

City of Lambertville
ORDINANCE NUMBER 17-2019

*An Ordinance to Amend the Lambertville City Code, 2014, Chapter 3, Article IV, Boards,
Committees, Commissions, Section 16, Shade Tree Commission*

ARTICLE IV
BOARDS, COMMITTEES, COMMISSIONS

3-16 SHADE TREE COMMISSION.

3-16.1 Members; Appointment.

- a. The Mayor is hereby authorized to appoint seven (7) persons to act and be known as the Shade Tree Commission for the City of Lambertville, N.J. In the event of a vacancy, the appointment of the new member shall be made to complete the unexpired term. All appointments, except to fill vacancies, shall take effect on January 1, and shall be for five (5) years. (1990 code §3-16.1; Ord. No. 10-2018)
- b. Ord. No. 10-2018 creates two (2) additional positions on the Shade Tree Commission, changing the board from a five (5) member to a seven (7) member board. For the first year of the appointment, the first position shall be for five (5) years, expiring on 12/31/2023 and the second position shall be for a four (4) year appointment expiring on 12/31/2022. (Ord. No. 10-2018)

3-16.2 Statutory Authorization.

The provisions of N.J.S.A. 40:64-1 to 40:64-14 as amended wherein the amendments apply to a municipality shall be part of this section. (1990 code § 3-16.2)

3-16.3 Purpose.

The mayor and council of the City of Lambertville have determined that the preservation of Shade Trees and Shrubs within the City is beneficially linked to the health, safety, and well-being of the City's inhabitants, and enhances the aesthetic and historic character of the City. It is

also recognized that Trees perform beneficial ecological functions related to air quality, temperature and noise modulation as well as control of storm water run-off. This article provides for the protection of Trees and Shrubs within the Shade Tree Commission's Jurisdiction Zone from indiscriminate destruction, harm to, or removal as set forth below.

The establishment of standards for the removal and maintenance of Trees and Shrubs existing on private property, that also share space within the Commission's Jurisdiction Zone, is in keeping with the recognition that actions undertaken on individual properties can have significant impact on neighboring properties. Land use and zoning regulations provide the framework for establishment and preservation of beneficial standards of environmental, social, economic and aesthetic land use management, which benefit the maintenance of a healthy urban forest and Tree canopy.

3-16.4 Authority.

The Shade Tree Commission shall have authority over policy, planning, management and maintenance of any and all Trees, Shrubs and vegetation that exist wholly within or whose drip line extends from private property into the Shade Tree Commission's Jurisdiction Zone. This authority will include but not be limited to entering onto private property for the purpose of inspection, advising, planting, removal, bracing, shaping, trimming, watering, fertilizing and treatment for disease.

- a. Private Property within the Jurisdiction Zone – Property owner is responsible for all matters pertaining to Shade Tree planting, removal, disease control and maintenance subject to Commission review and approval pursuant to terms and conditions set forth herein at the property owner's sole expense.
- b. City/Public Owned Property – The Shade Tree Commission is responsible for all matters pertaining to Shade Tree planting, removal, disease control and maintenance at the City's sole expense.

3-16.5 Definitions.

Applicant – The Person submitting Shade Tree Action Request Form to the Commission.

Authorized Representative—Any employee of City law enforcement, streets department or any member of the shade tree commission.

Caliper – The measurement of the diameter of a Shade Tree at 12 inches above the ground. This measurement is used to determine the Shade Tree size for planting.

Commission – The Lambertville Shade Tree Commission

Diameter at Breast Height (DBH) – The diameter of the main stem of a Tree or the combined diameters of a multi-stemmed Tree measured 4.5 feet above the surface of the uphill side of the Shade Tree. Where roots have girdled upward, the measurement shall be taken from the beginning of the clearest uphill vertical trunk line. The top diameter of a stump less than 4.5 feet tall shall be considered the “DBH” of an illegally destroyed Shade Tree for the purpose of calculating recompense.

Drip Line - The radius of the Tree or Shrub extending from the trunk to the tip of the outermost branch.

Jurisdiction Zone – The area or space required or used for any public street, sidewalk or pedestrian walk way. The Jurisdiction Zone shall extend from the outer edge of the sidewalk or walkway to the outer edge of the opposite sidewalk or walkway. Where no opposite sidewalk or walkway exists, the Jurisdiction Zone shall extend to eight (8) feet beyond the edge of the street.

Letter of Approval—An official letter from the Commission which grants approval and /or sets conditions for actions applied to a specific Shade Tree.

Root Barrier – A physical barrier that is designed to redirect root growth down and away from sidewalks and other infrastructure.

Shade Tree – Any Tree located wholly or in part within the Jurisdiction Zone, or on private property, which has a drip line or roots extending into the Jurisdiction Zone.

Shade Tree Action Request Form – A standardized form available from the Commission that Shade Tree owners must submit to request approval for any Commission regulated action within the Jurisdiction Zone.

Shade Tree Safety Hazard—A Shade Tree that requires immediate removal or other mitigating actions to reduce the level of risk posed to persons or property that could potentially be damaged or injured should a failure occur.

Shrub – A woody plant of relatively low height, having several stems arising from the base and lacking a defined single trunk which has a Drip Line or roots extending into the Jurisdiction Zone.

Stump – The part of the tree and its surface roots remaining after felling.

Tree – A woody perennial plant having a singular usually elongated main stem generally with few or no branches on its lower part.

3-16.6 Tree Maintenance Regulations.

- a. The maintenance, care or removal of any existing or newly planted Shade Tree or Shrub as defined herein, which requires compliance with any provision of this ordinance shall be the responsibility of the property owner on whose property the Shade Tree or Shrub is located or whose property abuts the Jurisdiction Zone in which the Shade Tree is located. When a Shade Tree trunk is on a property line, the responsibility for compliance shall be with the Person whose property contains the largest percentage of Shade Tree trunk circumference.
- b. All mature Shade Trees shall be kept trimmed to a minimum branching height of ten (10) feet over streets and seven (7) feet over sidewalks, except where the Commission may require greater height clearances to eliminate traffic and other hazards. Shrubbery and any vegetation shall be trimmed back behind the edge of the sidewalk.
- c. Whenever, in the opinion of the Commission, Safety Hazard is caused by a Shade Tree or Shrub, whether dead or alive, the Commission may issue a written order to the responsible property owner to take action to correct the condition. If after thirty (30) days from the date of receipt of written notification from the Commission, the responsible property owner fails to take corrective action, the City may have the recommended work accomplished to address the Safety Hazard and may bill the responsible property owner for the completed work.

3-16.7 Acts Requiring Permission from the Commission.

No Person shall do, or cause to be done, any of the following acts within the Jurisdiction Zone without the written approval of the Commission pursuant to the Shade Tree Action Request procedures detailed in Section 3-16.9 below.

- a. Plant any Tree or Shrubbery.
- b. Remove any Tree or Shrubbery
- c. Cut or trim branches greater than seven (7) feet above a walkway or greater than ten (10) feet above a street.
- d. Install or repair a sidewalk within four (4) feet of an existing Shade Tree or Shrub. (Ord. 9/21/53, §3)
- e. Install plants, or place planting containers, edging borders, structures, brick, stone, concrete, or any other hard material or surface about the base of Shade Trees or anywhere within the Jurisdiction Zone.
- f. Fasten or attach any sign, notice, rope, wire, electric attachment or any item to a Shade Tree.

- g. Close or obstruct any open space provided about the base or within the Drip Line of a Shade Tree.
- h. Engage in any actions, which, in the opinion of the commission, might cause harm or death to a Shade Tree or Shrub.

3-16.8 Conditions Applicable to Shade Tree or Shrub Removal.

The removal of a Shade Tree or Shrub, if approved by the Commission, shall be conditioned upon the following:

- a. Planting of Replacement Shade Trees or Shrubs

The size and number of replacement Shade Trees shall be consistent with the approved Shade Tree Replacement Schedule per Section 3-16.10 and planted at the direction of the Commission, within one year of tree removal.

- b. Contribution in Lieu of Tree Replacement

Alternatively, upon approval of the Commission, a contribution shall be made to the Shade Tree Trust Fund within thirty (30) days of the approval date, the amount being based on the Shade Tree Replacement Schedule in Section 3-16.10. Failure to submit the contribution will constitute a violation of this section and be subject to the same penalty as if the Shade Tree in question had been removed without approval.

- c. Stump Removal

The stump of any Shade Tree or Shrub shall be removed or ground down to twenty (20) inches below grade. Failure to remove the stump within one (1) year of Shade Tree removal may result in the City undertaking the stump removal process with the property owner being responsible for reimbursement to the City for any and all associated costs incurred.

3-16.9 Shade Tree Action Request Procedures for Property Owners.

- a. Submission of Shade Tree Action Request Form

Persons wishing to undergo any of the above regulated activities, must first submit a Shade Tree Action Request Form via the City's website or by hard copy with the Commission. No request will be considered without a Shade Tree Action Request Form. All requests will be reviewed and considered at the first regularly scheduled meeting of

the Commission occurring at least seven (7) days after the submission of the Shade Tree Action Request Form.

b. Applicant Attendance at Commission Meeting

Applicants are encouraged to attend the Commission meeting to present supporting documentation for their requests and to provide clarification where necessary, but attendance is not mandatory.

c. Commission Determination

1. The Commission shall review each Shade Tree Action Request Form and shall grant or deny said request [within ninety \(90\) days of first review](#). If the request is granted, it shall state in [a Letter of Approval](#) the type or species of Shade Tree to be planted or removed, cut, trimmed or pruned or other action involving a Shade Tree and may set forth specifications for doing the same. It shall then be unlawful to take any action contrary to any and all specifications set forth in the [Letter of Approval](#). Applicants will be notified in writing by regular mail of the Commission's decision.
2. The Commission may determine to waive or modify the requirements set forth herein where it finds that the site constraints impose significant limitations to the chances of survival or the long-term health of a replacement Shade Tree or of interference with utilities or pedestrian accessibility to the sidewalk.

d. Duty to Post Authorization During Approved Shade Tree Work

Persons issued a Letter of Approval by the Commission are required to post a copy of said letter in a visible location or present it upon request to any Authorized Representative of the City while work is being done by a contractor or by the property owner. Failure to produce a Letter of Approval upon request will be cause for the Authorized Representative to direct that all work being performed on the Shade Tree is to immediately cease. Until such time that a Letter of Approval is presented, this directive shall remain in effect.

e. Duty to Comply with Commission Conditions and Requirements

Failure to comply with any or all conditions set forth in the Letter of Approval by the Commission may result in enforcement action by the Commission as if none of the conditions were met and the Shade Tree action had taken place without any prior approval.

3-16.10 New and Replacement Shade Tree Requirements.

a. Replacement Shade Tree Size and Number

The Shade Tree Commission shall require that all new and replacement Shade Trees be of a size of a minimum of two and one-half (2 ½) inch caliper and be planted in accordance with accepted planting practices as directed by the Commission. Any replacement Shade Tree must be provided in accordance with the following Shade Tree Replacement Schedule:

Shade Tree Replacement Schedule		
Live Regulated Tree(s) Removed/Destroyed	Required No. of Replacement Tree(s) (2 ½ inch caliper) per Tree(s) Removed/Destroyed	Replacement Fee per Tree in Lieu of Planting
DBH of 1" to 4.99"	One (1)	\$400.00
DBH of 5" to 10.99"	Two (2)	\$800.00
DBH of 11" to 16.99"	Three (3)	\$1,200.00
DBH of 17" or greater	Four (4)	\$1,600.00

b. Annual Adjustment of Replacement Fees

The Shade Tree replacement fees contained in the Shade Tree Replacement Schedule may be reviewed annually and adjusted to reflect current pricing.

c. Shade Tree Selection and Placement

The Shade Tree Commission approval is required for determining the species, size and planting location of any new or replacement Shade Tree or Shrub within the Jurisdiction Zone.

d. Shade Tree Replacement Deadline

The property owner shall be required to replace any replacement Shade Tree or Shrub within one (1) year from date of notification of approval. Any replacement Shade Tree or Shrub must survive in good health for a period of two (2) years from the date of planting. If, in the opinion of the Commission, the replacement Shade Tree or Shrub dies or fails to thrive before two (2) years, that Shade Tree or Shrub must be replaced by the property

owner. Any replacement Shade Tree or Shrub will be subject to the same conditions as contained in the original approval, for a period of two (2) years from the date of re-planting.

e. Payment in Lieu of Shade Tree Planting

When Tree removal permission is granted and the space on the property is inadequate for planting any or all of the new or replacement trees required, the Applicant shall make a monetary contribution to the City's Shade Tree Planting Trust Fund in lieu of planting. This contribution must be made within thirty (30) days of receiving permission for removal in the amount as defined under this section and pursuant to the Shade Tree Replacement Schedule in section 3-16.10.

f. Installation of Root Barrier

Whenever a new Shade Tree is planted within five (5) feet of the Jurisdiction Zone, a Root Barrier of a type and size approved by the Commission may be required.

3-16.11 Shade Tree Planting Trust Fund.

There is hereby established a "Trust Fund" account, which shall be known and designated as the "Shade Tree Planting Trust Fund."

- a. Funds from this account shall be separate and distinct from the Commission's annual budget and shall only be used for the purchase and planting of Trees and/or Shrubs for planting within the Jurisdiction Zone.
- b. Contributions or donations from individuals, groups or businesses, for memorial purposes or any other reason, may be made directly to the Shade Tree Planting Trust Fund.

3-16.12 Protection of Shade Trees and Shrubs

a. From Wires.

1. Duty to Protect Shade Trees

Any Person, having control over any wire for the transmission of electric current, telephone, cable or any other utility service along a public street, highway or Commission Jurisdiction Zone, shall at all times guard all Shade Trees and Shrubs from injury caused by the wires or from the current carried by them.

2. Duty to Provide Notice

Prior to undertaking any work on the utility affecting any such Shade Tree or Shrub, the utility company shall provide at least ten (10) days' prior written notice to the zoning officer, Shade Tree Commission, and abutting property owner. The device or means used shall be subject to the approval of the zoning officer and/or Commission.

b. From Injurious Chemicals.

No Person shall permit any brine, gas or injurious chemicals to come in contact with the stem or roots of any Shade Tree or Shrub within the Jurisdiction Zone. (Ord. 9/21/53, §5)

c. From Actions Likely to Cause Tree Harm or Death.

No Person shall perform any intentional or negligent act that will more likely than not cause a Shade Tree or Shrub harm or death. Negligent damage shall include, but not be limited to, damage inflicted to the root system by machinery or cutting tools, storage of materials and soil compaction, change of natural grade above or below the root system or around the trunk; damage inflicted on the tree permitting fungus, pests or other infestation; pruning, which is so excessive that it threatens the health of the tree or thinning leading to the failure to thrive; paving over the root system with any impervious materials within such proximity as to be fatally harmful to the Shade Tree; or application of any toxic substance, including solvents, oils, gasoline and diesel fuel; trenching of roots; cutting, girdling or inflicting other severe mechanical injury to the trunk, roots or other vital sections of the Shade Tree; removing in excess of 20 percent of the live crown of the Shade Tree; causing damage by the operation of heavy machinery or vehicles; causing damage by the storage of materials; and/or deliberately or negligently setting fire to a Shade Tree. In addition, topping, tipping, or any similar improper pruning practices will automatically be deemed as harmful to, or destruction of a Shade Tree.

d. From Tree Climbing and Trimming Practices.

No Person shall perform any intentional or negligent act causing damage to a Shade Tree, including various Tree climbing practices, spiking, trimming, flush cutting, incursion into a designated root save area, and the use of climbing spurs or gaffs on trees not subject to removal that exposes the cambium of a Shade Tree to insects, decay organisms or damages the tree bark.

3-16.13 Advisory Role of Shade Tree Commission.

The Shade Tree Commission shall be given a minimum of ninety (90) days to make timely review and determination to the Planning Board, City Council, City Engineer, and the Director of Public Works, as appropriate, regarding the following:

- a. The Shade Tree planting, location, number, species and size or Shade Tree removal as part of any City sidewalk and/or street construction projects.
- b. Shade Tree planting in connection with the site plan approval process for private developments.
- c. It shall not be necessary for the City to obtain approval to do any Shade Tree work on public areas owned in fee simple or rented by it, but no such work shall be done without consultation with the Commission.

3-16.14 Educational Role of the Shade Tree Commission.

- a. Shade Tree Maintenance Information

The Shade Tree Commission shall provide information about trees to the public. This information will include, but not be limited to, proper planting and trimming practices, fertilizing, treatment and prevention of diseases and general maintenance of Shade Trees and Shrubs.

- b. Recommended Shade Tree List

The Commission will also maintain a publically available recommended Shade Tree and Shrub list. The list will identify native species and will recommend their use where, when or if the species is appropriate, available and best for a particular location.

- c. Inter-agency coordination

The Commission may also participate in and coordinate with other agencies, Commissions, and organizations regarding the raising awareness of the importance of supporting an ecologically sensitive and biodiverse community.

3-16.15 Interference with Shade Tree Commission Prohibited.

No person shall prevent, delay or interfere with any lawful work undertaken by the Commission or its authorized agent. (1990 Code §3-16.6)

3-16.16 Penalty.

- a. Any person who shall violate any of the provisions of this section shall be liable to the penalty in Chapter I, Section 1-5 for each and every such violation to be recovered as provided by law. (1990 code §3-16.7) (NJSA 40:49-5) The ordinances shall be enforced by like proceedings and processes. Enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the City.
- b. Any public utility or cable television company that clears, moves, cuts, or destroys any Shade 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, 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. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent or injurious actions as determined by the Commission.

3-16.17 No liability for death or injury.

Nothing in this chapter contained shall be construed to make the Shade Tree Commission or any member thereof, or any volunteer participating in a community forestry program as provided for by section 4 of P.L. 1996, c.135 (C.13:1L-17.4), responsible for the death or injury of any person, or for an injury to any property or highway tree or shrub. Liability for any such death or injury shall be governed by the provisions of section 16 of P.L.1996, c.135 (C.59:4-10) and any other relevant provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

3-16.18 Severability.

If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, section or parts of this ordinance.

3-16.19 Conflicting Ordinances.

In the event this ordinance conflicts with or overlaps with any other ordinance, the provisions of this ordinance shall take precedence rendering inapplicable any conflicting or overlapping ordinance provisions.

3-16.20 Effective Date

The terms and conditions of this ordinance shall take effect upon adoption by the Lambertville City Council.

INTRODUCTION AND FIRST READING: July 18, 2019

PUBLIC HEARING AND SECOND READING: August 22, 2019