

**BOROUGH OF FRANKLIN LAKES
ORDINANCE NO. 1562**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 71
“OFFICERS AND EMPLOYEES”, CHAPTER 118 “SHADE TREE
COMMISSION”, CHAPTER 300 “LAND USE AND DEVELOPMENT”,
CHAPTER 404 “SOIL REMOVAL”, AND CHAPTER 453 “TREES”
OF THE CODE OF THE BOROUGH OF FRANKLIN LAKES
TO AMEND PROVISIONS RELATING TO TREES**

BE IT ORDAINED by the Mayor and Council of the Borough of Franklin Lakes, in the County of Bergen and State of New Jersey as follows:

Section 1. Chapter 71 “Officers and Employees” of the Code of the Borough of Franklin Lakes is hereby supplemented by the addition of the following:

ARTICLE X, Tree Specialist

§ 71-37. Creation of position.

There is hereby created the position of Tree Specialist for the Borough of Franklin Lakes.

§ 71-38. Appointment.

The Tree Specialist shall be appointed annually by the Mayor with the advice and consent of the Council.

§ 71-39. Duties.

The Tree Specialist shall be responsible for the conservation of trees and soil within the Borough and shall administer the provisions of Chapters 453 and Article XV of Chapter 300 of the Borough Code. The Tree Specialist shall also provide assistance, support and advice to the Borough’s Shade Tree Commission and shall attend meetings of the Commission. The Tree Specialist shall be responsible for the inspection of sites for which application(s) are filed under this chapter. The Tree Specialist will be responsible for the administration and protection

requirements of this chapter and enforcement of ordinances as directed by the Shade Tree Commission.

§ 71-40. Compliance.

When enforcing applicable Borough ordinances, the Tree Specialist shall give the property owner a reasonable opportunity to comply with the requirements of the Tree Specialist in accordance with this section. The time period for compliance shall depend on the severity and urgency of the issue. If the property owner shall fail or refuse to comply with the requirements of the Tree Specialist after being given a reasonable opportunity to comply, then the Tree Specialist may forthwith proceed to take such actions as may be appropriate including, but not limited to, administering treatment or removal of any tree. The cost thereof shall be certified to the Tax Collector and shall thereupon become a lien upon the property in the same manner as taxes against the property. The Tree Specialist has the authority to issue summonses, Stop Work Orders and authorize the release of Tree Bonds.

Section 2. Chapter 118 “Shade Tree Commission” is hereby amended to read as follows:

Chapter 118, SHADE TREE COMMISSION

§ 118-1. Creation; scope; membership.

The regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways, public places, parks and parkways of the Borough, except state highways unless the State Highway Department shall assent thereto, and except county highways, parks and parkways unless a County Shade Tree Commission is operative and gives assent thereto, shall be exercised by and under the authority of the Borough Shade Tree Commission, which is hereby created. The Commission shall consist of seven members and two

alternates appointed by the Mayor, who shall be residents of the municipality and shall serve without compensation.

§ 118-2. Terms of office.

- A. The first Commissioners shall be appointed within 60 days after the effective date of this chapter and their terms of office shall commence upon the day of their appointment and be for the respective periods of one, two, three, four and five years beginning on January 1 next succeeding such appointment.
- B. The term of each appointee shall be designated in his appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January 1 next succeeding such appointment. In the event that membership of any Commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing.
- C. Alternates shall serve a period of five years beginning January 1 of the year following their appointment. Alternates may participate in all of the Commission's activities but may not vote unless one of the regular members is absent. Alternates shall be designated "Alternate One" and "Alternate Two." In the absence of one member, Alternate One shall vote; in the absence of two members, both alternates shall vote.

§ 118-3. Organization; officers.

The Commission shall organize annually by the election of one of its members as Chairman and the appointment of a Secretary, who need not be a member. The salary of the Secretary, who may be compensated even if a member of the Commission, shall be fixed by the Borough Council.

§ 118-4. Vacancies.

Any vacancy occurring by reason of the death, resignation or removal of any Commissioner shall be filled for the unexpired term by the Mayor.

§ 118-5. Powers and duties.

The Commission shall have the power to:

- A. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted, in any public highway or park except such as are excluded pursuant to § 118-1 of this chapter, including the planting, trimming, spraying, care and protection thereof.
- B. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection.
- C. Move or require the removal of any tree, or part thereof, dangerous to public safety.
- D. Encourage arboriculture.
- E. Make recommendations to the Mayor and Council for the passage, alteration, amendment and repeal of ordinances necessary or proper for carrying out the provisions thereof.
- F. Administer treatment to, or remove, any tree situate upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees and enter upon private property for that purpose with the consent of the owner thereof, provided the suspected condition is first confirmed by certificate issued by or on behalf of the New Jersey Department of Agriculture.
- G. Review development applications before the Planning Board and Zoning Board and, when necessary, require new plantings by applicants within the public right-of-way where destruction or removal of existing trees and shrubs will occur or where no trees or

shrubs are now in existence. If such applicants shall fail or refuse to comply with the requirements of the Commission, the Commission may forthwith proceed, after notice as herein provided of its intention to do so, to plant the same, and the initial cost of all such trees planted by the Commission, the cost of planting thereof and the cost of the posts and boxes or guards used for the protection thereof shall be charged against the tree bond, if any, and, to the extent the tree bond is not enough to cover such costs, shall be a charge upon the real estate on which such tree or trees shall be planted 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 Commission, be certified by it to the Tax Collector of the municipality and shall thereupon become and be a lien upon the 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 the property.

- H. Review applications for tree removal made to the Mayor and Council in accordance with section 300-150.

Section 3. Section 300-42.1 “Schedule of escrow deposits” of Chapter 300 “Land Use and Development” is hereby amended and supplemented to read as follows:

§ 300-42.1. Schedule of escrow deposits.

There is hereby established the following schedule of initial deposits required to be paid by each applicant for development toward reasonably anticipated Borough expenses for professional services and costs.

- A. Escrow deposits for legal, engineering, planning, and Tree Specialist fees for applications before the Planning Board or Zoning Board of Adjustment, where applicable, shall be as follows:

- (1) Major subdivision: \$10,000.
- (2) Minor subdivision: \$5,000.
- (3) Major site plan: \$10,000.
- (4) Bulk variances under N.J.S.A. 40:55D-70c: \$2,000.
- (5) Conditional use application: \$2,500.
- (6) Hold-harmless agreement: \$1,500.
- (7) Amended application: \$1,250.
- (8) All other applications: \$1,500 or as may be determined by the Planning Board.
- (9) Scheduling of a special meeting: \$2,000.

B. Escrow deposits for legal, engineering, planning, and Tree Specialist fees for applications before the Zoning Board of Adjustment or Planning Board, where applicable, shall be as follows:

- (1) Appeal from Zoning Officer's decision under N.J.S.A. 40:55D-70a: \$1,000.
- (2) Interpretation of Zoning Map or Ordinance under N.J.S.A. 40:55D-70b: \$1,000.
- (3) Bulk variances under N.J.S.A. 40:55D-70(c): \$1,500.
- (4) Use variances under N.J.S.A. 40:55D-70(d): \$2,500.
- (5) Appeals under N.J.S.A. 40:55D-34, through 40:55D-36: \$1,000.
- (6) Conditional use variance: \$2,500.
- (7) Preparation of hold-harmless agreement: \$1,000.
- (8) All other applications: \$1,000 or as may be determined by the Zoning Board of Adjustment.
- (9) Scheduling of a special meeting: \$2,000.

- C. The Planning Board and Zoning Board of Adjustment shall have the authority to require an escrow deposit for legal, engineering, planning, and Tree Specialist fees in an amount less than the amount set forth in this section under exceptional circumstances upon written request by the applicant.
- D. A minimum balance shall be maintained by the applicant in the escrow account. Inspections shall not be conducted, reports prepared, certificates or approvals issued or hearings conducted during any period of time when the balance in an account is less than the minimum required. It shall be the applicant's responsibility to monitor the account and ensure that the minimum is always maintained. The amount of the minimum balance shall be at least \$1,000 for applications involving one single-family home and \$5,000 for subdivision and site plan applications.

Section 5. Paragraph F of Section 300-121 “Regulations governing certain accessory structures and uses” is hereby amended to read as follows:

F. Fences, berms and walls:

- (1) No fence shall be erected, altered or constructed in any residential zone which shall exceed five feet in height above ground level, except for those fences located on that side of a residential property facing Route 208 or Route 287 where fences may be no more than six feet in height. Fences in all nonresidential zones shall be permitted to be no more than six feet in height.
- (2) No decorative wall shall exceed a height of two feet in the front yard. All other decorative walls shall conform to the regulations on fences, and shall be considered opaque for the purposes of this chapter.

- (3) Except for driveway construction which must meet the requirements of Borough Code section 300-71(D)(4), no retaining walls, berms, or regrading which would require a soil moving permit shall be located within 15 feet of any property lines.
- (4) If it is demonstrated that a retaining wall of a height greater than four feet is necessary, said retaining wall shall be terraced, where feasible, to enable suitable plantings to be installed along the retaining wall, thereby ensuring that individual sections of the retaining wall do not exceed four feet.
- (5) Notwithstanding the above provisions, no fence or wall shall be erected, altered or constructed in any zone which shall violate the provisions set forth regarding sight triangles.
- (6) Fences surrounding the perimeter of tennis courts shall be exempt from the above requirements. Said fence shall not exceed 14 feet in height above ground level.
- (7) The finished side of a fence shall face the adjoining properties.
- (8) Opaque fences shall not be located in any of the required building setback areas, in the following zones: A-22.5, A-40C, A-40 and A-130. Opaque fences are not permitted in the front yard setback of any zone.
- (9) Applications for fences shall be accompanied by a permit fee of \$50.
- (10) Swimming pools, spas and hot tubs.
 - (a) In accordance with § 220-5 of the Borough Code, all new and existing residential swimming pools, spas and hot tubs shall comply with the requirements for fences and barriers as set forth in Section AG105 of Appendix G, "Swimming Pools, Spas and Hot Tubs," of the International Residential Code, 2006, New Jersey edition, and as same may be amended

from time to time. These requirements shall apply to all new and existing swimming pools, spas and hot tubs, installed at any time. Copies of Section AG105 of Appendix G, "Swimming Pools, Spas and Hot Tubs," of the International Residential Code, 2006, New Jersey edition, and as same may be amended from time to time, shall be available for the public in the Construction Department office during normal business hours.

- (b) As provided in Subsection B of § 220-5 of the Borough Code, for residential swimming pools, spas or hot tubs installed prior to 1977, if the swimming pool, spa or hot tub does not meet the requirements as set forth above, then the property owner shall meet those requirements within six months following the transfer of title of the property. Any person who fails to meet the requirements of this Subsection B of § 220-5 within six months following the transfer of title of the property shall be in violation of § 220-5 and shall be subject to the penalties set forth therein.

Section 5. Section 300-124 "Buffer and planting requirements; tree removal" of Chapter 300 is hereby renamed "Buffer and planting requirements" and is amended to read as follows:

§ 300-124. Buffer and planting requirements.

A landscape buffer shall be provided in any nonresidential zone and for any nonresidential use where a development abuts a residential zone or residentially developed property. The buffer shall provide a year-round visual screen to minimize adverse impacts from the site on adjacent properties. The following buffer area and landscaping requirements shall apply, unless a different requirement is set forth elsewhere in this chapter:

- A. A minimum fifteen-foot buffer shall be provided for all uses in the RB and LB Districts, along all property lines, provided that a minimum thirty-foot buffer is required between any business district and residential district.
- B. A minimum twenty-five-foot buffer shall be provided for all uses in all I Districts, along all property lines, provided that a minimum thirty-foot buffer is required between any industrial district and any residential district.
- C. A minimum one-hundred-foot buffer shall be provided for all uses in the OB-RL and HOB-RL Districts, along all property lines.
- D. Buffer areas will be contiguous with residential property lines and shall be of uniform width.
- E. An applicant may be required by the Planning Board, the Board of Adjustment or the Shade Tree Commission to provide a landscape buffer and a six-foot high stockade fence within the buffer area parallel to the lot line of the abutting residential lot.
- F. Buffer areas shall be maintained and kept clean of all debris, rubbish, weeds and tall grass. Any screen planting shall be maintained permanently by the property owner, and any plant material which does not live shall be replaced within one year or one growing season.
- G. No structure, activity, storage of materials, driveways or parking of vehicles shall be permitted in the buffer area, except permitted signs and fencing as specified in the district regulations, and such signs and fencing shall be permitted in the buffer area only by a finding by the Planning Board that their location in the buffer is appropriate.
- H. Requirements for planting in buffer area.

- (1) A solid and continuous landscaped screen shall be planted and maintained around parking and loading areas, eliminate glare of vehicle lights and enhance the building from the abutting residential areas. The landscaped screen shall consist of evergreen trees, such as hemlock, Douglas fir, Norway spruce, etc. Evergreen trees shall not be less than five feet high when planted, and the lowest branches shall be not more than one foot above the ground. In the event that the existing evergreen trees do not cover the required area from the ground, said landscaping screen shall be supplemented with evergreen shrubbery.
- (2) In addition to the landscaped screen, shade trees shall be planted by the applicant at a distance of not less than 20 feet or more than 40 feet from each other.
- (3) If the buffer area includes existing growth of evergreen and deciduous trees and shrubbery, but not enough to provide a suitable screen as required above, existing trees and shrubbery may remain and shall be supplemented by additional evergreen plantings to provide the required landscaped screen. In the event the approving authority finds that further plantings of evergreens will not grow satisfactorily in said buffer areas, stockade fencing six feet high shall be erected in the buffer area.

I. The Planning Board or Zoning Board shall have the power to waive any of the requirements or details specified above if it determines an adequate buffer can be provided in less than the required width while maintaining the purposes of this section. The Planning Board or Zoning Board, when considering waiving any of the buffer requirements, shall review the proposed plat and the standards and purposes of this chapter and, to these ends, shall consider the location of buildings, parking areas, outdoor

illumination and topographic features of the area and existing features, such as trees and streams; the efficiency, adequacy and safety of the proposed layout of driveways, streets, sidewalks and paths; the adequacy and location of screening and parking areas, structures and uses; and such other matters as may be found to have a material bearing on the above standards and objectives.

Section 6. Paragraph B of section 300-124 “Buffer and planting requirements” is hereby deleted.

Section 7. Chapter 300 “Land Use and Development” is hereby supplemented by the addition of the following:

ARTICLE XX, Tree Removal and Replacement.

§ 300-147. Tree removal.

- A. The indiscriminate, unnecessary and excessive removal of trees upon land both developed and undeveloped may result in increased surface runoff and soil erosion, increased 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 effect and increased dust and pollution, thereby increasing municipal costs for the control of drainage. Excessive removal and destruction of trees also damages the aesthetic value of existing residential areas and impairs the stability and value of improved and unimproved real property with accompanying deterioration of conditions thereby affecting the health, safety and general welfare of the inhabitants of the Borough.

B. It is recognized that there is a strong interrelationship between the integrity of Borough water resources, development on steep slopes, tree removal, soil disturbance, stormwater management and the general use of the land resources. Fewer trees throughout the Borough also correlates with increased air pollution. The appropriate management of these resources is an important health, safety and general welfare concern. Managing the Borough's tree resource is consistent with its state-approved Community Forestry Management Plan.

§ 300-148. Definitions.

For the purpose of this subsection, the following words shall have the meanings indicated:

BUILDING PLOT -- A parcel of land upon which a building has been or may be erected in accordance with this chapter.

COMMUNITY FORESTRY MANAGEMENT PLAN -- A plan developed by the Borough outlining the goals and objectives for managing trees on Borough property with the intent of minimizing liability to the Borough and maximizing the useful life of the tree resource. The plan is to be approved by the New Jersey Department of Environmental Protection, Division of Parks and Forestry, Forest Service.

DIAMETER AT BREAST HEIGHT (DBH) -- The diameter of a tree measured four feet and six inches above the ground level.

DRIPLINE -- The extent to which the leaves and outer branches extend outward from the trunk to a point on the ground at which a line drawn vertically from the leaves furthest from the trunk touches the ground.

EROSION -- The detachment and movement of soil or rock fragments by water, ice, wind and gravity.

EXEMPT AREA -- The lot area as provided in this chapter for which tree replacement shall not be required.

EXTENSION TILE -- Four or six inch agricultural tile or split sewer pipes are laid in a wheel-and-spoke design with the tree as the hub. The radial lines of the tile near the tree should be at least one foot higher than the ends joining the circle of tile. A few radial tiles should extend beyond the circle and should slope sharply downward to ensure good drainage. An open-jointed stone or brick well is then constructed around the trunk up to the level of the new fill. The inner circumference of the stone well should be about two feet from the circumference of the trunk. Six-inch bell tiles are placed above the junction of the two tile systems, the bell end reaching the planned grade level, and stones are placed around the bell tiles to hold them erect. All ground tiles are covered with small rocks and cobblestones to a depth of 18 inches.

HAZARDOUS TREE – A tree is hazardous if it is an imminent hazard and a threat to the safety of persons or property. If a tree possesses a structural defect that may cause the tree or part of the tree to fall on someone or something of value (i.e. ‘target’), and the condition is determined to be imminent, the tree is considered hazardous.

IMPROVED PROPERTY -- Any property on which a residential structure exists at the time of the tree removal.

INVASIVE TREE -- Species of tree that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Tree of heaven (*Alanthus altissima*) and Norway maple (*Acer platanoides*) are examples of invasive trees in the Borough of Franklin Lakes.

TREE -- Any tree, whether dead or alive, having a single or multi-stemmed trunk with a diameter at breast height (*DBH*) of seven inches or greater, or, where the tree's height or the

remainder of the tree (the stump), is less than four feet six inches in height, the measurement shall be taken at the highest point of the trunk. Trees that grow out of one root system, with two or more trunks, that divide below DBH, will be counted as two or more trees. A multistemmed trunk that splits below four feet six inches will be counted as two or more trees.

TREE ESCROW FUND -- A fund established for the maintenance, repair, replacement, and planting of trees on public property throughout the Borough. The fund may be utilized for the administration and promotion of tree and shrubbery resource sustainability projects and practices consistent with the Community Stewardship Incentive Program as outlined in the New Jersey Shade Tree and Community Forestry Assistance Act. The Tree Escrow Fund shall be administered by the Mayor and Council, following referral and recommendation by the Shade Tree Commission.

TREE PLANTING PLAN -- A specific plan adopted by the Borough for the location and placement of trees on public property.

TREE REMOVAL PERMIT -- The permit issued by the Shade Tree Commission or the Tree Specialist to remove or destroy a tree or trees located on any improved land or vacant or unimproved property as defined in this section. The permit shall be valid for a period of 90 days.

TREE REPLACEMENT PLAN -- A specific plan for replacement of removed trees in accordance with the provision of this chapter.

UNIMPROVED OR VACANT LAND -- Privately owned land upon which no home has been completely built, and for a period of two years after the certificate of occupancy is issued.

WOODLAND MANAGEMENT PLAN -- A plan for the management of timbered or forested lands approved by the New Jersey Department of Environmental Protection, Forest Service, or similar state or federal agency.

§ 300-149. Removal of trees from land within the Borough.

No tree shall be removed, damaged or destroyed on any land whether improved, unimproved, commercial or residential, within the Borough without the issuance of a proper tree removal permit as described herein.

§ 300-150. Tree removal permits issued by Construction Official or Tree Specialist; Additional Tree Removal.

- A. Purpose. The goal of tree removal permit requirements is to maintain the forest canopy in the Borough of Franklin Lakes. The Borough of Franklin Lakes is a forested community and maintenance of the existing trees is important. Tree removal permit requirements help maintain the forest canopy. Some trees need to be protected from indiscriminate removal.
- B. Unless tree removal is being considered as part of a development application before the Planning Board or Zoning Board, the Construction Official or Tree Specialist shall issue a permit for removal of trees:
- (1) From the following areas:
 - (a) Within 20 feet of a principal structure.
 - (b) Within 10 feet of a pool or pool cabana.
 - (c) Within five feet of a driveway or walkway.
 - (d) Within five feet of a septic tank or field.
 - (e) Within 10 feet of a tennis court or similar recreational facility.
 - (2) Where the total number of trees to be removed is less than 10% of the total number of trees on the property, including trees to be removed pursuant to paragraph B(1) hereinabove; provided however that, if the total number of trees to

be removed pursuant to paragraph B(1) is 10% or more of the total number of trees on the property, then the property owner may remove the number of trees as is permitted pursuant to paragraph B(1). Except as otherwise provided for tree removal pursuant to paragraph B(1), no more than 10% of the total number of trees on the property may be removed within any five year period.

- (3) For any tree that is hazardous, dead or dying.
- (4) For any tree that is invasive, except that replacement trees shall be required in accordance with paragraph C of this section.
- (5) For any tree or trees removed or cut in accordance with a Woodland Management Plan or a Forest Stewardship Plan that has been approved by the New Jersey Forest Service, provided that such plan is filed with the Construction Official, Tree Specialist, Shade Tree Commission and Tax Assessor.
- (6) For any tree or trees removed or cut in accordance with an approved conservation plan prepared by the Soil Conservation District, provided that such plan has been filed with the Shade Tree Commission and Tax Assessor.
- (7) For any tree or trees planted and grown for commercial purposes on property used as a commercial nursery, tree farm, garden center, Christmas tree plantations or tree orchards.
- (8) For any tree growing in a utility right-of-way or fire trail subject to the approval of the Shade Tree Commission.
- (9) The Construction Official or Tree Specialist may not issue a permit for removal of trees within the street right of way (generally within 10 feet from the curb or edge of pavement), except for any tree that is hazardous, dead or dying. Trees within

10 feet of the curb or edge of pavement along a street may only be removed with approval of the Shade Tree Commission.

- C. An applicant may apply to the Mayor and Council to remove trees in addition to those permitted under paragraph B hereunder; except that trees within 10 feet of the curb or edge of pavement along a street may only be removed with approval of the Shade Tree Commission. Such application shall be referred by the Mayor and Council to the Shade Tree Commission for its review and recommendation. The Mayor and Council may, in its discretion, require that the applicant provide written notice to adjoining property owners of the application under this paragraph. For purposes of this section, adjoining property owners shall not include property owners across a street. An application to the Mayor and Council under this paragraph shall include the information required under paragraph E of this section and the Mayor and Council may require a site plan which complies with the site plan requirements set forth in paragraph B of section 453-10 of this chapter for a tree removal application submitted to the Planning Board or Zoning Board. In reviewing the application for tree removal, the Mayor and Council shall consider the criteria set forth in paragraph D of section 453-10 of this chapter for a tree removal application submitted to the Planning Board or Zoning Board.
- D. Replacement trees. For removal of trees in accordance with paragraph C of this section, the applicant shall be required to plant replacement trees on-site in accordance with the provisions of section 300-152 of this chapter.
- E. Application. An application for a permit for removal or destruction of any tree under this section shall contain the name of the applicant, the name of the owner, consent of the owner if the applicant name is different than the owner, the name and address of the tree

service, the reasons for the removal or destruction, and a sketch of the property which shall include the location, size and species of trees proposed for removal, and such further information as may be required by the Construction Official or Tree Specialist. An application for tree removal shall be reviewed and decided by the Construction Official or Tree Specialist within 14 days of the submission of a complete application.

§ 300-151. Tree removal applications to the Planning Board or Zoning Board.

- A. Where tree removal or replacement is part of a development application before the Planning Board or Zoning Board, the application for tree removal shall be made to the Planning Board or Zoning Board.
- B. [compare to §300-124(B)(5)(c)- see below] Site plan. Unless waived by the Planning Board or Zoning Board, a formal site plan as prepared by a licensed engineer or survey shall be required with the application, containing the following information:
 - (1) The location of the position of all trees as defined herein, including trees within 50 feet of the limit of disturbance of any proposed streets, underground or aboveground utility lines, and structures;
 - (3) The identity of the species and the quantity of each species of trees which are to be removed or disturbed and including the dripline circumference;
 - (4) List of the specific proposals for replanting, if applicable;
- C. Referral to other agencies. The Planning Board or Zoning Board shall refer all tree removal applications to the Shade Tree Commission for their review and comment. Their

report shall be submitted to the Board within 30 days of receipt of same. The Board shall consider but not be bound by the above-noted referral reports.

D. Standards for Planning Board or Zoning Board review. The Board may allow the removal of trees where the Board has made findings of fact in connection with the removal of trees based on consideration of the following criteria, the purposes of this article as set forth in section 300-147, and any relevant report or comment received from the referrals noted above:

- (1) Trees may be removed as permitted in paragraph B of section 300-150.
- (2) Where the failure to remove the trees will create an unreasonable hardship or unduly restrict the use of the property, the Board may allow removal of additional trees where the benefits of said removal outweigh any resulting detriment.
- (3) Where as the result of a cut or fill approved by the Board, the trees are deemed no longer viable, said trees may be removed.
- (4) The Board shall consider drainage or other physical conditions existing on the site or on adjoining property and, after considering the referral recommendations, may permit the removal of said trees where it is deemed appropriate, provided that the benefits will outweigh the detriments resulting from said removal.
- (5) The Board may approve the removal of trees when said removal will not impair the growth and development of the remaining trees on the property, or on adjacent properties, or will not cause erosion, impair existing drainage, or lessen property values or damage aesthetics in the area.

- E. For applications before the Planning Board or Zoning Board of Adjustment, the initial escrow deposit toward reasonably anticipated Borough expenses for services and costs of the Tree Specialist shall be as set forth in section 300-42.1 of the Borough Code.

§ 300-152. Tree replacement.

- A. To the extent that the Planning Board, Zoning Board or Mayor and Council permits removal of trees in addition to those permitted in paragraph B of section 300-150, the applicant shall replace the removed trees on-site. The applicant shall calculate for review by the Shade Tree Commission, Planning Board or Zoning Board the diameter at breast height of each tree to be removed. The total diameter at breast height for all trees shall be the basis for calculating the number of replacement trees required. The applicant shall be required to plant one tree with a diameter measured at one foot above root swell of two to two and one-half inches for every seven inches of total diameter at breast height for all trees to be removed. For example, if four trees totaling 28 inches in diameter at breast height were removed, the applicant would be required to plant four replacement trees. All replacement trees shall be properly protected and may not be removed with a tree removal permit.
- B. Replacement trees need to be planted according to standards developed by the International Society of Arboriculture, described in the pamphlet titled, “New Tree Planting.” The wire baskets, burlap and twine shall be removed from replacement trees prior to planting. The trunk flare will be at the natural existing grade of the soil.
- C. Replacement trees need to be planted at least 20 feet from existing trees and replacement trees, and they may not be planted under the canopy of existing trees, except for shade tolerant trees.

- D. Replacement trees must be cared for, kept alive and not removed for 10 years after planting, except as otherwise permitted in paragraph B(1) of section 300-150 hereinabove.

§ 300-153. Issuance of permits; fees; bonds.

- A. Permit. Upon approval of the application by the Construction Official, Tree Specialist, Planning Board or Zoning Board, marking of trees to be removed, and installation of tree protection for residual trees, a tree removal permit will be issued by the Construction Official or Tree Specialist. The permit will be displayed on the house or building, and shall be visible from the closest road. The permit will be displayed while tree work is being done and for the next ten days after the tree work is completed.
- B. Marking of trees. The trees to be removed must be clearly marked. Plastic flagging is acceptable.
- C. Fees.
 - (1) The fee for an application for removal of trees, either dead or alive, under section 300-150 of this chapter shall be \$35 for the first five trees and \$5 for each additional tree.
 - (2) The fee for an application for removal of tree in connection with a soil moving permit application shall be as set forth in section 404-9 of the Borough Code.
- D. Surety bond.
 - (1) A cash or surety bond for tree preservation and tree removal is required in all cases where Planning Board, Zoning Board, Mayor and Council or soil removal approval is required; except that the Planning Board, Zoning Board, Mayor and Council, Construction Official, Borough Engineer or Tree

Specialist may waive the bond requirement if there is minimal or no threat to trees on the property. The application to the Planning Board, Zoning Board, Mayor and Council or for soil removal shall be accompanied by a bond in the minimum amount of \$5,000 for each acre of the site on which the improvement is located. The amount of the bond can be increased by the construction official where the official feels it is justified based on the potential threat to the trees on the property. The bond shall be held by the Borough of Franklin Lakes to ensure compliance with the requirements imposed by the Borough Code related to the preservation of trees.

- (2) The bond shall be returned to the applicant upon completion of the project, issuance of a Certificate of Occupancy, and inspection of the property by the construction official to ensure compliance with the Borough Code and conditions of development approval relating to tree preservation and tree removal. Where trees have been damaged, improperly removed, or destroyed in violation of the Borough Code or conditions of development approval, in addition to other enforcement options, some or all of the cash bond shall be retained and said cash bond shall be deposited in the Borough's Tree Escrow Fund. Failure to comply with Borough Code and conditions of development approval relating to tree preservation and tree removal shall also be considered a violation of the provisions of this chapter.
- (3) In the event that the applicant fails to request an inspection to confirm that the improvements are completed and that ordinances have not been violated within two (2) years from the Borough's receipt of the cash bond, and fails to

request a refund of the cash bond, the amount of the cash bond shall be transferred to the Borough's Tree Escrow Fund.

§ 300-154. Waiver of Tree Replacement Requirements.

Where, in the discretion of the Construction Official, Tree Specialist, Planning Board, Zoning Board or Mayor and Council, new plantings are required by the ordinances of the Borough, but are not necessary due to the existence of a sufficient number of trees presently on the property, the Construction Official, Tree Specialist, Planning Board, Zoning Board or Mayor and Council may waive any or all requirements for new plantings.

§ 300-155. *Protection of trees.*

- A. Prior to construction and any tree removals, suitable tree protective barriers shall be erected and this protection, generally at the dripline, where required, shall remain until such time as the protection is authorized to be removed by the Construction Official or Tree Specialist or after issuance of a final certificate of occupancy. In addition, during construction no attachments or wires shall be attached to any of said trees so protected. Grading within the dripline of trees must be approved by the Construction Official or Tree Specialist and appropriate measures shall be taken to minimize impact to the trees. Any trees seriously damaged during construction must be professionally treated by a New Jersey Certified Tree Expert or New Jersey Licensed Tree Expert, or replaced if the damage is beyond treatment.
- B. A detail of the existing tree self-supported protective barrier shall be provided on all applications. The protective barrier shall be a minimum of four (4') feet high.

- C. The self-supported protective barrier shall be placed, as determined by the Construction Official or Tree Specialist, at the dripline of any tree along the limit of clearing and around the entire dripline for trees to remain undisturbed within the limit of clearing.
- D. It shall be unlawful for any person in the construction of any structure or other improvement to place solvents, material, construction machinery or temporary soil deposits within the dripline.
- E. During construction, the contractor shall take all reasonable steps to protect the surrounding trees including the installation of a wall around said trees with extension tile. Said wall shall be located no closer than the dripline of the trees.
- F. No structures, equipment or movable machinery that could injure a tree shall be permitted to operate closer than the dripline of the tree. In order to prevent injury, soil within the outer dripline is not permitted to be disturbed.
- G. Prior to removal for construction activity, all trees to be removed shall be tagged and all trees to be retained shall be protected with tree protection fencing. Tagging and fencing shall be inspected by the Construction Official or Tree Specialist.
- H. Installation and repair of septic tanks and fields and underground utilities are not permitted under the dripline of a tree. Any work in the dripline of a tree will be considered a violation of this ordinance, without the approval in writing of the Construction Official or Tree Specialist.

§ 300-156. Emergency removal.

Where the Construction Official or Tree Specialist concludes that it is necessary for purposes of health, safety or welfare considerations to remove a tree, said tree may be removed without a permit.

§ 300-157. Violations and penalties; costs charged against lands; enforcement.

- A. Violations and penalties. Any person violating any of the provisions of this chapter shall be subject to a fine of not less than \$250 nor more than \$1,500 and/or imprisonment in the county jail for a period not to exceed 90 days and/or 90 days of community service. Each tree damaged, removed or destroyed in violation of this chapter shall be considered a separate offense, and a separate fine shall be levied for each tree. In addition, the Court shall require the guilty party to restore areas where trees have been removed or damaged in violation of this chapter. Where a tree with a diameter at breast height of 12 inches or more minimally 12 inches in diameter has been removed, it will require that the responsible party replace said tree with three trees which are at least two inches in diameter. The same calculation shall be utilized to determine the size of other replacement trees.
- B. Costs charged against lands; lien established. Upon receipt of the certified costs, the Borough shall examine same and if found correct shall cause the costs to be charged against the lands. Council may reduce costs if determined to be excessive. The amount so charged shall forthwith become a lien upon the lands and shall be added to and become and form part of the taxes next to be assessed and levied upon the lands, the same to bear interest at the same rate as other taxes, and shall be collected and enforced by the same officer and in the same manner as taxes.
- C. Additional violations. If any person shall continue to violate any of the provisions of this subsection, after being duly notified of such violation, or shall neglect or refuse to comply with any lawful order of the office of the Zoning Official, Construction Official, or Tree Specialist, the failure to comply with a second or each subsequent notification or

order shall be construed as an additional violation of this subsection, and each such additional offense shall subject the offending party upon conviction to the same penalty as provided for the first offense.

- D. A notification of violations may be issued by the Construction Official, Zoning Officer, Borough Engineer, Shade Tree Commission, Environmental Commission, police officer, or Tree Specialist. The Construction Official, Zoning Official, Borough Engineer, police officers, and the Tree Specialist are authorized to enforce the terms of this subsection.

Section 8. Chapter 404 “Soil Removal” is hereby amended to read as follows:

Chapter 404, SOIL REMOVAL

§ 404-1. Permit required for certain activities.

No person, firm or corporation shall do, cause or allow any of the following actions to occur on any land in the Borough, unless and until a soil permit shall first have been issued by the Borough Engineer:

- A. The addition, removal or movement of more than 100 cubic yards of soil from or on any lot or a change in its contour of greater than six inches.
- B. The moving of any soil on a lot where the activity results in a change in the lot contours which result in a change in the drainage characteristics of the lot to the extent that there is increased or decreased runoff to any abutting properties or private or public roads.

§ 404-2. Responsibility of landowner where other party causes removal.

No owner of any land in the Borough shall permit any of the actions described in § 404-1 to occur upon his property until the owner of the land has first obtained a soil moving permit.

§ 404-3. Application for permit.

A. Any person, firm or corporation desiring to engage in any activities for which a permit is required shall, before commencing work, file a written application on a form furnished by the Borough for a permit therefor, with the Borough Engineer, which application shall contain the following data:

- (1) Present contour lines and contour grades of the lots and lands.
- (2) Proposed contour lines and proposed contour grades resulting from the addition, removal or moving of soil on the lots and lands and in relation to the adjoining properties.
- (3) Grades of all abutting streets, lots and lands to the extent it is required by the Borough Engineer.
- (4) Where soil is to be removed and stored on lands within the Borough the applicant shall indicate the precise location where the soil shall be stored, the present contour lines and contour grades of the property on which this soil shall be stored and the total cubic yards intended to be stored and the length of time of storage, and any and all plans for soil erosion control when requested by the Borough Engineer.

B. The Borough Engineer may waive or omit any of the requirements set forth herein.

§ 404-4. Permitted fill.

No fill other than soil shall be permitted without the express authorization of the Borough Engineer. Stone, boulders, debris, stumps or similar materials are not permitted without the Borough Engineer's authorization. Where soil is being imported into the Borough, the applicant shall provide to the Engineer a certification that the soil is free from any toxic waste, radioactive materials or other materials that would present health hazards or are prohibited from discharge

into the soil by the Department of Environmental Protection. The applicant shall further state the precise location from which the soil is being imported and, where required by the Engineer, shall provide any requested analysis of the soil.

§ 404-5. Review by Planning Board or Board of Adjustment.

If activities which would require a soil moving permit are part of a development application before the Planning Board or Board of Adjustment, then the Planning Board or Board of Adjustment shall review the activities as part of its development application process, in accordance with the requirements of this chapter.

§ 404-6. Guiding factors in reviewing applications.

In considering and reviewing the application and in issuing or denying the permit, the Borough Engineer shall be guided by the general purpose of municipal planning and shall take into consideration the following factors:

- A. Soil erosion by water and wind.
- B. Surface water drainage.
- C. Soil fertility.
- D. Lateral support of abutting streets, lots and lands.
- E. Public health and safety.
- F. Land values and uses.
- G. Such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Borough.
- H. Water table.
- I. Streams, ponds, lakes and watercourses.
- J. Preservation and removal of trees.

§ 404-7. Tree preservation and removal.

The applicant shall be required to comply with the requirements of Borough Code section 300-150 pertaining to tree preservation and removal. In addition to the requirements of said section, for new construction only, if trees are removed from the area because of installation of a septic tank or field, then replacement trees shall be required in accordance with paragraph C of section 300-150, unless otherwise permitted by paragraph B(2) of section 300-150. For purposes of this section, "new construction" shall mean the construction of a new home or an addition to an existing home.

§ 404-8. Performance bond.

Before any permit shall be issued, the applicant shall file with the Mayor and Council of the Borough any performance bond required by the Borough Engineer with satisfactory surety the amount to be set by the Borough Engineer. The bond shall be conditioned upon full and faithful performance by the principal within the time specified in the application of all the proposed work as set forth in the application and such additional work which may be found necessary by the Borough Engineer. In addition, the bond shall be conditioned upon the repair at the expense of the owner or applicant of any street or streets damaged by the transportation of soil in connection with the application if, in the judgment of the Borough Engineer, such repairs are deemed to be necessary. The term "expense" as used in this section shall include the cost of supervision incurred by the Borough Engineer in connection with such repairs.

§ 404-9. Top layer of soil not to be removed.

The owner of the premises or the person in charge of the moving of soil, when permission has been duly granted, shall not take away the top layer of arable soil for a depth of six inches, but such top layer of arable soil to a depth of six inches shall be set aside for retention on the

premises and shall be respread over the premises when the rest of the soil has been removed, pursuant to levels and contour lines approved by the Engineer.

§ 404-10. Conduct of operations; hours; records.

- A. In the moving of soil, when permission has been duly granted, the owner or person in charge shall so conduct the operations that there shall be no sharp declivities, pits or depressions, and in such a manner that, upon completion, the area shall be properly leveled off, cleared of debris and graded and seeded to conform with the contour lines and grades as approved by the Borough Engineer. No operation governed by this chapter shall be permitted on Sunday or before 6:00 a.m. or after 6:00 p.m.
- B. When a permit for the moving of soil has been granted, the person, firm or corporation receiving such permit shall keep records as are necessary to show the quantities of soil moved, removed or added to land. The records shall be so maintained as to permit inspection and audit by the Borough Engineer.

§ 404-11. Inspection of work.

The Construction Officer, Borough Engineer and Tree Specialist shall have at all times the right to inspect any property where a permit has been issued under the provisions of this chapter. In order to facilitate this right of inspection, the owners of the property shall cause sufficient grade and boundary stakes to be put in place while work is going on or about to commence. The Construction Official, Borough Engineer and Tree Specialist shall also have the right to inspect the property at any time for the purpose of laying out roads, drainage or for any other purpose deemed in the best interest of the Borough.

§ 404-12. Fees and escrow requirements.

- A. Fees. The applicant shall pay a fee to the Borough, which shall include tree preservation and removal review and inspection, as follows:
- (1) New residence: \$400.
 - (2) All other applications including addition, accessory structure, pool, tennis court, patio, regrading, wall: \$300.
- B. Escrows. In addition to the fees referenced in Subsection A above, an applicant seeking approval for soil movement shall deposit with the Borough as an escrow pursuant to §300-42 of the Code of the Borough of Franklin Lakes and N.J.S.A. 40:55B-53, the following amounts:
- (1) New residence: \$3,000.
 - (2) All other applications including addition, accessory structure, pool, tennis court, patio, regrading, wall: \$2,500.
- C. Additional escrows. In the event that the escrow is insufficient to cover the cost of the services provided by the engineering professional, the applicant shall be required to post an additional amount as established by the Borough, and the certificate of occupancy and all other Borough approvals shall not be issued until said additional amounts have been deposited into escrow.
- D. Legal escrows. Where appropriate, the Board Secretary, prior to accepting an application, may require an additional escrow of \$500 to cover anticipated legal fees. The Board may, by resolution, establish specific circumstances under which this additional escrow is required. This escrow shall be handled in accordance with § 300-42 of the Code of the Borough of Franklin Lakes and N.J.S.A. 40:55B-53.

§ 404-13. Possession of permit.

At any and all times when soil is being removed or deposited upon a site in the Borough, the soil moving permit shall be in the possession of the person in charge of the operation on the site. In the event the soil moving permit is not in possession of the person and on the site, a summons may be issued, and all work shall cease immediately.

§ 404-14. Definitions.

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

LAND -- Any parcel of land or portion thereof, the boundary lines of which can be ascertained by reference to the maps and records, or either, in the office of the Tax Assessor of the Borough or the office of the Bergen County Clerk.

MOVE -- To dig; to excavate; to remove; to grade, regrade, level or otherwise alter or change the location or contour; to transport; to supply. This term shall not be construed to include plowing, spading, cultivating, harrowing or discing of soil, or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes.

PERSON -- Any individual, firm, association, partnership or corporation, or any group of two or more of them or anyone acting in behalf of the person.

SOIL -- Any earth, topsoil, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence therein of organic matter.

Section 9. Chapter 453 “Trees” is hereby amended and supplemented to read as follows:

Chapter 453, TREES

§ 453-1. Specifications for planting shade trees.

A. No variety of tree other than nursery-grown sugar and red maple, pin, red, black, bur, swamp white, white, chestnut and scarlet oak, black, yellow, paper and river birch,

sycamore, sweet gum, hickory, black gum and beech shall be planted in or upon the public highways and parks of the Borough unless the prior approval of the Commission has been obtained to deviate.

- B. Notice must be given to a member of the Shade Tree Commission three days prior to start of planting in order that the Commission may inspect the stock for variety, condition, size and quality. All work shall be subject to the general supervision and approval of the Commission.
- C. No such tree shall be planted unless the same shall be not less than 2 ½ inches caliper measured 18 inches above the ground nor less than 10 feet high. Such tree shall be well branched, with branches to start not less than six feet from the crown of the root system.
- D. Where authorized for placement, flowering decorative trees may be of smaller size than shade varieties. Such trees shall be not less than 1 1/8 inches caliper measured 18 inches above the ground nor less than eight feet high. They shall be well branched, with branches to start not less than five feet from the crown of the root system.
- E. The exact location of all planted trees shall be determined by the Shade Tree Commission. All trees shall be planted 40 feet to 60 feet apart, and parallel to and 10 feet to 15 feet from the curbline. At street corners all trees shall be located a minimum of 20 feet from intercepting curbs.
- F. No trees coming within the jurisdiction of the Shade Tree Commission shall be planted between May 15 and the following October 1 without the permission of the Shade Tree Commission.
- G. Excavations for such trees shall be not less than 18 inches deep and not less than 30 inches in diameter. A seepage area shall be provided by loosening the soil to a depth of

one foot below the excavation. Planting soil in the excavation shall be composed of two parts parent soil and one part peat moss, all mixed thoroughly, to which shall be added and mixed in two pounds of bonemeal or its equivalent. The finished level of backfill shall be two inches below the adjoining finished grade.

- H. All stakes for such trees shall be of white or red cedar and must be eight feet long and not less than two inches in minimum diameter. Stakes must be driven into the ground to a depth of 12 inches below the excavation before planting the tree and are to be placed preferably on the northwest side of the tree trunk. Trees shall be guyed to the stakes using No. 10 wire in a piece of rubber hose. The wire shall be stapled to the stake in such a manner that the wire will not slip nor come in contact with the tree trunk.
- I. After planting of such trees, removal of all debris in the disturbed area shall be made immediately. The property where such planting is made must be left in a neat and orderly condition in accordance with good and accepted planting and tree surgery practice.
- J. All trees which fail to survive for a period of one calendar year following planting shall be replaced by the developer at no cost or expense to the Borough or the Commission. Replacement shall be made within 60 days following written demand for such replacement from the Commission or within such more extended period as may be specified.

§ 453-2. Approval from Shade Tree Commission.

Where the permission, consent or approval of the Shade Tree Commission is required by the provisions of this chapter, any person, firm or corporation required to obtain such permission, consent or approval shall receive the same from any members of the Shade Tree Commission who shall have the authority to do so.

§ 453-3. Planting and removal of trees; notice.

- A. In every case where the property of an abutting owner will be chargeable with the cost of the planting of any shade tree or trees, the Commission shall give notice of the meeting at which it is proposed to consider the planting by publishing the notice at least once, not less than 20 days before the meeting, in a newspaper circulating in the municipality and by personal service of a copy of the notice upon the abutting owner at least 10 days before the meeting. The notice shall specify the street, streets or portions thereof on which such planting is proposed and require all persons who may object thereto to present their objections in writing at the office of the Commission at or before the meeting. Before final action shall be taken, all objections so filed shall be considered.
- B. The Commission shall give reasonable notice of its intention to remove or cause the removal of a tree or part of a tree dangerous to public safety, unless public safety requires immediate removal, in which case no notice shall be necessary.

§ 453-4. Public improvements affecting trees.

- A. No statute giving any person or state, county or municipal board, body or official power or authority to lay any sidewalk along or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to a highway shade tree without the consent of the Shade Tree Commission within whose jurisdiction such tree shall be located. In all cases such Commission shall reasonably cooperate with such person, board, body or official for the general public good.
- B. Nothing in this chapter contained shall be held to take away or diminish any of the powers or authority of any county park commission over the trees or shrubbery in any

county park or parkway within its jurisdiction or to give any other commission or board any power or authority with respect to such trees or shrubbery.

§ 453-5. Nonliability for death or injury.

Nothing in the chapter contained shall be construed to make the Commission or any member thereof responsible for the death or injury of any person or for any injury to any property or highway tree or shrub.

Section 10. Repealer.

All ordinances or parts of ordinances inconsistent or in conflict with this Ordinance are hereby repealed as to said inconsistencies and conflicts.

Section 11. Severability.

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Franklin Lakes declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 12. Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.

APPROVED: _____
Frank Bivona
Mayor

ATTEST: _____
Sally T. Bleeker
Borough Clerk

Introduced: 02-19-13
Adopted: 03-19-13