Criteria in the table below;
2. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the municipality;
3. Be monitored by the applicant for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12) months; and
4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

**Tree Replacement Requirements Table:**

<b>Category</b>	<b>Tree Removed (DBH)</b>	<b>Tree Replacement Criteria (See Appendix A)</b>
1	DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99”	Replant 1 tree with a minimum tree caliper of 2.5” for each tree removed
2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 2.5” for each tree removed
3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 2.5” for each tree removed
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 2.5” for each tree removed

**C. Replacement Alternatives.**

1. If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:



- a. Plant replacement trees in a separate area(s) approved by the municipality.
- b. In lieu of the replanting requirement specified above, the applicant shall pay a cash equivalent to the Township of Little Egg Harbor for each tree not replanted as determined by the Township Landscape Architect and or the Township Engineer in accordance with 215-12.7, to be placed in a fund entitled “Little Egg Harbor Tree Bank Account” to be used for the purchase of replacement trees by the Township of Little Egg Harbor for use on public property.

In the event the cash contribution is made, such contribution shall be made prior to the filing of final map and/or approval for construction. No tree removal permit shall be issued until such time as the Mitigation requirement is met as outlined above.

The following contribution schedule shall apply:

<b>Description</b>	<b>Value/Unit</b>
Mountain Laurel	\$100.00/Shrub
American Holly	\$500.00/Tree
All Other Trees	\$300.00/Tree

The above schedule of contribution fees shall be reviewed by the Landscape Architect/Township Engineer and modified as required to meet current values on a bi-annual basis.

**Section IV. Exemptions.**

- A. All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below:
  - a. Residents who remove less than four (4) trees per acre that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a five-year period. [The number of trees removed is a rolling count across a five-year period. For example, if 3 trees from category 1 are removed in July 2023, the ‘count’ resets to zero in July 2028. However, if 1 tree from category 1 is removed in July 2023 and another in July of 2025 the first tree will come off the count in July 2028 and the second in July 2030.]
  - b. Tree farms in active operation, nurseries, fruit orchards, and garden centers;
  - c. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality;

- d. Any trees removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan.
  - e. Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan;
  - f. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
  - g. Hazard trees may be removed with no fee or replacement requirement.
  - h. Lands within the jurisdiction of the New Jersey Pinelands Commission.
- B. Proper justification for an exemption shall be provided to the Township Administrator and Township Engineer, in writing, in the form of certified statements and/or photographs from a Licensed Tree Expert as defined pursuant to N.J.S.A. 45:15C-12 under the Tree Experts and Tree Care Operators Licensing Act by all persons claiming an exemption.

**Section V. Enforcement.**

This ordinance shall be enforced by the Township Zoning Officer, Code Enforcement Officer, Township Engineer, Township Planner, and Police Department of Little Egg Harbor Township during the course of ordinary enforcement duties.

**Section VIII. Penalties.**

Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a minimum fine of \$500.00 or the amount required to replace the tree(s) and the cost of planting as determined by the Township Engineer, whichever is the higher amount. Any person(s) found to be in violation of this ordinance shall also be subject to the penalties set forth in §215-19.1, and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

**SECTION 2.** After introduction of this ordinance, the Township Clerk shall send a copy of this ordinance to the Township Planning Board for its review and comment. The

Township shall send a copy of the ordinance to the Ocean County Planning Board pursuant to N.J.S.A. 40:55D-16.

**SECTION 3.** This ordinance shall take effect after second reading and publication as required by law and the filing of the adopted ordinance with the Ocean County Planning Board.

**SECTION 4.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 6.** This ordinance shall take effect after second reading and publication as required by law.

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Little Egg Harbor held on the 14<sup>th</sup> day of June, **2024**, and will be considered for second and final passage at a meeting of the Township Committee to be held on the 11<sup>th</sup> day of July, **2024**, at 7:30 p.m. at the Municipal Building located at 665 Radio Road, Little Egg Harbor, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

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**KELLY LETTERA, CMC, RMC**  
Township Clerk  
Township of Little Egg Harbor

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Blaise Scibetta, MAYOR