



Township of Hillsborough

COUNTY OF SOMERSET
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ORDINANCE 2024-16

Ordinance Amending Chapter 188 “Land Use and Development”, Article IX “Tree Preservation” of the Code of the Township of Hillsborough, Somerset County, New Jersey, To Address the New Jersey Department of Environmental Protection Tree Removal Requirements

WHEREAS, the New Jersey Department of Environmental Protection (“NJDEP”) has by way of their November 1, 2023 Tier A Municipal Stormwater General Permit renewal under the New Jersey Discharge Elimination System (“NJPDES”) defined minimum requirements and published a sample ordinance section; and

WHEREAS, the NJDEP has promulgated a model Tree Removal-Replacement ordinance to establish requirements for tree removal and replacement to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil and protect the environment, public health, safety and welfare; and

WHEREAS, this Ordinance sets forth procedures and requirements for the maintenance and removal of trees within the Township of Hillsborough consistent with the NJDEP model ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey, that Chapter 188 “Land Use and Development” of the Municipal Code of the Township of Hillsborough is amended as follows: **New language is underlined thus and deletions are indicated with strikethroughs ~~thus~~.**

Section 1. Chapter 188 “Land Use and Development”, Article IX “Tree Preservation”, is amended as follows:

§ 188-160. Purpose.

It shall be the purpose of this article to preserve and protect the environment, aesthetics and rural character of the Township of Hillsborough by restricting and otherwise controlling the removal of mature trees throughout all land within the Township.

§ 188-161. Definitions.

As used in article, the following terms shall have the meanings indicated:

APPLICANT

Any “person”, as defined below, who applies for approval to remove trees regulated under this article.

CALIPER

The diameter of a trunk as measured at a height of four feet above grade.

CRITICAL ROOT RADIUS (CRR)

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’.

CROP

To cut off the branches, top or trunk of a tree.

CRITICAL FOOTPRINT AREA

An area of new home construction that includes the portions of a private residential lot reserved for driveways and the actual building foot print plus an additional 40 feet beyond the perimeter of the building footprint and septic field.

DIAMETER AT BREAST HEIGHT (DBH)

The diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.

HAZARD TREE

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, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).

PERSON

Any individual, resident, corporation, utility, company, partnership, firm, or association.

PLANTING STRIP

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.

PRUNE

To cut off or remove living or dead parts or branches of a tree.

RESIDENT

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

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

Any nursery stock tree with a caliper measurement of 2.5 inches, any flowering or ornamental tree with a caliper measurement of three inches or greater, any deciduous or coniferous tree of six-inch caliper or greater or any coniferous tree eight feet or greater in height. A woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

TREE CALIPER

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

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.

UNDERSTORY

The plant growth on the ground beneath the canopy, or upper branches of trees.

§ 188-162. Applicability.

A. The following activities shall be regulated by this article:

- ~~(1) Removal of more than three trees per calendar year on properties that can be subdivided, multifamily parcels and unimproved lots; provided, however, that on lots eligible to qualify for farmland assessment, three trees per acre on the overall tract may be removed per year without replacement except where those lots are otherwise exempt under the terms and provisions of Subsection B below. Unless specifically exempted in Subsection B below, it shall be unlawful for any person to remove or cause to remove a street tree with a DBH of 2.5 inches or more or any non-street tree with DBH of 6 inches or more on their property without first having obtained a Planning Board or Board of Adjustment or a Tree Removal Permit as provided herein.~~
- ~~(2) Reserved. Removal of any tree on an improved nonresidential lot. Nonresidential lots shall include, but not be limited to, the following: commercial retail or wholesale, office, industrial and warehousing properties.~~
- ~~(3) Reserved. Cropping or trimming of trees or other activities that will adversely affect the life span of the tree.~~

B. Exemptions. Prior to any tree removal proper justification such as photos, statements from licensed tree expert or arborist shall be provided, in writing, to the municipality by all persons claiming an exemption. The following activities are exempt from the provisions of this article:

- ~~(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.] Removal of trees on developed single and two-family residential lots that cannot be subdivided, other than removal of trees that were planted as part of an approved subdivision or municipal street tree planting program. Trees that were planted as part of an approved subdivision or as part of a municipal street tree planting program that have been removed for any reason must be replaced in a like number and in the approximate location as originally planted.~~
- (2) Routine maintenance, such as trimming, that will not adversely affect the lifespan of the tree.
- (3) Removal of trees of any size shown to be dead or diseased or that are otherwise damaged and a threat to the health, safety and welfare of the public. No fee or replacement requirement, unless the trees

were planted as part of a Planning Board or Board of Adjustment approval or as part of a municipal street tree planting program.

- (4) Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality. ~~Selective thinning in conjunction with a management plan approved by the State Forester.~~
- (5) On land zoned for and/or used as a Township approved mine or quarry, removal of any tree located on that portion of land used or to be used for the actual extraction of mine or quarry materials or for a function essential to the actual extraction of mine or quarry materials. Upon termination of the mine or quarry operation, a reclamation plan shall be submitted in accordance with Township Code § 188-108E(7).
- (6) 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.
- (7) Tree farms in active operation, nurseries, fruit orchards, and garden centers;
- (8) 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;
- (9) Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- (10) Hazard trees may be removed with no fee or replacement requirement, unless the trees were planted as part of a Planning Board or Board of Adjustment approval or as part of a municipal street tree planting program.

§ 188-163. Board approval required.

- A. Planning Board or Board of Adjustment, as the case may be, approval for tree removal shall be required except where otherwise exempted herein. In deciding whether to approve an application for tree removal, the Planning Board or Board of Adjustment, as the case may be, shall consider the following factors:
 - (1) Whether the removal of trees is justified and is related to an aesthetic and economic improvement of the land that is in the best interests of the citizens and property owners of the Township of Hillsborough.
 - (2) Whether the design of improvements maximizes tree preservation. Tree removal on new residential lots shall be restricted to inside the critical footprint area. Removal of trees outside this area requires a waiver from Planning Board or Board of Adjustment, as the case may be.
 - (3) Whether the applicant has attempted to preserve stands of trees and existing understory in logical locations.
 - (4) Whether appropriate measures will be taken to protect remaining trees during the construction period.
 - (5) Whether the mitigation or tree replacement plan is satisfactory.
- B. Mitigation Required. Mitigation for tree removal shall be required in accordance with § 188-164, Mitigation shall be required for the removal of trees on any residentially zoned lot or any non residentially zoned lot in accordance with site plan approval as provided in Subsection A above. However,

in no case shall more than up to 20% of all the count of trees on a residential zoned lot or up to 60% of the count of all trees on any nonresidential lot be removed even with mitigation measures. The maximum percentage shall be calculated from November 22, 2000 forward.

- C. Tree preservation plan submission requirements for Planning Board or Board of Adjustment applications. In addition to the standard development application form, the following information shall be required for approval for tree removal:
- (1) A rider explaining why each tree is to be removed.
 - (2) A tree preservation plan that depicts:
 - (a) The location, species and caliper of all trees to be removed on a surveyed drawing.
 - (b) The location, species and caliper of each tree within the dripline of each tree to be removed.
 - (c) The quality, quantity and limits of vegetation on the remainder of the site and within 200 feet of the property line.
 - (d) The location of existing and proposed structures, including parking areas, detention basins and other stormwater facilities.
 - (e) Existing contours and proposed grading.
 - (f) Proposed preservation methods of trees to remain.
 - (g) The location of replacement trees, including a replacement schedule indicating species, quantities and size in accordance with § 188-164, Mitigation required, below.
- D. Variance required. Deviation from the requirements of this article shall require variance approval in accordance with N.J.S.A. 40:55D:70(c).

§ 188-164. Mitigation required.

Replacement trees are required for the removal of any tree as regulated herein.

~~A. Number of replacement trees. Replacement shall be required in accordance with the following schedule, and are exclusive of the shade trees required as per § 188-80:~~

Caliper of Removed Tree	Number of Replacement Trees
6 to 12 inches	2
13 to 24 inches	4
25+ inches	6

- ~~B. Replacement species. Trees shall be replaced with the same species. In the case where the species is known to be disease prone or is otherwise not ecologically or aesthetically appropriate, other species shall be permitted with the approval of the appropriate Board.~~
- ~~C. Planting standards. All replacement trees shall be nursery grown, certified and guaranteed and shall have a minimum caliper of 3.0 inches, or the industry standard equivalent for the species if ornamental. All trees shall be balled and burlapped and planted as per Township of Hillsborough standards.~~
- ~~D. Off site contribution. If all required replacement trees cannot be provided on the subject lot(s), an off site contribution to the Township of Hillsborough Parks Department of a like number of trees or cash~~

~~equivalent to be placed in a dedicated fund to be used for the purchase of replacement trees by the Township of Hillsborough or for the purchase of equipment for the Township of Hillsborough to plant and/or maintain trees which are purchased by the Township of Hillsborough with these dedicated funds for use on public property and/or public right-of-way shall be considered by the Planning Board or Board of Adjustment, as the case may be.~~

~~E. Economic hardship waiver. In the case of commercial development, the Planning Board or the Board of Adjustment, as the case may be, will reduce the replanting requirement if the commercial developer can prove mitigation costs more than 1.5% of total site improvements for a commercial development. This reduction will limit the mitigation cost to 1.5% of the site improvements. In the case of residential development, the Planning Board or the Board of Adjustment, as the case may be, will reduce the replanting requirement if the residential developer can prove mitigation costs more than 1.5% of the total site improvements for a residential development. This reduction will limit the mitigation cost to 1.5% of the site improvements. The reduction in replanting will be approved at the site plan application stage. For the purpose of this section, the total site improvement costs shall include the estimated cost of construction for any proposed dwelling(s), commercial building(s) and any other structure(s) associated with the proposed development in addition to those costs normally associated with site preparation, soil erosion control, paving, utility work, landscaping and related site improvements.~~

A. Permit required.

(1) Any person planning to remove a street tree, as defined as Tree removal, with DBH of 2.5” or more or any non-street tree with DBH of 6” or more on their property shall submit a Tree Removal Application to the Township of Hillsborough with a fee of \$25. No tree shall be removed until municipal officials have reviewed and approved the removal.

B. 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 Section 188-162B, 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 Section 188-162B, shall be subject to the requirements of the Tree Replacement Requirements Table.
- (3) Number of replacement trees. Replacement shall be required in accordance with the following schedule, and are exclusive of the shade trees required as per Section 188-80:

Tree Replacement Requirements Table:

<u>Category</u>	<u>Tree Removed (DBH)</u>	<u>Required Action</u>
<u>1</u>	<u>DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99”</u>	<u>Replant 1 tree with a minimum tree caliper of 1.5” for each tree removed</u>
<u>2</u>	<u>DBH of 13” to 22.99”</u>	<u>Replant 2 trees with minimum tree calipers of 1.5” for each tree removed</u>
<u>3</u>	<u>DBH of 23” to 32.99”</u>	<u>Replant 3 trees with</u>

		<u>minimum tree calipers of 1.5” for each tree removed</u>
4	<u>DBH of 33” or greater</u>	<u>Replant 4 trees with minimum tree calipers of 1.5” for each tree removed</u>

C. Replacement species. Trees shall be replaced with the same species. In the case where the species is known to be disease-prone or is otherwise not ecologically or aesthetically appropriate, other species shall be permitted with the approval of the appropriate Board or Township Official.

D. Planting standards.

- (1) All replacement trees shall be nursery grown, certified and guaranteed and shall have a minimum caliper in accordance with the Tree Replacement Table above.
- (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 municipality.
- (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.
- (4) Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

E. Off-site contribution. If all required replacement trees cannot be provided on the subject lot(s), an off-site contribution to the Township of Hillsborough of a like number of trees or to a separate area(s) approved by the Township of Hillsborough or cash equivalent (\$500 per tree) to be placed in a dedicated fund to be used for the purchase of replacement trees by the Township of Hillsborough or for the purchase equipment for the Township of Hillsborough to plant and/or maintain trees which are purchased by the Township of Hillsborough with these dedicated funds for use on public property and/or public right-of-way shall be considered by the Planning Board or Board of Adjustment, as the case may be.

§ 188-165. Pruning and removal of trees in utility easements.

Pruning and removal of trees in utility easements or rights of way shall be the minimum necessary to protect the property of the applicable utility company. Pruning shall be performed in a manner than will serve to improve the shape of the tree and stimulate growth. The Township Engineer's office shall be informed by the applicable utility company of the time and location of any tree pruning or removal activities in rights-of-way or easements.

§ 188-166. Penalty and enforcement.

- A. Violation of the provisions of this article shall be considered a Class C violation for each tree illegally removed by any person(s) (including tree removal companies and contractors), and for each day the offense continues without mitigation and application for tree removal to the Planning Board or Board of Adjustment, as the case may be. A mitigation plan is required to be submitted for corrective action where any violation of the requirements of this article occurs.
- B. This article shall be enforced by the Planning & Zoning Department and Engineering Department or their respective representatives such as the Code Enforcement Officer during the course of ordinary enforcement duties.
- C. Unauthorized work. The Township shall have the authority to issue a stop-work order to cease all ongoing development work and order restoration, rehabilitation or replacement measures at the expense

of the owner or other responsible party, as appropriate, in order to compensate for violation of the provisions of this subsection.

D. Site investigations. The enforcing officer is authorized to make site inspections and take such actions that are necessary in order to enforce the provisions of this article.

Section 2. This Ordinance shall be construed so as not to conflict with any provision of New Jersey or Federal law. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning, and land use regulations. In the event of any inconsistency or conflict between the provisions of this Ordinance or other local requirements, the provisions of this Ordinance shall apply.

Section 3. If any provisions of this Ordinance shall be adjudged invalid, such adjudication shall not affect the validity of the remaining provisions which shall be deemed severable therefrom.

Section 4. After introduction, the Township Clerk is hereby directed to provide a copy of the within Ordinance to the Planning Board for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A.40:55D-64. The Planning Board is directed to make and transmit to the Township Committee within 35 days after referral a report, including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 5. After introduction, the Township Clerk is hereby directed to provide by personal service, certified mail or email with confirmation that the email was delivered, at least 10 days prior to the scheduled hearing, a copy of this Ordinance and a Notice of Hearing in accordance with N.J.S.A. 40:55D-15 to: the clerk of any adjoining municipalities located within 200 feet of the boundaries of the affected properties; and the County Planning Board.

Section 6. After introduction, the Township Clerk, in accordance with N.J.S.A. 40:49-2 and N.J.S.A. 40:49-2.1, is hereby directed to publish this Ordinance in its entirety or by title and summary at least once in a newspaper published and circulated in the municipality, if there is one, and if not, in a newspaper printed in the county and circulating in the municipality, together with a notice of the introduction thereof, the time and place when and where it will be further considered for final passage. The publication shall include a clear and concise statement prepared by the Clerk setting forth the purpose of this Ordinance and a time and place when and where a copy of this Ordinance can be obtained without cost by any member of the general public. The publication shall be at least one week prior to the scheduled hearing.

Section 7. If adopted, the Township Clerk, in accordance with N.J.S.A. 40:49-2 and N.J.S.A. 40:49-2.1, is hereby directed to publish this Ordinance, in its entirety or by title and summary, together with a notice of the date of passage or approval, at least once in a newspaper published and circulated in the municipality, if there is one, and if not, in a newspaper printed in the county and circulating in the municipality.

Section 8. If adopted, the Township Clerk, in accordance with N.J.S.A. 40:55D-16, shall forward a copy of this Ordinance to the County Planning Board for filing.

Section 9. This Ordinance shall take effect immediately upon its adoption, passage and publication according to law.

ATTEST:

TOWNSHIP OF HILLSBOROUGH:

Sarah Brake, Township Clerk

Robert Britting Jr., Mayor

Introduced: 11/12/2024

Published: 11/22/2024

Public Hearing: 12/10/2024

Adopted: 12/10/2024

Published: 12/20/2024