

BOROUGH OF HIGHLAND PARK  
ORDINANCE NO. 1730

**AN ORDINANCE AMENDING CHAPTER XV, ENTITLED “Protection of Trees,” OF THE CODE OF THE BOROUGH OF HIGHLAND PARK**

**BE IT ORDAINED**, by the Council of the Borough of Highland Park in the County of Middlesex in the State of New Jersey and it is hereby enacted and ordained by the authority of same as follows:

**SECTION I.** Chapter XV of the Code of the Borough of Highland Park is amended to read in its entirety as follows:

**15 TREE REMOVAL AND PROTECTION.**

**15-1 Title.**

This chapter shall be known as the “Tree Removal and Protection Ordinance of the Borough of Highland Park.”

**15-2 Purpose and Findings of Fact.**

- A. The Mayor and Council of the Borough of Highland Park find that the preservation, maintenance, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces stormwater runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; provides protection against severe weather; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; protects and increases property values; preserves and enhances the Borough’s physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare. It is the intent, therefore, of this chapter to regulate and control the indiscriminate and excessive cutting of trees in the Borough. It is the further intent of this chapter to encourage property owners to preserve and build around trees whenever possible.
- B. Trees are declared to be important cultural, ecological, scenic and economic resources. It is recognized that there is a strong relationship between the integrity of the Borough’s water resources, development on steep slopes, tree removal, soil disturbance, stormwater management and the general use of the land resources; and a correlation between increased air pollution and high density residential and commercial or industrial uses. Therefore, the Borough finds that the appropriate management of these resources is an important health, safety and general welfare concern.
- C. The enforcement of this chapter shall be the duty of the Dept. of Code Enforcement of the Borough of Highland Park in consultation with DPW and its appointees and STAC consultants for the purpose of the regulation, planting, care and control of shade, ornamental and evergreen trees and shrubs in the streets, highways, public places of the Borough and tree removal on all lands within the Borough of Highland Park.

**15-3 Definitions.**

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

STAC – The Shade Tree Advisory Committee (STAC) of the Borough of Highland Park, including any of its duly appointed members and any of its duly authorized agents or employees.

DIAMETER AT POINT OF MEASUREMENT — the diameter of a tree measured four and one-half feet (4 1/2’) (forestry method) above the ground level on the downhill side for existing trees. Trees utilized in the replacement of existing trees or proposed as part of a landscape plan shall be measured twelve inches (12”) above ground level for trees over a four-inch (4”) diameter, and the measurement shall be six inches (6”) above grade for trees up to four-inch (4”) diameter (nursery method). Diameter at point of measurement may appear as the abbreviation “DPM.”

MANAGEMENT PLAN — Plan for the management of timbered or forested lands developed by the New Jersey Department of Environmental Protection (“DEP”), Bureau of Forestry, or similar state or federal agency or the Highland Park Community Forestry Management Plan.

REPLACEMENT TREE — A nursery grown certified tree, properly balled and burlaped, and marked with a durable label indicating genus, species and variety, and satisfying the standards for nursery stock and installation thereof, set forth by the American Association of Nurserymen. Native species are encouraged to be used whenever possible. Non-biodegradable materials such as plastic must be removed.

**EXTRAORDINARY TREE** — Any tree with a DPM of thirty-six inches (36”) or greater or any tree designated by the Borough Council as an historic or landmark tree and such other trees or species of tree as the Council may, from time to time, designate as an extraordinary tree.

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

#### **15-4 Permit Required.**

- A. It shall be unlawful for any person to cut, destroy or remove, or cause to be cut, destroyed or removed, any tree upon any lands within the Borough that has a caliper diameter at point of measurement (“DPM”) of three (3) inches or more without a tree removal permit. Tree removal permits shall be issued by the Department of Code Enforcement in consultation with the STAC. Property owners are encouraged to keep and build structures and sidewalks around trees whenever possible. If a tree on private property is less than three (3) inches DPM, a permit is not required unless declared by Borough Council to be an extraordinary tree.
- B. Extraordinary trees. On all real property upon which extraordinary trees are located, trees having been designated as such under the provisions of this chapter shall be maintained in a living condition, and it shall be unlawful for any person to remove such tree without an approved tree removal permit.
- C. Site or Tree Removal Plan: Trees shall be designated as follows and shall require that their location, DPM and type be shown on the site or tree removal plan:
  - (1) Living deciduous trees having a DPM of sixteen inches (16”) or greater.
  - (2) All living coniferous trees having a DPM of twelve inches (12”) or greater.
  - (3) Such trees declared extraordinary by Borough Council.
- D. Excepted from specific tree removal permit application and permit fee, but not from tree replacement or from mitigation payments to the tree replacement fund shall be:
  - (1) All land-clearing operations as authorized in accordance with a site plan approval or subdivision approval and conditions imposed with respect to tree removal and planting granted by the Planning Board or Board of Adjustment of the Borough in accordance with the provisions of N.J.S.A. 40:55D-20 (exclusive authority of Planning Board and Board of Adjustment). Under no circumstances shall clear-cutting be permitted on any property.
  - (2) The pruning or trimming of trees in a manner which is not harmful to the health of the tree.
  - (3) The cutting, removal or destruction of a tree as necessary to construct any structure for which a building permit has been issued by the Borough Construction Official.
  - (4) The cutting, removal or destruction of any tree pursuant to an order or directive of any municipal, county or state agency or court.

#### **15-5 Applicability of Permit.**

- A. Any person wishing to obtain a permit to remove one (1) or more trees or clear land as required under the provisions of this chapter shall make application to the Dept. of Code Enforcement by filing a written application and paying such fee as set forth in § 15-7. Where an application as required by this chapter has been submitted, no permit shall be issued until a tree removal and replacement plan for the lot or parcel has been reviewed and approved by the STAC or DPW, and until the sign-off by the Dept. of Code Enforcement after an on-site inspection or review of a certified tree expert statement as to condition of the tree by the STAC or DPW. A permit shall be issued within twenty (20) business days of submission of an application for a permit.
- B. Residential development.
  - (1) There is no exemption for any existing and new residential development.
  - (2) For residential development where tree removal is to occur within public or private roadways/rights-of-way, drainage facilities, parking areas or proposed open space or private property, all trees are subject to replacement in accordance with this chapter. All required escrow and bond fees for said subdivision application, including required tree replacement, shall be verified as paid prior to the issuance of the tree removal permit by the Dept. of Code Enforcement in consultation with DPW and the STAC.

C. Nonresidential development. All commercial and industrial developments are required to replace all trees removed in accordance with § 15-11 of this chapter.

D. The Borough of Highland Park or its agencies is exempt from the permit application process.

#### **15-6 Permit Application.**

A. Applications for a permit shall be made to the Dept. of Code Enforcement and shall contain the following information:

- (1) The name and address of the applicant.
- (2) The name and address of the owner of the property from which the trees are to be removed.
- (3) The address, tax lot and block of the property.
- (4) The number of trees requested to be removed and the reason for removal.
- (5) A tree removal plan consisting of a map drawn to scale showing the following information:
  - (a) The shape and dimensions of the lot or parcel, including the location of all easements.
  - (b) The limits of all existing and proposed tree line limits.
  - (c) The identification and location of all trees to be removed, specifically by an assigned number, species and the DPM of each tree.
  - (d) The installation and limits of a temporary existing tree protection fence along the limit of proposed tree removal in compliance with § 15-10.
  - (e) The location of all existing and proposed structures on the property, along with the distance that the trees proposed to be removed are located from such structures and from property lines. A reproduction of the tax map or an existing survey modified to provide this information would be acceptable. In the event that the application is for the removal of more than five (5) trees, the tree removal plan must be prepared, signed and sealed by a licensed land surveyor.
  - (f) Tree removal and replacement plan shall include specific information regarding the disposal of the removed trees in a manner to avoid spreading disease or pests harbored in the wood.
  - (g) Any other information which may reasonably be required to enable the application to be properly evaluated, including, but not limited to, a description of the purpose for which this application is to be made; e.g., clearing land for agricultural use, harvesting timber, fire protection, private parks, scenic improvements, hardship, danger to adjacent properties, removal of diseased or damaged trees, transplanting or removal in a growing condition to other locations, installation of utilities, or drainage of surface water.
- (6) A tree replacement plan consisting of a map drawn to scale showing the location of all trees to be planted, the species of such trees and their caliper or size as required.

B. Inspection. The applicant shall place a one-inch-wide red, yellow, or blue ribbon around the trunk of each tree to be removed at a height of four and one-half feet (4 1/2') above the ground so that the proposed tree removal may be inspected in the field.

C. All reasonable efforts shall be made to preserve extraordinary trees, including but not limited to, if feasible, relocation of infrastructure, roadways, and buildings. Removal of extraordinary trees shall require the specific written recommendation of DPW in consultation with the STAC and approval of the Borough Council.

#### **15-7 Fees.**

Upon application for a tree removal permit, the applicant shall pay a permit fee of one hundred dollars (\$100.00) for each tree proposed to be removed.

#### **15-8 Conditions for Issuance of Permit.**

A. Upon receipt of an application for the cutting, destruction or removal of trees, DPW, in consultation with the STAC, shall inspect the site on which the trees sought to be cut, destroyed or removed are located and shall evaluate the drainage and other physical conditions existing on the subject property and adjoining properties. The following factors shall be considered in deciding whether to issue such permit:

- (1) Whether the area where the trees are located shall be used for a building or other structure, a patio, a driveway, a recreation area, a roadway, a drainage right-of-way or a sewerage line or whether the trees are located within fifteen feet (15') of any of the foregoing.
- (2) Whether the topography of the land in which the trees are located is deemed dangerous for the continued existence of the tree or trees located nearby.
- (3) Whether the trees, if left undisturbed, are likely to cause a hardship upon the applicant or place the community in danger or affect deleteriously an adjacent property owner.
- (4) Whether the proposed cutting, destruction or removal of the trees would change existing drainage patterns, allow soil erosion, increase dust or decrease the fertility of the soil on the land under consideration or shall similarly affect adjacent land or land located downstream from the land under consideration.
- (5) Whether the proposed cutting, destruction or removal would impair the growth and redevelopment of the remaining trees on the applicant's property or adjacent property.
- (6) Whether the proposed cutting, destruction or removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or the wooded aspect of the lot as viewed from the adjacent public road.
- (7) Whether the proposed cutting, destruction or removal would constitute a horticulturally advantageous thinning of an existing overgrown area or the removal of dead or diseased trees.
- (8) Whether the proposed cutting, destruction or renewal would affect the physical and aesthetic value of the property and the neighborhood or would remediate a safety hazard to persons or structures.
- (9) Whether the proposed changes in the topography of the area where such trees are located will have depressed land configuration or fill of land which shall be deemed injurious to the tree or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.
- (10) Whether the tree is to be removed in accordance with a forest management plan or soil conservation plan approved by the DEP or the STAC, with tree replacement or mitigation fees payable to the Tree Replacement Fund.
- (11) Whether the tree is on private property or is a street tree in Borough right-of-way. No street tree planted in Borough right-of-way is to be removed by adjacent property owners without permit, permit fee, and replacement or mitigation payment to the Tree Fund, regardless of size. Where tree roots interfere with sidewalks, driveways, or curbs, alternatives to removal need to be considered before removal is permitted. Such alternatives include, but are not limited to, narrowing or curving the paving; mounding the paving; using alternative materials that can flex over roots, such as recycled-rubber paving, bricks, or pavers; cutting-out sections of paving; and edging paving with root barriers that encourage roots to grow deeper.
- (12) No extraordinary tree shall be removed, unless the STAC and DPW have made this recommendation and the Dept. of Code Enforcement has issued a permit.

B. Permission may be granted for the removal of trees, without mitigation if:

- (1) The tree is dead, diseased, injured, in danger of falling, poses a safety hazard, or interferes with existing utility service and cannot be reasonably remedied by trimming, as determined by a New Jersey Certified Tree Expert. Or the continued presence of the tree conflicts with any other ordinances or regulations.

#### **15-9 Time of Permit.**

All tree removal permits shall be limited to one (1) year from date of issuance as designated by the permit. If the approved tree removal has not occurred within one (1) year, a new permit must be applied for and is subject to the payment of new fees. If, however, the applicant diligently pursues other governmental approval, or if approved development is ongoing, the permit may be renewed for up to two six-month periods. A renewal fee of one hundred dollars (\$100.00) shall be due and payable for an annual renewal and \$50 for a six-month renewal period as stated above.

#### **15-10 Protection of Existing Trees.**

A. During Construction. In connection with any construction, subsequent to tree removal but prior to the issuance of a building permit or start of construction, the developer shall be required to erect snow fencing or other tree protective barriers acceptable to the Dept. of Code Enforcement. Such barriers shall be placed at least ten feet (10') from the trunk of any tree and shall remain in place

until the Dept. of Code Enforcement authorizes the removal of the protection or after issuance of a final certificate of occupancy. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Nor shall any attachments or wires be attached to any of said trees so protected. Any landscaping activities subsequent to removal of barriers shall be accomplished with light machinery or hand labor.

- (1) A description of the existing tree protective barrier shall be provided on all major applications. The protective barrier shall be a minimum of four feet (4') high.
- (2) The protective barrier shall be placed at the dripline of any tree along the limit of clearing and around the entire tree dripline for trees to remain undisturbed within the limit of clearing.
- (3) It shall be unlawful for any person in the construction of any structures or other improvements to place solvents, material, construction machinery or temporary soil deposits within the dripline.
- (4) Street right-of-way and utility easements may be ribboned by placing stakes a minimum of fifty feet (50') apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of such areas to be cleared.
- (5) Large property areas separate from the construction or land-clearing area into which no equipment will venture may also be ribboned off as set forth above in §15-6B as determined by the DPW in consultation with the STAC following a field evaluation.

B. No person shall:

- (1) Cut down, destroy or remove any tree except as permitted by this article or allow or cause such cutting, destruction or removal.
- (2) Cause or allow any willful damage, injury or disfigurement of any tree growing within the Borough. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any tree is caused as a result of but not limited to the following: cutting, gashing or slitting of any tree; pouring any liquid or other material on any tree or on the nearby ground; construction or placement of any nonporous material on the ground around any tree so as to cut off air, light or water from the roots; or placement or removal of any soil from within fifteen feet (15') of any tree; or mounding mulch against the tree trunk.
- (3) Store or pile building material or debris or place construction equipment within ten feet (10') of any tree.

C. In the event that any tree to be saved in connection with construction as set forth above or any tree planted in mitigation shall die within two (2) years after planting, it shall be replaced by the applicant or property owner within six (6) months.

### **15-11 Tree Replacement.**

Any tree removed pursuant to this chapter, unless exempt under §15-8B, shall be replaced pursuant to at least one of the following criteria:

A. One-to-one tree replacement. For each tree with a DPM of three inches (3") or greater that is removed, the applicant shall prepare a replanting scheme on other treeless areas of the property to compensate the clearing of the tree area. The replacement plan or landscape plan shall reflect a one-to-one tree replacement unless otherwise stated herein. For each tree to be removed 3" DPM but less than 5", replacement shall be by a single tree with a DPM of not less than 2" caliper. For each tree of 5" DPM but less than 8", there must be a replacement with three trees not less than 2" caliper. For trees 10" DPM and larger, there must be a replacement with four trees not less than 2" caliper. All proposed replacement trees shall be submitted for review and approval prior to the issuance of a tree removal permit. Based on the recommendation of the STAC and DPW, the Planning Board may designate certain species to be planted.

- (1) In the event that the tree removal occurs in an area other than as permitted under § 15-8A, mitigation shall be required at a rate of two replacements for each tree removed in addition to any fines levied.
- (2) In the event that it is unknown how many trees were removed from any given site, and removal took place without a tree permit issued pursuant to this or the predecessor chapter, the number of trees requiring mitigation shall be computed by the STAC recommendation (based on an average number of trees/lot from comparable lots in the borough).
- (3) Mitigation in any instance is not to be considered a penalty, but rather an implementation of the purposes of this article. Mitigation shall not be a substitute for, but shall be in addition to, any penalty imposed for violation of the provisions of this article.

- B. For sites where trees (regardless of size) cover large portions of the site, so that those portions may be considered woods or forest or recovering woods or forest, the applicant shall prepare a reforestation scheme on other treeless open space to compensate for clearing of the tree area with equal square-foot area of new plantings. If sufficient suitable on-site area is not available, the Dept. of Code Enforcement or Planning Board, in consultation with the STAC, may direct that the compensating reforestation take place on municipally owned open space.
- C. Reforestation. For sites where multiple trees (regardless of size) cover large portions of the site, so that these portions maybe be considered woods or forest or recovering woods or forest, that applicant shall prepare a reforestation scheme on the other treeless open space to compensate for clearing of the tree area with equal square-foot area of new plantings. If sufficient suitable on-site area is not available, the Dept. of Code Enforcement or Planning board, in consultation with the STAC, may direct that the compensating reforestation take place on municipally owned open space. The reforestation plan shall be based on twenty-foot by twenty-foot (20' x 20') grid. Of this number of trees, ten percent (10%) shall be balled and burlaped two-inch (2") to two-and-one-half-inch (2 1/2") caliper, twenty percent (20%) shall be balled and burlaped one-and-three-fourth-inch (1 3/4") by two inches (2") caliper, thirty percent (30%) shall be bare root one-and-one-fourth-inch (1 1/4") by one-and-one-half-inch (1 1/2") caliper and forty percent (40%) shall be bare root six-foot (6') to eight-foot (8') tall whips. A mixture of trees, indigenous to the area and site shall be utilized. Proposed trees shall be planted in natural groves and may be spaced five feet (5') to twenty feet (20') on center. The ground shall be seeded with a meadow grass mixture approved by the STAC.
- D. Tree Replacement Fund.
- (1) The Dept. of Code Enforcement and DPW, in consultation with the STAC, may permit an applicant to make a payment to the Borough's Tree Replacement Fund, established hereunder in § 15-12, in lieu of replacement of part or all of the trees removed pursuant to § 15-8. Such payment shall be calculated at a rate of five hundred dollars (\$500.00) for each deciduous tree and four hundred fifty dollars (\$450.00) for each evergreen tree.
- E. All replacement trees shall be planted on site in accordance with the foregoing. However, if one or more of the following conditions exist, some or all of the replacement trees may be planted off-site:
- (1) The site in question cannot physically accommodate the total replacement amount of trees, and the applicant contributes an amount equal to the calculated monetary value of unreplaced trees to the Tree Replacement Fund; or
- (2) The Dept. of Code Enforcement and applicant agree in writing that the applicant shall make payment to the Tree Replacement Fund based upon the above; or
- (3) The Dept. of Code Enforcement in consultation with DPW and the STAC and applicant agree in writing that the applicant shall plant replacement trees off-site on municipally owned property pursuant to the municipal Community Forestry Management Plan.
- F. All tree replacement requirements and/or fees as set forth in this subsection shall be approved and/or paid prior to the issuance of the tree removal permit by the Department of Code Enforcement in consultation with DPW and/or the STAC.

#### **15-12 Tree Replacement Fund.**

- A. There is hereby established a Tree Replacement Fund to receive and disburse replacement tree contributions under the supervision of the Mayor and Council of the Borough with the advice of the STAC. The Tree Replacement Fund shall be the repository of all monies paid to the Borough pursuant to § 15-11B of this Chapter and may also accept contributions for its purposes from private sources. All funds remitted to the Borough shall be deposited and maintained in a separation designated bank account.
- B. The primary purpose of said fund is to provide for the replacement, planting and maintenance of trees and woody shrubs on public property in the Borough of Highland Park (including groundcovers, grasses, ferns, vines, and forbs when they are part of an ecological project using native plants). Professional consultant fees for administrative and/or consultant costs to implement the provisions of this chapter, including but not limited to site inspections, processing of permits, supervision of tree replacement, and enforcement of this chapter, shall not exceed thirty percent (30%) of the fund, as determined on an annual basis by the Borough Finance Director. Appropriations from the Tree Replacement Fund shall be authorized by the Mayor and Council with the advice of the STAC in accordance with the Community Forestry Management Plan of the borough.

**15-13 Performance Bond.**

Whenever trees are replaced pursuant to §15-8A, the applicant shall post with the Borough Clerk a performance bond for one (1) years in an amount to be determined by the Borough, but in no event to exceed the amount per tree specified in §15-11B. The performance bond may be either in the form of a cashier certified check made payable to the Borough or in the form of a corporate surety performance bond issued by a New Jersey corporation. No performance bond shall be released except on certification of the Dept. of Code Enforcement with advice from the STAC and DPW that the replacement tree(s) remain healthy one year after planting. If they are found at that time by DPW or its agents to be healthy and capable of surviving, and other performance requirements have been met, then the Dept. of Code Enforcement shall order the bond returned. If any trees are not at that point healthy, the tree(s) shall be replaced or payment made to the Tree Replacement Fund.

**15-14 Violation and Penalties.**

Any person, firm, partnership, corporation, association or other legal entity violating any of the provisions of this chapter shall, upon conviction of such violation, be punished by a fine not to exceed one thousand dollars (\$1,000) for each offense, in addition to the required mitigation for each tree illegally removed. Each illegally removed tree shall constitute a separate offense.

**Section II.** This Ordinance shall take effect upon final adoption and publication according to law.

Introduced and passed on first reading: October 2, 2007

ADOPTED: October 16, 2007

ATTEST:

APPROVED:

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BOROUGH CLERK

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MAYOR