

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

ORDINANCE 2023-85

“AN ORDINANCE TO AMEND CERTAIN PORTIONS OF THE CODE OF THE BOROUGH OF HO-HO-KUS RELATIVE TO THE REGULATION OF TREES”

WHEREAS, the Mayor and Council of the Borough of Ho-Ho-Kus believes it is be in the best interest of the residents of the Borough to amend the Borough’s Code to further protect trees and amend its prior Ordinance for the further benefit of the residents of Ho-Ho-Kus;

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Ho-Ho-Kus that the Code of the Borough of Ho-Ho-Kus is amended by repealing the following sections and replacing the language as follows:

§ 57-5. Duties.

The duties of the Shade Tree and Beautification Committee shall be as follows:

A. To exercise, subject to review by the Borough Council, recommendation over the planting and care of shade and ornamental trees and shrubbery now located or which may hereafter be planted in any public highway, public park or public lands owned or under the jurisdiction of the Borough of Ho-Ho-Kus. The provisions of this Article do not and shall not be interpreted to delegate any authority to the Shade Tree and Beautification Committee to enforce any of the provisions of Borough Code.

B. To encourage the planting of shade and ornamental trees and shrubbery throughout the Borough of Ho-Ho-Kus on public and on private property and to assist the various public boards, bodies and agencies of the Borough in their efforts with regard to the encouragement of planting shade and ornamental trees and shrubbery.

C. To prepare, develop and distribute information with respect to the growing of and care for shade and ornamental trees and shrubbery.

D. To prepare, develop and recommend any improvements for the purpose of enhancing the overall outdoor appearance of the downtown area through streetscape design, plantings and landscaping, hardscape items, and other recommended projects in order to attract residents and businesses in a pedestrian friendly atmosphere.

E. To make annual reports to the Borough Council setting forth therein and detailing the activities and operations of the Shade Tree and Beautification Committee during the preceding 12 months.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Ho-Ho-Kus that sections of “Chapter 75B – Trees”, are hereby repealed and replaced as follows

§ 75B-1 Definitions.

As used in this chapter, the terms hereinafter set forth shall be defined and deemed to have the following meanings:

BOROUGH OFFICIAL

Zoning Official, Planning or Zoning Board, Construction Official, DPW, or other agency or official or designee as may be appropriate.

BOROUGH ARBORIST

An individual who holds a New Jersey State Tree Expert license as a Licensed Tree Expert (NJLTE)

Diameter Breast Height (DBH)

The diameter of a tree trunk, when measured at a height of 4.5 feet above the ground at the base of the tree, calculated as the circumference (or girth) of the tree divided by pi (3.1416). On sloping ground the "above ground" reference point is the average between the highest and lowest points of the ground at the base of the tree. If the DBH point falls on a swelling in the trunk, it is measured below the swelling point where the diameter is the smallest. In case of trees with multiple trunks, The diameter of a multi-trunk tree is determined by measuring the full diameter of the largest trunk, plus half the diameter of the other trunks.

PERMITS

Whenever, pursuant to any provision of this chapter, a permit is required, the applicant shall apply to the Borough of Ho-Ho-Kus building department, which shall refer the matter to, Zoning Official, Planning or Zoning Board, or other agency or Borough Official as may be appropriate. The Construction Official (or appropriate official or officer or designee) shall either recommend approval or denial of an application for a permit, and it shall, in determining whether or not to recommend the issuance of such permit, take into consideration the nature, species, size, age and condition of any tree involved; the location thereof in the street or park; the planting, care, protection, maintenance, or removal procedures involved; the public safety and welfare; and the improvement and advancement of the shade tree plan or program of the Borough, based on conditions which may be established from time to time. The Construction Official shall thereafter make the final determination, subject to review by the Governing Body, of any permit application.

PERSON

Any individual, firm, partnership or corporation, or any combination thereof. Where, in the proper context, it is so required, this term may be construed to designate the plural as well as the singular.

STREET

Any road, avenue, street or highway dedicated to the public use for street purposes. A street shall be deemed to include all portions lying between the dedicated or established right-of-way lines and/or planting easement thereof, said lines being identical with the front property lines of lands abutting the street.

TREE

Any tree, shrub or plant, or any root, branch, flower or other part thereof that is located in or upon any street, park or public property.

TREE PROTECTION ZONE (TPZ)

A radius of at least 1.25 feet of protected area for each inch of trunk diameter DBH. For example, a tree with a 10 inch diameter should have protection placed 12.5 inch 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.

§75B-2 Responsibility for costs of planting and improvements.

Except as hereinafter provided, the initial cost of all trees recommended for planting by the Borough Official, the cost of planting the same, the cost of the posts and boards or guards used for the protection thereof, and the cost of the removal of any tree or part thereof dangerous to the public safety shall in accordance with uniform rules and regulations promulgated for this purpose, be a charge upon the real estate in front of which such tree or trees shall be planted or removed as an improvement thereof. Such cost, if it is so determined that it is to be paid by the owner, shall, unless paid directly to the Borough of Ho-Ho-Kus, be certified by it to the Collector of Taxes of the municipality; shall thereupon become and be a lien upon said real estate; shall be included in the next tax bill rendered to the owner or owners thereof; and be collected in the same manner as other taxes against that property.

B. The provisions of this section shall not apply to:

- (1)** A planting to replace a tree or trees theretofore recommended for planting by the Borough Official.
- (2)** A planting in connection with Arbor Day exercises or other educational demonstration.

§ 75-6 Construction and excavation work.

A. In any site improvement, erection, alteration or repair of any structure or building, the owner, contractor or other person in charge thereof shall place required protection around the tree protection zone (TPZ) of all street trees and nearby trees as directed by the Construction Official or his designee. No storage of equipment, supplies or building materials will be permitted in the tree protection zone.

B. No person shall use or operate any power equipment or any other implement or tool in such a manner so as to damage or destroy any tree.

§ 75-7 Wires; utility trimming.

A. No person shall string any wires in or through a public park or property without a permit.

B. Every person having or maintaining any electric, telephone, telegraph, cable TV or other wires running in or through a street, public property, or park shall securely fasten and maintain such wires in such manner as will safeguard all trees against any damage there from and shall make periodic adjustment whenever necessary to prevent damage to all trees.

C. No person shall, without a permit, attach or fasten any wires, insulator or other device for holding any wire to any tree.

D. Whenever the Borough shall deem it necessary to prune or remove any tree, any persons having a wire running in or through any street or park shall temporarily remove such wire within 24 hours after the service upon the owner or his agent of a written notice to do so.

E. Any public utility or its agents after filling out a permit may upon receiving written permission from the Borough at least 72 hours prior to the start of work, prune or remove trees for line clearance of utility wires in nonemergency situations pursuant to a line clearance program.

F. Any public utility or its agents may undertake emergency tree work to restore electrical service or spot work to prevent interruption of electrical, telephone, telegraph, cable TV or other wire services. In such event the utility will notify the Borough of said work within three business days of its beginning.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Ho-Ho-Kus that sections of Chapter 76 are hereby repealed and replaced as follows

§ 76-1Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

PERSON

Every person, firm, association, partnership, corporation and individual.

SHADE TREE

Shade and ornamental trees and shrubbery now located or which may hereafter be planted in any public highway, park or parkway in the Borough, except those located or planted on county highways, parks and parkways and state highways.

STREET

Any street, avenue, boulevard, road, parkway, viaduct, drive or other way which is an existing state, county or municipal roadway or which is shown upon a plat heretofore approved pursuant to law or which is approved by official action as provided by the Municipal Land Use Act or which is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a Planning Board and the grant to such Board of the power to review plats and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines. For the purpose of this chapter, "street" shall be classified as follows:

A. ARTERIAL Those streets which are used primarily for fast or heavy traffic.

B. COLLECTOR Those streets which carry traffic from minor streets to the major system of arterial streets, including the principal entrance streets of a residential development and streets for circulation within such development.

C. MINOR Those streets which are used primarily for access to the abutting properties.

D. MARGINAL ACCESS Those streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.

E. ALLEYS Minor streets which are used primarily for vehicular service access to the back or side of the properties otherwise abutting on a street.

§ 76-8Application for permit.

Where the permission, consent or approval of the Borough is required by the provisions of this chapter, any person, firm or corporation required to obtain such permission, consent or approval shall first make application therefor to the Building Department.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Ho-Ho-Kus that sections of Chapter 63, are hereby repealed and replaced as follows:

Chapter 63. Soil Movement

§ 63-17. General regulations.

Soil moving conducted in the Borough shall be performed in accordance with the following regulations:

A. In all operations for which a permit is required:

(1) Prior to the start of soil movement operations, the disturbance of a lot or construction, the following must be performed:

- (a)** The limits of disturbance must be delineated with construction fencing.
 - (b)** Sediment barriers must be installed and maintained throughout the entire length of the project.
 - (c)** Tree-protection measures must be installed to protect the tree Critical Root Zone of the existing trees and approved by the Borough Engineer or Borough Official. (CRZ) is the distance from the trunk that equals one foot for every inch of the tree's diameter.
 - ~~**(2)** Lands shall be graded to conform to the approved contour lines and grades.~~
 - (3)** Streets, roads and paved surfaces shall be cleaned, at the applicant's expense, on a daily basis, of sediments and debris.
 - (4)** The top layer of soil, to a depth of six inches, shall not be removed from the premises, but shall be set aside and respread over the premises when the remainder of the soil has been moved.
 - B.** In all operations, whether or not a permit is required:
 - (1)** Prior to the start of soil movement operations, the disturbance of a lot or construction, the following must be performed:
 - (a)** Sediment barriers must be installed and maintained throughout the entire length of the project.
 - (b)** Tree-protection measures must be installed to protect the Critical Root Zone of the existing trees within the Tree Protection Zone and must be approved by the Borough Engineer or Borough Official. As used herein, Tree Protection Zone (TPZ) a radius of at least 1.25 feet of protected area for each inch of trunk diameter. 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.
- In general tree protection barriers shall be placed as space permits at a distance of at least ten (10) feet from the trunk of any tree or the tree's drip line or the TPZ, whichever distance shall be greater, and shall remain in place until all construction activity on the property has terminated.
- (2)** All boulders, tree stumps and other debris shall be removed from the property.
 - (3)** In dry weather, the person conducting such operation shall dampen the ground where operations are conducted to prevent dust.
 - (4)** No trucks used shall be loaded above the level of the sides of the truck, to prevent spillage, and all streets shall be cleaned, at the applicant's expense, each day, of any spillage or soil on such streets resulting from truck operations.
 - (5)** All truckloads shall be covered with tarpaulin and, if necessary, treated by water or chemicals to prevent flying dust.
 - (6)** No trucks, machinery or any part of the operation shall be conducted before 8:00 a.m. or after 5:00 p.m. on weekdays nor at any time on Saturday, Sunday or federal or state legal holidays.
 - (7)** All vehicles engaged in such operations shall use as routes only those Borough streets which have been approved by the Planning Board. The applicant shall notify the Police Department as to the route which will be utilized for transporting soil.
 - (8)** The entire area covered by the work shall be maintained and left in such manner as not to create or maintain a nuisance or condition hazardous to life and limb or to the health or general welfare of the inhabitants or the Borough of Ho-Ho-Kus.
 - (9)** All excavation, removal and other mandatory ground cover work, including restoration of property to final grades and subsequent seeding, must be completed within one year from the date of the permit.
 - (10)** No more soil shall be removed than is reasonably necessary for the development and use of the land.
 - (11)** No soil removal shall be allowed which shall cause drainage to adjacent property or prejudicially affect the values of adjacent properties.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Ho-Ho-Kus that sections of Chapter 32B-10, are hereby repealed and replaced as follows

Land Subdivision and Site Plan Review

Prior to any preliminary and/or final site plan approval, the Board shall have received a report from the Borough Planner, or Borough Arborist, or its designee, as to the adequacy of the landscape plan.

(e) The Mayor and Council of the Borough of Ho-Ho-Kus finds that lack of (canopy cover in the community) street trees is causing increased drainage problems, soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increased buildup of atmospheric carbon dioxide, the establishment of a heat island effects and increased dust and pollution. All of the above can negatively affect the value of the properties in Ho-Ho-Kus and overall quality of life. Therefore, the Mayor and Council of the Borough of Ho-Ho-Kus finds that a street tree planting deposit is needed to ensure the health, safety and welfare of its residents and to maintain a high quality of life in the Borough of Ho-Ho-Kus.

1. Streets trees and plantings within the right-of-way of the Borough, including Borough-owned parks and buildings, are regulated by Ordinance The street planting deposit shall apply to any new house constructed on a vacant parcel or on a lot where an existing residence is demolished or the additional floor area is increased by 25% as determined by the Construction Code Official and to all commercial properties. The Construction Code Official. Borough Arborist, or its designee,

shall inspect the affected property and make a determination on the requirement of a street tree planting deposit before a building permit is issued.

2. If the property owner wishes to remove and/or destroy any tree on their property prior to the submission of an application to the Building Department, Planning Board or Zoning Board (i.e., as a step to prepare the property for an anticipated future development project), then the owner is required to apply for a permit and receive approval before such tree removal work can begin. This requirement remains applicable for up to two years prior to an application being submitted"
3. Borough Arborist shall be notified by the Planning Board or the Zoning Board of Adjustment upon receipt of any application regarding Subsection E(1) above. Borough Arborist, or its designee, will review and recommend street tree planting requirements within 15 business days. Plantings shall thereafter be done solely by an independent contractor engaged by the Borough and shall not be done by the owner or developer, absent written approval for the same.
4. One tree shall be planted every 25- 30 feet of street curb with a minimum of two trees per property A deposit a minimum of \$500 and up to the current market value of tree purchase and planting is required for each two-and-one-half-inch-caliper tree. The tree(s) will be planted by the Borough during the regularly scheduled street tree planting for each site, and an inspection fee will apply.
5. The estimate for street tree planting form is hereby adopted and shall be on file in the office of the Borough Clerk.
6. Deposit; accounts.
7. The street tree planting deposit shall be made prior to the issuance of a certificate of occupancy.

All other sections of the code not specifically repealed are to remain, unless inconsistent with the above.

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.

SECTION III: The Borough Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this ordinance to the Bergen County Planning Board, and to all others entitled thereto pursuant to the provisions of N.J.S.A. 40:55D-15. Upon adoption of this ordinance, after public hearing thereon, the Borough clerk is further directed to publish notice of the passage thereof and to file copy of this ordinance as finally adopted with the Bergen County Planning Board as required by N.J.S.A. 40:55D-16 and with the Borough Tax Assessor.

NOTICE OF PENDING ORDINANCE

This Ordinance published herewith was introduced and passed 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 ordinance 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.

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HO-HO-KUS AT THE SINE DIE PUBLIC MEETING ON April 25, 2023.

ATTEST: _____ Joan Herve, RMC, Borough Clerk

APPROVED: _____ Thomas W. Randall, Mayor