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ORDINANCE 2017-21

**Amending and Supplementing the South Brunswick  
Township Code to Require the Maintenance, Care And/Or  
Removal of Dead, Dying, Damaged And/Or Diseased Trees**

WHEREAS, SB Code Section 22-230 requires that “all exterior property and premises shall be maintained in a clean, safe and sanitary condition,” requiring both owners and occupants to maintain the exterior of their property and premises; and

WHEREAS, although this obligation is broad, SB Code Section 118-37(a)(3)d, which is part of the Shade Tree Commission’s powers and duties, confines Shade Tree Commission authority to “the moving or removal of any tree, or part thereof, dangerous to public safety,” but does not specifically address the moving or removal of any tree, or part thereof, that poses a danger to private persons or property; and

WHEREAS, since SB Code Section 118-37(a)(3)d confines Township authority to trees which are “dangerous to public safety,” SB Code Section 22-230 has historically been interpreted to regulate trees “dangerous to public safety” so that it is consistent with Section 118-37; and

WHEREAS, given the impending problems from the Emerald Ash Borer and the number of dead trees likely to result on private property throughout the township, which could potentially pose a danger to both public and private safety, it is appropriate to amend the Township Code to specifically require maintenance, care and/or removal of dead, dying, damaged and/or diseased trees, or any part thereof, that pose a danger to persons or property, whether public or private; and

WHEREAS, the Shade Tree Commission has recommended revisions to the Township Code so that the Township is prepared to address these potentially dangerous conditions; and

WHEREAS, the Township Council believes that it is in the best interests of the health, safety and welfare of the residents and guests in South Brunswick to amend the Township Code to give Township officials the authority to compel owners/occupants to maintain, care for and/or remove any dead, dying, damaged and/or diseased trees if it is determined that they pose a danger to persons or property, whether public or private;

NOW THEREFORE BE IT ORDAINED by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

I. Chapter 22, Article VII, Property Maintenance, of the South Brunswick Code shall be and is hereby amended and supplemented as follows, with the addition of the following:

## **Sec. 22-230. Exterior property areas.**

(h) *Dead and/or Dying Trees.* All property owners and/or occupants shall be responsible for the maintenance, care and/or removal of dead, dying, damaged and/or diseased trees, or any part thereof, located on their property that, in the opinion of the Township, pose a danger to persons or property, whether public or private.

- (1) The determination of whether a tree poses a danger to persons or property shall only be made after consultation with and examination by the Shade Tree Commission and/or a Licensed Tree Expert.
- (2) Factors to be considered in making such a determination shall include, but not be limited to, the size, age, health and location of the tree; any public and/or private structures or facilities in close proximity to the tree; any utility lines, poles or other utility facilities that are or may be effected by the tree; and any other relevant factors that, in the opinion of the Township, reasonably tend to demonstrate the likelihood of injury or damage that may be caused by the tree.
- (3) Upon receiving a Notice of Violation as required by Section 22-224, any owner or occupant may dispute the Notice, stating the reasons why the determination is incorrect. All such disputes shall be made in writing within ten (10) days of issuance of the Notice and shall be addressed to the Township Manager, who shall consider all relevant facts related thereto.
- (4) The Township Manager shall render a determination as to whether there are sufficient facts to sustain the Notice of Violation or whether the Notice should be dismissed. Such decision shall be final.
- (5) Nothing contained herein shall authorize the Township Manager to render any opinion or decision on any summons issued for a violation of this section.
- (6) Nothing contained herein shall prohibit the South Brunswick Municipal Court from exercising jurisdiction over any summons issued for a violation of this provision.

II. Chapter 118, Article II, Shade Tree Commission, of the South Brunswick Code shall be and is hereby amended and supplemented as follows, with deletions in strikethrough and additions in underline:

## **Sec. 118-37. Powers and duties; records and annual report.**

(a)(3) Work with the municipal staff and municipal agencies regarding the implementation and enforcement of all such ordinances and written rules and regulations, which shall include but not be limited to the following:

d. ~~The moving or removal of any tree, or part thereof, dangerous to public safety.~~  
The maintenance, care and/or removal of dead, dying, damaged and/or diseased trees, or any part thereof, that pose a danger to persons or property, whether public or private.

III. If any clause, sentence, paragraph, section or part of this ordinance or any other codes or ordinances incorporated herein shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved

in the controversy in which said judgment shall have been rendered.

IV. This ordinance shall become effective twenty (20) days after its final passage.

The above ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of South Brunswick held on September 12, 2017, and will be considered on second and final reading and final passage at a regular meeting of the Township Council of the Township of South Brunswick to be held at the Municipal Building, Monmouth Junction, New Jersey, at 7:30 p.m. on October 10, 2017, at which time and place any person having an interest therein will be given an opportunity to be heard.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Joseph Camarota, Councilman
<b>SECONDER:</b>	Josephine "Jo" Hochman, Councilwoman
<b>AYES:</b>	Ken Bierman, Joseph Camarota, Charlie Carley, Josephine "Jo" Hochman
<b>ABSENT:</b>	Chris Killmurray

This is to certify that the foregoing is a true copy of a Ordinance Adopted at the South Brunswick Township Council meeting held on October 10, 2017.

  
Barbara Nyitrai, Township Clerk