



## ORDINANCE O-24-04

AMENDING CHAPTER 22 (ENVIRONMENTAL PROTECTION) SECTIONS 22-1.2 (PURPOSE), 22-1.3 (DEFINITIONS AND WORD USAGE), 22-1.7 (REVIEW OF APPLICATIONS), ADDING NEW SECTION 22-1.8 (TREE REPLACEMENT REQUIREMENTS) AND APPENDIX A (BOROUGH OF HIGHLANDS SUGGESTED TREES AND SHRUBS) AND RENUMBERING THE REMAINING SECTIONS

**WHEREAS**, the governing body desires to amend Chapter 22 (Environmental Protection) Sections 22-1.2 (Purpose), 22-1.3 (Definitions And Word Usage), 22-1.7 (Review of Applications), add a new Section 22-1.8 (Tree Replacement Requirements) and renumber the remaining sections.

**NOW, THEREFORE, BE IT ORDAINED**, by the governing body of the Borough of Highlands as follows:

### SECTION I.

Borough Code Chapter 22 (Environmental Protection), Section 22-1.2 (Purpose), shall be amended as follows (additions are shown in **bold with underlines**).

#### Section 22-1.2 Purpose

A.-B. No Change.

**C. An ordinance to establish requirements for tree removal and replacement in The Borough of Highlands 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.

Borough Code Chapter 22 (Environmental Protection), Section 22-1.3 (Definitions and Word Usage), shall be amended by adding the following definitions (additions are shown in **bold with underlines**).

#### Section 22-1.3 Definitions and Word Usage

##### **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'.**

##### **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. 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**

##### **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.**

##### **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.**

**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.**

**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.**

**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.**

**SECTION III.**

Borough Code Chapter 22 (Environmental Protection), Section 22-1.7 (Review of Applications), shall be amended as follows (additions are shown in **bold with underlines**).

- a. No change.
- b. When reviewing applications, the Tree Commissioner will, after inspecting the site, evaluating soil, location, grading, drainage and other conditions on the site and adjacent properties and consulting with such other officials, agencies, committees, boards and commissions as the Commissioner deems appropriate, determine if the regulated activity proposed is prohibited, permitted or restricted in accordance with this section. **If an application is for activity on a property that has a site plan or subdivision application pending with the Land Use Board, the Tree Commissioner shall not approve of any activity until the Land Use Board has rendered its decision. If no site plan or subdivision application is pending, then the Tree Commissioner shall not approve of any activity until after the Land Use Board provides its recommendation.**
  - 1. Prohibited regulated activities include:
    - (a) Clear cutting areas, outside of the limits of removal which collectively exceed forty (40%) percent of a lot.
    - (b) Removal of any trees.
    - (c) Any action that will substantially increase the potential of erosion.
    - (d) Removal of any vegetation, including trees with a DBH less than four (4) inches on a slope.
    - (e) Any action that will substantially change drainage patterns.
    - (f) Any action inconsistent with other land use approvals or regulations affecting the site.
    - (g) Any action that would create a potential hazard to persons or property.
  - 2. Restricted regulated activities include:
    - (a) All regulated activities, which are neither prohibited nor permitted, are restricted. Applications may propose a combination of prohibited, permitted and restricted activities. In such cases, the Tree Commissioner may segregate the activities proposed and take the appropriate action on each type of activity.
    - (b) Applications for restricted activities shall be referred to the Land Use Board for recommendation to the Tree Commissioner.
- c. No change.
- d. No change.

**SECTION IV.**

Borough Code Chapter 22 (Environmental Protection), Section 22-1.8, shall be amended by adding a new Section 22-1.8 (additions are shown in **bold with underlines**).

**NOTE TO CODIFIER:** Re-number the following sections.

**Section 22-1.8 Tree Replacement Requirements**

**A. 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 subsection (C), 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 subsection (C), 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 Appendix A.**

**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 Tree Commissioner;**
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><u>Category</u></b>	<b><u>Tree Removed (DBH)</u></b>	<b><u>Tree Replacement Criteria (See Appendix A)</u></b>	<b><u>Replacement Fee</u></b>
<b><u>1</u></b>	<b><u>DBH of 2.5" (for street trees) or 6" (for non-street trees) to 12.99"</u></b>	<b><u>Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed</u></b>	<b><u>\$240.00</u></b>
<b><u>2</u></b>	<b><u>DBH of 13" to 22.99"</u></b>	<b><u>Replant 2 trees with minimum tree calipers of 1.5" for each tree removed</u></b>	<b><u>\$420.00</u></b>
<b><u>3</u></b>	<b><u>DBH of 23" to 32.99"</u></b>	<b><u>Replant 3 trees with minimum tree calipers of 1.5" for each tree removed</u></b>	<b><u>\$840.00</u></b>
<b><u>4</u></b>	<b><u>DBH of 33" or greater</u></b>	<b><u>Replant 4 trees with minimum tree calipers of 1.5" for each tree removed</u></b>	<b><u>\$1,680.00</u></b>

**B. Replacement Alternatives:**

1. **If the Tree Commissioner 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 Tree Commissioner.**
  - b. **Pay a fee as set forth in the Tree Replacement Requirements Table per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.**

**C. Exemptions:**

**All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below. Proper justification shall be provided, in writing, to the Tree Commissioner by all persons claiming an exemption:**

1. **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.

2. Tree farms in active operation, nurseries, fruit orchards, and garden centers; Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the Borough;
3. 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.
4. 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;
5. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
6. Hazard trees may be removed with no fee or replacement requirement.

**NOTE TO CODIFIER:** Existing Sections 22-1.8 (Protection of Existing Trees), 22-1.9 (Emergency Action) and 22-1.10 (Violations and Penalties) should be renumbered as 22-1.9 (Protection of Existing Trees), 22-1.10 (Emergency Action) and 22-1.11 (Violations and Penalties).

## **SECTION V.**

Borough Code Chapter 22 (Environmental Protection), Appendix A, shall be added as follows:

### **Borough of Highlands Suggested Trees and Shrubs**

#### **Shrubs**

Boxwood  
Yew (dense yew)  
Emerald Green Arborvitae  
Laurel  
Scarlet Firethorn  
Red Twig Dogwood  
Privet hedge  
Japanese black pine  
Leyland Cypress  
Holly  
Euonymus

#### **Medium Trees [under 30 feet]**

Eastern Redbud  
Japanese Tree Lilac  
Purple leaf plum  
Crabapple

#### **Large trees [over 30 feet]**

Magnolia  
Dogwood  
Hornbeam  
Linden  
Zelkova  
Hackberry

Replacement trees shall be planted in the fall prior to mid-October when possible, or at such other time as directed by the Tree Commissioner. Replacement trees shall not be planted in the winter.

**SECTION VI. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

**SECTION VII. REPEALER.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

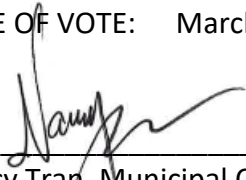
**SECTION VIII. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its passage and publication in accordance with law.

First Reading and Set Hearing Date for O-24-04:

	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
CERVANTES			X			
CHELAK		X	X			
MELNYK						X
OLSZEWSKI			X			
BROULLON	X		X			

This is a Certified True copy of the Original Ordinance on file in the Municipal Clerk's Office.

DATE OF VOTE: March 20, 2024

  
 Nancy Tran, Municipal Clerk  
 Borough of Highlands

Public Hearing for O-24-04:

	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
CERVANTES						
CHELAK						
MELNYK						
OLSZEWSKI						
BROULLON						

This is a Certified True copy of the Original Ordinance on file in the Municipal Clerk's Office.

DATE OF VOTE: April 17, 2024

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 Carolyn Broullon, Mayor

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 Nancy Tran, Municipal Clerk  
 Borough of Highlands