

**BOROUGH OF HIGHLAND PARK  
ORDINANCE NO. 20-2001**

**AN ORDINANCE TO REPLACE CHAPTER 388 AS THE “CODE OF THE BOROUGH OF HIGHLAND PARK, 2010” CONCERNING TREE REMOVAL AND PROTECTION.**

**BE IT ORDAINED** by the Highland Park Borough Council, Middlesex County as follows:

1. Chapter 388 of the “Code of the Borough of Highland Park, 2010” concerning tree removal and protection is hereby rescinded and replaced with the following:

**§ 388-1. Title.**

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

**§ 388-2. 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 aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce stormwater runoff and the potential damage it may create; aid in the removal of pollutants from the air and assists in the generation of oxygen; provide a buffer and screen against noise and pollution; aid in the control of drainage and restoration of denuded soil subsequent to construction or grading; provide a haven for birds and other wildlife and otherwise enhances the environment; protect and increases property values; preserve and enhance the Borough's physical and aesthetic appearance; and protect 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 Department of Code Enforcement of the Borough of Highland Park in consultation with DPW for the purpose of the regulation, planting, care and control of shade, ornamental and evergreen trees and shrubs in the streets, highways and public places of the Borough and tree removal on all lands within the Borough of Highland Park.

**§ 388-3. Definitions.**

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

**CLEAR-CUTTING** as the removal or destruction of Twenty (20%) or greater of the trees having a diameter at point of measurement (“DPM”) of eight (8”) inches or more for shade trees or a height of ten (10’) feet or more for evergreen and ornamental trees on any lot within a twelve (12) month period.

**DIAMETER AT POINT OF MEASUREMENT** — the diameter of a tree measured 4 1/2 feet (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 12 inches above ground level for trees over a four-inch diameter, and the measurement shall be six inches above grade for trees up to a four- inch diameter (nursery method). Diameter at point of measurement may appear as the abbreviation "DPM."

**EXTRAORDINARY TREE** — Any tree with a DPM of 36 inches or greater and any other tree or species as designated by Borough Council. The Borough Council may, from time to time, designate an extraordinary tree, including but not limited to an historic or landmark tree.

**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 county, state or federal agency or the Highland Park Community Forestry Management Plan.

REPLACEMENT TREE — A nursery-grown certified tree, properly balled and burlapped, 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. Nonbiodegradable materials such as plastic shall be removed when the replacement tree is planted.

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.

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.

#### **§ 388-4. 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 eight inches or more without a tree removal permit. Tree removal permits shall be applied for at the Code Enforcement Office in Borough Hall. Property owners are encouraged to keep and build structures and sidewalks around trees whenever possible. If a tree on private property is less than eight 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.
  - a. Site plan or tree removal plan. Trees shall be designated as follows and shall require that their location, DPM and type be clearly listed on the site plan or tree removal plan:
    - i. Living deciduous trees having a DPM of 16 inches or greater.
    - ii. All living coniferous trees having a DPM of 12 inches or greater.
    - iii. Any extraordinary tree.
- C. 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:
  - a. All property development as authorized in accordance with a site plan approval or subdivision approval 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) and strictly conforming to any conditions imposed by such boards. Under no circumstances shall clear-cutting be permitted on any property.
  - b. The pruning or trimming of trees in a manner that is not harmful to the health of the tree.
  - c. The cutting, removal or destruction of a tree as necessary to construct any structure for which a building permit has been issued by the Department of Code Enforcement.
  - d. The cutting, removal or destruction of any tree pursuant to an order or directive of any municipal, county or state agency or court.

#### **§ 388-5. Applying for a permit.**

- A. Any person wishing to obtain a permit to remove one or more trees within the Borough with a DPM equal to or greater than 8" shall make application to the Department of Code Enforcement by filing a written application and paying such fee as set forth herein. 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 Department of Code Enforcement after an on-site inspection or review by a licensed tree expert statement as to condition of the tree. An approval or denial of application shall be issued within 20 business days of submission of an application for a permit.

**§ 388-6. Permit application.**

- A. Applications for a permit shall be made to the Department of Code Enforcement and shall contain the following information:
- a. The name and address of the applicant.
  - b. The name and address of the owner of the property from which the trees are to be removed.
  - c. The address and tax lot and block of the property.
  - d. The number of trees requested to be removed, their DPM, and the reason for removal.
  - e. For the removal of five trees or more, a tree removal plan consisting of a map drawn to scale showing the following information:
    - i. The shape and dimensions of the lot or parcel, including the location of all easements.
    - ii. All existing and proposed tree line limits.
    - iii. The identification and location of all trees to be removed, specifically by an assigned number, species and the DPM of each tree.
    - iv. The installation and limits of any temporary existing tree protection fence necessary to comply with this chapter.
    - v. 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 shall be acceptable.
    - vi. Any other information which shall 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., 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.
  - f. A tree replacement plan consisting of a map drawn to scale showing the location of all replacement trees to be planted, the species of such trees and their respective DPM or a check payable to the Tree Replacement Fund in the amount to cover the number of replacement trees not planted.
- 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 4 1/2 feet 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 and approval of the Borough Council.

**§ 388-7. Fees. [Amended 6-8-2011 by Ord. No. 11-1817]**

Upon application for a tree removal permit, the applicant shall pay a permit fee of \$25. Such permit shall be valid for 12 months from the date of issuance and shall permit the removal of up to 10 trees from the named property during that period.

**§ 388-8. Conditions for issuance of permit.**

- A. Upon receipt of an application for the cutting, destruction or removal of trees either the Department of Code Enforcement in consultation with DPW or a licensed tree expert 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 grounds for denial of a permit:

- a. If any area of the property for which the tree removal permit is sought meets the definition of "steep slope," as set forth in this code, then no trees shall be removed from such area, except in compliance with the applicable code section. The tree removal plan required under § 388-6A (e) shall include the delineation of each such steep slope area.
- b. If any area of the property for which the tree removal permit is sought meets the definition of "riparian zone," as set forth in this code, then no trees shall be removed from such area. The tree removal plan required under § 388-6A (5) shall include the delineation of each such riparian zone.
- c. No street tree planted in Borough right-of-way shall be removed by adjacent property owners. Where tree roots interfere with sidewalks, driveways, or curbs, alternatives to removal need to be considered before removal is permitted.
- d. No extraordinary tree shall be removed, unless STAC and DPW have made this recommendation, Borough Council has approved, and the Department of Code Enforcement has issued a permit.

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

- a. The tree is dead, diseased, injured or in danger of falling; or
- b. The tree poses a safety hazard to persons or property or poses a danger to any adjacent structures, whether on the same property as the tree or a neighboring property; or
- c. The tree is of a species that appears on any list of invasive or non-indigenous species published by the New Jersey Department of Environmental Protection, as such list may be updated from time to time, or any successor list published by an agency or department of the State of New Jersey; or
- d. The tree interferes with existing utility service and cannot be reasonably remedied by trimming, as determined by the Department of Code Enforcement in consultation with the Department of Public Works or by a licensed tree expert; or
- e. The continued presence of the tree conflicts with any other ordinance or regulation promulgated by the Borough of Highland Park, or by the County of Middlesex or by the State of New Jersey.

For the avoidance of doubt, this provision requires that a permit be obtained and the fee for such permit paid, but no replacement tree or payment to the Tree Replacement Fund shall be required.

**§ 388-9. Time of permit.**

All tree removal permits shall be limited to one year from date of issuance as designated by the permit. If the approved tree removal has not occurred within one 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 shall be renewed for up to two six-month periods. A renewal fee of \$100 shall be due and payable for an annual renewal and \$50 for a six-month renewal period.

**§ 388-10. 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 Department of Code Enforcement. Such barriers shall be placed at least 10 feet from the trunk of any tree and shall remain in place until the Department 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.

- a. A description of the existing tree protective barrier shall be provided on all permit and building applications. The protective barrier shall be a minimum of four feet high.

- b. 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.
- c. 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.
- d. Street right-of-way and utility easements shall be ribboned by placing stakes a minimum of 50 feet apart and tying ribbon, plastic tape, rope, etc., from stake to stake along the outside perimeters of such areas to be cleared.

B. No person shall:

- a. Cut down, destroy or remove any tree except as permitted by this article or allow or cause such cutting, destruction or removal.
- b. 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 15 feet of any tree; or mounding mulch against the tree trunk.

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 years after planting, it shall be replaced by the applicant or property owner within six months.

**§ 388-11. Tree replacement.**

Any tree removed pursuant to this chapter and having a DPM of 8 inches or greater shall be replaced, unless otherwise exempt, by planting a replacement tree or making a payment in mitigation.

A. Planting of replacement trees

- a. All replacement trees of whatever species shall have a DPM of not less than two-inch caliper.
- b. For any property for which tree replacement is required, trees shall be replaced according to the following schedule:
  - i. For each tree removed that is 8 inches DPM or greater but less than 20 inches, replacement shall be by one (1) replacement tree; and
  - ii. For each tree removed that is 20 inches DPM or greater but less than 36 inches, replacement shall be by two (2) replacement trees; and
  - iii. For each tree removed that is 36 inches DPM or greater, replacement shall be by three (3) replacement trees.
- c. For all properties, a list showing species and sizes of all proposed replacement trees shall be submitted to the Department of Code Enforcement and/or the Planning Board or Zoning Board of Adjustment for review and approval prior to the issuance of a tree removal permit. The Department of Code Enforcement and/or the Planning Board or Zoning Board of Adjustment shall obtain the written recommendations of STAC for such list.
- d. In the event that the tree removal occurs in an area other than as permitted under § 388-8A, mitigation shall be required at a rate of two replacements for each tree removed in addition to any fines levied.
- e. 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 Code Enforcement Officer with written recommendations from STAC (based on an average number of trees/lot from comparable lots in the Borough).

- f. 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 plan on other treeless open space to compensate for clearing of the tree area with equal square-foot area of new plantings. If sufficient suitable area is not available on site, the Department of Code Enforcement or Planning Board, in consultation with the STAC, may require 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 may 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 Department of Code Enforcement and/or Planning Board or Zoning Board of Adjustment, 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 grid. Of this number of trees, 10% shall be balled and burlapped two-inch to 2 1/2-inch caliper, 20% shall be balled and burlapped 1 3/4 inch by two inches' caliper, 30% shall be bare root 1 1/4 inch by 1 1/2-inch caliper and 40% shall be bare root six-foot to eight-foot 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 to 20 feet on center. The ground shall be seeded with a meadow grass mixture approved by the STAC.
  - D. Tree Replacement Fund. The Department 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 § 388-12, in lieu of replacement of part or all of the trees removed pursuant to § 388-8. Such payment shall be calculated at a rate of \$500 for each deciduous tree and \$450 for each evergreen tree.

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:

- a. 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
  - b. The Department of Code Enforcement and applicant agree in writing that the applicant shall make payment to the Tree Replacement Fund based upon the above; or
  - c. The Department 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.
- E. 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.

**§ 388-12. 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 STAC. The Tree Replacement Fund shall be the repository of all monies paid to the Borough pursuant to this chapter and shall 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 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 STAC in accordance with the Community Forestry Management Plan of the Borough.

**§ 388-13. Performance Guaranty.**

Whenever trees are replaced pursuant to this Chapter, the applicant shall post with the Borough Clerk a performance guaranty for one year in the amount the applicant would otherwise pay to the Tree Replacement Fund, but in no event to exceed the amount per tree specified herein. The performance guaranty shall be either letter of credit, a cashier checks or 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 guaranty shall be released except on certification of the Department of Code Enforcement with advice from DPW that the replacement tree(s) remain healthy one year after planting. If they are found at that time by DPW to be healthy and capable of surviving, and other performance requirements have been met, then the Department of Code Enforcement shall order the performance guaranty returned. If any trees are not at that point healthy, the tree(s) shall be replaced, or payment made to the Tree Replacement Fund for the value of the tree removed.

**§ 388-14. Violations and penalties.**

Any person, firm, partnership, corporation, association or other legal entity violating any of the provisions of this chapter may, upon conviction of such violation, be punished by a fine not to exceed \$2,000.00, the maximum court fine permitted pursuant to *N.J.S.A. 40:49-5* for each offense, in addition to the required mitigation for each tree illegally removed. Each illegally removed tree shall constitute a separate offense.

This Ordinance shall take effect upon its passage and publication as provided for by law.

Introduced and Passed on first reading: April 7, 2020

Adopted: April 21, 2020

Approved: April 21, 2020

Attest:

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Joan Hullings, Municipal Clerk

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Gayle Brill-Mittler, Mayor