



# *Township of Hillsborough*

COUNTY OF SOMERSET  
MUNICIPAL BUILDING  
379 SOUTH BRANCH ROAD  
HILLSBOROUGH, NJ 08844

[www.hillsborough-nj.org](http://www.hillsborough-nj.org)  
(908) 369-4313

## **HILLSBOROUGH PLANNING & ZONING DEPARTMENT**

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### **SUSTAINABLE JERSEY RECERTIFICATION ACTION: TREE PROTECTION ORDINANCE FILE 2: COPY OF RESOLUTION ADOPTING TREE PROTECTION ORDINANCE**

*Instructions: Provide a copy of the resolution adopting the tree protection ordinance.*

#### **Attachments:**

- Resolution Ord. 2000-38 Tree Preservation
- Resolution Ord. 2002-39 Tree Preservation

## **ORDINANCE 2000-38**

### **AN ORDINANCE TO AMEND THE DEVELOPMENT REGULATIONS OF THE TOWNSHIP OF HILLSBOROUGH TO REGULATE THE REMOVAL AND PRESERVATION OF TREES**

**WHEREAS**, the Township Committee of the Township of Hillsborough is concerned about the indiscriminate removal of mature trees and the destruction of forested areas; and

**WHEREAS**, the preservation of mature trees and forested areas is a key strategy in the management of environmental resources, particularly watershed management, air quality and ambient heating and cooling; and

**WHEREAS**, the preservation of mature trees and forested areas is critical to maintaining a high quality of life and rural environment in Hillsborough Township;

**WHEREAS**, the pre-application removal of trees in the Township has had substantial negative impacts on visual quality and other indicators;

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey, that Chapter 77, Development Regulations, of the Township Code is hereby amended to establish a new Article, Article XI, Tree Preservation, as follows:

## **ARTICLE XI**

### **TREE PRESERVATION**

#### **SECTION 77-160. 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.

#### **SECTION 77-161. DEFINITIONS**

**TREE** shall mean any flowering, ornamental or nursery stock tree with a caliper measurement of 3 inches or greater, any deciduous or coniferous tree of 6-inch caliper or greater or any coniferous tree 8 feet or greater in height.

**CALIPER** shall mean the diameter of a trunk as measured at a height of four feet above grade.

**CRITICAL FOOTPRINT AREA** shall mean 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 20 feet beyond the perimeter of the building footprint.

#### **SECTION 77-162. APPLICABILITY**

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

1. Removal of more than 3 trees per calendar year on properties that can be subdivided, multi-family parcels and unimproved lots.
2. Removal of any tree on an improved non-residential lot.
3. Cropping or trimming of trees or other activities that will adversely affect the lifespan of the tree.

B. Exemptions. The following activities are exempt from the provisions of this Article:

1. 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. Such trees shall be replaced in a like number in the same location or elsewhere on the property.
2. Clearing of trees required in connection with new home construction that are located within the critical footprint area.
3. Routine maintenance, such as trimming, that will not adversely affect the lifespan of the tree.
4. 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.
5. Selective thinning in conjunction with a management plan approved by the State Forester.

#### **SECTION 77-163. 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.
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 Section 77-164, Mitigation Required, below. However, in no case shall more than 20 percent of all trees on any lot(s) be removed.
- C. Tree Preservation Plan Submission Requirements. 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 drip line 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 Section 77-164, Mitigation Required, below.
- D. Variance Required. Deviation from the requirements of this Article shall require variance approval in accordance with NJSA 40:55D:70(c).

#### **SECTION 77-164. 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 Section 77-73:

<b>Caliper of Removed Tree</b>	<b>Number of Replacement Trees</b>
6 to 12 inches	2
13 to 24 inches	3
25+ inches	4

- 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.
- C. Planting Standards. All replacement trees shall be nursery grown, certified and guaranteed and shall have a minimum caliper of 2.5 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 Contributions. 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 fund to be used for the purchase of replacement trees by the Township of Hillsborough for use on public property, shall be considered by the Planning Board or Board of Adjustment, as the case may be.

#### **SECTION 77-165. PENALTY AND ENFORCEMENT**

Violation of the provisions of this Article shall be considered a Class C Violation for each tree illegally removed, and for each day the offense continues without mitigation and application to the Planning Board or Board of Adjustment, as the case may be.

ORDINANCE NO. 2002-39

AN ORDINANCE TO AMEND, REVISE AND SUPPLEMENT ARTICLE XI, TREE PRESERVATION,  
CHAPTER 77, DEVELOPMENT REGULATIONS, OF THE TOWNSHIP OF HILLSBOROUGH, COUNTY  
OF SOMERSET, STATE OF NEW JERSEY

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**WHEREAS**, it has been determined during the application and practice of the Code of the Township of Hillsborough, Chapter 77, Development Regulations, Article XI, Tree Preservation, that certain amendments, revisions, and supplements are required to various provisions of that Article.

**NOW THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey, that the Code of the Township of Hillsborough, Chapter 77, Development Regulations, Article XI, Tree Preservation, is hereby amended, revised and supplemented as follows:

ARTICLE XI

TREE PRESERVATION

**SECTION 77-160. 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.

**SECTION 77-161. DEFINITIONS**

**TREE** shall mean [any flowering, ornamental or nursery stock tree with a caliper measurement of 3 inches or greater] any nursery stock tree with a caliper measurement of 2.5 inches, any flowering or ornamental tree with a caliper measurement of 3 inches or greater, any deciduous or coniferous tree of 6-inch caliper or greater or any coniferous tree 8 feet or greater in height.

**CALIPER** shall mean the diameter of a trunk as measured at a height of four feet above grade.

**CROP** shall mean to cut off the branches, top or trunk of a tree.



**CRITICAL FOOTPRINT AREA** shall mean 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 [20] 40 feet beyond the perimeter of the building footprint and septic field.

**PRUNE** shall mean to cut off or remove living or dead parts or branches of a tree.

**UNDERSTORY** shall mean the plant growth on the ground beneath the canopy, or upper branches of trees.

#### **SECTION 77-162. APPLICABILITY**

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

1. Removal of more than 3 trees per calendar year on properties that can be subdivided, multi-family parcels and unimproved lots, provided, however, that on lots eligible to qualify for farmland assessment, 3 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 Section 77-162B. below.
2. Removal of any tree on an improved non-residential lot. Non-residential lots shall include, but not be limited to, the following: commercial retail or wholesale, office, industrial and warehousing properties.
3. Cropping or trimming of trees or other activities that will adversely affect the life span of the tree.

B. Exemptions. The following activities are exempt from the provisions of this Article:

1. 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. Such trees shall be replaced in a like number in the same location or elsewhere on the property. 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.
4. 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 Section 77-97 E.(7).

#### **SECTION 77-163. 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 under story 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 Section 77-164, 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 Section 77-163(A) above. However, in no case shall more than up to 20 percent of all the count of trees on a residential zoned lot or up to **60** percent of the count of all trees on any non-residential lot be removed even with mitigation measures.
- C. Tree Preservation Plan Submission Requirements. 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 drip line 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 storm water 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 Section 77-164, Mitigation Required, below.
- D. Variance Required. Deviation from the requirements of this Article shall require variance approval in accordance with NJSA 40:55D:70(c).

#### **SECTION 77-164. 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 Section 77-73:

<b>Caliper of Removed Tree</b>	<b>Number of Replacement Trees</b>
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 Contributions. 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 fund to be used for the purchase of replacement trees by the Township of Hillsborough for use on public property, 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 percent of total site improvements for a Commercial Development. This reduction will limit the mitigation cost to 1.5 percent 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 1.25 1.5 percent of total site improvements for a Residential Development. This reduction will limit the mitigation cost to 1.25 1.5 percent of the site improvements. The reduction in replanting will be approved at the site plan application stage.

#### **SECTION 77-165. 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.

#### **SECTION 77- 166 PENALTY AND ENFORCEMENT**

Violation of the provisions of this Article shall be considered a Class C Violation for each tree illegally removed, and for each day the offense continues without mitigation and application 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 ordinance occurs.

ATTEST:

TOWNSHIP OF HILLSBOROUGH

\_\_\_\_\_  
Ann Marie McCarthy, Township Clerk

By:\_\_\_\_\_  
Joseph Tricarico, Mayor

CERTIFICATION

I, ANN MARIE McCARTHY, Clerk of the Township of Hillsborough in the County of Somerset do hereby certify that the foregoing ordinance is a correct copy of an ordinance duly adopted by the Township Committee of said Township at a regular meeting held on the 12<sup>th</sup> day of November, 2002.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Township this 14<sup>th</sup> day of November 2002.

Ann Marie McCarthy  
Township Clerk

Introduced:	October 8, 2002
Published:	October 24, 2002
Public Hearing:	November 12, 2002
Adoption:	November 12, 2002
Published:	November 21, 2002