

**BOROUGH OF PENNINGTON
ORDINANCE 2018-6**

**AN ORDINANCE CONCERNING SHADE TREES AND THE
BOROUGH SHADE TREE COMMITTEE**

WHEREAS, shade trees are an important part of the quality of life in the Borough of Pennington and the Borough Shade Tree Committee provides invaluable assistance to Borough Council in the care and management of trees and the enhancement of the urban forest in this municipality;

WHEREAS, Borough Council seeks to clarify certain provisions of the Borough Code with respect to the advisory responsibilities of the Shade Tree Committee, the management of trees, particularly in or near the public right-of-way, and obligations of the Borough and property owners with respect to them;

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

- 1. Article I of Chapter 13 of the Code of the Borough of Pennington, concerning the Shade Tree Committee, is hereby repealed and the following ordinance substituted:**

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.

Section 13-1.1 . Definitions.

- A. "Care" as used herein shall include trimming, spraying, watering, mulching and other measures calculated to protect the public safety or the health and well-being of the tree or shrubbery.
- B. "Trees and shrubbery upon and in the public right-of-way and public property of the Borough" shall mean any tree or shrub whose trunk at ground level is wholly or partially in the public right-of-way or on public property.
- C. "Trees and shrubbery on private property" shall mean any tree or shrub whose trunk at ground level is not in the public right-of-way or on public property in whole or in part.
- D. "Public right-of-way" or "right-of-way" is 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. The street lines are parallel to each other equidistant from the center of the street, in conformance with prescribed street widths as displayed on the Borough Tax Map.
- E. "Urban forest" shall mean all of the trees and other vegetation in and around our cities and towns. It includes trees in home landscapes, schoolyards, parks and greenbelts, utility rights-of-way and cemeteries. It also includes trees along streets and streams and anywhere else that trees can grow in and around a community.
- F. "Community Forestry Management Plan" shall mean a plan developed by a municipality that outlines the goals and objectives for managing trees on municipal property with the intent of minimizing liability to the municipality 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, New Jersey Forest Service.

Section 13-2. Initial appointment; terms.

The first Shade Tree Committee members were appointed by the Borough Council within 60 days after December 2, 1985 for the respective periods of one, two and three years. All appointments, except to fill vacancies, made on or after January 1, 2017, shall be for the full term of three years.

Section 13-3. Organization; expenses.

The Shade Tree Committee shall organize annually by the election of one of its members as Chair, and the appointment of a Secretary who need not be a member.

Section 13-4. Vacancies.

Any vacancies occurring by reason of the death, resignation or removal of any Shade Tree Committee member shall be filled for the unexpired term by the Borough Council.

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.

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: (a) included in the annual budget for the Shade Tree Committee approved by Borough Council; (b) authorized by separate action of Borough Council in its sole discretion even when budgeted; and (c) 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 extending from trees and shrubbery on private property onto public property or into the public right-of-way as needed to protect the public safety or public

infrastructure shall 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 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.

Section 13-7. Public improvements affecting trees.

No statute giving any person or state, county or municipal board, body or official the 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 trees and shrubbery upon and in the public right of way and public property of the Borough without the consent of the Borough Council. In all cases, the Borough Council shall reasonably cooperate with such person, board, body or official for the general public good. If such action causes injury to or demise of the tree, the person or state, county or municipal board, body or official responsible shall pay for a replacement tree meeting the specifications of the Shade Tree Committee pursuant to § 177-6 of the Borough Code.

Section 13-8. Procedure and payment for planting or removal of trees.

A. During the month of October in each year, the Shade Tree Committee shall certify to the Borough Council the estimated sum necessary for the proper conduct of work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made ~~for~~:

- (1) Expenses of Shade Tree Committee members in discharging official duties, including expenses incident to attendance at professional meetings.
- (2) Purchase and installation of trees and shrubbery.
- (3) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work
- (4) Expense of tree maintenance and removal.

B. The Borough Council shall annually appropriate such sum as it may deem necessary for these purposes.

Section 13-9. Rules of procedure; meetings.

The Shade Tree Committee shall adopt rules or procedures, which shall provide for a regular public meeting each month.

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.

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.

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

Introduced: May 7, 2018

Advertised: May 11, 2018

Public Hearing: June 4, 2018

Adopted: June 4, 2018

Published: June 8, 2018

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor