

ORDINANCE NO. 2017-³
BOROUGH OF FORTY FORT

AN ORDINANCE OF THE BOROUGH COUNCIL OF THE
BOROUGH OF FORTY FORT AMENDING THE SHADE TREE ORDINANCE

WHEREAS, the Borough of Forty Fort has a Shade Tree Ordinance which is codified at Sections 25-101 through 25-303 of the Borough of Forty Fort Code of Ordinances;


WHEREAS, the Borough Council of the Borough of Forty Fort wishes to make changes to various provisions of that Ordinance.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Forty Fort and it is hereby ordained and enacted as follows:

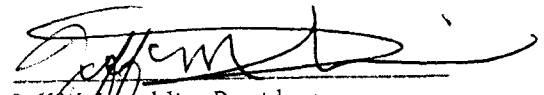
1. Sections 25-101 through Section 25-303 of the Borough of Forty Fort Code of Ordinances is hereby amended as set forth in Exhibit "A" which is incorporated into this Ordinance by reference. The italicized portions of Exhibit "A" represent the new language to be inserted into the Ordinance and the crossed out portions of Exhibit "A" represent those portions which are being deleted.
2. Severability. The provisions of this Ordinance are severable and if any section, sentence, clause or part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect the remaining sections, clauses, parts or provisions of this Ordinance. It is hereby declared that such Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.
3. Repealer. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed.
4. This Ordinance shall take effect as provided by law.

5th ORDAINED AND ENACTED by the Borough Council of the Borough of Forty Fort, this
day of June, 2017.

ATTEST:

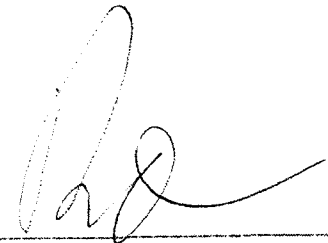


Bonnie Arnone
Borough Manager



Jeff McLaughlin, President
Borough of Forty Fort Council

APPROVED this 5th day of June, 2017



Andy Tuzinski, Mayor
Borough of Forty Fort

EXHIBIT "A"

Part 1**Shade Tree Commission****§25-101. Creation.**

A Shade Tree Commission is hereby established for the Borough of Forty Fort, in accordance with provisions of the Borough Code, 53 P.S. §47721 et seq. (Ord. 1994-5, 6/6/1994, §101)

§25-102. Membership; Terms of Office.

The Commission shall be composed of five residents of the Borough who shall be appointed by Council, and shall serve without compensation. Each term shall be 5 years. Vacancies in the office shall be filled by Council for the unexpired term. The Commission shall elect a Chairman and Vice-Chairman.

(Ord. 1994-5, 6/6/1994, §102; as amended by Ord. 2008-1, 3/3/2008)

§25-103. Powers and Duties.

1. The Commission shall have exclusive custody and control of the shade trees in the Borough.
2. The Commission is authorized to plant, remove, maintain and protect shade trees on the streets and highways in the Borough.
3. The Commission may authorize third parties to plant, remove, maintain and protect shade trees on the streets and highways in the Borough.
4. *The Commission may order the property owner who is responsible for tree maintenance to remove a tree that is deemed by the Commission to be unhealthy. The property owner will be responsible for the cost of removing the tree and removing or grinding out the stump. Property owners ordered to remove an unhealthy tree will not be required to pay a permit fee or deposit. If the property owner fails to comply with such an order the Borough may act to remove the tree and stump. The abutting property owner will be responsible for all associated costs plus a 10% administrative fee and in default of payment of costs and fine(s) a lien shall be placed against the property.*

(4) 5. The Commission may employ and pay such superintendents, engineers, foresters, tree-wardens, or other assistants, as the proper performance of the duties devolving upon it shall require, and may make and enforce regulations for the care and protection of the shade trees of the Borough. No such regulations shall be in force until it has been approved by the Council and enacted as an ordinance.

(Ord. 1994-5, 6/6/1994, §103)

§25-104. Report to Council.

The Shade Tree Commission shall report transactions monthly to the Council/or any prior months transactions. (Ord. 2014-3, 9/2/14, §104)

§25-105. Notice to the Public.

Whenever the Shade Tree Commission proposes to plant, transplant, or remove shade trees on any street, or whenever the Shade Tree Commission considers approval of the application of third parties to plant, transplant or remove shade trees on any street, notice of the time and place of the meeting at which such work is to be considered shall be given pursuant to the requirements of the Sunshine Act of the Commonwealth of Pennsylvania, 65 Pa.C.S.A. §701 et seq., as amended from time to time. All costs for publication of any required notices shall be paid by the Borough. (Ord. 1994-5, 6/6/1994, §105)

1. The Shade Tree Commission shall not plant any tree or trees on any street or highway within the Borough without first notifying in writing the abutting property owner or owners of its intention to do so at least sixty (60) days in advance.

2. If the abutting property owner or owners wish to appeal the decision made by the Shade Tree Commission to plant a tree or trees within the abutting property, a formal, written appeal must be filed with Forty Fort Borough Council within ~~Sixty (60)~~ *Thirty (30)* days of the Shade Tree Commission's notice. The appeal must state, in detail, the reason or reasons for the appeal.
3. If an appeal is not filed with the Borough Council within ~~Sixty (60)~~ *Thirty (30)* days of notice by the Shade Tree Commission of its intention to plant a tree or trees, then the Shade Tree Commission may plant a tree or trees without any further contest or appeal by the abutting property owners.
4. If Council overturns the decision of the Shade Tree Commission to plant a tree or trees the tree or trees shall not be planted in the location.
5. Council's decision to overturn the Shade Tree Commission shall be valid only for one (1) year from the date of the decision at which time the Shade Tree Commission may, once again, notify the property owner and/or owners of its intention to plant a tree or trees in the aforesaid location. (Ord. 2012-5, 4/2/12 §105)

§25-106. Payment of Costs.

The costs of planting, transplanting or removing any shade trees in and along the streets and highways of the Borough, of the necessary and suitable guards, curbing and grading for the protection thereof, and of the replacing of any pavement or sidewalk necessarily disturbed in the execution of such work shall be paid by the Borough, only if an emergency condition exists, which in the determination of the appropriate Borough official poses a threat to the safety and general welfare of the public. In all other cases the costs for any work described herein shall be borne by the applicant requesting approval from the Shade Tree Commission for initiation of such work.
(Ord. 1994-5, 6/6/1994, §106)

§25-107. Funding.

1. The cost and expense of caring for and maintaining such trees after having been planted shall be borne and paid by the Borough property owner whose property lies adjacent to or abuts the tree line in which any such shade tree is located. The Commission may authorize payment of any such costs by the Borough, if in the opinion of the appropriate Borough official, the costs for such care and maintenance are necessary to protect the safety and welfare of the public.
2. Council shall appropriate funding for use by the Shade Tree Commission in the performance of its duties. Any amounts needed over and above the amount allocated by Council shall be certified by the Commission to the Council and shall be drawn against, as required by the Commission, in the same manner as money appropriated for Borough purposes.
3. Council may levy a general tax not to exceed the sum of one-tenth of one mill on the dollar on the assessed valuation of the property in the Borough taxable for County purposes, for the purpose of defraying the cost and expenses of caring for such shade trees and the expenses incurred by the Shade Tree Commission or the Borough in implementing the duties of the Shade Tree Commission.
(Ord. 1994-5, 6/6/1994, §107)

§25-108. Penalties for Violation.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense, and whenever such persons will have been notified by the Shade Tree Commission or appropriate authority or by service of a summons, or prosecution, or in any other way, that he is committing such violation, each day on which he shall continue such violation after such notification shall constitute a separate offense punishable by a like fine or penalty. All penalties or assessments imposed under this Part shall be paid to the Borough Treasurer to be placed to the credit of the Commission, subject to be drawn upon by the Commission for the purposes authorized in this Part.
(Ord. 1994-5, 6/6/1994, §108; as amended by Ord. 2009-8, 12/7/2009)

Part 2
Tree Lawns

§25-201. Grading of Tree Lawns.

The tree lawns on all streets shall be properly graded to the grade as fixed by the Borough Engineer and now on file in the office of the same within 30 days after written notice so to do shall be served on the property holder. (Ord. 1994-5, 6/6/1994, §201)

§25-202. Weeds, Refuse; Seeding and Mowing.

1. The tree lawns on all streets of the Borough shall be kept free from noxious weeds and other unhealthy growths or refuses and shall be properly seeded. The tree lawns shall be cut, mowed and/or otherwise maintained so that the grass does not exceed a height of 6 inches. Tree lawns shall only consist of natural grass and approved shade trees; *unless authorized by the Shade Tree Commission*, no other vegetation or thing may occupy a tree lawn; except for recycling bins on its designated day and garbage containers on its designated day, pursuant to the recycling and garbage ordinances.

(a) The Shade Tree Commission may authorize the planting of decorative plants, flowers and other such vegetation and the application or placement of such landscaping materials as may be deemed appropriate. Before planting such vegetation, placing or applying such materials a permit must be obtained from the Shade Tree Commission. Requests for such permits shall be acted upon at regular Shade Tree Commission meetings. If the Commission denies such request the applicant may file a written appeal within thirty (30) days to Borough Council. Fees for such applications and appeals shall be set by Resolution of Council.

2. The grass and vegetation in other areas, such as front, side and rear yards shall also be cut, mowed and/or otherwise maintained so that the grass and vegetation does not exceed a height of 6 inches. This shall not apply to flower beds or gardens, vegetable gardens, shrubbery, or nationally recognized decorative or landscaping plants.

3. Clippings/debris from lawn cutting or maintenance shall not be deposited upon Borough sidewalks, streets or alleys.

(Ord. 1994-5, 6/6/1994, §202; as amended by Ord. 2002-7, 8/26/2002; and by Ord. 2009-2, 2/2/2009)

§25-203. Failure to Grade; Work Done; Costs.

Thirty days after notice to grade their tree lawns shall be given to the property owners abutting and adjoining on any of the streets of the said Borough, either by personal service on the occupants, the owner, or by written notice left on the premises, it shall be the duty of the Street Commissioner to grade the said tree lawns on the said properties and the cost of so doing shall be charged to the responsible property owner, who shall reimburse the Borough for the cost of grading aforesaid.

(Ord. 1994-5, 6/6/1994, §203; amended by 2012-6, 4/16/12)

§25-204. Failure to Mow; Work Done; Cost.

After 4 days notice has been given to the owners of the said properties that their lawns are not maintained in the proper order, it shall be the duty of the Borough to cut, mow or otherwise maintain the lawns in accordance with §25-202 above. The cost of mowing and/or maintenance, and administrative costs, shall be charged to the property owner monthly or on a per occurrence basis. Such charges shall include, but are not limited to, all costs associated with the work, labor, materials, supplies, administrative costs, and a fine not less than \$25 nor more than \$1,000 plus costs and, in default of §25-204 Borough of Forty Fort

§25-204, 25-6 payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense; and in default of payment of costs and fine(s) a lien shall be placed against the property.

Part 3
Protection and Care of Trees

§25-301. Prohibited Acts; Penalty for Violation.

1. No person shall commit any of the following acts in relation to trees on the streets of the Borough of Forty Fort:

A. Remove any living trees without permit. The only exception being that the Borough may remove trees, which in the opinion of the appropriate Borough official, pose a threat of immediate harm to the safety and general welfare.

B. Cut, scrape, paint or in any way deface or injure bark, branches or trunk of any tree.

C. Tie any animal to any tree, guard or permit any animal to damage any tree.

D. Throw or allow to be thrown any salt, acid, oil, wood killer or any injurious substance, where such material may enter the ground and injure roots of any public trees.

E. Erect any structures, fences, or cause to be placed ornamental borders of any kind on the tree lawns of the Borough.

2. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

[Ord. 2009-8] (Ord. 1994-5, 6/6/1994, §301; as amended by Ord. 2009-8, 12/7/2009)

§25-302. Acts for Which Permit Required; Penalty.

1. No person shall commit any of the following acts in relation to trees on the tree lawns or property of the Borough of Forty Fort without a previously obtained permit from the authorized officers of the Shade Tree Commission or obtained permission from the Borough Council. [Ord. 2009-8]

A. Plant any tree. [Ord. 2009-8]

B. Plant any tree of a different species or variety or of a different size or contrary to specifications as given on permit.

C. Spray or have sprayed any tree, or give any treatment whatsoever, except that water or appropriate fertilizer or nutritional supplement may be applied, and usual garden cultivation given to soil.

D. Attach any advertisement to any tree or tree guard.

E. Attach anything to any tree or make use of it for any purpose contrary to, and inconsistent with, the intent of a tree planted for shade and ornament.

F. Dig at a depth greater than 1 foot, nearer than 12 times the diameter of the trunk of any tree at base.

§25-302 Borough of Forty Fort §25-303 25-8

G. Lay gas pipe within 5 feet of any tree. [Ord. 2002-7]

2. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to a fine of not more than \$25 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(Ord. 1994-5, 6/6/1994, §302; as amended by Ord. 2002-7, 8/26/2002; and by Ord. 2009-8, 12/7/2009 and by Ord. 2014-3, 9/2/14)

§25-303. Tree Maintenance.

1. No person may remove, prune, trim, or alter a tree in a tree lawn or on Borough property without first applying for and obtaining a permit. *Upon receipt of an application fee of \$25.00 will be charged for removal and \$10.00 in an amount set by resolution of Council, a pruning permit shall be issued. Before a permit is issued to remove a tree a deposit in an amount set by resolution of Council must be paid. The deposit, less administrative costs, shall be refunded provided tree is removed, stump removed or ground out, and a replacement tree planted. If the applicant cites damaged sidewalks and/or sewer lines as reason for removal, such sidewalks and/or sewer lines must be repaired before deposit is*

refunded. All work must be completed within one year of approval of permit. Relief from the replacement requirement may be granted by Borough Council in cases involving the safety, health and welfare of residents and/or the public. Council from time to time may revise said fees by Resolution.

2. All pruning of trees in tree lawns and Borough property shall conform to the latest revision of the ANSIA300 Pruning Standards-"Tree, Shrub, and Other Woody Plant Maintenance-Standard Practices". All work must also conform to the latest revision of ANSI Z 133-1"Arboricultural Operations-Safety Requirements" A copy of this standard (both standards (ANSI A300 and ANSIZ133.1) is on file in the Borough Building.

3. Final decisions made by the Shade Tree Commission can be overturned by a majority vote of Borough Council. A formal, written appeal must be filed with the Borough Council within 30 days of the Shade Tree Commission's decision.

A. If Council overturns the decision of the Shade Tree Commission and gives permission to remove a tree, the resident, business or entity must submit a deposit in an amount as established from time to time by resolution of Borough Council within 15 days of motion of Council. The deposit is returnable upon planting a new approved tree in its place. The deposit will be returned upon review and approval of the Shade Tree Commission or Code Enforcement Department. [Ord. 2009-8]

B. Failure to submit deposit within the 15 days will result in automatic revocation of permission to remove the tree. [Ord. 2008-1]

C. If the person, business or entity requesting to remove a Shade Tree cites heaving or damaged sidewalks, cracked or damaged sewer lines, and/or other property damage, they must also complete those repairs, with the proper permits, within 1 year of Council's overturning of the Shade Tree Commission's decision. Failure to make the repairs will result in citations (which may be daily if permissible by ordinance) immediately following the lapsing of 1 calendar year. [Ord. 2008-1]

D. Grinding out or removal of the stump is also required as part of the permission to remove a Shade Tree. Failure to do this will result in the enforcement of the penalty portion of this Part. [Ord. 2008-1]

E. If a tree is not planted within 1 year of Council's permission, the deposit shall remain the property of the Borough. The Borough will then select a suitable tree and use some or all of the deposit to purchase and plant an approved tree. [Ord. 2008-1]

F. Failure to follow deposit requirements will result in enforcement of the penalty portion of this Part. [Ord. 2008-1]

G. Any person, business or entity receiving permission from the shade tree commission to remove a tree is required to remove and/or grind out the stump (within (30) thirty days of removing a tree). Failure to do so will result in a citation and fine as established by Ord. 2008-1. Upon Failure of the applicant to do so, the Borough shall remove or grind out stump and all associated costs will be billed to the applicant. In default of payment of these costs, a lien shall be placed against the property bordering the tree lawn from which the tree was removed. [Ord. 2009-1]

H. Any person, business or entity that is having a tree removed by a utility company is responsible for the removal and/or grinding out of the stump. Failure to do so will result in a citation and fine as established by Ord. 2008-1. [Ord. 2009-1] and removal of stump by the Borough. All costs of removing and/or grinding out the stump will be billed to the owner of the property bordering the tree lawn from which the tree was removed. In default of payment of these costs, a lien shall be placed against the property.

I. The Borough may cost share the removal of a tree in a tree lawn, if approved by the Shade Tree Commission, at up to ~~50 percent cost or \$100.00 whichever is less, based upon the lowest of three submitted quotes,~~ if Borough funds are available. Reimbursement will be made upon submission of an actual bill prior to the next regularly scheduled Meeting of Council. The Borough reserves the right to reject any and all requests for cost-sharing. [Ord. 2009-1]

4. Any person or entity violating the provisions of this Section by performing tree maintenance activities without a permit or in violation of tree maintenance or safety standards (ANSI A 300 andANSIZ133.1) shall be subject to the penalties as set forth in §25-303.5 of this Part.

5. Enforcement. This Part shall be enforced by the Police Department and/or the Code Enforcement Department in conjunction with the Shade Tree Commission. [Ord. 2008-1]

6. Violation and Penalty. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. All penalties or assessments imposed under this Section shall be paid to the Borough Treasurer, to be placed to the credit of the Commission, subject to be drawn upon by the commission for the purposes of the preceding sections of this Part. [Ord. 2009-8] (Ord. 1994-5, 6/6/1994; as added by Ord. 2002-4, 7/1/2002; as amended by Ord. 2008-1,3/3/2008; by Ord. 2009-1,2/2/2009; and by Ord. 2009-8, 12/7/2009)