

ORDINANCE #2012-1112

AN ORDINANCE PROVIDING FOR THE CREATION OF A SHADE TREE COMMISSION OF THE BOROUGH OF MANVILLE, NJ, AND THE APPOINTMENT OF COMMISSIONERS, FOR THE PURPOSE OF THE REGULATION, PLANTING, CARE, AND CONTROL OF SHADE AND ORNAMENTAL TREES AND SHRUBBERY IN THE STREETS, HIGHWAYS AND PUBLIC PLACES OF THE BOROUGH OF MANVILLE AND PROVIDING FOR THE ENFORCEMENT THEREOF.

Section 1. CREATION.

Pursuant to the authority of N.J.S.A. 40 : 64 - 1, a Shade Tree Commission of the Borough of Manville is hereby created.

Section 2 AUTHORITY OF COMMISSION.

The regulation, planting, care, and control of shade and ornamental shade trees and shrubbery upon and in the streets, highways, public places, parks, and parkways of the Borough of Manville shall be exercised by and under the authority of the Shade Tree Commission, with the following exceptions:

- a.) State highways, unless the Department of Transportation gives assent to.
- b.) County roads, parks and parkways, unless a county shade tree commission is operative and gives assent to.

Section 3. PERSONNEL; APPOINTMENT.

- a.) The Shade Tree Commission shall consist of seven members and may include two alternate members.
- b.) The members and alternate members shall be appointed by the Mayor.
- c.) The members and alternate members shall serve without compensation.

Section 4. TERMS; FIRST COMMISSION; SUBSEQUENT COMMISSIONS; ALTERNATES; VACANCIES

a.) First Commission

1.) Within sixty days after the effective date of this Ordinance the first commissioners shall be appointed, and shall commence their offices upon the date of appointment.

2.) The terms the members of the first commission shall however be calculated from the date of January 1st next succeeding appointment.

3.) Of the first commissioners two appointees will have terms of five years; two appointees will have terms of four years; one appointee will have a term of three years; one appointee will have a term of two years; and one appointee will have a term of one year. The term of each appointee shall be designated in his or her appointment.

b.) Subsequent Commissions.

1.) All subsequent appointments shall be for a term of five years except in the event of a vacancy, and shall run from January 1st.

c.) First Alternates

1.) Within sixty days after the effective date of this Ordinance two alternate commissioners shall be appointed, and shall commence their offices upon the date of appointment.

2.) The term of Alternate No. 1 shall be five years commencing on the date of their appointment and shall expire on the fifth December 31 next ensuing after the date of their appointment.

3.) The term of Alternate No. 2 shall be four years commencing on the date of their appointment and shall expire on the fourth December 31 next ensuing after the date of their appointment.

4.) The term of each alternate shall be designated in his or her appointment.

d.) Subsequent Alternates

1.) The term of each subsequent alternate commissioner shall be five years commencing on January 1 of the year appointment.

e.) Vacancies

1.) Any vacancy occurring by reason of the death, resignation or removal of any commissioner or alternate shall be filled for the unexpired term by the mayor.

Section 6. DUTIES OF ALTERNATES.

a.) An alternate member may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member.

b.) A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

Section 7. ORGANIZATION;

The commission shall organize within thirty days after the appointment of its total membership. At this time it shall elect a chairman and appoint a secretary to serve for the remainder of the calendar year. Thereafter the commission shall reorganize yearly within thirty days of January 1st at which time it shall elect a chairman and appoint a secretary. A secretary serving the commission need not be a member of the same, and shall not receive a salary.

Section 8. POWERS AND DUTIES.

The Shade Tree Commission shall:

a.) Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and woody shrubs now located, or which may hereafter be planted, in any public street, highway, public place, park, and parkway, except such as are excluded under Authority of this ordinance, 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.) Make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of the ordinances by the Mayor and Council of the Borough of Manville, any and all ordinances necessary or proper for carrying out the provisions hereof.

e.) Administer treatment to, or remove, any tree situated upon private property which is believed to harbor a disease of insects readily communicable to neighboring healthy trees in the care of the Borough 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.

f.) Prepare and implement a Community Forestry Management Plan in accordance with the requirements of the New Jersey Shade Tree & Community Forestry Assistance Act.

g.) Meet all other requirements of, and maintain approved status under, the New Jersey Shade Tree & Community Forestry Assistance Act.

h.) Encourage arboriculture.

Section 9. ORDINANCES BY THE SHADE TREE COMMISSION.

The Shade Tree Commission is hereby authorized and empowered to promulgate such ordinances as may be necessary, pursuant to statute, and for the proper interpretation, administration and enforcement of this basic ordinance, provided that such ordinances do not conflict with this ordinance and conform to the general standards prescribed by this article.

Section 10. COST OF TREES AND IMPROVEMENTS; EXCEPTIONS.

a.) Except as hereinafter provided, the initial cost of all trees planted by the Shade Tree Commission, the cost of planting those trees, the cost of ancillary items used for their protection, and the cost of the removal of any tree or part thereof dangerous to public safety shall, if the Commission shall so determine, in accordance with uniform rules and regulations promulgated for this purpose, be a charge upon the real estate in front of which such tree or trees shall be planted or removed as an improvement hereof. Such cost, if it is so determined that it is to be paid by the owner, shall, unless paid directly to the Shade Tree Commission, be certified by it to the Tax Collector of the Borough of Manville, shall thereupon become and be a lien upon said 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 that property. Moneys received by the Shade Tree Commission shall be paid over to the Chief Financial Officer of the Borough and kept by him in a special fund which shall be under the control of the Shade Tree Commission and used only for the purpose of defraying the costs of planting and maintaining shade and ornamental trees and shrubbery in the Borough and for the other expenses of the Commission.

b.) The provisions of this section shall not apply to:

1. A planting to replace a tree or trees theretofore planted by the Shade Tree Commission.

2. A planting in connection with an Arbor Day program or other educational demonstration.

Section 11. PLANTING AND REMOVAL OF TREES; NOTICE AND HEARING;

EMERGENCIES.

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 Borough shall give notice of the meeting at which it is proposed to consider said planting by publishing the notice at least once, not less than 20 days before the meeting, in a newspaper circulating in the Borough, or 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 at the office of the Shade Tree Commission at or before the meeting. Before final action shall be taken, all objections so filed shall be considered.

The Shade Tree 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.

SECTION 12. PUBLIC IMPROVEMENTS AFFECTED TREES.

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 Borough 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.

SECTION 13. COUNTY PARK COMMISSION UNAFFECTED

Nothing contained in this article shall be held to take away or diminish any of the powers or authority of the Somerset County Park Commission over the trees or shrubbery in any Somerset 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.

SECTION 14. ANNUAL APPROPRIATION.

a.) During the month of December in each year, the Shade Tree Commission shall certify to the Mayor and Council the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items:

1. Expenses of Commission members in discharging official duties, including expenses incident to attendance at professional meetings;
2. Purchase of trees and shrubbery;
3. Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

b.) The Mayor and Council shall annually appropriate such sum as they may deem necessary for said purposes.

Section 15. PENALTY; JURISDICTION OF COURTS.

a.) The Shade Tree Commission may prescribe a fine for violation of its ordinances in any amount not exceeding \$1,500 for each violation, and the Municipal Court of Manville

shall have jurisdiction over actions for the violation of such ordinances, and its ordinances shall be enforced by like proceedings and process as that provided by law for the enforcement of Borough ordinances. The officers authorized by law to serve and execute process for the Municipal Court shall be the officers to serve and execute any process issued out of the Municipal Court for violations of the ordinances of the Shade Tree Commission.

b.) A copy of any ordinance of this Shade Tree Commission, certified to under the hand of its Secretary or Chairman, shall be received in any court of this State as full and legal proof of the existence of the ordinance and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

c.) In addition to the penalties authorized by Subsection 1 of this section, the Shade Tree Commission may require a person who removes, damages and/or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment to the Borough of Manville. The replacement assessment shall be the value of the tree as determined by the appraisal of an appropriately qualified New Jersey Certified Tree Expert retained by the Shade Tree Commission in accordance with the current edition of the Guide For Plant Appraisal, authored by the Council of Tree & Landscape Appraisers and published by the International Society of Arboriculture.

d.) Any public utility or cable television company that clears, moves, cuts or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures necessary for the supply of electric light, heat or power, communication, or cable television services upon any lands in which it has acquired an easement or right-of-way shall not be subject to any penalty imposed by the Shade Tree Commission pursuant to this section. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions.

Section 16. DISPOSITION OF PENALTIES.

All moneys collected, either as fines or penalties, for any violation of a rule or regulation of a Shade Tree Commission enacted by ordinance, or as a charge against real estate, under any provision of this article, shall be forthwith paid over to the custodian of the Borough funds.

Section 17. PUBLIC NOTICE.

All regulations adopted by the Shade Tree Commission shall be filed with the Municipal Clerk for inspection by the public during regular business hours.

Section 18. INCONSISTENCY.

Should any provision of this ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of said prior ordinances are hereby repealed, but only to the extent of such inconsistencies

Section 19. SEVERABILITY.

In the event that any provision of this ordinance, or the application thereof to any person or circumstances is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect, and to realize this intent, the provisions and application of this ordinance are declared to be severable.

Section 20. CAPTIONS.

Captions contained in this ordinance have been inserted in this ordinance only for the purpose of facilitation of reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

Section 21. EFFECTIVE DATE

This Ordinance shall take effect upon its adoption and publication according to law.

Borough of Manville.

A handwritten signature in black ink, appearing to read "Angelo Corradino". The signature is written in a cursive, flowing style.

Angelo Corradino, Mayor

Dated: June 25, 2012


ORDINANCE #2012-1112

FIRST READING (Re-introduction)

Introduced	Seconded	Council	Yes	No	Abstain	Absent
	√	ASHER	√			
		KOMOROSKI	√			
√		LYNN	√			
		ONDERKO	√			
		PETZINGER	√			
		SZABO	√			
		MAYOR CORRADINO				

PASSED this 11th day of June, 2012

Attest:



Philip E. Petrone, Borough Clerk

SECOND READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
√		ASHER	√			
		KOMOROSKI	√			
	√	LYNN	√			
		ONDERKO	√			
		PETZINGER	√			
		SZABO	√			
		MAYOR CORRADINO				

PASSED this 25th day of June, 2012

Attest:



Philip E. Petrone, Clerk

