

**Pennington Borough Council
Special Meeting – April 15, 2019**

Mayor Lawver called the Special Meeting of the Borough Council to order at 5:00 pm. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Gnatt, Marciante and Mills. Ms. Semple arrived after the roll call.

Also present were Borough Administrator Eileen Heinzl, and Borough Attorney Walter Bliss.

Mayor Lawver announced that notice of this meeting has been given to the Hopewell Valley News, Trenton Times and was posted on the bulletin board in Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Mayor Lawver asked everyone to stand for the Flag Salute.

Open to the Public – Agenda Items Only

Meeting open to public for comments on items on the agenda for which no public discussion is provided. In an effort to provide everyone interested an opportunity to address his or her comments to the Governing Body, a public comment time limit has been instituted for each speaker. **Please come forward and state your name and address for the record. Please limit comments to the Governing Body to a maximum of 3 minutes.**

There were no comments from the public.

ORDINANCE FOR INTRODUCTION

Mayor Lawver read Ordinance 2019-6 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2019-6**

**AN ORDINANCE CONCERNING SHADE TREES AND THE
BOROUGH SHADE TREE COMMITTEE AND FURTHER
AMENDING CHAPTER 13 OF THE BOROUGH CODE**

WHEREAS, Borough Council seeks to amend provisions of the Borough Code concerning procedures for the planting, care and removal of shade trees in the public right-of-way and on public property;

WHEREAS, among the desired changes is elimination of any question concerning Council 's exclusive discretion over the types, sizes and locations of the trees to be planted;

WHEREAS, other changes would make clear the prohibition against removal of a public tree by a private person;

WHEREAS, a third change would remove the requirement that the Shade Tree Committee develop a Master Plan for planting trees, clarifying instead the Committee's responsibility for advising the Borough in crafting and implementing the Community Forestry Management Plan;

WHEREAS, new language is underlined and language to be deleted is crossed out;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, as follows:

1. Chapter 13, Article 1 of the Code of the Borough of Pennington is hereby amended at Section 13-1 as follows:

Section 13-1. Establishment, membership and purpose.

- A. The Shade Tree Committee has been established by ordinance effective December 2, 1985, amended April 4, 2016. It shall consist of seven members who shall be residents of this municipality and, when feasible, have experience or expertise in the area of arboriculture or related fields.
- B. The purpose of the Shade Tree Committee is to advise Borough Council in the exercise of its authority over the regulation, planting, care and removal of shade and ornamental trees and shrubbery upon and in the streets, highways, public right-of-way and public property of the Borough of Pennington. This authority shall not extend to state highways unless the State Highway Department shall assent thereto, or to county highways, roads, parks and parkways unless a County Shade Tree Commission is operative and gives assent thereto.
- C. Nothing in this ordinance shall be construed to limit the exclusive control of Borough Council

over the planting, care and removal of trees and shrubbery in its public right-of-way and on its public property, including but not limited to removal of all or part of the roots, branches and other parts of trees and shrubbery on private property extending into or over the public right-of-way or public property, except as otherwise provided by Borough ordinance.

2. Chapter 13, Article 1 of the Code of the Borough of Pennington is hereby amended at Section 13-5, as follows:

Section 13-5. Scope of Responsibilities.

The Shade Tree Committee in its advisory capacity may:

A. Recommend to Borough Council legislation and other appropriate action governing the regulation, care and removal of trees and shrubbery upon and in the public right-of-way and public property of the Borough, and use of the ground surrounding them, so far as may be necessary for their growth, care and protection. All such recommendations shall be with notice to the Borough's Superintendent of Public Works and subject to such conditions as the Committee deems appropriate consistent with the purposes of this ordinance, after weighing the following considerations:

- (a) the safety of the public;
- (b) the condition or health of the tree;
- (c) the appropriateness of the location of the tree or shrub;
- (d) the significance of the tree for preservation of the urban forest;
- (e) opportunities for planting replacement trees or shrubbery conforming with Shade Tree Committee specifications;
- (f) the immediacy of the need for action;
- (g) the availability of public or private financing for the action contemplated; and
- (h) other factors favoring removal or non-removal of the tree in the best interests of the Borough and its residents.

B Recommend to Borough Council with notice to the Superintendent of Public Works legislation and other appropriate action to enhance and protect the public property of the Borough and the public right-of-way, including:

- 1. the planting of trees and shrubbery upon or in the public right-of-way or public property; and
- 2. the care or removal of roots, limbs, branches and other growth extending from trees and shrubbery on private property into or over public property or the public right-of-way.

~~Recommendations for the planting of trees shall be made after visiting the potential site and consulting the list of shade trees recommended for the Borough to identify the type or types of trees and the location and size that may be appropriate. When the potential site is in a public right-of-way adjoining private property, the Committee shall review the list of recommended shade trees in consultation with the adjoining property owner.~~

C. Recommend to Borough Council, with notice to the Borough's Superintendent of Public Works, the care, treatment or removal of any tree on private property which is believed to harbor a disease or insect harmful to trees or other vegetation readily communicable to neighboring healthy trees or other vegetation in the care of the municipality, and recommend to Borough Council entry upon the private property for that purpose, with the consent of the owner thereof, provided that the suspected condition is first confirmed by a certificate issued by or on behalf of the New Jersey Department of Agriculture.

~~D. Develop and maintain a list of trees recommended for shade tree plantings in the Borough. The list shall provide a variety of options, taking into consideration the regional climate, the size of the tree and its root systems, and the available space for a planting. Advise the Borough in the crafting and implementation of its "Community Forestry Management Plan."~~

E. Encourage private property owners to plant, care for and maintain shade trees, ornamental trees and ornamental shrubs on their property as part of the urban forest.

3. Chapter 13, Article 1 of the Code of the Borough of Pennington is hereby amended at Section 13-6, as follows:

Section 13-6. Payment for planting or removal of trees.

A. The planting, care and removal of trees and shrubbery upon and in the public right-of-way and public property of the Borough shall be paid for by the Borough provided the work is:

- (1) included in the annual budget for the Shade Tree Committee approved by Borough Council; and

~~(2) authorized by separate action of Borough Council in its sole discretion even when budgeted; and~~

(32) conducted by the Department of Public Works or a contractor retained by the Borough in conformance with the Local Public Contracts Law.

B. The removal of all or part of ~~the roots and branches~~ extending from trees and shrubbery on private property into public property or into the public right-of-way ~~as needed to protect the public safety or public infrastructure shall, except as provided by Section 177-21 of the Code,~~ also be paid for by the Borough, subject to the same conditions as set forth in the preceding subsection.

C. In other instances involving care or removal of trees and shrubbery on private property pursuant to this ordinance or the Borough Code, the work shall be paid for by the property owner. These instances include the removal of parts of trees and shrubbery on private property extending ~~over public property or~~ into the public right-of-way pursuant to Section 177-21 of the Code and the removal of trees determined to be diseased or otherwise dangerous to the public safety. The work in each case shall be performed by the Department of Public Works or a contractor retained by the Borough except with respect to work required to be performed by the property owner pursuant to Section 177-21 ~~of the Code.~~

D. When the Shade Tree Committee determines that a tree on private property requires removal in whole or in part because it is diseased or otherwise dangerous to the public safety, the Committee shall give the property owner 10 days' notice that it intends to recommend removal of all or part of the tree to Borough Council. Within that ten-day period the property owner may request a hearing before the Shade Tree Committee and the Committee shall report the property owner's objections to Borough Council. If the public safety requires immediate removal of the tree, no notice shall be necessary.

E. The property owner shall also be responsible for the cost of tree removal in the public right-of-way for which the owner has agreed to provide private financing as part of the review process described in Section 13-5.A.

F. When the expense of the planting, care or removal of a tree or shrubbery, including the purchase of trees and shrubbery and replacement trees and shrubbery, is to be charged to a property owner pursuant to this article, the following provisions apply.

1. When the work is performed by the Borough Department of Public Works, the charges for the work, in addition to out-of-pocket costs, shall be computed according to the pertinent charges for labor and equipment provided in Chapter 98 of the Code, concerning fees.
2. When the work is performed by a contractor retained by the Borough, in accordance with the Local Public Contracts Law, the charge for the work shall be the charges and reimbursements incurred by the Borough, in addition to its out-of-pocket costs.
3. Charges for replacement trees will be at actual cost plus 10%.
4. The amount due for the work and out-of-pocket costs, unless earlier paid directly to the Borough by the property owner, shall be certified by Borough Council to the collector of taxes of the Borough and shall thereupon become a lien upon the affected real estate and 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.

G. The planting of trees under the Pennington Memorial Tree planting program shall be at the expense of the applicant.

4. Chapter 13, Article 1 of the Code of the Borough of Pennington is hereby amended by the deletion of Section 13-10, as follows:

~~Section 13-10. Development of Master Plan for planting of trees.~~

~~The Shade Tree Committee shall develop and recommend to the Borough Council a Borough Master Plan, setting forth those areas of the Borough in need of shade trees along the public right-of-way, the types of tree which should be planted and the approximate locations. The Master Plan should consider the type of zoning, the climate, soil conditions and other factors necessary to evaluate and develop such a plan. Upon completion of the Master Plan, any recommendations for the planting of trees made pursuant to this section should make reference to this plan, and any variance from the plan should be explained.~~

5. Chapter 13, Article 1 of the Code of the Borough of Pennington is hereby amended at Section 13-11, as follows:

~~Section 13-11. Prohibition Against Removal of Trees on Public Property or in the Public Right of Way.~~

A. No person shall remove any tree or shrubbery or part of a tree or shrubbery upon or in the streets, highways, public right-of-way or public property of the Borough ~~unless expressly authorized~~

~~by Borough Council in accordance with this article or otherwise pursuant to the Borough Code.~~

B. Any person violating this prohibition shall, upon conviction thereof, be subject to a fine not exceeding \$1,000. Such person also shall be required to pay for correction of the work as necessary to bring it into compliance with applicable specifications and requirements.

6. This ordinance shall be effective upon passage and final publication as provided by law.

Council Member Chandler made a motion to introduce Ordinance 2019-6, second by Council Member Mills. Mr. Marciante stated that he has several questions on this ordinance. Mr. Marciante stated that there is a contradiction in the ordinance regarding whether the Borough has control over planting, care and removal of trees in the public right of way or on public property. Mr. Marciante stated that the “whereas” clause and the language in the ordinance are contradictory. Mr. Bliss stated that they are intended to be the same. Mr. Bliss stated that if there is any question about whether Council has exclusive jurisdiction of the type, size and location of trees to be planted this ordinance intends to eliminate that question and make it clear that Council alone has jurisdiction. Mr. Marciante stated that in the fourth paragraph it references a Community Forestry Management Plan and should Council be aware of this plan. Mr. Bliss stated that the Community Forestry Management Plan is the responsibility of Borough Council, it is not a Planning Board document. Mrs. Heinzel stated that Borough Council does not approve the plan it just gets submitted. Mr. Marciante stated that Council just went through this with the Open Space Committee where they implemented a plan and came to Council and it was the first time Council was seeing the plan.

Mrs. Chandler stated that she has a similar question regarding the master plan for planting trees and the Community Forestry Management Plan. Mr. Bliss stated that if you look at the Municipal Land Use Law, there is no defined element of the Master Plan that explicitly addresses trees. Mr. Marciante stated that his question then refers to the committee advising the Borough in crafting and implementing a Community Forestry Management Plan. Mr. Marciante asked is the Borough as referenced Borough Council? Mr. Bliss stated that this should be a Borough Council document and the Shade Tree Committee’s job is to advise Borough Council on this document. Mr. Marciante asked that it be clarified in the ordinance so that there is no confusion. Mr. Bliss stated that only vagueness is in the use of the word Borough as opposed to Borough Council and this language is in the current ordinance and this amendment was not intended to address this issue. Mr. Bliss further clarified sections of the ordinance for Mr. Marciante. Mr. Bliss stated that this ordinance makes clear that the only way a tree ever comes down in the public right of way is if the Borough takes it down or if the Borough contracts with someone to do the work. Mr. Bliss stated that the one exception which does not pertain to a public tree is if a private tree meaning the trunk of the tree is totally on private property but parts of the tree invade the seven foot space defined around the sidewalk under 177-21, then the owner is expected to prune back the tree. Some further discussion took place with regard to section 177-21 of the code.

At 5:45pm, with no further business to come before Council, Mr. Marciante made a motion to adjourn, second by Council Member Mills.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk