

BOROUGH OF HO-HO-KUS  
COUNTY OF BERGEN, NJ

**ORDINANCE 2023-84**

**AN ORDINANCE ESTABLISHING A NEW CHAPTER  
“76C-TREES-PROTECTION OF TREES” TO THE  
BOROUGH OF HO-HO-KUS CODE**

**WHEREAS**, the Borough of Ho-Ho-Kus Code (the "Borough") does not contain specific provisions regarding the removal of trees on individual lots or tracts of land in the Borough; and

**WHEREAS**, it has come to the Borough's attention that there have been instances of the indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees on privately owned individual lots and tracts of land; and

**WHEREAS**, the Borough desires to amend the Borough Code so as to add provisions regarding the removal of trees on privately owned individual lots and tracts of land; and

**WHEREAS**, the Borough Council finds and determines that amending the Borough Code so as to establish regulations regulating the removal of trees on privately owned individual lots and tracts of land is required to ensure and protect the safety, health and welfare of residents of the Borough and the public at large.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Ho-Ho-Kus in the County of Bergen and State of New Jersey, that the Borough of Ho-Ho-Kus Code be hereby amended as follows:

**SECTION 1. Amendment(s).** The Borough Code is hereby amended to create new Chapter 76C, entitled "Protection of Trees," which shall read as follows:

**Chapter 76C: Trees**

**A. PURPOSES:**

The Borough of Ho-Ho-Kus has long-standing commitment to preserving the environmental assets and aesthetics of its natural surroundings. Ho-Ho-Kus has determined that the indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon privately owned individual lots and tracts of land within the Borough will increase the municipal costs to control surface drainage and will increase the probability of soil erosion, sedimentation and a decrease of soil fertility; all of which conditions negatively impact the environment and the public safety, health and welfare of the citizens of the Borough of Ho-Ho-Kus,

The appropriate management and use of existing vegetation resources are an important

health, safety and welfare concern as per N.J.S.A. 40:48-2. Therefore, it is the intent of these regulations to: (1) Reduce soil erosion and protect surface water quality by minimizing soil and tree root disturbance in existing woodlands, around tree masses or under individual trees. (2) Reduce stormwater runoff, velocity and volume by retaining woodland and forest areas where stormwater can infiltrate easily. (3) Increase groundwater recharge by retaining woodland areas where stormwater can infiltrate easily. (4) Improve air quality by conserving existing trees and other mature vegetation which produce oxygen and remove carbon dioxide from the atmosphere. (5) Protect wildlife habitat. (6) Retain existing trees to provide wind breaks, shade and other microclimate benefits. (7) Retain trees and woodlands that are important to the history or natural and aesthetic beauty of the Borough of Ho-Ho-Kus. (8) Preserve and enhance property values by retaining and properly protecting existing trees

## **B. DEFINITIONS**

For the purposes of this Ordinance, the following terms as used within the Ordinance are defined as follows:

**Caliper:** Standard measure of tree size for trees to be newly planted. The measurement is taken six inches above the ground level for trees four inches in diameter or less and 54 inches above the ground for trees over four inches in diameter.

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

**Emergency:** Any tree that creates an immediate hazard or danger to persons and property, as a result of a weather event, such as a hurricane, windstorm, flood, freeze or other disaster, or other cause.

**Endangered Species Tree:** Any tree of a species which is threatened with extinction including, but not limited to, those species of trees so noted in New Jersey State and/or national registers.

**Historic Tree:** Any tree with or approaching the girth which is the largest of its species in the State of New Jersey, or any tree located on private property which has been identified as such by the State of New Jersey and/or dedicated by the Borough Council, with the consent of the landowner, to an individual or event.

**International Society of Arboriculture:** Provides accreditation to those in the tree industry with demonstrated knowledge and skills to properly care for trees.

**Licensed Tree Care Operator (LTCO) and Licensed Tree Expert (LTE):** Professional Certifications issued by the NJ Board of Trees Experts as delineated in the Tree Expert and Tree Care Operator Licensing Act of 2010. All tree care companies doing business in that State of New Jersey are required to have at least one licensed LTCO or LTE on staff.

**Plan:** The "Tree Removal/Replacement Plan", in accordance with the requirements of this tree ordinance, which indicates the trees to be removed or replaced.

**Preferred Tree List:** A list of trees recommended by the Borough Arborist to be best adapted to the climate, soil and topography of the Borough of Ho-Ho-Kus formulated for use by persons intending to plant trees.

**Protective Barrier:** A barrier constructed to protect the root system and/or the trunk of a tree from damage during construction and/or from equipment, soil or material deposited on the site. The protective barrier may consist of a snow fence, sawhorses or other similar structure which is sufficient to protect the root system or trunk of a tree from potential damage.

**Regulated waters:** all waters in the state excluding man-made canals and waters draining less than 50 acres as described in N.J.A.C 7:13-2.2.

**Right of Way:** A strip of land acquired by reservation, dedication, prescription or condemnation and intended to be occupied by a street, a crosswalk, a railroad, electric transmission lines, an oil or gas pipeline, a water line, a sanitary storm sewer, or other similar uses.

**Riparian Zone:** Land and vegetation within and adjacent to a regulated water.

**Specimen Tree:** Any tree which by its singular nature, condition, size, location and/or appearance is determined by the Borough Planner, Zoning Official, and/or Borough Arborist to impart a particular value to a property or landscape.

**Borough Property:** Lands which are owned by the Borough of Ho-Ho-Kus or are within the right-of-way (ROW) of the Borough's, County's or State's streets, highways (especially the area between the curbing and sidewalk), open space or under the control of the Borough of Ho-Ho-Kus by way of ownership, deed restriction or other covenant.

**Tree:** Any living woody perennial deciduous plant with a caliper of at least six

inches (6") measured six inches (6") above the ground, or any living woody perennial evergreen plant or thinner deciduous plant (e.g., dogwoods, birches, American Hornbeams, etc.) at least fifteen feet (15') in height above ground level.

TREE PROTECTION ZONE (TPZ)

A radius of at least 1.25 feet of protected area for each inch of trunk diameter DBH.

**Tree Removal Permit:** Written authorization from the Ho-Ho-Kus Zoning Official allowing the removal of trees in accordance with the "Tree Removal/Replacement Plan" as approved by the Zoning Official, Borough Planner, and/or the Borough Arborist.

**C. TREES ALLOWED TO BE REMOVED WITHOUT TREE REMOVAL PERMIT**

If permitted as set forth below, any "Tree" as defined in this Ordinance (and any smaller trees) may be removed from a privately owned lot or tract of land without the necessity of submitting a "Tree Removal/Replacement Plan" and obtaining a "Tree Removal Permit" except that, in any case, no "Endangered Species Tree", "Historic Tree" or "Specimen Tree" may be removed without a "Tree Removal Permit", except in the case of an emergency as set forth in subsection 2 (b), below:

1. Up to six (6) trees may be removed every twelve (12) months for any reason from an existing lot within the Borough of Ho-Ho-Kus which contains a residential dwelling, but no more than ten (10) trees may be removed for any reason from an existing lot which contains a residential dwelling within any five (5) year period. The limitations herein shall not apply to any tree or trees removed for the approved construction of a new home, an addition to an existing home, the installation of a new septic system or the repair/replacement of an existing septic system, or the construction of an accessory structure to the home, such as a patio, deck, tennis court and/or swimming pool, but only to the extent reasonably required, after due consideration of the property owner's design needs, for the construction of the home, the addition, the repair/replacement of the septic system or an accessory structure.
2. The removal of the tree or trees permitted below shall not count toward the six (6) trees permitted to be removed every twelve (12) months or the total of ten (10) trees permitted to be removed in each five (5) year period specified in subsection 1, above.
  - (a) Any dead or diseased tree, or any tree that creates an imminent hazard or danger to persons and property or an Emergency, as defined in Section B, above, may be removed immediately. However, the property owner shall, upon request of the Zoning Official, be required to provide documentation confirming said conditions, which will include photographs of the trees removed and the property and a certification from a duly licensed LTE,.

- (b) Any tree may be removed as directed by the Borough of Ho-Ho-Kus, Bergen County, the State of New Jersey.
- (c) Any tree may be removed pursuant to an application for development (as defined in the Municipal Land Use Law, N.J.S.A. 40:55D-1et. seq.) approved by the Ho-Ho-Kus Borough Planning or Zoning Board, provided that said approval includes a Tree Replacement Plan.
- (d) Any tree may be removed as part of the operation of an agricultural or horticultural use on property that is five acres or more, and that is assessed for local property taxes pursuant to the New Jersey Farmland Assessment Act of 1964, N.J.S. 54:4-23.1 et. seq.

**D. REQUIRED TREE REMOVAL/REPLACEMENT PLANS**

Unless the tree is smaller than described in the "Tree" definition of this ordinance or is otherwise permitted to be removed in accordance with one or more of the provisions listed in Section D.2. of this Ordinance hereinabove, no more than six trees every twelve (12) months, or ten (10) trees in any five year time period on any residential lot within the Borough of Ho-Ho-Kus shall be removed (or purposely injured or damaged) unless a "Tree Removal/Replacement Plan" is submitted to and approved by the Zoning Official, with the advice and review of the Borough Arborist in accordance with the provisions of this ordinance. **This requirement remains applicable for up to two years prior to an application being submitted and applies to development projects as defined in Section C1.**

Additionally, any landowner desiring to clear an area greater than one thousand five hundred (1,500) total square feet, including not only trees, but also brush and/or natural vegetation, must obtain approval under this Ordinance.

The "Tree Removal/Replacement Plan" and accompanying information shall include the following:

1. The subject property where the tree(s) is/are to be removed shall be identified by street address, tax block and lot number(s) and approximate acreage;
2. The name, address and telephone number of the owner of the subject property or the owner's duly authorized agent;
3. The name, address, and State license identification number of the NJ LTCO licensed tree contractor who will be performing the tree removal work. All tree contractors must comply with the NJ Tree Care Licensing Act, N.J.S.A. 45:15C-11 et seq, and the Contractor must carry a current/valid LTCO or LTE license from the State of New Jersey. Unless the tree removal is being performed by the landowner, the tree removal must be performed by a LTCO or LTE as defined

herein.

4. The tree(s) proposed to be removed shall be clearly marked on the subject property for review by the Zoning Official, Borough Planner and/or Borough Arborist;
5. To the extent required by the Zoning Officer to make an appropriate decision, the following information shall be shown on a map, legal survey or site plan which is drawn to scale and is of a suitable size to depict the required information:
  - a. The total number and the location and size of each tree proposed to be removed;
  - b. The total number and approximate location of any trees removed from the lot in the preceding twelve months, if known;
  - c. The location of the principal building and all accessory buildings on the subject property;
  - d. The location of any driveway on the subject property;
  - e. The location of any deed restricted areas, scenic buffers, and/or HOA restricted areas on the subject property;
  - f. The location, type, and number of trees to be replanted on the property.

**E. GUIDELINES FOR THE PREPARATION OF  
REQUIRED TREE REMOVAL/REPLACEMENT PLANS**

1. Hardship Trees: Generally, any tree likely to cause a hardship upon the landowner or a neighboring landowner will be approved for removal.
2. Streetscape Trees: All trees between the frontage street and the principal building on a lot should be preserved to the maximum extent possible.
3. Trees Which Visually Screen: All trees which visually screen large tracts of vacant land or large structures shall be preserved to the maximum extent possible.
4. Trees On Public Land: No tree within a public right-of-way or easement or on any publicly owned land shall be removed by any individual unless specifically authorized in writing by the Borough of Ho-Ho-Kus.
5. Trees On Steep Slopes: No tree on a steep slope shall be removed if the Zoning Official, in consult with the Borough Engineer, factually concludes that the removal of the tree will cause increased surface water runoff onto an adjacent property, will cause increased soil erosion and/or silting, will cause significantly increased dust in the air, and/or will cause a decrease in the fertility of the soil.

6. Solar Installations: No trees may be removed or "topped" to expose ground mounted or roof mounted solar panels unless expressly permitted as a part of the Zoning Permit application process.
7. Trees Within Buffers. No tree may be removed that is located within a buffer that was created as a condition of approval of a development approved by the Planning or Zoning Board, or within recorded Homeowners Association documents, without approval of the board or body that imposed the buffer.

#### **F. REPLACEMENT TREES**

Each tree removed pursuant to a submitted and approved "Tree Removal/Replacement" plan and not otherwise allowed to be removed without a Tree Removal Permit pursuant to Section D, above, either shall be replanted on the subject property or shall be replaced with a new tree planted either on the subject property or as directed by the Zoning Official. The specific location of all replanted and newly planted trees shall be as approved by the Ho-Ho-Kus Zoning Official, and/or the Borough Arborist. All newly planted trees shall meet the following minimum standards and requirements:

1. Each newly planted tree shall be a species from the approved preferred tree list that is continually updated and will be provided by the Borough.
2. Each newly planted tree shall have a minimum caliper at the time of planting of one and one-half inches (1½") measured six inches (6") from the ground;
3. Each newly planted tree shall be of nursery stock and shall be balled and burlapped or container of similar size caliper; and
4. Each newly planted tree shall be guaranteed for at least two (2) years from the date of planting, and any tree which does not survive within that time period shall be replaced by another tree of the same size and species at the expense of the landowner.

The tree replacement plan shall provide for replacing the removed or destroyed tree(s) in the same or contiguous location(s) on the premises, and in accordance with the following specific requirements. The tree replacement plan shall require that the applicant replace each removed or destroyed tree with one or more trees depending upon the DBH of the removed or destroyed tree, in accordance with "Tree Replacement Schedule".

Based on industry standards and site conditions on the premises, and in consultation with the Zoning Officer, the applicant may, in lieu of on-premises planting of the required replacement tree(s), be permitted to pay a tree replacement fee into the Ho-Ho-Kus Shade Tree Trust Reserve for up to fifty percent of the trees to be removed and/or destroyed based on the foregoing Tree Replacement Schedule. The tree replacement fee shall represent the cost to replace the removed or destroyed tree(s), including administration and labor costs. At least fifty percent of the required

replacement trees shall be planted on the applicant’s premises as identified the application

<b>Tree Removed/Destroyed</b>	<b>Required Replacement Tree*</b>	<b>Tree Replacement Fee</b>
Tree with DBH of 6” to 11.99”	One (1) Replacement Tree	\$500.00
Tree with DBH of 12.99” to 23.9”	Two (2) Replacement Trees	\$1000.00
Tree with DBH of 24” to 30.99”	Three (3) Replacement Trees	\$1500.00
Tree with DBH greater than 31”	Four (4) Replacement Trees	\$2,000 00

**G. PROTECTIVE BARRIERS**

During the construction of any structure on a property, care must be taken to protect any existing tree within the vicinity of the construction by erecting a "Protective Barrier" as defined in this ordinance and in accordance with the following:

1. No equipment, soil or material shall be placed within the TPZ or dripline, whichever is greater, of any tree located on the subject property within the vicinity of the construction and a protective barrier shall be erected around the areas of such trees defined by the dripline. For example, a tree with a 10ft diameter should have protection placed 12.5ft from tree. A 20ft diameter tree should have fencing placed at least 25ft from tree to protect the tree roots. This may mean protecting the roots on-site. This area is to be free of equipment, supplies or building materials and to be delineated by an orange construction fence.

**H. REVIEW AND ACTION ON SUBMITTED PLANS**

The Ho-Ho-Kus Borough Zoning Official or his/her designee shall review the site to determine whether the cutting, removal, or destruction of the tree shall impair drainage conditions, impair soil erosion, increase dust concentration, decrease the fertility of the soil or deteriorate the property value, destroy a buffer between residential and nonresidential uses; and shall further determine the overall physical conditions of the land and the deleterious effect thereon if any, in accordance with the standards set forth in this Ordinance. NO ACTION MAY BE TAKEN BY THE LANDOWNER UNTIL WRITTEN AUTHORIZATION IS RECEIVED AND A PERMIT ISSUED.

1. Two (2) copies of each "Tree Removal/Replacement Plan" shall be submitted to the Ho-Ho-Kus Borough Zoning Official who shall retain one (1) copy for the Borough's records.
2. The Ho-Ho-Kus Zoning Official shall review and act upon each submitted plan within ten (10) business days of the date the plan was submitted. Should the Zoning Official determine that a review is required by the Borough Planner and/or Borough Arborist, the Zoning Official shall have the authority to extend the review



period to up to thirty (30) calendar days.

3. If the Zoning Officer requests review, the Ho-Ho-Kus Borough Arborist shall consider a request from the Zoning Official regarding the submitted plan, provided that the report is forwarded to the Borough Arborist within thirty (30) days of the date the plan was submitted to the Zoning Official.
4. The Ho-Ho-Kus Zoning Official, Borough Planner and/or Borough Arborist shall inspect the subject property as part of the review of the submitted plan.
5. Should the Zoning Official approve the submitted plan, either as submitted or subject to specified conditions, a "Tree Removal Permit" shall be issued by the Zoning Official in writing to the landowner indicating any specific conditions of the approval.
6. Should the Zoning Official deny approval of the submitted plan, the Zoning Official shall notify the landowner in writing with the reasons for the denial.
7. If the submitted plan is denied by the Zoning Official, the landowner shall have the right to appeal the decision to the Zoning Board of Adjustment.

#### **I. FEES**

A \$100 Administrative Fee shall be required upon submission of a permit for the Tree Removal application. All fees collected for Tree Removal Application will be collected by the Zoning Office and deposited into a Tree Bank Trust Account, maintained by the Borough Finance office. Any expenditure of said fees must be approved by the Borough Arborist, and be utilized only for the purposes of tree planting and restoration in the Borough of Ho-Ho-Kus.

#### **J. ENFORCING AUTHORITY**

1. The requirements under this article shall be enforceable by the Code Enforcement Officer or his designee, including, but not limited to, the Borough Construction Official or Zoning Officer. The Ho-Ho-Kus Police Department can also enforce provisions of this article.
2. The Construction Official shall not issue a Construction Permit or a Certificate of Occupancy until all applicable requirements of this Ordinance have been met.

#### **K. VIOLATIONS AND PENALTIES**

Any person found to have violated any provision of this Ordinance shall be required to adhere to the requirements of this Ordinance and shall be subject to a fine not exceeding one thousand (\$1,000) or imprisonment for thirty (30) days, or both, for each offense. In addition to monetary sanctions, the Zoning Official may request and the Court may grant a specific performance penalty by way of a restoration plan for the cut trees and/or other

disturbed areas. Restitution in accordance with the ISA Valuation of the tree(s) removed.

Cutting of each tree covered by this Ordinance shall be considered as a separate and independent Violation of this Chapter.

**SECTION 2. *REPEALER, SEVERABILITY AND EFFECTIVE DATE***

- A. Any and all Ordinances and provisions thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency.
- B. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision and the remainder of this ordinance shall be deemed valid and effective.
- C. This Ordinance shall take effect immediately upon final passage and publication according to law.

**NOTICE OF PENDING ORDINANCE**

This Ordinance published herewith was introduced and pass upon first reading at a meeting of the Municipal Council of the Borough of Ho-Ho-Kus, in the County of Bergen, New Jersey, held on March 28, 2023. It will be further considered for final passage after the public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 333 Warren Avenue, Ho-Ho-Kus, NJ 07423-1547, in said Borough at the Public Meeting on April 25, 2023, at 7:00 p.m. at which time and place all interested member of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said has been posted on the bulletin board upon which public notices are customarily posted in the Borough Hall and copies are available at no charge in the Office of the Borough Clerk for members of the general public who may request them.

