BOROUGH OF HILLSDALE
ORDINANCE 12-09
(Adoption)

# AN ORDINANCE TO REVISE CHAPTER 310-133, REMOVAL OF TREES

I. Purpose

The purpose of this ordinance is to protect and preserve natural resources through the entire Borough with particular attention to open spaces provided by the floodplains. The Borough recognizes that tree vegetation within flood plains provides an important ecological resource. Tree removal in the floodplain exacerbates soil erosion and quality, and impedes the re-establishment of forests due to the loss of tree overstory, and increases the loss of wildlife habitat. Removal of trees within floodplains also impedes the absorption of groundwater during and following a flood event.

Tree replanting within floodplains shall be more aggressive. The clearing or harvesting of trees, or tree overstory removal within the floodplain results in the following: (1)Causes the local water table to rise and become wet, which impedes the development of new tree seedlings; (2) Removal of the tree overstory causes the understory vegetation community to expand which prevents new desirable tree seedlings from becoming established, and; (3) Partial clearing and cutting on floodplain soils increases the risk of wind damage to the remaining overstory trees, encourages deer browse, and exacerbates ice flow scouring that also significantly prevents tree seedlings from becoming established.

II Whereas, the purposes of zoning contained in N.J.S.A. 40:55D-2 include:

> N.J.S.A. 40:55D-2(c) To provide adequate light, air and open space. N.J.S.A. 40:55D-2(j) To promote the conservation of historic sites and district, open space, energy resource and valuable natural recourses in the State and to prevent urban sprawl and degradation of the environment through improper of land.

III. To achieve the stated purposes of the Municipal Land Use Law, the following revisions be made to Hillsdale Borough Code Section 310-133, Removal of Trees

A. Definitions. As used in this section, the following terms shall have the meaning as set forth below:

REPLANTED TREE

> Any deciduous or evergreen woody plant of the diameter caliper required in this section, planted for the purpose of replacing trees cut, removed or destroyed.

TREE

Any live, woody plant having a diameter or width greater than six inches and/or circumference greater than 25 inches measured at the natural ground level. If a plant has multiple stems, then the aggregate of the stem diameters and/or the aggregate of the circumferences shall be used in determining whether the plant is a tree.

B. Prohibited activities. No individual, corporation or association shall do, or cause to be done by others, either purposely, carelessly or negligently, any of the following acts upon privately owned property within the Borough of Hillsdale:

[Amended 4-4-2007 by Ord. No. 07-16]

(1) Cut, destroy or injure any tree, except as provided for in this section.

(2) Place or maintain upon the ground any substance which will impede the tree free access of air and water to the tree's living components.

(3) Apply any substance to any part of a tree, including roots, with the intention to injure or destroy the tree.

(4) Fail to maintain trees, bushes, shrubs, buffer strips, other landscaping and conditions imposed as part of site plan or subdivision approval without application and approval by a board of appropriate jurisdiction.

C. Permitted activities. Notwithstanding the restrictions contained in the above subsection, the following activities shall be permitted:

(1) The removal of not more than three trees per calendar year, on any approved or existing building lot, as shown on the current Tax Assessment Maps of the Borough.

[Amended 4-4-2007 by Ord. No. 07-16]

(2) The removal of trees in accordance with a site plan or subdivision plan approved by the Planning Board or a plot plan submitted for a soil movement permit approved by the Building Department, in conjunction with development or soil movement applications, so long as the approval includes a requirement that the applicant replace two trees for each tree removed for property that is not located in a floodplain. Floodplains are identified by largest areas show as in either the 100-Year Flood Hazard Area in the New Jersey Department of Environmental Protection Flood Delineation Maps, or as the Special Flood Hazard Area by the 100-year Flood per the Flood Insurance Rate Mapping (F.I.R.M) prepared by the Federal Emergency Management Agency. For those properties located within either 100-year floodplains, the ratio for tree replacement shall be four replaced trees for each tree removed from property that is within a 100-year floodplain. The

following reforestation methodology shall be used subject to the recommendations of the Environmental Commission:

(a) First location for replanting shall be on the same property from which the tree was removed.
(b) Second location for replanting shall be on a different 100-year floodplain property within the Borough of Hillsdale.
(c) Third location for replanting shall be on public property within the Borough of Hillsdale.

All reforestation shall be subject to the review and approval of the Hillsdale Environmental Commission and the Borough Engineer.

(3) The cutting, trimming or maintenance of trees in a manner which is not harmful to the health of the tree.

(4) The removal of trees which are diseased, dead, partially or completely fallen by acts of nature or which endanger public safety.

(5) The removal of trees necessary to construct any structure for which a permit has been issued by the Construction Code Official, so long as the approval includes a requirement that the applicant replace at least 25% of the trees removed.

(6) Activities involving tree trimming or removal located within a public right-of-way or easements, or publicly owned or controlled property, so long as the Borough of Hillsdale is in responsible charge of the activities.

D. Exceptions. The following exceptions shall apply:

(1) The Planning Board may waive the replacement planting requirements either in number, specie or replacement size.

(2) Upon application to the Planning Board, the granting of exceptions from the requirements of this section as may be reasonable and within the purposes and intent of this section if the literal enforcement of one or more provisions is impracticable or will exact due hardship because of peculiar conditions pertaining to the land in question. The form of application will be the same provisions as that of the Site Plan Review Ordinance.

(3) Where the Environmental Commission and Borough Engineer deems it acceptable and makes such recommendation to the land use board or Construction Department, the number of trees for restitution may be reduced in quantity if replacement caliper sizes are increased based on the methodology found in the current New Jersey No Net Loss Reforestation Act "Caliper Tree Substitution Size" lists for the various type trees.

E. Criteria for consideration of tree removal and replanting.

(1) The Planning Board may consult with the Hillsdale Environmental Commission, the Department of Public Works, the Borough Engineer, or any professional as provided in the Municipal Land Use Law

(2) Replanted trees shall be at least 2½ inches in diameter caliper, measured at breast or chest height, and must be nursery stock, balled in burlap and staked upon planting per Borough standards provided by the Borough Engineer or the New Jersey Department of Environmental Protection, Division of Parks and Forestry, NJ Forest Service as detailed in the most recent Program Guidelines. Trees for reforestation shall be indigenous to the site from which trees have been removed, consistent with the specie found and/or being considered for removal. The Planning Board may also consult with the Environmental Commission in the selection of replacement trees.

Replanted trees for restitution shall not include trees required for visual buffers, foundation plantings, or ornamental trees. Tree size substitutions and specie shall be in conformance with the New Jersey No Net Reforestation Act, N.J.S.A. 13:1L-14.1 "Program Guidelines" current edition, and the recommendations made by the Hillsdale Environmental Commission.

(3) The location of replanted trees shall be determined by the following schedule of preference when at all possible:

(a) In the location where the trees are removed.

(b) Within the building lot containing the removed trees.

(c) Within the development site approved by the Planning Board or within the public right-of-way fronting or bounding the site.

(d) Elsewhere in the Borough within public property, but as near as possible to the building lot where the trees are removed.

F. Landscaped Buffers, landscape plantings, and replacement trees that are part of an approved Site Plan, Subdivision, Soil Movement Permit, or Plot Plan, shall remain in effect and be maintained in perpetuity. Conditions of approvals relying upon such buffers and/or landscape plantings shall be binding upon all subsequent property owners of the lands upon which the approvals were granted. Any alteration of such improvements must be approved by the appropriate land use board or municipal official referenced under this ordinance.

G. Enforcement. The Borough Code Compliance Officer is designated as the enforcing agent for this section, or his designee. Upon review of as-built plans or site inspection of any development application or soil movement activity, the Borough Engineer shall inform the Code Compliance Officer of any trees removed in excess of those called for removal in the Planning Board's approval.

H. Penalty.

(1)Any individual, corporation or association violating any provision of this section shall, upon conviction thereof, be punishable by a fine not exceeding $1,000 per offense. The cutting, destruction or removal of each tree shall constitute a separate offense.

(2) If trees are cut, destroyed, or removed for any reason, in conjunction with any land use, development or soil movement activity in excess of the specified number of trees which were approved for removal by the Planning Board, restitution shall be made by the applicant in accordance with the following schedule:

| **Diameter of Tree Removed (inches)** | **Number of 2.5-Inch-Caliper Trees to be Provided** |
|---|---|
| 8 to 15 | 6 |
| 16 to 24 | 10 |
| 25 to 36 | 15 |
| 37 and over | 20 |

IV. All ordinance and resolutions inconsistent with the provisions of this ordinance are hereby repealed as to such inconsistencies.

V. The Borough Clerk is hereby directed to publish notice of the passage of this Ordinance and to file a copy of the Ordinance as finally adopted with the Bergen County Planning Board. The Clerk shall also transmit a copy of this Ordinance after final passage to the Borough Tax Assessor, as well as to the Clerks of all adjoining municipalities.

VI. This Ordinance shall take effect immediately upon adoption and publication as required by law.

| Council member | Motion | Second | Yes | No | Absent | Abstain |
|---|---|---|---|---|---|---|
| Becker, Leslie | | | x | | | |
| Capawana, Rod | | x | x | | | |
| DeRosa, Anthony | | | x | | | |
| Frank, Douglas | | | x | | | |
| Giancarlo, Michael | x | | x | | | |
| Hanlon, Marie | | | x | | | |

Adopted: May 1, 2012

Attest:

Susan Witkowski, RMC
Municipal Clerk

Max Arnowitz
Mayor