

CHAPTER 25

TREES

Part 1

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Part 1
Shade Tree Ordinance

§101. Definitions. For the purpose of this Part, the following terms shall have the following meanings:

BOROUGH - The Borough of Emmaus, Pennsylvania.

CHAIRPERSON - The Chairperson of the Borough of Emmaus Shade Tree Commission.

COMMISSION - The Shade Tree Commission of the Borough of Emmaus, Pennsylvania.

COUNCIL - The Council of the Borough of Emmaus, Pennsylvania.

DEPARTMENT - The Department of Public Works of the Borough.

DESIGNEE - Individual designated by the Commission to perform ministerial acts on behalf of the Commission and pursuant to this Part.

DIRECTOR - The Director of the Department of Public Works of the Borough.

MANAGER - The Manager of the Borough or his/her designee.

NEW TREE - Any tree planted by the Borough in a public right-of-way, except a replacement tree.

NOTICE - Either the publication in a newspaper of general circulation once a week for two (2) consecutive weeks, or written notification sent by first class mail to property owners immediately affected, or notification posted on the affected tree. Notice of public hearings shall be published and sent to affected property owners within thirty (30) calendar days of the hearing date.

PERSON - Any individual, firm, partnership, association, corporation, company or organization of any kind and includes the plural of each.

PUBLIC TREE - Any tree with a portion of the trunk located in a public right-of-way.

REPLACEMENT TREE - A tree planted in a location formerly occupied by another tree, in a public area.

RIGHT-OF-WAY - The area defined on the official Borough map for the roadway corridor.

TREE DRIP LINE - A line derived by the horizontal line extending along a radius from the trunk of a tree to the outermost tips of branches.

TREE PROTECTION ZONE - The three-dimensional area within the drip line, a column extending from the crown to the root system of each public tree.

WORK DAYS - Monday through Friday, excluding legal holidays when Borough offices are closed.

(Ord. 1006, 9/5/2006)

§102. Shade Tree Commission.

1. Responsibilities. The Commission shall have the following responsibilities:

A. The Commission shall have exclusive custody and control of the shade trees in and upon the highways, streets, alleys and all right-of-ways within the Borough, and tree branches that extend over and above such areas or that pose a safety hazard to the use of such public areas.

B. The Commission shall advise the Director on the planting, maintenance and removal of trees. Such advice may include:

(1) Recommendations of tree species for public areas.

(2) Recommendations for controlling diseases and pest damaging trees.

(3) Recommendations for tree maintenance.

(4) Recommendations for a public education/information program concerning the importance and care of trees.

(5) Recommendations on Departmental rules and regulations pertaining to tree planting, maintenance and removal.

C. The Commission, in conjunction with the Department, shall prepare for Council's approval a plan for street trees in the Borough. This plan should include an inventory of existing trees, listing species and location. In addition, the plan should include suggested policies for the planting and maintenance of trees, including suitable species for various environments and spacing of trees. The plan may also identify locations for new plantings, desirable species changes, etc. Once approved by Council, selection and planting of new trees should generally be in accord with said plan. The plan shall be periodically reviewed as the Commission deems necessary.

D. The Commission may, with the approval of Council, solicit and accept grants and contributions on behalf of the Borough. All funds obtained by the Commission shall be expended for the specific purpose or under the stipulations set by the contributor or the Commission with specific approval of Council.

E. The Commission or its designee shall be responsible for issuing permits (consistent with §106 of this Part) regarding property owners' requests to plant, prune, or remove trees within the right-of-way.

F. The Commission may review land development plans to determine the impact of such plans on public trees and to make recommendations on steps needed to mitigate said impact.

Preliminary or Final Plans. The Planning Commission shall forward one copy of any preliminary or final land development plan to the Commission for review. The Commission will then provide written comments to the Planning Commission concerning the affect of said land development plan on any public tree(s).

G. In the event a zoning permit application may impact an existing street tree, the Commission shall review the said zoning permit application.

Within two (2) working days of the receipt of the zoning permit application from the Zoning Officer, the Commission, or its designee, shall determine the need for and location of the tree protection zone fencing around all public trees located on or adjacent to the site.

Where determined necessary by the Commission, or its designee, the property owner shall install or cause to be installed a staked construction fence at least four (4) feet high, or alternative as approved by the Commission, or its designee, around all portions of the tree protection zone located on public property, excluding any portions occupied by sidewalks, street cart way, curbs/gutters or a driveway.

No activity is permitted within the tree protection zone without a permit issued in accordance with §106 of this Part. Any activity occurring within a tree protection zone in violation of this Part shall be addressed as provided for in §§107 and 108 of this Part.

2. Membership. The Shade Tree Commission will consist of up to five (5) members, all of whom shall be residents of the Borough. At least two (2) of the members shall be professionals in forestry, horticulture, plant pathology, entomology, landscape architecture or related fields.

Members of the Commission shall be appointed by Council for staggered terms of five (5) years. The first member shall be appointed to serve one (1) year. The second member appointed shall serve two (2) years. The third member appointed shall serve three (3) years. The fourth member appointed shall serve four (4) years. The fifth member appointed shall serve five (5) years. Thereafter, each member appointed shall serve three (3) years.

The members of the Commission shall serve without pay, but they may be reimbursed for actual authorized expenses within the funds budgeted for such activities by Council.

A. Organization, Records and Meetings. Members of the Commission shall annually elect a Chairperson, Vice-Chairperson and such other officers as it deems necessary. All the officers shall be eligible for reelection. The Commission shall keep a written record of its meetings in accordance with law. The Commission shall provide Council with monthly meeting minutes as well as an annual activity report. For the purpose of taking action, a quorum of three (3) members must be present. Special meetings may be called by the Chairperson, or in his/her absence, the Vice-Chairperson.

B. Voting. All votes of the Commission shall be cast at a duly advertised public meeting. A majority vote of the members present shall carry a motion.

(Ord. 1006, 9/5/2006)

§103. Trees on Private Property. All property owners shall be responsible for the maintenance of trees and shall prune any tree overhanging the streets and highways of the Borough so that they will not obstruct the light from any street light or from any traffic sign, and so that there shall be a clear height of fourteen (14) feet above the surface of the street and ten (10) feet over the sidewalk. The Shade Tree Commission or its designee shall deliver or mail notice of noncompliance with this Part to a property owner, which notice shall advise the property owner of the noncompliance and

directing the noncompliance be corrected within fifteen (15) work days, unless the time is extended by the Commission or its designee. If a property owner fails to complete the work within the time limits specified in such notice, the Borough may cause such pruning to be done at the expense of the owner either by Borough employees or by a subcontractor, with the expense to be placed as a lien against the property, together with administrative expenses and legal and filing fees.

(Ord. 1006, 9/5/2006)

§104. Dead or Dying Trees in Public Right-of-Way. Trees located in a public right-of-way must be maintained by the adjacent property owner. The Shade Tree Commission may direct a property owner to remove a dead or dying tree. In its discretion, the Commission may direct that the stump of the dead or dying tree be ground to a depth sufficient to allow for a replacement tree. The Commission shall decide whether the property owner is required to plant a tree in place of the removed tree. If the work is not completed within fifteen (15) work days or a time period deemed appropriate by the Commission, the Borough may cause such work to be done at the expense of the owner either by Borough employees or by a subcontractor, with the expense to be placed as a lien against the property, together with administrative expenses and legal and filing fees if not paid in accordance with the billing of the Borough.

(Ord. 1006, 9/5/2006)

§105. Hazardous Trees on Private Property and Public Areas.

1. Trees Posing a Potential Hazard. When the Commission determines that a tree or portion of a tree on private property or in a public area is damaged, diseased or in such condition to cause a potential hazard to the public or to other trees on public or private property, the Shade Tree Commission shall be authorized to act consistent with the following:

A. If the tree is in a public area, the Commission shall direct that the tree shall be removed, pruned, or treated. Property owners so ordered shall have ten (10) days following receipt of the order to appeal to the Commission. The Commission shall hear the appeal and make a determination within ten (10) days of the receipt of the appeal. Following a determination by the Commission, the property owner shall comply within fourteen (14) days. If the property owner fails or refuses to comply, the property owner shall be subject to the penalties specified in §108(B). In addition, the Director is authorized to remove said hazardous tree or portions thereof, all costs for such work shall be assessed and, if not paid, shall be a lien against the property.

B. If the tree is on an area of private property over which the Shade Tree Commission does not exercise jurisdiction, then the Shade Tree Commission is authorized to provide notice to the property owner that the tree is hazardous.

2. Trees Posing an Immediate Hazard. When the Commission or Director determines that a tree or portion of a tree in a public area is damaged, diseased or in such condition to cause an immediate hazard to the public or to other trees on public or private property (involving a direct and imminent

threat to person or property), the Director may remove the hazard without notice or appeal. All costs for such work shall be assessed and, if not paid, there shall be a lien placed against the property.

(Ord. 1006, 9/5/2006; as amended by Ord. 1072, 7/19/2010, §105)

§106. Permits. The Commission is authorized to issue permits for work on a tree having any portion of its trunk within the Commission's jurisdiction. Permits shall be required for the following activities:

A. Planting, transplanting, pruning, removing or otherwise disturbing any tree or its root structure located within the Commission's jurisdiction. If a tree is removed, the Commission may require that it be replaced with no less than a two (2)-two and one-half (2 1/2) inch caliper.

B. Damaging or cutting roots by tunneling, trenching or digging for the purpose of sidewalk, curb, pipe, conduit, electric wire, curb cut, driveway, etc.

C. Fastening any rope, wire, electric attachment, sign or other devices that may cause damage to any public tree. Exception: newly planted trees may be guyed to provide stability during the first growing season.

D. Construct site access, whether permanent or temporary.

Permits shall be in writing and shall specify the work permitted. All work shall be performed in accord with the conditions of the permit. Such permits may be revoked by the Commission if the terms and conditions of the permit are violated. Revocations may be appealed, in writing, to the Council within five (5) workdays of that notice of revocation. Nothing in this Section shall be construed to exempt public utility companies, or any other person or entity from any of the requirements of this Part.

(Ord. 1006, 9/5/2006)

§107. Violations. It shall be unlawful for any person to carry out any of the following activities concerning a public tree:

A. Top any tree, which is the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough (at least one-third (1/3) the diameter of the branch being cut) to assume the terminal role.

B. Climbing with spikes on any tree.

C. Cause or authorize a wire or other conductor charged with electricity to come into contact with any tree in a manner that may injure or kill it.

D. Cause or authorize any oil, gasoline, herbicide, paint, brine, hot water, steam or other gas, liquid or solid substances deleterious to trees to contact any tree or to enter the soil about the base or root system of a tree in any manner that may injure or kill it.

E. Interfere, cause or authorize an interference with the Borough or any of its agents or employees while they are engaged in planting, inspecting, maintaining or removing trees.

F. Place or maintain upon the ground any asphalt, cement, stone or other material or substances in such manner as may obstruct or further obstruct free access of air and water to the roots of any tree.

G. Pile any building material or make any mortar or cement within six (6) feet of any tree.

(Ord. 1006, 9/5/2006)

§108. Penalties. Any person violating the provisions of this Part shall, upon conviction in a proceeding filed by the Commission before a magisterial district judge of appropriate jurisdiction, be liable to pay costs of prosecution and a fine as follows:

A. For willfully injuring or killing a living tree in any public area or within any tree protection zone by cutting, debarking, breaking, by the use of herbicides, use of a vehicle, or in any other manner wherein it is determined by the magisterial district judge that such damage or destruction was intentionally inflicted, a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) plus the costs of prosecution and value of the destroyed or damaged tree and/or cost of repair shall be levied. The value of the tree or trees removed shall be determined by a certified Borough arborist or other certified arborist selected by the Borough using a valuation method approved by the International Society of Arboriculture.

B. For failure of a property owner to remove, partially remove or treat a tree on private property, as ordered in accord with this Part, the guilty person shall be fined not more than one hundred dollars (\$100.00) per day. Each day the property owner remains in violation shall constitute a separate offense.

C. For all other violations, where it is determined by the magisterial district judge that such damage or destruction was not intentionally willfully inflicted, a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) plus the costs of repairing or replacing the damaged tree shall be levied. The value of the tree or trees removed shall be determined by a certified arborist using a valuation method approved by the International Society of Arboriculture.

(Ord. 1006, 9/5/2006)