

Mrs. Burton offered the following Ordinance pass third and final reading and moved on its adoption according to law:

**O-08-06**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER XXII OF THE REVISED GENERAL CODE OF THE BOROUGH OF HIGHLANDS ENTITLED “TREE REMOVAL [ORD. 0-88-20§1]” IN ITS ENTIRETY, AND ESTABLISHING A NEW CHAPTER XXII ENTITLED, “ENVIRONMENTAL PROTECTION”, AND MORE PARTICULARLY ESTABLISHING SECTION 22-1 ENTITLED, “TREE PROTECTION”.**

**BE IT HEREBY ORDAINED, FOR THE PURPOSES HEREINBELOW EXPRESSED, THAT CHAPTER XXII OF THE REVISED GENERAL CODE OF THE BOROUGH OF HIGHLANDS ENTITLED “TREE REMOVAL [ORD. 0-88-20§1]” BE AND HEREBY IS REPEALED IN ITS ENTIRETY, AND REPLACED WITH A NEW CHAPTER XXII, ENTITLED, “ENVIRONMENTAL PROTECTION” AND MORE PARTICULARLY ESTABLISHING SECTION 22-1 ENTITLED, “TREE REMOVAL AND PROTECTION”.**

**NOW, THEREFORE, BE IT ORDAINED THAT CHAPTER XXII, ENTITLED, “ENVIRONMENTAL PROTECTION”, be and hereby is established to read as follows:**

**22-1.1 Title.**

This section shall, be known as and may be cited as “Tree Removal and Protection Ordinance of the Borough of Highlands.”

**22-1.2 Purpose**

The purpose of this chapter is to prevent uncontrolled and excessive destruction or removal of trees within the borough on level properties as well as on any slopes. Uncontrolled and excessive destruction or removal of trees within the borough has caused or contributed to potential hazards to persons or property including but not limited to soil erosion, changes in drainage patterns, increased dust and noise pollution. And to restrict the removal of other trees, thereby maintaining the beauty and character of the Borough of Highlands, preventing erosion, controlling action that will substantially change drainage patterns, and restricting any action that could create a hazard to persons or property.

**22-1.3 Definitions and Word Usage.**

For the purposes of this section, the following terms, phrases, words and their derivations shall have the meaning given herein. The word “shall” is always mandatory and not merely directory.

*Applicant* shall mean any person making application to the Tree Conservation Officer for a Tree Protection Permit.

*Clear cutting* shall mean the removal of all, or substantially all, of any size or type of trees within an area on a lot larger than five hundred (500) square feet, or within noncontiguous areas on a lot which have a total combined area greater than one thousand (1,000) square feet, or on any slope (see definition of slope).

*Destruction or destroy* shall mean the cutting, girdling, poisoning, bulldozing over or any other deliberate act which results in the death or destruction of the life or main stems and crown or root system of tree.

*Dripline* shall mean a line connecting the tips of the outermost branches of a tree projected vertically onto the ground.

*Diameter at breast height (DBH)* shall mean the diameter of a tree measured at breast height, which is approximately four and one-half (4.5') feet above the ground. The diameter of a multi-trunked tree shall be two-thirds (2/3) of the sum of the diameters of all trunks but not less than the diameter of the largest trunk.

*Emergency* shall mean any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger or hazard to person or property.

*Mitigation plan* shall mean a plan prepared by a qualified person acceptable to the Tree Conservation Officer showing the planting of replacement trees on the property on which a restricted regulated activity is taking place or on other properties within the Borough. Said plan must depict, in a manner acceptable to the Tree Conservation Officer, a reasonable scheme for the ultimate full replacement of trees removed.

*Ornamental tree.* See *Tree, ornamental.*

*Permittee* shall mean any person who has been issued a permit pursuant to the terms and conditions of this section and who is obligated to fulfill all the terms of this section.

*Person* shall mean any person, firm, partnership, association, corporation, company, or public or private organization of any kind other than those exempted from the provisions of this section.

*Protective barrier* shall mean a barrier constructed to protect the root system or trunk of a tree from damage during construction or from equipment. Such a barrier may consist of a snow fence or similar structure approved by the shade tree commission.

*Pruning* shall mean the act of trimming or lopping off what is unnecessary. The act of cutting off branches to help strengthen those that will remain, or bringing a tree into a desired shape.

*Shade Tree Commission* shall be defined in chapter 2-21 in Revised General ordinances of the Borough of Highlands. Shade tree commission members shall have the right to enforce this section and issue complaints if needed, as well as provide a list of acceptable replacement trees.

*Significant specimen tree* shall mean any tree or ornamental tree with a diameter at breast height (DBH) exceeding sixty (60%) percent of that of the largest similar tree listed in either of these references: Monmouth, County's Largest Trees, prepared and updated annually by the Monmouth County Shade Tree Commission or New Jersey's Big Trees, prepared and updated biannually by the Division of Parks and Forestry of the New Jersey Department of Environmental Protection.

*Specimen tree* shall mean any tree or ornamental tree which is not a significant specimen tree and which has a diameter at breast height (DBH) of eighteen (18") inches or more.

*Slope* shall mean a rise equal to or greater than 1'(foot) vertical on 2'(feet) horizontal. Areas within 25 feet of the top or 15 feet of the toe of any slope.

*Thinning* shall mean the removal of undesirable, competitive, diseased or damaged trees so as to improve the development of the remaining trees on a lot.

*Tree* shall mean any living deciduous or coniferous (evergreen) tree with a normally anticipated mature height of twenty (20') feet or greater with an existing DBH larger than 4", except **on slopes greater than 1' on 2' (meaning trees located on slopes with less than a DBH of 4" need to have approved permit for removal)**. Examples include but are not limited to: Norway, Red, Silver or Sugar Maple, Sweetgum, London Plane, American Sycamore, White, Red or Pin Oak, American Elm, Yellow or White Poplar, Copper Beech, Cedar, Spruce, Pine, Fir or Hemlock.

*Tree Commissioner* shall mean the person designated by resolution of the Borough Council to administer permitting and enforce this section. Shall be a member of the Shade Tree Commission. If no such person is designated, the Borough Clerk or the Clerk's designee shall act as Tree Commissioner.

*Tree expert* shall mean a specialist in trees or tree care whose qualifications are acceptable to the Tree Conservation Officer.

*Tree removal plan* shall mean a legible sketch, a tax map reproduction, a copy of an existing survey or similar drawing with field measurements and dimensions provided by, the property owner or the owner's agent.

*Tree, ornamental* shall mean any living deciduous or coniferous small decorative tree with a normally anticipated mature height of six (6') feet or greater. Examples include but are not limited to: Dogwood, American Holly, Native Laurel, and any other Birch, Japanese Maple, Cherry, Crabapple, Magnolia, Bradford Pear and Willow).

#### **22-1.4 Prohibited Activity**

The activities described in this subsection and any substantially similar activities are prohibited activities:

- a. Remove, destruction or clear cutting of any tree or trees upon any lands, including public right of ways, easements, privately and publicly owned lots and slopes within the Borough of Highlands.
- b. Undertaking, causing or permitting any activities including grading, demolition or construction on, or adjacent to, any lot which may damage; or otherwise causing or permitting any damage, injury or disfigurement to any tree, ornamental tree or dripline of a tree described in paragraphs a.

#### **22-1.5 Permit Required.**

No person shall engage in, nor allow, permit or direct any person to engage in, any prohibited activity as defined in subsection 22-1.4 above unless a tree removal/protection permit is first obtained from the Tree Commissioner.

#### **22-1.6 Permit Application Procedure and Requirements.**

- a. Application for a tree removal/protection permit shall consist of:
  1. A fully and accurately completed application form provided by the Borough.
  2. A Tree Removal Plan in sufficient detail to identify the location, species, diameter and estimated height of all trees wanting to remove or protect, and all existing and proposed accessory structures in relations to any removals. All trees described in subsection 22-1.4 shall be shown on a tree removal plan if construction or any grading activity is proposed within ten (10') feet of the dripline of such trees. For removals of five (5) or fewer trees on a lot where the principal use is an existing single-family dwelling, the Tree Removal Plan

may be provided using a legible sketch, a tax map reproduction, a copy of an existing survey or similar drawing with field measurements and dimensions provided by, the property owner or the owner's agent. In the case of tenants and landlords, the Tree Removal Plan must be accompanied by a signature and contact information of property owner on file at borough hall.

3. A narrative description of the property owner's reasons for removing the trees, including a description of any alternates considered.
  4. A tree removal/protection permit application fee, as set forth herein shall be paid:
    - (a) Twenty-five (\$25.00) dollars a tree (non-refundable), or Fifty (\$50.00) dollars (non-refundable) a specimen or significant specimen tree
    - (b) Fees may be waived or modified by the Borough Council for charitable, public or quasi-public, or educational agencies or in unusual and exceptional circumstances.
- b. The applicant will place or cause to be placed, in a highly visible manner, a one (1") inch wide red ribbon, which may be obtained from borough hall, around the trunk of each tree to be removed, to aid the Tree Commissioner in evaluating the proposed removals.
- c. After evaluation of an application, the Tree Commissioner will take one (1) of the following actions within the time set forth:
5. If the Officer determines that the permit application is incomplete, unclear, inaccurate or otherwise deficient, the Commissioner shall so advise the applicant and return the permit application within ten (10) days of the date of application. The applicant may revise, supplement and/or resubmit the application, which will then be treated, as a new application except no additional fee is required.
  6. If the Officer determines that the proposed regulated activity is permitted or prohibited by the standards set forth in subsection 22-1.7 herein below, a permit shall be, respectively, issued or denied within thirty (30) days of the date of application.
  7. In issuing permits under this section, the Commissioner may impose reasonable permit conditions necessary to effectuate the purposes of this section.

8. In cases of slopes, permittee will be required for every tree or ornamental tree removed to plant a tree or shrub in accordance to a plant list provided by the Shade Tree Commission suitable for slope stabilization within thirty (30) days of removal or completion of construction project. Temporary means of supporting the slope approved by borough engineer are required during thirty (30) day grace period. No exceptions.
9. In cases of multi-family or single family homes, permittee will be required for every tree or ornamental tree removed to plant a tree or shrub in accordance to a plant list provided by the Shade Tree Commission suitable for our climate within sixty (60) days of removal or completion of construction project. In cases where the planting of replacement trees or ornamental trees is not feasible on property, twenty five (\$25) dollars, to the borough for planting of a replacement tree in a location recommended by the Shade Tree Commission.

#### **22-1.7 Review of Applications.**

- a. Application will be reviewed by the Tree Commissioner.
- 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 Officer deems appropriate, determine if the regulated activity proposed is prohibited, permitted or restricted in accordance with this section.
  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 4" on a slope.
    - (d) Any action that will substantially change drainage patterns.
    - (e) Any action inconsistent with other land use approvals or regulations affecting the site.
    - (f) 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 Conservation Officer 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 Planning Board for recommendation to the Tree Conservation Officer.

b. The Planning Board shall consider these factors in making a recommendation to the Tree Commissioner concerning a restricted regulated activity:

1. Whether the proposed cutting or removal would impair the growth and redevelopment of the remaining trees on the applicant's property or adjacent property.
2. Whether the proposed cutting or removal would change existing drainage patterns.
3. Whether the proposed removal would allow soil erosion or increase dust.
4. Whether the proposed removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or the aspect of the lot as viewed from the adjacent public road.
5. The overall, effect of removal of such tree(s) on the physical and aesthetic value of the property and the neighborhood.
6. Whether proposed changes to the topography of the area where such tree(s) are located will have a land configuration which shall be deemed injurious to the trees or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.
7. Whether reasonable application of the standards of this section create a substantial hardship for the applicant, prohibiting reasonable use of the property consistent with the Planning and Development Regulations, and whether, therefore, one (1) or more of the standards should be waived.
8. In appropriate circumstances, an applicant may be required to post performance and maintenance guarantees assuring compliance with the provisions of any tree protection permit and this section and assuring provision of replacement plantings damaged or removed contrary to the terms of any tree removal/protection permit or this section.

c. The Tree Commissioner shall give due deference to the recommendations of the Planning Board with regard to an application for a permit to allow a restricted regulated activity. The Officer may only act contrary to, or significantly modify, the recommendations of the Planning Board if the Officer finds that the recommendations are based on incomplete or inaccurate information, are unreasonable or impracticable or would produce results contrary to the intent of this section. The Tree Commissioner shall, provide the Planning Board with a copy of the Commissioner's final action on all permits for a restricted regulated activity.

#### **22-1.8 Protection of Existing Trees.**

In connection with any construction, subsequent to tree clearing but prior to the start of other construction, snow fencing or other protective barrier acceptable to the Construction Official and/or Tree Commissioner, shall be placed around trees that are not to be removed. The protective barrier shall be placed at the dripline of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction material shall be placed within any areas so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.

#### **22-1.9 Emergency Action.**

In the event of an emergency, any person, otherwise subject to this section, having responsibility, jurisdiction and/or authority to cure, remedy or mitigate dangerous, hazardous, inconvenient or unhealthy conditions resulting from the emergency may, without first applying for and obtaining a permit under this section, take any lawful action which is otherwise a regulated activity. However, such person, or the agent or designee of such person shall apply for a tree removal/protection permit not later than the end of the second succeeding business day after any regulated activity takes place and may not proceed with non-emergency work including restoration until a permit is obtained.

#### **22-1.10 Violations and Penalties.**

- a. Pursuant to *N.J.S.A. 40:49-5*, any person, firm, association or corporation violating any section of this chapter, shall, upon conviction in the municipal court having jurisdiction, be subject to a fine not exceeding two thousand dollars (\$2,000.00) or imprisonment in the county jail or in any place provided by the municipality for the detention of prisoners, for any term not exceeding ninety (90) days, or both, or community service and shall replace each tree destroyed or removed in violation of this section with a tree on accordance to a list provided by



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the Shade Tree Commission. Each tree destroyed or removed in violation of this section shall be considered a separate offense.

- b. Any member of the Shade Tree Commission can file complaints.

Seconded by Mr. Nolan and adopted on the following voice vote:

**ROLL CALL:**

**AYES:** Mrs. Burton, Mr. Nolan, Mayor Little  
**NAYES:** Mr. Caizza, Mr. Urbanski  
**ABSENT:** None  
**ABSTAIN:** None

**DATE:** June 4, 2008

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Nina Light Flannery, Borough Clerk

**Intro:** May 7, 2008  
**Publish:** May 22, 2008 The Courier  
**Amended:** May 21, 2008 (non-refundable fees)  
**2<sup>nd</sup> Reading:** June 4, 2008  
**Adoption:** June 4, 2008 (Penalty Corrected)  
**Publication:**

I, \_\_\_\_\_ Clerk/Deputy Clerk do hereby certify this to be a true copy of Ordinance # \_\_\_\_\_ as adopted on \_\_\_\_\_, 2008.