

**BOROUGH OF MOSCOW
LACKAWANNA COUNTY, PENNSYLVANIA
ORDINANCE #218 - 2012**

**ORDINANCE REGULATING THE PLANTING, MAINTENANCE AND REMOVAL
OF TREES ALONG THE STREETS, HIGHWAYS, AVENUES, LANES, ALLEYS AND PUBLIC PARKS
AND AREAS WITHIN THE BOROUGH OF MOSCOW, EXCLUDING PRIVATE PROPERTIES**

Section 1: BE IT ORDAINED BY MOSCOW BOROUGH COUNCIL, MOSCOW, PENNSYLVANIA, that the Ordinance shall be known and may be cited as the Shade Tree Ordinance of the Borough of Moscow, County of Lackawanna, State of Pennsylvania.

Section 2: Definitions:

- a. PARK: All public parks maintained by the Borough of Moscow.
- b. PERMIT: A permit, in writing, as issued by the Secretary of the Shade Tree Commission of the Borough or the appropriate designated agent or representative of the Borough.
- c. PERSON: Any individual, company, corporation, group of individuals, firm, association and its servants, agents or other employees, or organization of any kind.
- d. PUBLIC AREA: That area including cartway and sidewalk within public right-of-way lines, for streets, highways, alleys and public ways within the Borough and also all property owned by the Borough.
- e. STREET, HIGHWAY, LANE, PARK, PARKWAY, ALLEY or AVENUE: The entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and/or pedestrian traffic.
- f. TREES: Any tree, shrub or other woody plant in or upon any public street, highway, lane, park, parkway, alley, avenue or other public areas or that part of any tree, shrub or other woody plant which extends within the lines of any public street, highway, lane, park, parkway, alley, avenue or other public areas in the Borough.

Section 3: Rules and Regulations.

Rules and regulations of this ordinance pertain to street, highway, lane, parkway, alley, or avenue trees solely within the right-of-way of such streets, highways, lanes, parkways, alleys or avenues within the Borough of Moscow as well as trees on public parks and areas within the Borough of Moscow. This Ordinance does not pertain to private property.

Section 4: Shade Tree Commission.

- a. There shall be created a Commission known and designated as the "Shade Tree Commission". The Commission shall consist of nine (9) members, all of whom shall serve without compensation. Upon the expiration of the initial terms of office, members shall be appointed to serve terms of four (4) years. Upon a vacancy occurring or upon the expiration of the term of any Commissioner, a successor shall be appointed by the Borough Council to serve the balance of the said unexpired term. The Borough Council may, from time to time, appoint ad hoc, nonvoting members.
- b. The Commission shall have the exclusive custody and control of all shade trees in the Borough. The Commission shall have the authority to adopt such rules and regulations as may be necessary for the purpose of carrying out the intent of this Ordinance. Such regulations for

planting, care, trimming and removal of trees shall not only be aimed at the elimination of economic waste by reason of damage to the public property and/or the property of others and the public health, safety and welfare, but also the beautification of the streets, highways, avenues, parks, parkways and other public areas of the Borough. In carrying out the provisions of this Ordinance, it may be guided by the standards of the National Shade Tree Conference or any other similar organizations which promulgate standards which would carry out the intent of this Ordinance.

- c. The Commission shall include but not be limited to studying the problems and determining the needs of the Borough in connection with its tree planting program, to recommend to the Borough Council the type and kind of trees to be planted upon such Borough streets, parks of the Borough or parks as designated to assist the Borough, as well as the citizens of the Borough in the dissemination of news and information regarding the selection, planting and maintenance of trees within the Borough limits, whether the same be on private or public property, and to make recommendations, from time to time, to the Borough Council regarding desirable legislation regarding the tree program activities of the Borough to provide regular and special meetings at which the subject of trees, insofar as it relates to the Borough, may be discussed by members of the Commission, officers and personnel of the Borough and its several divisions and all others interested in the tree program.
- d. The Commission shall have the authority to prepare and adopt a street tree plan for all trees in or upon the public streets, highways, avenues, parks, parkways and other public areas which, in its opinion, shall effectuate the provisions of this, provided that such plan shall not become effective until approved by the Borough Council.

Section 5: Permit Requirements.

No tree shall be planted or removed in or upon any public street, highway, avenue, park, parkway or other public areas without a written permit; such permit to designate the type of tree and place where such tree is to be planted or removed. The Commission shall have authority to designate the suitable type of tree and may refuse a permit to plant any type of tree, which, in its opinion, is not suitable to the location. All persons shall first obtain a written permit before doing or having done any work for the care, pruning, or trimming of any tree in or upon the public streets, highways, avenues, park, parkways, and other public areas, and such work shall be done to the satisfaction of the Commission.

Section 6: Planting near streets and sidewalks restricted.

No tree shall be planted in or upon the public streets, highways, avenues, park, parkways and other public areas of the Borough within five (5) feet of any driveway, nor shall any tree on private property adjacent to the sidewalk be planted within three (3) feet therefrom. No tree shall be planted nearer to the intersection of any two (2) or more streets than twenty-five (25) feet from the point of intersection of any two (2) public right-of-ways.

Section 7: Minimum clearance over walks and highways responsibility for trimming.

All trees shall be kept trimmed so that the minimum clearance where they overhang any public walk shall be eight (8) feet, and the minimum clearance where the trees overhang any public street or highway shall be fourteen (14) feet. However, the commission reserves the right to designate a higher clearance on certain highways where heavy traffic or other conditions make it expedient. All trees standing on private property and having branches projecting over a public highway shall be kept trimmed by the owner of such private property so that the lowest branches shall have a minimum clearance specified above or such other clearance as may be specified by the Commission. In case the owner of such property shall neglect or refuse to trim the trees upon being notified, in writing, by the Commission or the Borough's designated agent so to do, the Borough may, after the expiration of thirty (30) days of said notification, cause such trimming to be done at the expense of the owner, and the entire cost thereof shall be a lien upon said premises and shall be filed and collected by the

Borough in the same manner as municipal claims are filed and collected and/or as hereinafter provided by this Ordinance.

Section 8: Removal of diseased trees.

The Commission or its designated representative or an appropriate Borough official may, upon thirty (30) days written notice to the property owner, require the removal of diseased trees, and, upon the failure of the owner to do so, within thirty (30) days thereafter, the Commission may do so and collect the costs thereof as hereinbefore and hereinafter provided.

Section 9: Appropriation of funds and designation of workers.

For the purpose of defraying the cost of the planting, trimming, maintenance and removal of trees and such other expenses of the Commonwealth, the Council may appropriate necessary funds or designate Borough workers to do the required services. The Commission may hire no employees or have the work done without prior approval of the Council of the Borough.

Section 10: Collection of costs; costs to become lien.

Whenever it is necessary for the Commission or the Borough to trim or remove trees by reason of the failure of the property owner so to do after thirty (30) days notice, the Borough may levy and collect the costs thereof from the owner of the property. The cost of such work shall be a lien upon the premises from the time of the commencement of the work, which date shall be fixed by the Borough Engineer and shall be filed with the Borough Secretary. Any such lien may be collected by an action in assumpsit or by lien filed in the manner provided by law for the filing and collection of municipal claims. The Borough Secretary shall cause thirty (30) days written notice to be given the persons against whose property an assessment has been made, which notice shall state the amount of the assessment, the time, and place of payment and certificates from the Commission and the Engineer as to the work performed. In the event of nonpayment within thirty (30) days thereafter, the same may be collected as herein provided.

Section 11: Permit applications; bond requirements; authority to grant or deny permit.

- a. An application for a permit shall be made in writing to the Borough Secretary on a form provided by him or her. It shall specify the particular kind of work or operation the applicant desires to perform, the exact location and the species of any shade tree affected, the owner of the property and the person who will do the work. It shall be the duty of the Borough Secretary to submit every such application promptly to the Commission for approval or disapproval. The permit shall be valid for a term of sixty (60) days but may be removed at any time upon proof satisfactory to the Commission that any of the terms or conditions upon which such permit was issued has been violated.
- b. The Commission, in its discretion, may, as a condition precedent to the issuance of the permit, require the applicant to file a bond satisfactory to the Commission or to deposit security satisfactory to it, to guarantee the compliance by the applicant with the terms and conditions upon which such permit was issued; and which bond shall not be more than double the estimated costs of such work. For major work, the Commission shall require a certification of insurance against personal injury or property damage.
- c. Authority to grant or deny a permit and impose condition in a permit.
 1. The Commission shall review each application for a permit and shall grant or deny said application, and, if granted, it shall state in the permit the type of species of shade tree to be planted or removed, cut, trimmed or pruned and may set forth specifications for doing the same. It shall then be unlawful to plant, remove, cut, trim or prune any shade tree contrary to specification set forth in a permit.

2. The Commission, in carrying out its duties hereunder and in issuing permits, shall adhere to the standards adopted by the National Shade Tree Conference or any other similar recognized organization or body which promulgates standards and which carries out the intent of the regulations herein.
3. It shall not be necessary for the Borough to obtain a permit to do any work on public areas owned in fee simple or rented by it, but no such work shall be done without consultation with the Commission, except as provided by the exceptions of Section 4 above.

Section 12: Prohibitions.

No person shall, without first obtaining a permit therefore, cut, break, climb with spurs, injure in any manner or remove any shade tree or cut down or interfere in any way with the main roots of any shade tree or spray any shade tree with any chemical or insecticide or place any rope, guy wire, cable, sign, poster or any other fixture on any shade tree or guard for any shade tree or injure, misuse or remove any device placed to protect any shade tree, except in case of immediate necessity for the protection of life or property.

Section 13: Required open space around trees.

Every owner or occupier of property shall maintain an area of open space, not less than four (4) square feet around the base of every tree, which space shall be so maintained so as to permit the free passage of air and water to the roots of such tree.

Section 14: Injurious acts prohibited.

No person shall pour salt water, oil or any other material at any place in such manner that injury might result to any shade tree.

Section 15. Violations and penalties.

Any person who shall violate or fail to comply with the terms and provisions of this Ordinance or with any of the regulations or rules promulgated by the Shade Tree Commission of the Borough shall be liable, on conviction thereof, to a fine or penalty not exceeding three hundred dollars (\$300.00) for each and every offense whenever such person shall have been notified, by the Shade Tree Commission or by service or summons, in prosecution or in any other way, that he/she is committing such violation, each day in which he/she shall continue such violation after such notification shall constitute a separate offense punishable by like fine or penalty. Such fines or penalties shall be collected as prescribed by law. In the event of a second or repeated offense, any person who shall violate or fail to comply with any of the regulations of the Shade Tree Commission of the Borough and all of the terms and conditions of this chapter and amendments thereto shall be liable to conviction, fine or penalty of five hundred dollars (\$500.00) for each and every repeated offense, and, whenever such person shall have been notified by the Shade Tree Commission or by service or summons in prosecution or in any other way that he/she is committing such violation, each day in which he/she shall continue such violation after any such notification shall constitute a separate offense punishable by like fine or penalty. Such fines or penalties shall be collected as prescribed by law.

Section 16. The provisions of this Ordinance shall be severable and, if any of the provisions hereof shall be held to be invalid or unenforceable, the remaining provisions of this Ordinance shall remain in effect.

Section 17. All Ordinances or parts of Ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as same affect this Ordinance.

This Ordinance shall become effective immediately.

ORDAINED AND ENACTED INTO LAW by Moscow Borough Council in lawful session assembled, this _____ day of _____, 2012.

BOROUGH OF MOSCOW

BY: _____
Arthur Pencek,
President of Council

Daniel F. Edwards
Mayor

ATTEST:

Constance A. Sanko
Secretary