

Chapter 174

SHADE TREES

[HISTORY: Adopted by the Borough Council of the Borough of North Wales 8-24-1982 by Ord. No. 561. Amendments noted where applicable.]

GENERAL REFERENCES

Shade Tree Commission — See Ch. 65.

Brush, grass and weeds — See Ch. 96.

Streets and sidewalks — See Ch. 181.

§ 174-1. **Short title and intent.** [Amended 2-22-2011 by Ord. No. 780]

- A. This chapter shall be known as and may be cited as the "Shade Tree Regulations."
- B. This chapter is designed to promote and protect shade trees within the Borough of North Wales. Preservation of shade trees provides for a more pleasant neighborhood and provides for shade from the sun, while reducing glare and reflection.

§ 174-2. **Definitions.**

The following words and phrases, when used in this chapter, shall have the meanings hereby ascribed to them, except in those instances where the context clearly indicates a different meaning:

BOROUGH — The Borough of North Wales.

BOROUGH COUNCIL — The Borough Council of the Borough of North Wales.

COMMISSION — The Shade Tree Commission of the Borough of North Wales.¹

PERMIT — Any permit in writing issued by a member of the Commission.

PERSON — Any natural person, firm, association, partnership, corporation, estate or trust, as well as all officers, agents, servants, employees or others acting for any of the same.

SECRETARY — The Secretary of the Commission.

SHADE TREE — Any tree, classified as a deciduous or conifer species on or adjacent to any street within the Borough of North Wales, including any tree which extends within the lines of any street, within the Borough of North Wales. [Amended 11-22-1994 by Ord. No. 674; 2-22-2011 by Ord. No. 780]

STREET — Any paved street, road, lane, court, cul-de-sac, public way or public square, if such street has been dedicated or opened as provided in the Borough Code. [Amended 2-22-2011 by Ord. No. 780]

1. Editor's Note: See also Ch. 65, Shade Tree Commission.

§ 174-3. Authority of Commission.

- A. The Commission shall have the responsibility to plan and make recommendations to Borough Council for the planting, replacement, removal, protection, and needed maintenance of shade trees that are within 10 feet of the edge of the paved surface of any street in the Borough. [Amended 2-22-2011 by Ord. No. 780]
- B. The Commission is authorized to plant, maintain and protect the shade trees in the borough and is authorized to issue orders on a majority vote of the Commission directing compliance with the shade tree regulations.
- C. The Commission may not expend any funds of the borough without the prior approval of Borough Council.
- D. Nothing contained in the shade tree regulations shall be construed to require the borough or any person acting under its direction to obtain a permit hereunder if the borough is performing a duty, function or responsibility which it is otherwise required or authorized to perform under the law.
- E. Each member of the Commission shall be a resident of the Borough and shall serve without compensation. The members of the Shade Tree Commission shall annually elect one among themselves to serve as Chairperson and another among themselves to serve as Secretary. The Secretary shall have the responsibility of keeping and maintaining records of the Commission. [Added 2-22-2011 by Ord. No. 780]

§ 174-4. Permit required.

No person shall do any of the following without first obtaining a permit:

- A. Plant any shade tree in the borough.
- B. Intentionally cut, break, trim, climb with spurs, injure in any manner or remove any shade tree. [Amended 2-22-2011 by Ord. No. 780]
- C. Cut down or interfere in any way with the main roots of any shade tree.
- D. Spray any shade tree with any chemical or insecticide.
- E. Place any rope, guy wire, cable, sign, poster or any other fixture on any shade tree or guard for any shade tree.
- F. Injure, misuse or remove any device placed to protect any shade tree.
- G. Place or hereafter maintain any stone, cement or any other substance which shall impede the passage of water and air to the roots of any shade tree unless such person shall have an open space of ground surrounding the trunk of such shade tree, such base to be not less than four square feet.
- H. Attach any electrical wire, insulator or any device for the holding of an electrical wire to any shade tree.

§ 174-5. Application for permit.

An application for a permit to do any of the acts enumerated in § 174-4 hereof shall set forth:

- A. The name, address and telephone number of the owner of the property on which such action is contemplated.
- B. The name, address and telephone number of the applicant.
- C. The species of shade tree for which the permit is requested.
- D. The caliper (measured one foot above the ground) and height of such shade tree.
- E. The location of such shade tree.
- F. The contractor's name and insurance. [Added 2-22-2011 by Ord. No. 780]
- G. A fee of \$25 shall be assessed for any permit submitted with the intent to remove a shade tree. Said fee shall be paid to the Borough Treasurer, to be placed to the credit of the Shade Tree Commission, subject to be drawn upon by the Commission for the purposes set forth herein. [Added 2-22-2011 by Ord. No. 780]

§ 174-6. Application procedure. [Amended 11-28-2005 by Ord. No. 744]

The application for permit shall be filed with the Borough Manager, who shall forward the application to the Commission. The Commission shall, at its next meeting following receipt of the application(s), approve or disapprove the application and in doing so shall take into account the considerations set forth in § 174-7 hereof.

§ 174-7. Review of permit application; considerations.

- A. In reviewing an application for a permit, the Commission shall consider whether or not the shade tree will obstruct, interfere with or damage the following:
 - (1) The proper lighting of the streets.
 - (2) The streetlights.
 - (3) Traffic and pedestrian control signs, signals and devices.
 - (4) Electric, telephone and cable television transmission wires.
 - (5) Vehicular and pedestrian traffic.
 - (6) Street identification signs.
 - (7) Streets, curbs and sidewalks.
- B. All shade trees shall be planted so as to form as nearly as possible a straight and uniform line with the other shade trees growing on the same street. Such shade trees shall be planted or set from 25 feet to 30 feet apart and shall be sound, straight and symmetrical. Every such shade tree shall be planted in a pit three square feet filled with good topsoil otherwise enriched and shall have an open space of ground outside the trunk of said shade tree with an area, where practical, for the free entrance of water and air to the roots thereof.
- C. If the application for a permit is made whereby the applicant requests permission to do any

of the acts which are otherwise prohibited by § 174-4B through H, the applicant shall first demonstrate by a preponderance of the evidence that the proposed action is necessary to protect life or property. If the Commission approves a request to remove a shade tree, the entire tree, including the stump, must be removed below the surface of the ground so that soil can be placed level over the area of disturbance. Upon granting approval to remove any shade tree, the Commission may replant a tree in the general location of the removed tree. Should replanting not be possible because of safety concerns or interference with the use of any street or abutting property, the Shade Tree Commission may plant a replacement tree in another location within the Borough of North Wales. [Amended 2-22-2011 by Ord. No. 780]

- D. If all of the considerations have not been satisfied, the Commission shall not approve the application for the permit or shall revoke any permit that has been issued, as the case may be, and promptly notify the applicant of such decision in writing. If an application has not been approved within 18 days of the date on which it was filed, the application shall be deemed to be denied.
- E. If all of the considerations have been satisfied, the Commission shall approve the application for a permit, whereupon the permit shall be issued to the applicant. If the application is approved, the Commission may provide that such approval shall be upon certain conditions, including but not limited to the setting of the caliper, height and species of the shade tree to be planted, the exact location where such shade tree is to be planted and the time for which the permit shall be effective. The Commission may require the applicant to furnish a surety bond or surety bonds, in form, substance and amount satisfactory to the Commission and conditioned upon the applicant's compliance with the terms and conditions upon which the permit was issued. Alternatively, the Commission may require the applicant to deposit funds with the borough in an amount determined by the Commission to be sufficient to guarantee the applicant's compliance with the terms and conditions upon which the permit was issued. Said funds, or portion thereof, shall be returned to the applicant upon his compliance with said terms and conditions.

§ 174-8. When permit not required. [Amended 2-22-2011 by Ord. No. 780]

No permit shall be required to take any action for which a permit would otherwise be required in a case where there is an immediate necessity to protect life or property as determined by an arborist or member of the Shade Tree Commission. Following removal of such a tree, if not previously approved by the Shade Tree Commission, an arborist shall submit sufficient evidence to the Borough to satisfy the need to forego the permit process. Should sufficient evidence not be provided, the violations and penalties in § 174-14 may be imposed.

§ 174-9. Trimming.

All shade trees shall be kept trimmed by the owner of the property on or in front of which they are located so that considerations set forth in § 174-7A will be satisfied. If any such property owner shall neglect or refuse to trim any shade tree as required by these regulations or in accordance with an order of the Commission, upon written notice by the Commission and within the time limit specified therein, the Commission may cause such trimming to be done at the owner's expense and the costs thereof shall be a lien upon said premises and a claim therefor

shall be filed and collected by the Borough Solicitor in the same manner as municipal claims are filed and collected. The written notice provided for herein shall be delivered to such property owner by personal service or by certified mail, return receipt requested.

§ 174-10. Protection of trees.

In connection with any building operation or the performance of any work whatsoever in the borough in the vicinity of any shade tree, before any work shall be commenced, suitable protective devices shall be placed at all shade trees which might be affected by such work so as to prevent any injury to such shade trees.

§ 174-11. Prohibited acts. [Amended 2-22-2011 by Ord. No. 780]

- A. No person shall pour salt water, oil or any other material in any place in such a manner that injury might result to any shade tree.
- B. It shall be unlawful for any person or firm to top any shade tree. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown, to such a degree so as to remove the normal canopy and disfigure the tree. If a tree is severely damaged, or where other pruning practices are impractical, the Commission may grant an exemption from this section.

§ 174-12. Electrical wires.

- A. Every person owning any wire charged with electricity running along or through a street shall securely fasten such wire or shall place an adequate shield thereon, so that such wire will not come into contact with any shade tree and so that such wire will not injure the same.
- B. Whenever action is to be taken with respect to a shade tree and the Commission determines that the public's safety shall be protected by the removal of any wire running through or along a street, the owner of such wire shall remove the wire or shall cut off the flow of electrical current therefrom for such time as the Commission deems appropriate and upon written notice from the Commission, which notice shall be received by the owner of such wire at least 24 hours prior to the time set forth in the notice.

§ 174-13. Appeal.

- A. Any person aggrieved by any decision or order of the Commission may, within 30 days thereafter, file a written notice of appeal with the Borough Council. A person aggrieved by any decision of the Commission shall include any person who is a property owner in or a resident of the borough who disagrees with such decision. Such appeal shall be heard by Borough Council in accordance with the provisions of the Local Agency Law (Act of April 28, 1978, P.L. 202, No. 53, as amended, 2 Pa.C.S.A. § 101 et seq.).
- B. The notice of appeal shall state the name and address of the applicant or the permit holder, as the case may be, the date on which the Commission made the decision appealed from and a statement of the grounds on which the appellant contends the decision of the Commission was erroneous.

- C. Within 20 days of receipt of the notice of appeal, the Borough Council shall fix a time and a place for a public hearing and cause to be published once in a newspaper having a general circulation in the borough notice of the time and place of the hearing, the name and address of the applicant or permit holder, as the case may be, and a brief statement of the issues involved in the appeal.
- D. The Borough Council shall not be required to conduct and/or complete such a hearing unless the appellant first pays to the borough a sum determined by the Borough Solicitor to be sufficient to cover any costs of the preparation of the stenographic record of the hearing which the borough shall make part of the original record to be filed with the Court of Common Pleas if an appeal is taken to that Court. Otherwise, such stenographic record shall be filed and preserved by the borough.
- E. The Borough Council shall render its adjudication within 60 days of its receipt of the stenographic record.

§ 174-14. Violations and penalties. [Amended 11-22-1994 by Ord. No. 674; 6-28-2005 by Ord. No. 740; 2-22-2011 by Ord. No. 780]

Any person or firm who fails to submit a permit for review and approval shall be required to pay a fee of \$50. Additionally, any person or firm who violates any of the provisions of this chapter or who shall fail to comply with a lawful order of the Commission shall be liable for each offense, upon conviction before any District Justice, to a fine of not more than \$1,000, together with costs of prosecution, and, in default of payment of said fine, shall be sentenced to a term of imprisonment not to exceed 30 days. Further, the Borough Council, upon request by the Commission, may authorize the Commission to institute any appropriate action or proceeding, whether by legal process or otherwise, to restrain, correct or abate a continuing violation of any provision of this chapter or of any lawful order of the Commission.