Chapter 2.80

SHADE TREE COMMISSION

Sections:

2.80.010 Commission personnel—Appointment.

2.80.020 First commission—Subsequent commissions—Terms.

2.80.030 Organization—Salaries of officers and employees.

2.80.040 Vacancies.

2.80.050 Powers of commission.

2.80.060 Cost of trees and improvements.

2.80.070 Public improvements affecting trees—Consent of commission, county park commissions unaffected.

2.80.080 Annual appropriation—Estimated amount.

2.80.090 Penalties—Jurisdiction of courts—Copy of ordinance as evidence.

2.80.100 Disposition of penalties.

2.80.110 No liability for death or injury.

2.80.120 Reserved.

2.80.130 Definitions.

2.80.140 Homeowner maintenance or removal of street trees.

2.80.150 Permit for maintenance or removal.

2.80.160 Permit application procedure.

2.80.170 Penalties.

2.80.010 Commission personnel—Appointment.

The regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways, public places, parks and parkways of the borough, except state highways, unless the State Highway Department shall assent thereto, and except county highways, parks and parkways, if a county shade tree commission is operative and gives assent thereto, shall be exercised by and under the authority of the Freehold Borough shade tree commission, which is created. The commission shall consist of seven members appointed by the mayor with the advice and consent of the borough council. Commission members shall be residents of the borough and shall serve without compensation except as hereinafter provided. (Prior code § 2-24.1)

2.80.020 First commission—Subsequent commissions—Terms.

The first commissioners shall be for the respective periods of three years, four years and five years each. The terms of each appointee shall be designated in his or her appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January 1st, next succeeding such appointment. In the event that the membership of any commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing. (Prior code § 2-24.2)

2.80.030 Organization—Salaries of officers and employees.

The commission shall be organized within thirty (30) days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually by the election of one of its members as chairperson, and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated even if a member of

the commission, shall be fixed by the council; the salary of all other employees shall be fixed by the commission. All salaries shall be fixed as nearly as practicable in accordance with the salary schedule, if any, of the borough for corresponding positions. (Prior code § 2-24.3)

2.80.040 Vacancies.

Any vacancy occurring by reason of the death, resignation or removal of any commissioner shall be filled for the unexpired term by the mayor. (Prior code § 2-24.4)

2.80.050 Powers of commission.

The shade tree commission shall have power to:

A. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted in any public highway, park or parkway, except such as are excluded pursuant to Section 2.80.010, 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. Care for and control such parks and parkways; encourage arboriculture; make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the borough council 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 harbour a disease or 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. Exercise any and all other powers, specific or general, authorized or created by law, particularly R.S. 40:64-1 to 40:64-14, inclusive;

G. Continue to control, regulate, replace, repair, treat or otherwise proceed with the regulation and control of trees and the ground surrounding the same and continue to hold title to any and all equipment; plants or trees or materials heretofore acquired, undertaken, or now in the process of being done by virtue of authority contained or given to any existing shade tree commission previously created; the commission to have the same power and authority in connection therewith as generally granted hereunder and as generally authorized by R.S. 40:64-1 to 40:64-14, inclusive, including the honoring of any commitments or obligations now in existence on the effective date of the creation of the commission.

H. The board shall have full control over all borough trees and the ground surrounding same and may adopt suitable rules, regulations and bylaws for the control, regulation, replacement, removal, repair, maintenance, planting, care and treatment of same; and any person who shall violate any of such rules, regulations or bylaws shall be deemed and adjudged to be a disorderly person. The custodians, supervisors and assistants appointed by the board shall, while on duty and for the purpose of preserving order and the observance of rules, regulations and bylaws of the board, have all the power and authority of police officers of the borough. (Prior code § 2-24.5)
(Ord. No. 2013/16, § 2, 11-4-13)

2.80.060 Cost of trees and improvements.

Except as hereinafter provided, the initial cost of all trees planted by the commission, the cost of planting the same, the cost of the posts and boxes or guards used for the protection thereof, and the cost of the removal of any tree or part thereof dangerous to public safety shall be borne by and paid for by the borough; provided approval and consent to such costs upon request of the shade tree commission shall be given prior thereto by formal action of the mayor and council. (Prior code § 2-24.6)

2.80.070 Public improvements affecting trees—Consent of commission, county park commissions unaffected.

No statute giving any person or state, county or municipal board, body or officials, 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 highway 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.

Nothing in this section contained shall be held to take away or diminish any of the powers or authority of any county park commission over the trees or shrubbery in any 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. (Prior code § 2-24.7)

2.80.080 Annual appropriation—Estimated amount.

During the month of December in each year, the shade tree commission shall certify to the 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 as it is anticipated expenditure will be made, namely:

A. Payment of wages and salaries of employees;

B. Expenses of commission members in discharging official duties including expenses incident to attendance at professional meetings;

C. Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

The council shall annually appropriate such sum as it may deem necessary for the above purposes. (Prior code § 2-24.8)

2.80.090 Penalties—Jurisdiction of courts—Copy of ordinance as evidence.

A. The commission may prescribe a fine for the violation of each of ordinances in an amount not exceeding one thousand five hundred dollars ($1,500.00) for each violation, and the court which now or hereinafter shall have jurisdiction over actions for the violation of ordinances of the municipality in which the commission has been or shall be appointed shall have jurisdiction in actions for the violation of such ordinances as the commission shall enact.

B. In addition to the penalties authorized by subsection A of this section, the commission may require a person who removes or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment to the municipality. The replacement assessment shall be the value of the tree as determined by the appraisal of a trained forester or certified tree expert retained by the commission for that purpose. In lieu of an appraisal, the commission may adopt a formula and schedule

based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed twenty-seven dollars ($27.00) per square inch. The square inch cross section shall be calculated from the diameter at breast height and, if there is a multiple-step tree, then each trunk shall be measured and an average shall be determined for the tree. For the purposes of this section, "diameter at breast height" means the diameter of the tree taken at a point four and one-half feet above ground level. The commission shall modify the value of the tree based upon its species, variety, location and its condition at the time of removal or destruction.

C. 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 service upon any lands in which it has acquired and easement or right-of-way, shall not be subject to any penalty imposed by a commission pursuant to subsection A or B of this section. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent action.

The ordinances shall be enforced by like proceedings and process and the practice for the enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the municipality in which the commission exists.

The officers authorized by law to serve and execute any process in the municipal court of the borough shall be the officers to serve and execute any process issued out of any court under this title.

A copy of any ordinance of the commission, certified to under the hand of its secretary or chairperson, 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. (Ord. 2001/21 § 11: prior code § 2-24.9)

2.80.100 Disposition of penalties.

All moneys collected, either as fines or as penalties for any violation of a rule or regulation of the shade tree commission, or as a charge against real estate, under any provisions of law, shall be forthwith paid over to the officer empowered to be custodian of the funds of the borough. (Prior code § 2-24.10)

2.80.110 No liability for death or injury.

Nothing contained in this chapter shall be construed to make the commission or any member thereof responsible for the death or injury of any person, or for any injury to any property or highway tree or shrub. (Prior code § 2-24.11)

2.80.120 Reserved.

Editor's note—Ord. No. 2013/16, § 1, adopted Nov. 4, 2013, repealed § 2.80.120 in its entirety, which pertained to ordinances by shade tree commission and derived from the prior code § 2-24.12.

2.80.130 Definitions.

As used in this chapter:

"Borough trees" means shade and ornamental trees and shrubbery upon and in the streets, highways, public places, parks and parkways of the borough, and/or between the curb and sidewalk along private property. (Ord. 2005/28 § 1)

2.80.140 Homeowner maintenance or removal of street trees.

This chapter shall apply to the care and maintenance of borough trees, in particular those trees growing between the curb and sidewalk adjacent to the permit applicant's property.

A. No person or entity shall perform the following activities unless authorized by specific written permission from the borough, the shade tree commission or its legitimate agents as set forth herein, or unless performed by the borough, the shade tree commission or its legitimate agents:

1. The removal, pruning, or any alterations to any borough owned trees.

2. Any willful damage, injury or disfiguration of any borough owned tree. Damage will be considered willful if the damage, injury or disfiguration is caused as the result of but not limited to the following: cutting, carving, taping, gashing or slitting of any tree, or the attachment of any rope, wire, cable, nail, sign, poster or any other manmade object to any tree.

3. The disturbance of the soil, or the construction or placement of any nonporous material on the ground around any tree so as to damage roots, cut off air, light or water from the roots; or placement or removal of any soil from within five feet of any borough tree, or to allow any liquid or solid substance which is harmful to such trees to come in contact with them.

4. The planting or placing of any plants or aboveground objects other than official mail boxes between the curb and sidewalk.

5. Notwithstanding the above, residents may apply to the shade tree commission for permission to prune, shape and plant trees on their property in the area between the curb and the sidewalk provided same is done in accordance with the rules, regulations and requirements established by the commission and further provided that any such plantings comply with the list of acceptable plantings as established by the commission. (Ord. 2005/28 § 2)
(Ord. No. 2013/16, § 3, 11-4-13)

2.80.150 Permit for maintenance or removal.

A. Property owners may apply to the borough shade tree commission for a permit to perform maintenance or removal of a borough tree located between the curb and sidewalk along the applicant's property for the following types of work:

1. Pruning to serve one or more of the following purposes: eliminate hazardous dead limbs, remove limbs which conflict with structures or overhead utilities, removal or trimming of other limbs which present a potential hazard. All pruning will be done in compliance with the National Arborist Association, Inc., American National Standards Institute, Inc. Standard ANSI A300 (Part 1)-2001 Revision of ANSI A300-1995; American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Pruning).

2. Removal of trees that have become hazardous.

3. Trimming of trees that have become hazardous.

4. Trees causing damage to paved areas. In such case, the following shall apply:

a. Where space allows, curve the sidewalk or pavement around the tree, leaving about two feet of undisturbed area around the tree trunk.

b. Do not cut or shave off more than fifteen (15) percent of the tree roots. Make cuts clean—do not leave ragged edges.

c. Place an eight-inch deep bed of three-quarter-inch stone under the new pavement. This will create a "desert-like" environment under the pavement that discourages root growth.

B. All pruning or tree removal will be done in accordance with the rules, regulations and requirements established by the commission.

C. The applicant shall be responsible for total execution of all permitted work, including the legitimate disposal of all tree material removed, the removal of the tree stump to eight inches below the surrounding soil surface (in instances of tree removal), and the restoration of the work site to the extent of reestablishing the original soil surface contour and establishing grass cover. All work must be completed within ninety (90) days of the issuance of the permit.

D. It shall be the applicant's responsibility to coordinate the work with the appropriate utilities to eliminate conflicts with above- or below-ground service lines; local police to provide traffic control if necessary; neighbors to avoid conflicts.

E. Property owners who choose to perform maintenance or removal of borough trees agree to accept full liability for any damage to persons, environment or property resulting from this activity. All of the permitted work shall be done at the applicant's expense. (Ord. 2005/28 § 3)
(Ord. No. 2013/16, § 4, 11-4-13)

2.80.160 Permit application procedure.

A. Property owners who desire to perform maintenance or removal of borough trees shall file an application with the shade tree commission via the borough administrator's office and make arrangements to have a representative of the shade tree commission inspect the proposed work site. The application form may be acquired from the borough administrator's office.

B. Property owners who desire to plant new trees in the area between the curb and the sidewalk shall select the proper tree from the approved list and shall file an application with the shade tree commission via the borough administrator's office and make arrangements to have a representative of the shade tree commission inspect the planting to verify that the proper tree selection has been made and proper planting procedures have been followed.

C. There shall be no fee for the application.

D. Upon approval of the proposed work project by the shade tree commission, the commission shall notify the borough administrator and a permit will be issued to the applicant detailing the approved work. The permit shall be effective for ninety (90) calendar days from the date of issue.

E. In the event the borough or shade tree commission determines that the permit has been violated, and/or the borough or commission deems that the safety of persons and/or property warrants an immediate work stoppage, the permit may be terminated. (Ord. 2005/28 § 4)
(Ord. No. 2013/16, § 5, 11-4-13)

2.80.170 Penalties.

Any person or entity who violates any provision of this chapter shall, upon conviction thereof, be punished by a fine not to exceed one thousand two hundred fifty dollars ($1,250.00). Each day that a violation occurred or is committed or continues may constitute a separate offense. (Ord. 2005/28 § 5)
(Ord. No. 2013/16, § 6, 11-4-13)