

AN ORDINANCE TO AMEND
TITLE 8
OF THE CODE OF EMMITSBURG
ENTITLED HEALTH AND SAFETY

BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Board of Commissioners of the Town of Emmitsburg, Maryland, pursuant to the authority granted to them by the laws of Maryland and the Charter of the Town of Emmitsburg, that Title 8 of the Emmitsburg Municipal Code, be amended by adding thereto the following as Chapter 8.20:

New language is indicated by being in **BOLD, CAPITAL LETTERS**, and deleted language is designated by being in ~~{brackets and strike-out}~~.

Title 8 – Health and Safety

Chapter 8.20. - FOREST AND TREE CONSERVATION

8.20.010 - DEFINITIONS.

IN THIS CHAPTER, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

“LARGE TREE” MEANS TREES GROWING OVER 50-FEET IN HEIGHT.

“MEDIUM TREE” MEANS TREES GROWING BETWEEN 31-FEET AND 50-FEET IN HEIGHT.

“PARK TREES” MEANS ALL TREES, SHRUBS, BUSHES AND ALL OTHER WOODY VEGETATION IN PUBLIC PARKS HAVING INDIVIDUAL NAMES, AND ALL AREAS OWNED BY THE TOWN, OR TO WHICH THE PUBLIC HAS FREE ACCESS AS A PARK.

“SMALL TREE” MEANS TREES REACHING 30-FEET OR UNDER IN HEIGHT.

“STREET TREES” MEANS ALL TREES, SHRUBS, BUSHES, AND ALL OTHER WOODY VEGETATION ON LAND LYING BETWEEN PROPERTY LINES ON EITHER SIDE OF ALL STREETS, AVENUES OR WAYS WITH THE TOWN.

"TREE" MEANS A LARGE, WOODY PLANT HAVING ONE OR SEVERAL SELF-SUPPORTING STEMS OR TRUNKS AND NUMEROUS BRANCHES THAT REACH A HEIGHT OF AT LEAST TWENTY (20) FEET AT MATURITY.

8.20.030 - STREET TREES

- A. THE PURPOSE OF THIS SECTION IS TO ESTABLISH CRITERIA APPLICABLE TO THE PLANTING, CARE, MAINTENANCE AND REMOVAL OF STREET TREES IN THE TOWN OF EMMITSBURG. THESE CRITERIA ARE IN ADDITION TO THE REQUIREMENTS FOR ROADSIDE TREES AS SET FORTH IN NATURAL RESOURCES ARTICLE, SECTIONS 5-401 THROUGH 5-411, ANNOTATED CODE OF MARYLAND AND THE REGULATIONS PROMULGATED THEREUNDER (THE "MARYLAND ROADSIDE TREE LAW"). THESE ADDITIONAL CRITERIA ARE AUTHORIZED BY NATURAL RESOURCES ARTICLE, SECTION 5-403(D). TO THE EXTENT THAT ANY OF THESE CRITERIA CONFLICT WITH THE MARYLAND ROADSIDE TREE LAW, THE CRITERIA OF THE STATE LAW SHALL GOVERN. NO STREET TREE MAY BE PLANTED WITHOUT FIRST OBTAINING THE PERMIT REQUIRED BY THE MARYLAND ROADSIDE TREE LAW UNLESS OTHERWISE EXEMPTED BY THAT LAW.**
- B. THE FOLLOWING LIST CONSTITUTES THE OFFICIAL STREET TREE SPECIES FOR EMMITSBURG. NO SPECIES OTHER THAN THOSE INCLUDED IN THIS LIST MAY BE PLANTED AS STREET TREES WITHOUT THE WRITTEN PERMISSION OF THE TOWN MANAGER AND/OR HIS/HER DESIGNEE. ADDITIONAL SPECIES WILL BE CONSIDERED ON A CASE BY CASE BASIS.**

SMALL TREES	MEDIUM TREES	LARGE TREES
APRICOT CRABAPPLE HAWTHORNE (SP.) REDBUD SOAPBERRY JAPANESE LILAC TREE FLOWERING PEACH SERVICEBERRY DOGWOOD EASTERN REDBUD HONEYLOCUST ORNAMENTAL CHERRY	HACKBERRY HONEYLOCUST (THORNLESS) LINDEN OR BASSWOOD (SP.) (FRUITLESS, MALE) PECAN RIVER BIRCH OSAGE ORANGE (MALE, THORNLESS) PERSIMMON SASSAFRAS	SUGAR MAPLE BUR OAK SYCAMORE LONDON SYCAMORE (COTTONLESS, MALE) RED MAPLE WHITE OAK SWAMP WHITE OAK AMERICAN BEECH ENGLISH OAK RED OAK GINKGO (MALE)

- C. UNLESS AUTHORIZED BY THE TOWN, AND UNLESS UNDERTAKEN IN COMPLIANCE WITH STATE LAW, NO PERSON OTHER THAN A DULY AUTHORIZED REPRESENTATIVE OF THE TOWN MAY PLANT, REMOVE, TRIM, PRUNE, MAINTAIN OR REMOVE ANY STREET TREE OR OTHER PLANTS OR SHRUBS LOCATED IN ANY PUBLIC RIGHT OF WAY. THE TOWN MAY UNDERTAKE SUCH ACTIONS AS NECESSARY TO INSURE PUBLIC SAFETY OR TO PRESERVE OR ENHANCE THE SYMMETRY AND BEAUTY OF THE STREET TREES, SHRUBS OR PLANTS, WHICH SHALL BE PERFORMED IN ACCORDANCE WITH THE MARYLAND ROADSIDE TREE LAW.**

8.20.040 – GENERAL TREE CARE, MAINTENANCE, PRUNING AND REMOVAL

- A. EVERY OWNER OF ANY TREE OVERHANGING ANY STREET OR RIGHT-OF-WAY WITHIN THE TOWN SHALL PRUNE THE BRANCHES SO THAT SUCH BRANCHES SHALL NOT OBSTRUCT THE LIGHT FROM ANY STREET LAMP OR OBSTRUCT THE VIEW OF ANY STREET INTERSECTION AND SO THAT THERE SHALL BE A CLEAR SPACE OF EIGHT (8) FEET ABOVE THE SURFACE OF THE STREET OR SIDEWALK. SAID OWNERS SHALL REMOVE ALL DEAD, DISEASED OR DANGEROUS TREES OR BROKEN OR DECAYED LIMBS WHICH CONSTITUTE A MENACE TO THE SAFETY OF THE PUBLIC. EVERY OWNER OF ANY TREE SHALL MAINTAIN SUCH TREE SO THAT IT DOES NOT CREATE A HAZARD OR CAUSE INJURY TO SEWER LINES, ELECTRIC POWER AND OTHER UTILITY LINES, GAS LINES, WATERLINES OR OTHER PUBLIC IMPROVEMENTS.**

- B. ANY OWNER OF ANY TREE WHICH IS IN VIOLATION OF SUB-SECTION A MAY BE NOTIFIED BY THE TOWN OF SUCH VIOLATION AND INSTRUCTED TO CORRECT THE VIOLATION WITHIN A PERIOD OF TIME AS DETERMINED BY THE TOWN MANAGER AND/OR HIS/HER DESIGNEE, WHICH PERIOD OF TIME SHALL NOT BE LESS THAN 20 DAYS. IN THE EVENT THAT THE OWNER FAILS TO CORRECT THE VIOLATION WITHIN THE 20 DAY PERIOD, THE TOWN MAY UNDERTAKE TO TRIM, PRUNE, OR REMOVE ONLY SO MUCH OF THE TREE OR PART THEREOF THAT IS NECESSARY TO REMOVE THE VIOLATION. IN THAT EVENT, THE OWNER SHALL BE LIABLE TO THE TOWN FOR THE COST AND EXPENSE OF DOING SO.**

8.20.050 - PUBLIC LANDS

- A. NO PERSON, FIRM OR ENTITY SHALL PLANT, TRIM, PRUNE, MAINTAIN OR REMOVE ANY TREE, SHRUB OR OTHER PLANT LOCATED ON ANY STREET OR ROAD RIGHT OF WAY, OR ON ANY PARK, OR ON ANY PUBLIC PROPERTY.**

- B. ALL STUMPS OF STREET AND PARK TREES SHALL BE REMOVED BELOW THE SURFACE OF THE GROUND SO THAT THE TOP OF THE STUMP SHALL NOT PROJECT ABOVE THE SURFACE OF THE GROUND.**

8.20.060 - PRIVATE PROPERTY

- A. NO PROPERTY OWNER MAY MAINTAIN ON PRIVATE PROPERTY ANY TREE OR PART THEREOF WHICH:**
 - 1. INTERFERES WITH THE PROPER SPREAD OF LIGHT ALONG THE STREET FROM A STREETLIGHT OR INTERFERES WITH THE VISIBILITY OF THE STREET TO THE PUBLIC TRAVELING ON THE PUBLIC STREETS OR OF ANY TRAFFIC CONTROL DEVICE OR SIGN;**

 - 2. WHICH HARBORS INSECTS OR DISEASE WHICH, AS DETERMINED BY A CERTIFIED TREE ARBORIST, CONSTITUTES A POTENTIAL THREAT TO OTHER TREES WITHIN THE TOWN; OR**

- 3. IS IN SUCH A WEAK OR UNSAFE CONDITION THAT IT POSES AN IMMEDIATE THREAT TO PUBLIC HEALTH AND SAFETY.**
- B. IN THE EVENT THAT A VIOLATION OF SUB-SECTION A. IS DETERMINED TO EXIST, THE TOWN SHALL HAVE THE RIGHT ENTER ONTO THE PROPERTY TO CORRECT THE VIOLATION.**
- 1. PRIOR TO ENTERING THE PROPERTY, THE TOWN OR ITS AGENTS SHALL NOTIFY THE PROPERTY OWNER IN WRITING OF SUCH VIOLATION GIVING THE DATE, NATURE AND LOCATION OF THE VIOLATION. THE NOTICE SHALL INSTRUCT THE OWNER TO CORRECT THE VIOLATION AT THEIR OWN EXPENSE WITHIN SIXTY (60) DAYS AFTER THE DATE OF SERVICE OF NOTICE AND OF THE RIGHT TO REQUEST A HEARING BEFORE THE BOARD OF COMMISSIONERS.**
 - 2. UPON RECEIVING NOTICE OF THE VIOLATION, THE OWNER MAY REQUEST A HEARING BEFORE THE BOARD OF COMMISSIONERS BY MAKING SUCH REQUEST, IN WRITING, TO THE TOWN MANAGER WITHIN FIFTEEN (15) DAYS OF RECEIVING THE NOTICE.**
 - 3. IF A REQUEST FOR A HEARING IS MADE, THE BOARD OF COMMISSIONERS SHALL SCHEDULE A HEARING ON THE VIOLATION TO BE HELD WITHIN THIRTY (30) DAYS OF THE RECEIPT OF THE REQUEST.**
 - 4. AT THAT HEARING, THE OWNER WILL BE GIVEN AN OPPORTUNITY TO HEAR THE FACTS OF THE ALLEGED VIOLATION AND TO PRESENT TESTIMONY AND WITNESSES IN SUPPORT OF THE OWNER'S POSITION.**
 - 5. IN THE EVENT THAT THE BOARD OF COMMISSIONERS FINDS THAT THE VIOLATION EXISTS, THEN THE OWNER SHALL CORRECT THE VIOLATION WITHIN TWENTY (20) DAYS OF THE BOARD'S DECISION.**
- C. IF THE OWNER FAILS TO REQUEST A HEARING AND FAILS TO CORRECT THE VIOLATION WITHIN THE SIXTY (60) DAY PERIOD, OR IF, AFTER A HEARING, THE BOARD OF COMMISSIONERS FOUND THAT A VIOLATION EXISTS AND THE OWNER FAILS TO CORRECT THE VIOLATION WITHIN THE TIME PERIOD SET BY THE BOARD, THEN THE TOWN MAY CORRECT THE VIOLATION AT THE EXPENSE OF THE OWNER. THE WORK DONE BY THE TOWN SHALL BE THE MINIMUM AMOUNT NECESSARY TO CORRECT THE VIOLATION AND SHALL BE UNDERTAKEN BY A PROFESSIONAL TREE TRIMMING CONTRACTOR. IN THE EVENT THAT THE OWNER FAILS TO PAY THE COST THEREOF WITHIN THIRTY (30) DAYS AFTER RECEIVING A STATEMENT THEREOF FROM THE TOWN, THEN THE TOWN MAY INSTITUTE A SUIT AGAINST THE OWNER IN THE DISTRICT COURT OF MARYLAND FOR FREDERICK COUNTY OR THE CIRCUIT COURT FOR FREDERICK COUNTY, DEPENDING UPON THE AMOUNT INVOLVED, FOR THE RECOVERY OF THE SAME.**

8.20.070 - NO LIABILITY

NOTHING CONTAINED IN THIS CHAPTER SHALL IMPOSE ANY LIABILITY UPON THE TOWN OF EMMITSBURG, ITS OFFICERS OR EMPLOYEES, NOR RELIEVE THE OWNER OF ANY PRIVATE PROPERTY FROM THE DUTY TO KEEP ANY TREE, SHRUB, OR PLANT UPON ANY TREE ON HIS PROPERTY OR UNDER HIS CONTROL IN SUCH CONDITION AS TO PREVENT IT FROM CONSTITUTING A HAZARD OR AN IMPEDIMENT TO TRAVEL OR VISION UPON ANY STREET, PARK, ALLEY OR PUBLIC STREET OR PUBLIC WAY.

8.20.080 - INTERFERENCE WITH TOWN PROHIBITED

IT SHALL BE UNLAWFUL FOR ANY PERSON TO PREVENT, DELAY OR INTERFERE WITH THE TOWN, ITS EMPLOYEES, OFFICIALS OR ANY OF ITS AGENTS WHILE ENGAGING IN AND ABOUT THE PLANTING, CULTIVATING, MULCHING, PRUNING, SPRAYING OR REMOVING, AS AUTHORIZED BY THIS CHAPTER, OF ANY STREET TREES, PARK TREES OR TREES ON PRIVATE GROUNDS.

8.20.090 – ENFORCEMENT

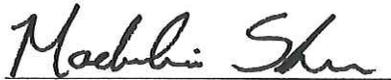
ANY PERSON VIOLATING ANY PROVISION OF THIS ORDINANCE SHALL BE GUILTY OF A MISDEMEANOR AND SHALL BE SUBJECT TO A FINE OF FIFTY DOLLARS (\$50.00) FOR EACH OFFENSE, UNLESS OTHERWISE GOVERNED BY STATE LAW, IN WHICH CASE THE MAXIMUM PENALTY SHALL APPLY. EACH DAY THE VIOLATION CONTINUES SHALL BE DEEMED A SEPARATE OFFENSE. IN ADDITION, ANY VIOLATION OF THIS CHAPTER MAY ALSO BE ENFORCED AS A MUNICIPAL INFRACTION PUNISHABLE BY A FINE OF FIFTY DOLLARS (\$50.00) FOR EACH DAY THE VIOLATION CONTINUES. NOTHING CONTAINED HEREIN PRECLUDES THE TOWN FROM ENFORCING THIS CHAPTER THROUGH ANY OTHER LEGAL OR EQUITABLE REMEDY AVAILABLE TO IT.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Ordinance shall take effect on the date on which the Mayor approves the Ordinance after passing by the Board of Commissioners or on the date on which the Board of Commissioners passes the Ordinance over the veto of the Mayor.

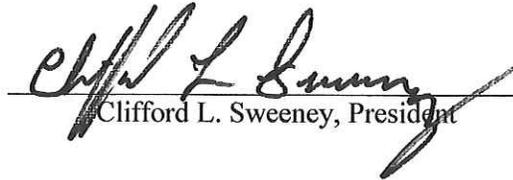
PASSED this 5th day of November, 2018
by a vote of 5 for, 0 against, 0 absent, and 0 abstain.

ATTEST:

EMMITSBURG BOARD OF COMMISSIONERS:



Madeline Shaw, Town Clerk

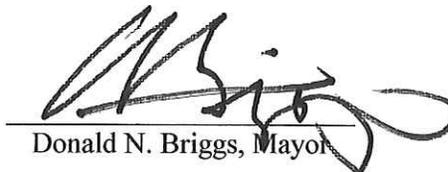


Clifford L. Sweeney, President

MAYOR

APPROVED VETOED

this 5th day of November, 2018.



Donald N. Briggs, Mayor

I hereby certify that the foregoing Ordinance has been posted as required by Chapter 2.04 of the Emmitsburg Municipal Code.

Madeline Shaw, Town Clerk
Date: