

CHAPTER 25

TREES

PART 1

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PART 1

REGULATION OF SHADE TREES

§25-101. Definitions and Interpretation.

In the interpretation of this Part 1, the present tense includes the future; the singular number includes the plural, and the plural includes the singular; and the word person includes a natural person, property owner, company, trust, individual, partnership, firm, association, corporation, or entity of any kind. The following terms shall have the definitions assigned:

BOROUGH – the Borough of Mechanicsburg.

BOROUGH COUNCIL – the Borough Council of the Borough of Mechanicsburg.

CHAIRPERSON – the duly elected Chairperson of the Commission.

COMMISSION – the Shade Tree Commission of the Borough of Mechanicsburg.

NOTICE – the notice described in §25-108 of this Part 1.

OWNER – the legal and beneficial owner of land. Where the legal and beneficial ownership of land is severed, the term shall include all persons holding legal and beneficial interests.

PERSON – an individual, partnership, corporation, unincorporated association, civic organization or other similar entity.

PUBLIC AREA – any public street, alley, park, recreation area, open space, easement, right-of-way, way or other public area within the corporate limits of the Borough and under its control.

RIGHT-OF-WAY – the area of any public street, alley, road, highway, way or other publicly held thoroughfare within the corporate limits of the Borough.

SECRETARY – the duly elected Secretary of the Commission.

SHADE TREE – any tree, shrub or other woody plant which is planted in any right-of-way or public area or has a portion of its trunk, branches or roots extending into any right-of-way.

STREET – the public streets, highways, roads, avenues, alleys, ways and similar areas, including public walkways appurtenant thereto, to the extent of the public right-of-way in such areas. A shade tree shall be deemed to be in such area when a portion of its trunk, branches or roots extend therein.

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TREE LAWN – that part of a public street not covered by a sidewalk or other paving lying between the property line and that portion of the street or highway usually used for vehicular traffic, typically known as the "grassy" strip located between the curb and the sidewalk.

(Ord. 1071, 7/5/2005, §2)

§25-102. Legislative Intent.

The Borough recognizes that properly planted, maintained and protected shade trees add to the aesthetics and health and welfare of the citizens of the Borough. Therefore, it is the intent of this Part 1 to establish rules and regulations to encourage the planting of appropriate shade trees, provide for the proper maintenance of the trees, protect shade trees and provide guidelines for the removal and replacement of shade trees.

(Ord. 1071, 7/5/2005, §2)

§25-103. Jurisdiction of Commission.

1. Excepting such powers as are reserved to the Borough Council under applicable law, or as herein reserved, the Commission shall have exclusive custody and control of the shade trees in the Borough and is authorized to plant, transplant, remove, maintain and protect shade trees in the streets and public areas in the Borough.
2. The Borough Council hereby reserves the following powers unto itself, its officers, employees, agents and contractors:
 - A. Such power and authority as is reserved to it in the Pennsylvania Motor Vehicle Code to require owners of real property to remove any tree, plant, shrub or other similar obstruction or part thereof which, by obstructing the view of any driver, constitutes a traffic hazard.¹
 - B. Such power and authority as is reserved to it in the Pennsylvania Borough Code to accept, purchase and plant or contribute to the purchasing and planting of shade trees along the streets and sidewalks of the Borough.²
 - C. Such power and authority as is reserved to it in the Pennsylvania Borough Code and this Part to assess liens.³
 - D. Such power and authority as is reserved to it in the Pennsylvania Borough Code to accept the petition of a majority of the property owners upon any public street and, after receiving the counsel of the Commission, thereupon

¹ Editor's Note: See 75 Pa. C.S.A. § 6112.

² Editor's Note: See 53 P.S. § 46202(63).

³ Editor's Note: See 53 P.S. § 47728.

ordain the planting and replanting of suitable shade trees along and upon the sides of such streets by the owners of property abutting the points designated in such ordinance.⁴

- E. All powers and authority reserved to it under any other applicable law.

(Ord. 1071, 7/5/2005, §2)

§25-104. Specific Powers of Shade Tree Commission.

In addition to all other powers provided by law, the Shade Tree Commission shall have the following specific powers:

- A. To issue permits required by this Part 1 and to enforce its provisions.
- B. When so requested, to act as an advisory panel to the Borough Council on matters having an environmental impact on the Borough, including but not limited to subdivision and land development, park development or improvements, and Borough revitalization and beautification projects.
- C. Upon notice, to require the owners of any tree located in the Borough to trim or cut and remove such tree if the same is afflicted with the Dutch Elm or other disease which threatens to injure or destroy other shade trees in the Borough or if the same is obstructing public streets or rights-of-way or is about to fall and is dangerous. Such trees are hereby declared to be public nuisances.
- D. To make such rules and regulations and to impose such penalties for the violations of same as it may deem necessary and proper, provided that such rules, regulations and penalties are approved by the Borough Council and are not in conflict with any other ordinances of the Borough or statutes of the Commonwealth of Pennsylvania. Penalties shall be assessed against the owner for violations as set forth in this Part.
- E. To prohibit any activity which injures shade trees in and upon any public area.
- F. To educate the public relative to the care and control of trees and planting of the same.
- G. To work closely with owners to encourage the additional planting of trees when street reconstruction occurs and curbs and/or sidewalks will be replaced.

⁴ Editor's Note: See 53 P.S. § 47741.

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- H. To provide its counsel to the Borough Council on the merits of any petition presented by a majority of the property owners upon any public street for the planting and replanting of shade trees along and upon the sides of such streets.

(Ord. 1071, 7/5/2005, §2)

§25-105. General Regulations.

1. The planting, transplanting, maintenance, care or removal of any shade tree, as defined herein, and full compliance with any provision herein shall be the responsibility of the owner on whose property the tree is located or to be planted or whose property abuts the right-of-way in which the shade tree is located. In addition to all of the provisions of this Part 1 and any regulations promulgated hereunder, all trees must be planted and maintained in strict compliance with all federal, state and local highway laws and regulations, as the same are amended from time to time.
2. No person shall affix any foreign object to, or in any way cause injury to, any shade tree within any public area.
3. No person shall plant, transplant, trim, prune or remove, or cause to be planted, transplanted, trimmed, pruned or removed, any shade tree in or overhanging a public area until a permit therefor is granted by or under the authority of the Commission. The application for such permit, which shall be provided by the Borough and which shall be signed by the owner of the abutting premises containing such tree or wherein such tree is proposed to be planted, shall include the details of such planting, trimming or removal, whether by sketch or otherwise, and the same shall be brought to the attention of the Commission, or under proper circumstance to its administrative designee, for approval. Such work shall not be commenced until a permit shall have been secured. A reasonable fee for obtaining such permit may be set by the Commission, subject to the approval of the Borough Council. The Commission or, under proper circumstance, its administrative designee may refuse a permit for noncompliance with the provisions of this Part.
4. Whenever a shade tree is removed under authority of a permit issued under this Part, it shall be replaced within one year with a new shade tree and shall include a root barrier (a type approved by the Commission) unless a waiver is granted by the Commission.
5. Property owners shall trim or prune branches from any shade trees overhanging public streets and highways of the Borough so that they will not obstruct the light from any streetlight and so that there shall be a clear height of 14 feet above the surface of the street and eight feet over the sidewalk. If, upon notice in writing from the Borough, any property owner shall neglect or refuse to trim or prune any shade tree within the time limits specified in such notice, the Borough may cause such trimming or pruning to be done at the expense of the owner.

6. Whenever, in the opinion of the Commission, a health or safety hazard is caused by a shade tree, the Commission may issue a notice to the owner to take action to correct the condition within 35 days of the date of the order, unless exigent circumstances require a shorter time for action, in which event the time for correction shall be so specified. If, after notice and expiration of the time for corrective action, the owner fails to take such action, the Borough shall have the required work accomplished to correct the health or safety condition and shall bill the owner for the cost thereof. Upon a failure of the owner to remit the cost, the amount shall be certified by the Commission to the Borough Council and to the Borough Treasurer.
7. In the case of a shade tree in or overhanging a public street or highway which poses a serious threat of imminent harm to public health or safety in the nature of an emergency, necessitating the tree's removal in whole or overhanging part, the Commission, or the Borough, as the case may be, may effect its immediate complete or partial removal with only such notification to the owner of the abutting or containing property as required by the Pennsylvania Motor Vehicle Code or other applicable law. In such event, the costs shall be borne by the owner, and the amount owed for such work shall be ascertained and certified by the Commission to the Borough Council and the Borough Treasurer.
8. Whenever, in the opinion of the Commission, the planting, transplanting or removing of any shade tree in a public area, of the necessary and suitable guards, curbing or grading for the protection thereof, and of the replacing of any pavement or sidewalk necessarily disturbed in the execution of such work shall be necessary, it may issue a notice to the owner to take such action within 35 days of the date of the notice, unless exigent circumstances require a shorter time for action, in which event the time for correction shall be so specified. If, after notice and expiration of the time for corrective action, the owner fails to take such action, the Borough shall have the required work accomplished and shall bill the owner for the cost thereof. Upon a failure of the owner to remit the cost, the amount shall be certified by the Commission to the Borough Council and to the Borough Treasurer.
9. Any permit issued by the Commission shall be effective for such length of time as it shall designate therein. Any permit may be revoked at any time upon proof satisfactory to the Commission that any of the terms or conditions of the permit have been violated.
10. The Commission shall have the authority, upon notice and hearing, to grant waivers from the provisions of this Part 1, provided that the applicant has demonstrated peculiar circumstances where strict enforcement would result in undue hardship and the public interest will not be adversely affected thereby.
11. Every property owner who intends to plant, transplant, remove or otherwise excavate his or her property for the addition or removal of shade trees shall notify the proper public utility facility owners via the One Call system before beginning ex-

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cavation on the site. The owner must delay excavation of the site until notified by the utility facilities that the area is clear of public utility lines.⁵

(Ord. 1071, 7/5/2005, §2; as amended by Ord. 1124, 8/16/2011)

§25-106. Specific Regulations.

The Commission shall determine, from time to time, regulations for the administration of this Part, for the manner of planting, pruning, trimming, removal and transplanting of trees, for the establishment of an approved shade tree list, for the establishment of permit fees and for the establishment of fines and penalties, all of which, upon approval by resolution of the Borough Council, shall take effect as if set forth herein.

(Ord. 1071, 7/5/2005, §2)

§25-107. Special Provisions for Shade Trees Located in Borough Parks, Open Space, Recreation Areas, and Other Public Areas.

Where not otherwise governed by the Subdivision and Land Development Chapter or the Zoning Chapter, any new planting proposals concerning public areas shall be reviewed by the Commission, and the Commission shall make recommendations on the type of tree that should be planted.

(Ord. 1071, 7/5/2005, §2)

§25-108. Enforcement; Notice; Liens; Collection of Attorney Fees; Penalties.

1. Enforcement. The Commission, or the Borough, as the case may be and as authorized by law, may institute actions for violations of this Part. All penalties or assessments shall be paid to the Borough.
2. Notice Requirements.
 - A. Upon the failure or neglect of any owner to plant, transplant, protect, trim, prune or remove any shade tree, new tree or replacement tree in and along public areas or perform or refrain from performing any other act required or prohibited under the provisions of this Part 1, the Commission shall provide notice of such fact to such owner of the violation by certified mail, restricted delivery. If the owner cannot be so served, service shall be effected by posting the written notice at a conspicuous location upon the premises. In the case of an exigent circumstances where a shade tree is damaged, felled or severely injured as a result of a storm or other cause, an owner shall comply

⁵ Editor's Note: See 73 P.S. § 176 et seq.

with the provisions of any form of notice actually delivered to such owner within 24 hours.

- B. Upon the failure or neglect of the owner to comply with the provisions of any notice within 30 days after receiving notice of such violation, or the posting of such notice, whichever the case may be, the Borough may cause the planting, transplanting, protection, trimming, pruning or removal of any shade tree to be done, and collect the cost thereof, plus 10% additional together with all charges and expenses, from such owner in accordance with the Acts of Assembly and in accordance with the law relating to the filing and collection of municipal claims, or by action of assumpsit.
3. Collection of Attorney Fees. Where attorney fees are sought to be collected or are incurred in the collection of a delinquent account(s) or for costs associated with violations of any provision of this Part 1, the Borough shall first comply with the Acts of Assembly related thereto.
4. Amount of Fees. Where attorney fees are sought to be collected or are incurred in the collection of a delinquent account(s) or costs associated with violations of these Shade Tree Commission rules and regulations, said fees shall be calculated at prevailing rates being charged to the Borough by the Borough Solicitor from time to time.
5. Liens. Upon the failure of any owner to pay any cost, expense, fee, attorneys' fees or penalty established under the authority of this Part, the Commission shall file a certificate to such effect with the Borough Secretary for transmittal to the Borough Council and Borough Treasurer. Upon the filing of the certificate, the Borough Secretary shall cause 30 days' written notice to be given to every owner against whose property such claim has been made. The notice shall state the amount of assessment and the time, place, and manner of payment and shall be accompanied by a copy of the certificate. The amount assessed against the real estate shall be a lien from the time of the filing of the certificate with the Council; and if not paid within the time designated in the notice, a claim may be filed and collected by the Borough Solicitor in the manner provided by law. The collection of assessments, the filing of liens, the levying of taxes and the collection of penalties, whether by the Commission or on behalf of the Borough, are hereby expressly authorized as provided for in said Article XXVII(b) of the Borough of Code of 1966, P.L. (1965) 1656, as amended.
6. Penalty for Violation. Any person who shall violate any of these provisions shall, upon a finding thereof in a summary proceeding before a Magisterial District Judge, be directed to pay a fine or civil judgment of not less than \$50 nor more than \$600, together with the costs of prosecution or enforcement, to be collected as other fines, judgments and costs are now recovered by law, together with the replacement cost of all work not meeting specifications.

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7. Other Remedies Preserved. Nothing herein shall prevent the Borough from seeking available remedies at law or in equity, to include injunctive or equitable relief, to ensure compliance with this Part.
8. Remedies Several, Collective and Cumulative. All enforcement remedies provided herein may be exercised severally or collectively, as the Borough Council shall determine. The exercise of one remedy shall not preclude other enforcement proceedings.
9. Voluntary Compliance. Nothing in this Part shall be construed to prevent any owner or owners of property within the Borough from voluntarily complying with the terms and conditions of this Part prior to action by the Commission or the Borough of Mechanicsburg.

(Ord. 1071, 7/5/2005, §2)

§25-109. Severability.

If any sentence, clause, section or part of this Part 1 is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, section or parts of this Part 1. It is hereby declared as the intent of the Borough that these provisions would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not included herein.

(Ord. 1071, 7/5/2005, §2)

§25-110. Hearings.

Any person aggrieved by a notice, determination, refusal, act or failure to act issued, taken or omitted under this Part shall have the right to a hearing to be held by the Commission, which hearing shall be held pursuant to the administrative law for local agencies.⁶ Notice of the time and place of the meeting at which said hearing shall occur shall be given according to law.⁷ In all cases, the aggrieved party shall be given personal notice by regular mail of the date, time and place of the meeting, which notice shall generally specify the rights granted to the party under law. Any person aggrieved by a decision of the Commission shall have the right to appeal said decision to the Court of Common Pleas of Cumberland County within 30 days of the date of said decision. Should no appeal be filed, the cost of the work and any penalty imposed by the Commission shall be certified by the Commission to the Borough Council and Borough Treasurer as provided in this Part.

(Ord. 1071, 7/5/2005, §2)

⁶ Editor's Note: See 2 Pa. C.S.A. § 551 et seq.

⁷ Editor's Note: See 65 Pa. C.S.A. § 701 et seq.