

**BOROUGH OF HASBROUCK HEIGHTS**

**COUNTY OF BERGEN, NJ**

**ORDINANCE NUMBER 2555**

**AN ORDINANCE TO AMEND CHAPTER 236 OF THE CODE OF THE BOROUGH OF HASBROUCK HEIGHTS ENTITLED "STREETS AND SIDEWALKS" TO ADD SUBSECTION 236-36 "TREE REMOVAL AND REPLACEMENT" AND TO AMEND CHAPTER 253 ENTITLED "TREES".**

**WHEREAS**, Trees play a critical, often overlooked, role in the water cycle and in the mitigation of stormwater runoff issues such as soil erosion, pollutant reduction, infiltration, quantity reduction, and thermal effects.

**WHEREAS**, Pursuant to the New Jersey Department of Environmental Protection (NJDEP) 2023 Tier A MS4 permit renewal, the Borough is required to adopt and enforce an ordinance to control tree removal and replacement within the Borough to reduce soil erosion, reduce pollutant runoff, promote infiltration of rainwater into the soil and protect the environment; and

**WHEREAS**, Chapter 236 of the Code of the Borough of Hasbrouck Heights contains subsection 236-34 which controls and regulates Shade Trees within the Borough under the direction of the Superintendent of Public Works; and

**WHEREAS**, the Mayor and Council of the Borough of Hasbrouck Heights has determined that it is in the best interest of the Borough to comply with the NJDEP's request and revise the above referenced chapters to include language to control and regulate the removal and replacement of trees within the Borough.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF HASBROUCK HEIGHTS, COUNTY OF BERGEN AND STATE OF NEW JERSEY, AS FOLLOWS:**

**SECTION ONE:**

**Chapter 236 is amended to add the following new subsection:**

**Section 236-36 Tree removal and replacement**

**A. Definitions:**

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" means the requirement is always mandatory and not merely directory.

(1) "Applicant" means any "person", as defined below, who applies for approval to remove trees regulated under this ordinance.

(2) "Critical Root Radius (CRR)" – means 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'.

(3) "Diameter at Breast Height (DBH)" means 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.

(4) “Hazard Tree” means a tree or limbs thereof that meet one or more of the criteria below as determined within the sole discretion of the DPW Superintendent or his/her designee. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.

(a) Has an infectious disease or insect infestation;

(b) Is dead or dying;

(c) Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;

(d) Is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or

(e) Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).

(5) “Person” means any individual, resident, corporation, utility, company, partnership, firm, or association.

(6) “Planting strip” means 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.

(7) “Resident” means 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.

(8) “Street Tree” means 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.

(9) “Tree” means 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.

(10) “Tree Caliper” means 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.

(11) “Tree removal” means 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.

## **B. Regulated Activities:**

### **(1) Optional Application Process:**

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 DPW Superintendent or his/her designee. No tree shall be removed until the DPW Superintendent or his/her designee have reviewed and approved the removal. For larger scale clearing projects, municipalities

may choose to require a tree survey be submitted as part of the application to determine number, sizes, and exemptions of trees for the assessment of fees. Applicants will be subject to an application fee as per the Table below.

In the event the DPW Superintendent or his/her designee approves an Applicants request to remove a tree on Township property, the Applicant shall be required to pay for the tree removal in addition to other fees and requirements of this Section.

**(2) Tree Replacement Requirements**

(a) Any person who removes one or more street tree(s) with a DBH of 2.5” or more, unless exempt under Section IV, shall be subject to the requirements of the Tree Replacement Requirements Table below.

(b) 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 IV, shall be subject to the requirements of the Tree Replacement Requirements Table.

*The species type and diversity of replacement trees shall be in accordance with Appendix A.*

(c) Replacement tree(s) shall:

- i. Be replaced in kind with a tree that has an equal or greater DBH than tree removed **or** meet the Tree Replacement Criteria in the table below;
- ii. 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;
- iii. 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; and
- vi. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

**Tree Replacement Requirements Table:**

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Application Fee (None)
1	DBH of 2.5” (for street trees) or 6” (for non-street trees) to 12.99”	Replant 1 tree with a minimum tree caliper of 1.5” for each tree removed	\$50.00
2	DBH of 13” to 22.99”	Replant 2 trees with minimum tree calipers of 1.5” for each tree removed	\$100.00
3	DBH of 23” to 32.99”	Replant 3 trees with minimum tree calipers of 1.5” for each tree removed	\$200.00
4	DBH of 33” or greater	Replant 4 trees with minimum tree calipers of 1.5” for each tree removed	\$250.00

### **(3) Replacement Alternatives:**

- (a) If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:
  - i. Plant replacement trees in a separate area(s) approved by the municipality.
  - ii. Pay a fee of \$350.00 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

### **C. Exemptions:**

- (1) All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below which are exempt. Proper justification shall be provided, in writing, to the DPW Superintendent or his/her designee by all persons claiming an exemption. The Borough shall define "proper justification" by photos or statements from a New Jersey licensed tree expert as per NJ Statute 45:15C-11 or arborist.
  - (a) Residents who remove less than four (4) trees per acre 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.]
  - (b) Tree farms in active operation, nurseries, fruit orchards, and garden centers;
  - (c) 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;
  - (d) 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.
  - (e) 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;
  - (f) Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
  - (g) Hazard trees may be removed with no fee or replacement requirement.

### **D. Enforcement:**

This ordinance shall be enforced by Borough Code Enforcement and/or the DPW Superintendent or his/her designee.

### **E. Violations and Penalties:**

Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a fine of up to \$1,000 per tree. However, in no event shall the fine be less than the amount of the required replacement tree(s) and cost of planting. The Code Enforcement Officer and/or the DPW Superintendent or his/her designee may (in their sole discretion) require the planting of additional trees in lieu of or in addition to a fine. [amount per tree to be established by municipality but shall not be less than the amount of the required replacement tree(s) and cost of planting] [Municipalities may require the planting of additional trees in lieu of a fine].



**SECTION TWO:**

Chapter 253 Subsection 253-1 is amended as follows:

No person, firm or corporation shall injure or damage, in anyway whatsoever, any tree or shrubbery planted in any public highway, park or parkway of the Borough of Hasbrouck Heights or plant, replant, remove, cut or trim the same except with the permission and under the direction of the Superintendent of Public Works. For removal and replacement of trees, see section 236-36.

**Appendix A**

**Approved list of Replacement tree Species and Planting Standards for the  
Borough of Hasbrouck Heights**

The following is a list of species considered suitable for tree planting within the Borough of Hasbrouck Heights. This list may be revised in the sole discretion of the Borough at any time, as new species or cultivars become available and/or as experience indicates the good or poor performance of some species, and/or as other issues such as hazardous or disease arise.

Tree Species	Planting Season	Planting Procedure soil type, watering, pruning, staking, wrapping, exposure, depth, mulching, etc.
Japanese Lilac Syringa reticulata	Varies – must consult DPW Superintendent	All planting must be in accordance with the procedures outlined by the state of New Jersey found at the official state website: NJ.GOV  <a href="http://www.NJ.GOV">http://www.NJ.GOV</a>
Ginko Gum/Tupelo Nyssa Sylvatica		
American Hornbeam		
Little Leaf Linden Tilia Cordata		

**SECTION THREE Severability:**

Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase, and finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause or reason shall not affect any other portion of this Ordinance.

**SECTION FOUR. Effective Date:**

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

Approved this 11<sup>th</sup> day of June 2024



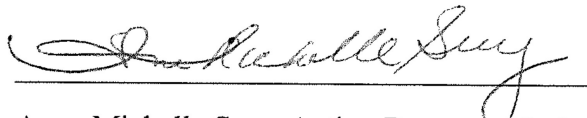
Ronald Kistner, Mayor

Re-Introduced: May 28<sup>th</sup>, 2024

Adopted: June 11<sup>th</sup>, 2024

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	PRESENT	ABSENT
SICKELS	✓		✓				
SODORA			✓				
MCGUIRE							✓
BING		✓	✓				
MELL			✓				
SAMPERI			✓				

The foregoing Ordinance No. 2555 was finally adopted by the Borough Council at a meeting held on June 11, 2024, and approved by the Mayor on the same date.



Anne Michelle Sery, Acting Borough Clerk