

Tree Protection High Bridge (2000)

Disclaimer. This ordinance is an example of an approach that has worked in one municipality. It should be modified to reflect local environmental conditions, current regulations, and state-of-the-art knowledge in the environmental field.

AN ORDINANCE TO ESTABLISH CHAPTER 183, ORDINANCE #12-2000

TREE PROTECTION, OF THE CODE OF THE BOROUGH OF HIGH BRIDGE

BE IT ORDAINED by the Mayor and Common Council of the Borough of High Bridge in the County of Hunterdon and State of New Jersey as follows:

SECTION I: Chapter 183, Tree Protection, is hereby created and made a part of the Code of the Borough of High Bridge as follows:

183.1 Title.

This Chapter shall be known and may be cited as the "Tree Protection Code of the Borough of High Bridge".

183.2 Findings.

The Governing Body does herein decide and find that the indiscriminate uncontrolled and excess destruction, removal and cutting of trees upon lots and tracts of land particularly on steep slopes and along stream corridors within the borough has resulted in increased municipal costs to control drainage and road repairs and has further caused increased soil erosion, decreased fertility of soils and increased dust, which has caused deterioration of property values. This has further rendered land unfit and unsuitable for their most appropriate use, with the result that there has been deterioration or will result in a future deterioration of the health, safety and general well-being of the inhabitants of the Borough of High Bridge and has caused the passage of this ordinance to regulate and control the indiscriminate and excessive cutting of trees in the Borough.

183.3 Purpose.

The purpose of this ordinance is to regulate the removal of trees within the Borough; to protect the Borough's current tree stock; to establish the authority for tree protection within the Borough and to provide penalties for violations to this ordinance.

183.4 Definitions, as used in this ordinance:

"Alter" means to take action by cutting or pruning any tree, or by filling, surfacing, grading, compacting or changing the drainage pattern of the soil around any tree in a manner that threatens to diminish the vigor of the tree; provided that, as used in this chapter, the term "alter" does not include: 1. Normal seasonal trimming, shaping, thinning or pruning of a tree necessary to its health and growth.

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

"Farmland Assessment Act" shall mean the New Jersey State Law, N.J.S.A. 514:4?23.1 et seq.

"Official Appointed by the Borough" shall mean the Zoning officer, unless the Borough specifically appoints another official.

"Person" shall mean any owner, operator, company, corporation, general agent, forester, or contractor of a property that has trees.

"Replacement Tree" shall mean a nursery grown certified tree at least 2 1/2 to 3 inch caliper, properly balled, and marked with a durable label indicating genus, species and variety, and satisfying the standards for nursery stock and installation thereof, set forth by American Association of Nurserymen.

"Specimen Tree" shall mean any tree with a diameter of 18" inches or greater or any tree of historical significance or otherwise significant by reason of its rarity or environmental significance.

"Subdividable Lot" shall mean a legally established and existing parcel of land, with boundaries determinable from existing records, which has a building located thereon which is occupied or capable of being occupied, but which has a lot size at least twice the minimum zoning requirements of the Borough, with dimensions and set backs sufficient to allow subdivision into at least two building lots and having the same restrictions as an undeveloped lot.

"Tree" shall mean any woody perennial plant, having a diameter greater than eight inches, measured from a point four and one-half (4 1/2) feet above ground (forestry method).

"Tree Replacement Plan" shall mean a specific plan for replacement of removed trees in accordance with the provisions of this ordinance.

"Undeveloped Lot" shall mean a legally established and existing parcel of land, with boundaries determinable from existing records, which does not have a building located thereon. Whenever approval is granted by the Planning Board to an application for preliminary major subdivision, each lot shown upon the subdivision plat, which does not have a building, located thereon shall be deemed a separate undeveloped lot for the purposes of this ordinance.

"Woodland Management Plan" shall mean a plan prepared in accordance with criteria set forth in N.J.A.C. 18:15?2.10 and which is required to be filed with the assessor and the DEP by an owner of the woodland as set forth in N.J.A.C. 18:15?2.7.

183.5 Determination of definitions.

The official appointed by the Borough is the established authority responsible for interpreting definitions. In any case, the official appointed by the Borough shall have the right to determine whether any specific wood, plant shall be considered a tree or a shrub. Such determination shall be final and not subject to appeal.

183.6 Jurisdiction.

The Borough of High Bridge shall have control of all street trees, shrubs, and other plantings now or hereafter in any street park, public right-of-way or easement, or other public place within the Borough limits or on property owned by the Borough, and shall have the power to plant, care for, maintain, remove and replace such trees, shrubs and other plantings. The Borough of High Bridge shall also have jurisdiction under the terms of this ordinance over any tree upon any private land, including easements within the Borough of High Bridge.

183.7 Policies regarding trees.

A. It is the policy of the Borough to line its streets with trees and to conduct a consistent and adequate program for maintaining and preserving these trees. It is the policy of the Borough to encourage new tree planting on public and private property and to cultivate the Borough's Forestry environment.

B. The Borough, in implementing its various programs and projects, shall comply with the purpose and policy of this Ordinance. In doing so the Borough shall provide to the Environmental Commission for review and comment all plans that may affect protected trees, including but not limited, to road improvement projects.

183.8 Permit Required for Tree Removal.

A. No person shall destroy or remove any tree upon any land including the public right of way and easements, within the Borough of High Bridge until a permit has been secured pursuant to this ordinance or the removal is specifically exempt herein.

B. No approval for a major subdivision in the Borough that involves the destruction or removal of any tree will be granted until a Landscaping Plan, and if necessary in accordance with this Ordinance, tree replacement and reforestation, of that parcel is submitted to and approved by the Planning Board in consultation with the Environmental Commission.

183.9 Exceptions

A. Any dead or diseased tree that is likely to endanger the occupants, the public or any adjoining property, subject to verification of its dead, diseased or endangering status by an official appointed by the Borough.

183.10 Application

A. Any person desiring to cut down, destroy or remove any tree in excess of eight (8") caliper shall apply to the officially appointed Borough Official of High Bridge for a permit prior to cutting, destroying, altering or removing such trees.

B. The applicant shall identify the land upon which the tree or trees are located and shall disclose the name and address of the owner, tenant or duly authorized agent of the owner of the property.

C. The applicant shall identify and place the location of the tree or trees to be cut, destroyed or removed.

D. Applicants with Woodland Management Plans will be required to apply for a permit, receive approval from the appointed Borough official and will be responsible for full permit fees.

183.11 Basis for Determination.

As a basis for approving or denying an application for a tree permit, the Official appointed by the Borough shall give due consideration to the impact on existing trees and the following:

A. Clearance for proposed road or approved driveway right of way.

B. Clearance of trees for the construction of a residence or outer primary building plus a twenty-five (25') foot wide area surrounding such buildings.

C. Clearance of trees for the construction of septic tanks, leaching fields, sewer plants and outer utilities shall be considered if the plan is approved by the County Health Department, Health Officer or the Borough Engineer.

D. Any tree designated in accordance with an approved Woodland Management Plan.

E. Clearance of any dead, dying or diseased or infested tree.

F. Its inherent value as a specimen tree.

G. Its value for drainage control, soil erosion, and/or other uses, including soil fertility, and dust retention.

183.12 Activities Involving Trees on Undeveloped or Subdividable Lots.

A. Prohibited Activities. No person shall:

1. Injure, deface, poison or damage any tree located on any undeveloped or subdividable lot within the Borough;
2. Excavate around or remove earth or soil from or cause any water to flow upon the roots of any tree on any undeveloped or subdividable lot within the Borough in any manner that may harm affect such tree.
3. Place any material, temporary soil deposit, large machinery or equipment that may cause damage to roots or may compact soil, within the drip line or within six feet of any trees determined or required to be left standing.

B. Landscaping Plan. A person seeking approval for a major subdivision on an undeveloped or subdividable lot shall submit to the Planning board a Landscaping Plan in accordance with Section 808 of the Land Use and Development Ordinance.

C. Regulated Activities. No person shall remove any tree from an undeveloped or subdividable lot until a tree removal permit has been issued in accordance with this Ordinance.

D. Responsibilities of owner and contract purchaser. No owner or contract purchaser of an undeveloped or subdividable lot who employs any person to perform any work upon such lot shall permit such person to violate any provision of this ordinance.

E. Tree Replacement. Where clearing and or construction on an undeveloped or subdividable lot will result in removal of or severe damage which will result in the death of any tree other than those permitted to be removed the developer shall replace the heels in accordance with the following table:

Caliper of Tree Removed Number of Replacement Trees

Between 10 and 18 inches 4

Between 19 and 24 inches 5

Between 25 and 30 inches 7

Between 31 and 36 inches 10

37 inches or greater An equivalent number of 2" to 3" caliper trees equal to the caliper of the tree removed

1. Replacement tree (s) shall be located on site. If replacement trees cannot be accommodated on site, the Environmental Commission may consider suggestions of alternate planting sites and/or monetary compensation to the Borough Tree Trust Fund.
2. The Tree Replacement Plan shall show where the replacement trees will be located and the proposed planting details and specifications, including a schedule and plan for watering new plantings to insure their continued growth.
3. Reforestation Plan. Lots with tree cover less than thirty percent shall be required to plant a minimum of 1.5 trees per 10,000 square feet or less of open field. The owner or applicant shall have a landscape architect or licensed surveyor calculate the total required trees to be distributed by the Environmental Commission..

183.13 Issuance of Permit.

The Official appointed by the Borough after reviewing the site shall determine whether the applicant shall be granted a permit and shall issue a tree removal permit or denial in writing within fourteen days of the dale of such application.

183.14 Fees

A. The applicant, at the time of filing said application shall deposit with the Official appointed by the Borough, a fee for the permit according to the following schedule:

1-5 Trees \$30.00

6-15 Trees \$300.00

16-50 Trees \$1000.00

51-100 Trees \$3000.00

100-200 Trees \$5000.00

Each additional increment of 100 \$2000.00

B. If upon reviewing an application, the official appointed by the Borough determines a tree to be dead, the fee shall be waived.

C. If the applicant's request for a permit is denied, the Official appointed by the Borough shall promptly notify the applicant in writing within fourteen days and shall not issue said permit. The applicant shall, therefore, be entitled to a refund of the fees paid with the application less five percent (5%) or \$25.00 administrative fee, whichever is greater.

D. In cases where the services of a tree expert are required, the cost thereof shall be borne by the applicant.

183.15 Borough Liability

Nothing contained in this section shall be deemed to impose any liability upon the Borough, its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant upon any street tree area on his property or under his control in such condition or to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, pleasure ground, alley or public place within the Borough.

183.16 Unlawful interference with planting, maintenance, and removal of trees.

No person, firm or corporation shall interfere with the Director of Public Works or persons acting under the authority of the Mayor and Council while engaged in planting, mulching, pruning or removing any tree, shrub or plant in any street or public place within the Borough. No person, firm or corporation shall purposefully damage, harm or alter any tree in a manner that threatens to diminish the vigor of the tree, and will be subject to the penalties outlined for unlawful tree removal in this ordinance.

183.17 Right of Appeal.

The Applicant shall have the right to appeal the aforesaid decision to the Planning Board/Board of Adjustment of the Borough of High Bridge within twenty days of receipt of the official appointed by the Borough's decision. Said appeal shall be scheduled to be heard with a written notice of the hearing sent to the applicant within thirty (30) days after the filing of said notice of appeal. The Planning Board/Board of Adjustment may, in its discretion and upon complete review of the application, after hearing the testimony of the official appointed by the Borough and the applicant, reverse, modify or affirm the aforesaid decision.

183.18 Penalty for violation.

A. Fines. Any violation of any provision in this ordinance shall be considered an offense punishable by a fine not to exceed \$1000 for each offense or imprisonment for a term not exceeding 90 days or both.

B. Any person violating this ordinance shall be required to replace each tree destroyed or removed with nursery grown trees of the same or similar species having a caliber of not less than two inches.

C. Each tree removed in violation of this ordinance shall constitute a separate offense.

D. Presumptions. In any prosecution for failure to secure a permit prior to removal the following shall apply: The diameter of the stump of a removed tree shall be rebuttably presumed to be the diameter of the removed tree at a point four and a half (4.5) feet above the ground. If the stump of a removed tree has been removed or destroyed, it shall be rebuttably presumed that the tree exceeded the minimum standards requiring a permit to be secured.

183.19 Enforcement.

The Official appointed by the Borough is hereby charged with the responsibility for the enforcement of this ordinance and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the Borough Prosecutor is hereby authorized to institute appropriate proceedings to that end.

183.20 Performance evaluation of ordinance.

The Borough Environmental Commission shall collect and maintain all records and data necessary to objectively evaluate whether progress is being made toward the stated goals of this ordinance. An annual summary and analysis of the evaluation, and recommendations for action shall be prepared at the direction of the Environmental Commission and presented to the Mayor and Borough Council. The Mayor and Borough Council shall consider the report and recommendations and take all actions deemed necessary to accomplish the goals of this ordinance. These actions may include, but are not limited to, revision or amendment of this ordinance or the adoption of other resolutions or ordinances.

183.21 Administrative responsibilities

The Mayor and Borough Council shall promulgate rules, regulations and policies establishing public tree policy. The duties of the Borough Environmental Commission shall include: To study the problems and determine the needs of the Borough in connection with its tree policy. To recommend to the Mayor and Borough Council the type and kind of trees to be planted upon such Borough streets or parts of Borough streets, parks or public places. To assist the properly constituted officials of the Borough, as well as the Mayor, Borough Council and citizens of the Borough, in the dissemination of news and information regarding the protection, maintenance, removal, and planting of trees on public and private lands, and to make such recommendations from time to time to the Borough Council as to desirable legislation concerning tree policy and activities within the Borough. The official appointed by the Borough of High Bridge Mayor and Council shall have the authority and be responsible for implementing the provisions of this policy carried under this ordinance. The Director of Public Works shall, by use of city employees or private contractors, plant, maintain and otherwise care for, or if necessary remove trees in any public place in the Borough.

183.22 Severability.

Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held invalid.

SECTION II: REPEALER

All ordinances or parts of ordinances deemed to be inconsistent with this ordinance are hereby repealed.

SECTION III: EFFECTIVE DATE

This ordinance shall take effect immediately upon adoption and publication in accordance with law.