

BOROUGH OF SOUTHMONT
CAMBRIA COUNTY

ORDINANCE NO. 538

**AN ORDINANCE OF SOUTHMONT BOROUGH, CAMBRIA COUNTY,
PENNSYLVANIA, AMENDING & REVISING THE SHADE TREE
ORDINANCE OF THE BOROUGH**

WHEREAS, the Borough of Southmont (“hereafter “Borough”) has previously enacted a “Shade Tree Ordinance” known as Ordinance No. [486]; and

WHEREAS, the Borough has determined that amendments and revisions to its current Shade Tree Ordinance are necessary to serve the interests of the Borough; and

NOW, THEREFORE, BE IT ORDAINED and ENACTED by the Council of the Borough of Southmont, Cambria County, Pennsylvania, and it is so ordained and enacted by the authority of same that Shade Tree Ordinance be amended as follows:

Borough Council as Shade Tree Committee.

The Council of the Borough hereby elects to exercise all the rights and perform the duties and obligations imposed by Article XXVII, Subchapter B, “Shade Trees” of the Borough Code. The Council may implement a Shade Tree Committee (“Committee”) to provide recommendations to the Council regarding actions to be taken regarding Shade Trees of the Borough. The Committee shall be made up of one (1) to (3) elected members of Borough Council as assigned by the President of Borough Council. The purpose of this Ordinance is for the Borough to administrate and regulate shade trees for the benefit of the community.

1. Shade Tree Advisory Board.

The Council *may*, effective on January 1 of any year, create a Shade Tree Advisory Board. The Advisory Board shall be composed of three residents of the Borough, who shall be appointed by the Council and who shall serve without compensation. The Advisory Board can provide recommendations to the Shade Tree Committee. Vacancies in the office of Advisory Board member shall be filled by the Council for the unexpired term.

2. Definitions.

As used within this chapter, the following terms shall have the meanings set forth in this section:

ADVISORY BOARD. The Shade Tree Advisory Board being composed of residents of the Borough that have been duly appointed by Borough Council.

BOROUGH. Borough of Southmont, Cambria County.

BOROUGH COUNCIL. The members of the Borough Council of the Borough.

BOROUGH MANAGER. The Borough Manager is the Chief Administrative Officer of the Borough under the direction of Borough Council.

COMMITTEE. The Shade Tree Committee of the Borough composed of three (3) members of Borough Council as designated by the Borough President.

PROPERTY OWNER. That person owning such property as shown by the block and lot records of Cambria County, Commonwealth of Pennsylvania.

REMOVE / REMOVAL. The removal of all above and below ground parts, including the stump and roots.

RIGHT-OF-WAY. Any easement area along the cart way of a street or highway in the Borough granted or dedicated to public use, including the area between such cart way and the nearest public sidewalk parallel thereto.

SHADE TREE.

- A. Any living plant with needles or scale type leaves or fronds that has a well-defined stem or stems with a diameter of at least six inches at 4 1/2 feet from the surface from the ground.
- B. Any living, self-supporting woody broad leaf plant that has a well-defined stem or stems with a diameter of at least two inches at 4 1/2 feet from the surface of the ground.
- C. Any living self-supporting woody plant that has a well-defined stem or stems, which has been intentionally cultivated and established.
- D. Any tree set forth in the Accepted Shade Tree Appendix attached to this Ordinance, which is planted in any right-of-way, or has at least one half of trunk, branches or roots extending into any right-of-way.

3. Regulation and protection of plants, shrubs and trees; enforcement.

It shall be the duty of the [Committee/Borough Manager], under the direction of the Council, to regulate, protect and preserve the trees within the Borough by taking the necessary measures for the health of said trees, including control or extermination of Dutch Elm or other disease, including damage by insects or pests, which may injuriously affect the trees on public or private property in the Borough. The Council shall have the power to enforce the provisions of this chapter with the assistance and/or recommendation of the Committee, as the case may be, and the Council may appoint or hire any qualified person or firm to assist the [Committee/Borough Manager] in any such enforcement.

4. Power to enter property, investigate and take reasonable actions.

- A. Power. The [Committee/Borough Manager] or their agents shall have the power to enter upon any public or private property within the Borough or the right-of-way as defined herein, to inspect and determine the condition and/or health of a tree and/or its impact on the public safety. Based on their investigation, the [Committee/Borough Manager] or their agents may take any number of actions including, but not limited to:
- i. notifying property owners of their need to take action related to a tree including, but not limited to: treating, spraying, pruning, cutting, trimming or removing any tree in the right-of-way which abuts their property;
 - ii. entering upon public property or right-of-way within the Borough to spray, cut, trim, remove, or otherwise treat any tree afflicted with a condition or disease which threatens to injure or destroy trees, a threat to public safety, or a hazardous condition.
- B. Conditions to be considered when taking action. To the extent that the [Committee/Borough Manager] determines the type and immediacy of action required regarding a tree because it constitutes a threat to public safety due, the following conditions shall be deemed to indicative of a danger to public safety, although such conditions are not intended to be all-inclusive:
- i) Street. Any tree overhanging a street or highway and not allowing a vertical clearance of 14 feet above ground or obstructing vehicle traffic.
 - ii) Sidewalk. Any tree overhanging a public sidewalk and not allowing a vertical clearance of eight (8) feet above ground or obstructing pedestrian traffic.
 - iii) Line-of-sight. Any tree obstructing traffic signs or preventing a clear line of sight along a roadway or at or near a public intersection.
 - iv) Fire hydrant. Any tree causing a hindrance or delay in access to or use of a fire hydrant.
 - v) Decaying or Dead Tree. Any tree which is dead or has broken, decayed limbs which may fall without notice.
- C. Severity of the danger. Depending on the Severity of the danger, the [Committee/Borough Manager] may take action or direct that the property owner, in the case of private property or right-of-way, take action pursuant to this Ordinance.

5. Regulations for trees in public rights-of-way.

- A. Duty of maintenance. Trees within the public rights-of-way in the Borough shall be maintained by the owner of the real estate abutting the land where such tree is located. Said owners shall be responsible for cutting, pruning, trimming, planting, transplanting, removal, installation or replacement of trees. While minor cutting, trimming and pruning shall be

permitted without notification to the Committee, no person shall perform major cutting, pruning or trimming of a tree or remove any part of a tree, including the roots within the drip line of the tree, without a permit in writing as described in Section 6, Subsection D.

- B. Cost responsibilities for maintenance, planting, transplanting or removal. The cost of maintaining, planting, transplanting or removal of any trees within the public rights-of-way of the Borough, the cost of installing suitable guards, curbing or grading for the protection therein and the cost of replacing pavement or sidewalk necessarily disturbed in the execution of such work shall be borne by the owner of the real estate abutting the land where such maintenance, planting, transplanting, removal, installation or replacement occurs. The amount any owner is to pay hereunder shall be ascertained and certified by the Borough in accordance with this Ordinance.

- C. Permit for planting. No tree shall be planted, in any public right-of-way without a written permit from the Committee, such permit to designate the type of tree per the acceptable tree list provided by the Committee and place where such tree is to be planted. No such permit shall be granted unless a written application is made to the Committee on a form acceptable to the Committee. In determining whether to grant a permit under this Section 6, Subsection D, the Committee shall follow generally acceptable land development and arboricultural principles and shall apply such principles in a fair and uniform manner throughout the Borough. There shall be no cost in obtaining said permit.

- D. Permit for major maintenance, transplanting or removal. No tree shall undergo major maintenance, be transplanted, or be removed from any public right-of-way without a written permit from the Committee. The permit shall designate the tree involved and the state the reasons for the work to be done; i.e. i) maintain safe clearances for vehicular traffic on roadways or clearance for sidewalk traffic; ii) the tree is afflicted with a tree borne disease that cannot be cured; iii) the tree has aged out or has some other condition that poses risk to public safety; iv) the tree poses a serious risk to public safety and welfare and cannot be pruned or otherwise maintained to prevent said risk; or v) the tree presents a serious risk to an existing structure and cannot be pruned or otherwise maintained to prevent the risk to said structure. In determining whether to grant a permit under this Section, the Committee shall follow generally acceptable land development and arboricultural principles and shall apply such principles in a fair and uniform manner throughout the Borough. There shall be no cost in obtaining said permit.

Any applicant for said permit will be responsible for the cost of: 1) any major maintenance and/or removal of the tree, including, but not limited to, the removal of tree and stump, including hauling away of all debris, and proper filling of stump hole; and 2) the planting of a sufficient replacement tree as specified by the Committee. Replacements shall be at least two-inch diameter, nursery-grown stock.

- E. Regulations. The Committee is urged to promulgate supplementary regulations pertaining to the planting and transplanting of shade trees in the public rights-of-way of the Borough. These regulations shall deal with the species of permitted trees, distance between trees along the same right-of-way, permitted methods of planting, appearance, risk of interference with utility wires and cables and uniformity. Any such regulations so promulgated shall be in writing and, unless established by the Council itself, be approved by the Council by Resolution. Once such regulations are in force, the Commission shall follow them in issuing permits under Section.
- F. Required removal. The Committee may require the removal of any afflicted tree in any public right-of-way in the Borough upon its determination that such tree threatens other plants, shrubs or trees in the Borough, is harmful to public safety or welfare or has a negative impact on the aesthetic qualities elsewhere along such right-of-way. The expense of this removal shall be borne by abutting property owners in accordance with the Shade Tree Ordinance of the Borough of Southmont.

6. Procedure/Notices.

- A. Regular Maintenance & Public Notice. Whenever the Committee proposes to implement plant, transplant or remove shade trees on any public right-of-way in the Borough, notice of the time and place of the meeting at which such work is to be considered shall be given in a newspaper of general circulation in the Borough once a week for two weeks immediately preceding the time of the meeting. Such notice shall specify in detail the streets or portions therein upon which trees are proposed to be so planted, replanted or removed. Actual written notice of such a proposal shall also be sent to each affected abutting property owner by regular or certified mail. This notice shall not be required when and if immediate action is required by the Borough due to a hazardous condition or a public safety issue.
- B. Notice to Property Owners Affected. Any other notice required under this chapter shall be sent to any affected property owner by regular or certified mail at least 14 days in advance of the meeting of the Committee or the Council at which such work shall be finally approved, and this notice shall reasonably and generally apprise such owners of the impact of the intended action. This notice shall not be required when and if immediate action is required by the Borough due to a hazardous condition or a public safety issue.
- C. Trees on Private Property. If, in the opinion of the [Committee/Borough Manager] a tree on private property or in the right-of-way is sufficiently damaged, aged out, diseased or in such other condition as to constitute a hazard to the public or a threat to the survival of other trees, the [Committee/Borough Manager] shall notify the owner, or abutting property owner in case of right-of-way, in writing, of the action suggested to be taken and why regarding the tree(s) in question consistent with provisions in Section 6 herein.
- D. When Immediate Action required. Whenever the [Committee/Borough Manager] determines that it was necessary to take immediate action under Section 5, due to public

safety concerns, without notice to the affected property owners, the Committee shall notify the affected property owner in writing and provide: (i) the action taken regarding the tree(s); (ii) the reason(s) why said action was taken; and (iii) an explanation why notice was not afforded to the owner prior to taking said action. This notice shall be provided to the affected property owner no less than 14 days after the action was taken.

7. Appeals.

Any party aggrieved by a decision of the [Committee/Borough Manager] with respect to the actions taken, standards or requirements of this Ordinance may take an appeal to Borough Council within 30 days of the date of the decision and/or action. Council, upon receipt of the appeal on an approved Borough form, shall have the authority and duty to consider and act upon the appeal. The appeal shall clearly and in detail state what changes are being sought, reasons such changes are warranted, and shall be accompanied by such supplemental data as deemed necessary to substantiate the changes. The appeal shall indicate if the property owner wishes to have a formal (hearing) or informal (review) appeal process.

Council shall review and/or hear the appeal within 45 days of the receipt of the appeal, but can be extended for cause. After hearing the appeal, the Borough Council may approve, modify or deny the appeal based upon the protection of public interest, preservation of the intent of this Ordinance, and possible unreasonable hardships involved in the appeal. Council shall make a determination on the appeal as expeditiously as possible and shall notify the appealing party in writing within 15 days of the determination. The decision of the Borough shall be appealable as provided by law.

Following a decision by the Borough that a tree shall be removed, partially removed or treated, the property owner shall comply with the determination within 30 days of the receipt of the decision. If the property owner shall fail or refuse to comply with such determination or fail to obtain a stay from the determination, the property owner shall be subject to the penalties specified in Section 12 herein. Additionally, if a property owner shall fail to refuse to comply with the determination, the Committee with the authorization of the Borough Council, is authorized, at their discretion to remove the hazardous tree or portions therein. All costs for such work shall be assessed against the property on which the tree is located and, if not paid, shall be a lien against the property in accordance with Section 9 herein.

8. Costs; liens.

Upon the failure of any property owner to initiate any work required to be done by him/her under the chapter at his/her expense, the Borough may cause the work to be done by its employees, agents or contractors and collect and/or levy the cost therein from such owner. The cost of such work to be borne by each such owner, as well as the cost of any work initiated by the Borough but required to be paid by a property owner, shall be certified to the Borough Treasurer by the Committee and/or Council. Upon the filing of this certification, the Borough Secretary shall provide 30 days' written

notice to the property owner against whose property an assessment has been made. The notice shall state the amount of the assessment and the time and place of payment and shall be accompanied by a copy of the certificate. The amount assessed against the real estate shall be a lien from the time of the filing of the certificate, and, if not paid pursuant to a payment schedule provided by the Borough, a claim may be filed and collected by the Borough Solicitor in the same manner as municipal claims are normally filed and collected. Collection may occur by way of either a lien or magisterial claim or both.

9. Requirements of persons/entities performing work on trees in the right-of-way.

- A. Any person, firm or corporation or employee therein granted a permit under Section 6, Subsection D, herein shall post a bond or furnish insurance coverage to the Borough in an amount or form approved by the Borough and shall maintain adequate public liability, property damage and workers compensation insurance to perform work.
- B. The provisions of this section may be waived by the Borough Manager if and when the Borough Manager shall decide that the work to be performed is not likely to be of any foreseeable injury of a bodily nature to the public or to public or private property, but any person operating under such a waiver must furnish evidence to the Borough Manager that he/she carries full public and comprehensive liability insurance of a reasonable nature, as well as workmen's compensation insurance, and he/she shall waive all rights for compensation or damages by the Borough.

10. Violations and penalties.

In addition to the levy, collection and lien remedies set forth in Section 9 herein, any person, firm or corporation violating any provision of this chapter shall, upon conviction therein, for each and every violation, be sentenced to pay a fine of not more than \$300, plus costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for a period not exceeding 30 days.

11. Purchase or planting by Borough.

Notwithstanding any of the foregoing, Council may, by motion, accept, purchase or plant, or contribute one-half of the costs to the purchasing or planting of, shade trees along the streets and sidewalks of the Borough.

13. 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, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

14. Title and Repealer

This Ordinance shall be known as the Shade Tree Ordinance of the Borough and all Ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

15. Effective Date

This Ordinance shall become effective immediately.

Ordained and Enacted this 18th day of July, 2022, by Council of the Borough of Southmont.

Attest:

SOUTHMONT BOROUGH


Secretary


Council President

Approved this 18th day of July, 2022.


Mayor