

ORDINANCE 1543

ORDINANCE OF THE BOROUGH OF GLEN RIDGE, COUNTY OF ESSEX, STATE OF NEW JERSEY ADDING CHAPTER 12.26, SHADE TREE COMMISSION TO THE CODE OF THE BOROUGH OF GLEN RIDGE

BE IT ORDAINED by the Mayor & Council of the Borough of Glen Ridge, County of Essex, and State of New Jersey that Chapter 12.26, Shade Tree Commission, is hereby added to the Code of the Borough of Glen Ridge, as follows:

SECTION 12.26-1 Commission; personnel; appointment.

The regulation, planting, care and control of shade and ornamental trees and woody shrubs upon and in (1) the streets, highways, public spaces owned by the Borough of Glen Ridge and which provide public access, allowing for activities such as pedestrian and vehicular travel, active and passive recreation, and flood control, and (2) parks and parkways of the Borough of Glen Ridge except State highways, unless the Department of Transportation shall assent thereto and except county highways, parks and parkways, if a County Shade Tree Commission is operative and gives assent to, shall be exercised by and under the authority of Glen Ridge Borough Shade Tree Commission, which is hereby created.

The Commission shall consist of five (5) members, and may include not more than two alternate members. The members and alternate members shall be appointed by the Mayor with Council consent, and shall be residents of the Borough of Glen Ridge and shall serve without compensation.

SECTION 12.26-2 First Commission; subsequent Commissions; terms.

The first Commissioners, shall be appointed within 60 days after the effective date of this ordinance, and their terms of office shall commence upon the date of their appointment and be for the respective periods: 5 members - of 1, 2, 3, 4, and 5 years. The terms of each appointee shall be designated in his appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January 1, next succeeding such appointment. In event that the membership of the Commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing.

If the ordinance provides for the appointment of two alternate members, the terms of each alternate member shall be five years commencing on January 1 of the year of appointment; provided, however, that in the event two alternate members are appointed the initial term of "Alternate No. 1" shall be five years, and the initial term of "Alternate No. 2" shall be four years. An alternate member may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

SECTION 12.26-3 Organization; salaries of officer and employees.

The Commission shall organize within 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 chairman, 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 Mayor & Council of the Borough of Glen Ridge.

SECTION 12.26-4 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 or other chief executive of the Borough of Glen Ridge Borough of Glen Ridge.

SECTION 12.26-5 Powers of Commission.

The Shade Tree Commission organized under this ordinance shall have power to:

- 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 (1) public highway and (2) park or parkway, except such as are excluded pursuant to Section I of this ordinance including the planting, trimming, spraying, care and protection thereof;
- B.** Control the use of the publicly owned ground surrounding the same, so far as may be necessary for their proper growth, care and protection;

C. With the advice of the Borough Forester, move or require the removal of any tree, or part thereof, dangerous to public safety;

D. 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 of Glen Ridge 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. The work of such removal shall be done by or at the expense of the owner or tenant of such lands, and shall be done under the supervision of the Forester.

E. Encourage arboriculture.

SECTION 12.26-6 Exclusions

The Shade Tree Commission organized under this ordinance shall not have power to:

A. Make, alter, amend or repeal ordinances.

B. Assess abutting homeowner for the planting or removal of a public tree.

SECTION 12.26-7 Public improvements affecting trees; consent of Commission, county park Commissions unaffected.

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 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 co-operate with such person, board, body or official for the general public good. Nothing contained in this ordinance shall be held to take away or diminish any of the powers or authority of the Essex County Park Commission over the trees or woody shrubs in any Essex 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 woody shrubs.

SECTION 12.26-8 Annual appropriation; estimate; amount.

A. During the month of December in each year, the Shade Tree Commission shall submit to the Mayor & Council of the Borough of Glen Ridge 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 for; namely,

1. Payment of wages and salaries of employees;
2. Expenses of Commission members in discharging official duties including expenses incident to attendance at professional meetings;
3. Purchase of trees and woody shrubs; and
4. Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

B. The Mayor & Council of the Borough of Glen Ridge may annually appropriate a sum as it may deem sufficient for said purposes consistent with other budgetary constraints.

SECTION 12.26-9 Penalty, jurisdiction of courts; copy of Ordinance as evidence.

A. Any person who violates any provision of this Chapter shall, upon conviction in the Municipal Court of the Borough of Glen Ridge, or such other court having jurisdiction, be liable for fines and penalties as set forth in Chapter 1-15 of the Code of the Borough of Glen Ridge, at the discretion of the Court. Each day that a violation occurs shall be deemed a separate and distinct violation, subject to the penalty provisions of this article.

B. In addition to the penalties authorized by subsection A. of this section, the 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 Glen Ridge. 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 \$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 stem 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" shall mean the diameter of the tree taken at a point 4.5 feet above ground level. The

Commission shall modify the value of the tree 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 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 Commission pursuant to subsections 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 actions.

SECTION 12.26-10 Disposition of penalties.

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

SECTION 12.26-11 Public notice.

All regulations proposed by the Shade Tree Commission shall be submitted to the municipal clerk for inspection by the public during regular business hours and are subject to approval by the Mayor & Council prior to said regulations being enforceable.

SECTION 12.26-12 Consistent with State Law.

This Chapter has been adopted by the Mayor & Council of the Borough of Glen Ridge pursuant to the authority vested in this municipality under Title 40, Chapter 64, Sections 1-14, as amended of Public Laws of New Jersey 1996 - Chapter 42.

SECTION 12.26-13 Definitions.

A. COMMISSION OR SHADE TREE COMMISSION shall mean the Shade Tree commission of the Borough of Glen Ridge.

B. NEGLIGENT shall mean beyond the scope of the Standard Operating Procedure ("SOP") for trimming trees established and approved by the Glen Ridge Borough Shade Tree Commission"

C. PERSON shall mean every person, firm, association, partnership, and corporation.

D. PLANT CONSTRUCTION as applied to public utility companies shall mean poles, wires, cables, sub-surface conduits, pipes, manholes and appurtenant facilities of such companies installed in a street, a recorded easement or right of way.

E. PUBLIC UTILITY COMPANY shall refer to a public utility as defined in the Revised Statutes of the State of New Jersey (R.S. 48:2-13)

F. STREET shall mean: Any road, avenue, street or highway, dedicated to the public use for street purpose, regardless of whether or not it has been formally accepted by the Borough of Glen Ridge. A street shall be deemed to include all portions lying between the dedicated or established right-of-way lines and/or planting easement thereof, said lines being identical with the front property lines of lands abutting the street.

G. TREE shall mean: Trees and Woody Shrubs

SECTION 12.26-14 Required Permits (Non-Utility Operations)

No person shall do any of the following acts to any public tree on a street without first obtaining a permit from the Shade Tree Commission:

- (1) Cut, prune, climb with spikes, break, damage or remove or kill;
- (2) Cut, disturb or interfere in any way with any root, including during the placement or maintenance of gas or other pipes;
- (3) Spray with any chemical;
- (4) Fasten any rope, wire, sign or other device. (Nothing herein shall prevent any governmental agency from affixing in a manner approved by the Shade Tree Commission a public notice upon a tree in connection with administering governmental affairs);
- (5) Remove or damage any guard or device placed to protect or water any tree or woody shrub.
- (6) Conduct razing, removal or renovation of any structure if deemed by the Commission, to be damaging to neighboring street trees.
- (7) Place or distribute chemicals, including, but not limited to, salt deleterious to tree health except as required to prevent injury to persons using streets and sidewalks.
- (8) Maintain a stationary fire or device which vaporizes noxious fumes deleterious to tree health.

- (9) Remove soil, either through trenching or otherwise;
- (10) Construct new sidewalks and/or driveways with any material whatsoever within 5 feet of a public tree or do anything to impede the infiltration of water into the soil within the rooting zone of a tree unless required for access to their property.
- (11) Plant any tree or woody shrub within the designated area under the control of the Commission.

SECTION 12.26-15 Required Permits: Utility Operations;

Exceptions

(A) The Shade Tree Commission shall grant to Public Utility Companies a blanket permit for (1) tree pruning for line clearance and (2) for the installation and maintenance of sub-surface and above-ground Plant Construction even if there is interference with or endangerment of street trees. The activities authorized by this permit shall follow a Standard Operating Procedure ("SOP") approved by the Glen Ridge Borough Shade Tree Commission.

(B) Public Utility Companies may, during periods of emergency, without specific prior permit (1) Prune, or remove, (2) install temporary attachments to trees and (3) make emergency sub-surface repairs.

(C) Each Public Utility Company shall exercise reasonable diligence in the maintenance of its Plant Construction so as to avoid damage to trees under the jurisdiction of the Glen Ridge Borough Shade Tree Commission.

SECTION 12.26-16 Issuance of Permits

Requests for permits required by the provisions of this ordinance for the performance of public tree work should be directed to the Shade Tree Commission, Glen Ridge Township, Essex County, New Jersey.

In cases where an arborist or other contractor is to be used by a property owner to perform work on public trees, the permit applicant must provide evidence that said contractor possesses worker compensation and liability insurance in the minimum amounts of \$1,000,000 for bodily injury or death and \$100,000 property damage indemnifying the Borough or any persons injured or damaged resulting from the performance of said work.

All Ordinances contrary to the provisions of this Ordinance are hereby repealed to the extent that they are inconsistent herewith.

This Ordinance shall take effect upon passage and publication according to law for a period of 5 years and *will expire on December 31, 2015, unless it is reauthorized by the Borough Council.*

The foregoing ordinance was introduced by Mayor and Commissioners at a meeting held on XXXX. This Ordinance will be considered for adoption on final reading and public hearing to be held on XXX at 7:30 p.m. in the Council Chambers, Glen Ridge Borough Municipal Building, 825 Bloomfield Avenue, Glen Ridge Avenue, New Jersey 07028.

The purpose of this Ordinance is to create a Shade Tree Commission in the Borough of Glen Ridge. A copy of this Ordinance is available at no charge to the general public between the hours of 8:30 AM to 4:30 PM, Monday through Friday (Legal Holidays excluded), at the Office of the Borough Clerk, 825 Bloomfield Avenue, Glen Ridge Avenue, New Jersey 07028.