

**BOROUGH OF LILLY
CAMBRIA COUNTY
PENNSYLVANIA**

ORDINANCE NO. 1996-1

AN ORDINANCE PROVIDING FOR THE CARE,
PRESERVATION AND PERPETUATION OF TREES
IN THE BOROUGH OF LILLY, ESTABLISHING
A TREE COMMISSION FOR THESE PURPOSES,
REQUIRING THE ISSUANCE OF PERMITS FOR
CERTAIN TREE RELATED WORK AND PRESCRIBING
VIOLATIONS AND REMEDIES AND PENALTIES
THERE FOR.

NOW, THEREFORE, be it Ordained and Enacted by the
Council of the Borough of Lilly, Cambria County, Pennsylvania,
as follows:

PREAMBLE. Trees provide a positive environment in our
Borough setting. They cool in the summer and provide wind
breaks in the winter. Aesthetically, trees soften the
streetscape and cover the harsh look of overhead utilities.
Well-maintained trees also provide a haven for birds and small
animals. It is the intent of this Ordinance to promote the
proper selection, planting and maintenance of trees on public
property and rights-of-way throughout the Borough.

SECTION 101. Definitions:

For the purpose of this Ordinance, the following terms
shall have the following meanings:

- A. Borough - The Borough of Lilly.
- B. Commission - The Tree Commission of the Borough of
Lilly.
- C. Council - The Council of the Borough of Lilly.

D. Notice - Notice shall mean either publication in a newspaper of general circulation once a week for two (2) consecutive weeks or written notification sent by first class mail to property owners immediately affected or notification posted on the affected tree. Notice of public hearings shall be published and sent to affected property owners at least thirty (30) calendar days preceding the hearing date.

E. Person - Any individual, firm, partnership, association, corporation, company or organization of any kind and includes the plural of each.

F. Public Area - Any public right-of-way, park, easement or other area under the control of the Borough.

G. New Tree - Any tree planted by the Borough in a public right-of-way, except a replacement tree.

H. Replacement Tree - A tree planted in a location formerly occupied by another tree.

I. Street Commissioner - The Street Commissioner of the Borough of Lilly.

J. Work Days - Monday through Friday, excluding legal holidays when Borough offices are closed.

SECTION 102. Tree Commission

A. Creation and Membership - a Tree Commission is hereby created which shall consist of five (5) members, all of whom shall be residents of the Borough.

Members of the Commission shall be appointed by Council for staggered terms of three (3) years. The first member shall be appointed to serve one (1) year. The second and third members appointed shall serve two (2) years, and the fourth and fifth members appointed shall serve three (3) years. Thereafter, each member appointed shall serve three (3) years.

The members of the Commission shall serve without pay but they may be reimbursed for actual authorized expenses within the funds budgeted for such activities by Council.

A vacancy on the Commission, which occurs for reasons other than the expiration of a term, shall be filled by Council for the unexpired portion of the term.

B. Organization, Records and Meetings - Members of the Commission shall elect a chairman, vice-chairman and such other officers as they may determine necessary. All officers shall be eligible for re-election.

The Commission shall keep a written record of its meetings in accordance with law. The Commission shall provide Council with minutes and annual or other reports of its activities as may be requested or required.

For the purpose of taking action, a quorum of three (3) members must be present.

C. Responsibilities - The Commission shall have the following responsibilities:

- 1) The Commission shall advise the Street Commissioner on the planting, maintenance and removal of trees. Such advice may include:
 - a) Recommendations of tree species for public areas;
 - b) Recommendations for controlling diseases and pests damaging trees;
 - c) Recommendations for tree maintenance;
 - d) Recommendations for a public education/information program concerning the importance and care of trees; and
 - e) Recommendations on Street Commissioner rules and regulations regarding tree planting, maintenance and removals.

2) The Commission, through the Street Commissioner, shall prepare, for Council's approval, a plan for street trees in the Borough. The plan should include a list of existing trees (including species and location). The plan should also include suggested policies for the planting of trees (including suitable species for various environments and spacing of trees). The plan may also identify locations for new plantings, desirable specie changes, etc.

In developing the plan, the Commission should consult with the Street Commissioner and may consult with other Borough authorities, boards and commissions. The plan should recognize the benefits of a public tree program and the need to control expenses (both in the short- and long-term) of planting, maintenance, removals, clean-up and all other costs associated with a tree program. The Commission shall review the plan annually and/or at other times, at the request of the Street Commissioner.

3) The Commission may, with the approval of Council, solicit and accept grants and contribution on behalf of the Borough. All funds obtained by the Commission shall be expended for the specific purpose(s) or under the stipulations set by the contributor or the Commission with specific approval of Council.

4) The Commission shall conduct all public hearings required by this Ordinance. After hearing testimony, the Commission may make recommendations to the Street Commissioner concerning the subject of the hearing.

5) In accord with Section 103.c. of this Ordinance, the Commission shall hear appeals by property owners of notifications by the Street Commissioner to eliminate potentially hazardous trees on private property.

SECTION 103. Authorized Activity

The Department is hereby authorized, but is not limited, to perform the following activities in regard to trees:

A. Adopt Policies, Rules and Regulations - Policies, rules and regulations may be adopted to control tree trimming, cabling, spraying, root cutting and other work on trees by contractors, abutting property owners and/or others.

B. Select and Plant New Trees in Public Areas - If a plan has been approved by Council in accordance with Section 102.c.2., selection and planting of new trees should generally be in accordance with that plan. Prior to the planting of any new tree in the right-of-way, a public hearing shall be held to hear comments from property owners who will be assessed. Notice of the hearing shall include the address, location and species of trees to be planted.

C. Potentially Hazardous Trees on Private Property - Trees on private property which, in the opinion of the Street Commissioner, are sufficiently damaged, diseased or in such condition as to contribute a potential hazard to the public or to other trees on public property, may be ordered removed, partially removed or treated. Property owners so ordered shall have ten (10) days, following receipt of the order, to appeal to the Tree Commission. The Tree Commission shall hear the appeal and make a determination within ten (10) days of the receipt of the appeal. Decisions of the Tree Commission shall be appealable as provided by law. Appeals to the Tree Commission shall be recorded and decisions shall be written and shall include findings of fact. Following a determination by the Tree Commission that said tree should be removed, partially removed or treated, the property owner shall comply within five (5) days. If the property owner shall fail or refuse to remove or treat said tree, the property owner shall be subject to the penalty specified in Section 108.b. In addition, the Street

Commissioner is authorized to remove said hazardous tree or portions thereof. All costs for such work shall be assessed, and if not paid, shall be a lien against the property in accord with Section 104.

D. Immediate Hazards on Private Property - When, in the opinion of the Street Commissioner, a tree or portion(s) of a tree on private property is infected with Dutch Elm Disease or otherwise constitutes an immediate hazard to the public or other trees on public or private property, the property owner shall immediately be notified of the hazard and requested to eliminate it. If the hazard is not eliminated, the matter shall be considered by the Tree Commission at a public meeting. In the absence of a quorum of the Tree Commission, the matter shall be considered at the next meeting of Borough Council. Upon determination that the tree is an immediate threat or hazard, the Street Commissioner is authorized to remove or order the removal of the tree or portion of the tree after five (5) days of notice to the property owner. All costs for such work shall be assessed, and if not paid, shall be a lien against the property in accord with Section 104.

E. Potentially Hazardous Trees in Public Areas - Trees in public areas which, in the opinion of the Street Commissioner, are seriously damaged, diseased, disfigured or constitute a hazard to the public may be removed by the Street Commissioner. Prior to tree removals from public rights-of-way, notice shall be provided to the property owner(s)

immediately adjacent to the tree(s) to be removed. Notice shall also be provided to the Council. The property owner may appeal the removal to the Commission. If not satisfied with the Commission's decision, the property owner may appeal to the Council.

F. Immediate Hazards in Public Areas - When, in the opinion of the Street Commissioner, a tree or portion(s) of a tree in public areas constitutes an immediate hazard to persons or property, the Street Commissioner shall remove the hazard without notice or appeal.

G. Trees/Maintenance Operations - Maintain all trees, administrate budget involving tree maintenance, and report on tree maintenance activities.

SECTION 104. Payment, Assessments, Liens

The cost of new trees and planting in the public areas, together with the cost of necessary guards, curbing, grates, sidewalks or grading shall be paid by the owner of the abutting property. Replacement trees shall be planted at no cost to the owner. All costs of tree removal, partial removal or treatment ordered by the Street Commissioner or Tree Commission, for trees on private property, shall be paid by the owner of the property on which such trees are located. Owners shall have an opportunity to make written objections to proposed assessments, which objections shall be considered by the Council prior to approval. All costs incurred in repairing or replacing trees shall be assessed as provided in Section 108.

The amount each property owner is to pay shall be determined and certified by the Street Commissioner to the Council and approved by Council. Thereafter, the Council shall cause thirty (30) days' written notice to be given to each person against whose property an assessment has been made. The notice shall state the nature and amount of the assessment and the time and place for payment thereof.

The amount assessed against the real estate shall be a municipal claim from the time of approval by the Council and, if not paid within the time specified in the notice, the claim may be filed and collected by the Borough Solicitor in the same manner as municipal claims are, by law, recoverable.

SECTION 105. - Easements

The Borough is authorized to accept easements from property owners to plant and maintain trees on private property within twelve (12) feet of the boundary of a public area. Such easements shall be in writing, executed and acknowledged by such property owners and shall be recorded in the Office of the Cambria County Recorder of Deeds.

SECTION 106. - Permits

The Commission is authorized to issue permits for certain work on Borough trees by persons not Borough employees. Permits shall be required for the following acts:

A. Planting, treating, pruning, removing or otherwise disturbing any tree located in public area;

B. Trimming, pruning or removing any tree or portions thereof if such tree or portions thereof may reasonably be expected to fall in public areas and cause damage to persons or property or interfere with pedestrian or vehicular traffic using the public right-of-way or public easements.

C. Placing in public areas, either above or below ground level, a container for tree, shrubs or other plants;

D. Transplanting any tree located in public areas;

E. Attaching any rope, wire, nail, sign, poster or similar man-made object to any tree located in public areas; and

F. Damaging or cutting roots by tunneling, trenching or digging in public areas for the purpose of sidewalk, curb, pipe, conduit, electric wire, etc. installation and repair.

Permits shall be in writing and shall specify the work permitted and the time period, not exceeding one (1) year. All work shall be performed under the supervision or inspection of the Street Commissioner. Such permits may be revoked by the Street Commissioner if his instructions are not followed. Revocations may be appealed, in writing, to the Commission within five (5) work days of that notice of revocation.

Nothing in this section shall be construed to exempt abutting property owners or public utility companies or other agents from any of the requirements of this Ordinance.

SECTION 107. - Violations

It shall be unlawful for any person to:

A. Cut, break, climb with spikes, disturb the roots of, or otherwise injure or destroy trees in any public area, or to authorize such actions. It shall not be considered a violation to trim trees or perform other activities with a valid permit from the Commission specific to the tree(s) involved in accordance with Section 106 of this Ordinance.

B. Cause or authorize a wire or other conductor charged with electricity to come into contact with any tree in any public area in a manner that may injure or kill it without a written permit from the Commission specific to the tree(s) involved.

C. Cause or authorize in any public area, any oil, gasoline, herbicide, paint, brine, hot water, steam or other gas, liquid or solid substances deleterious to the tree to contact any tree or to enter the soil about the base or root system of a tree in any manner that may injure or kill it.

D. Interfere, cause or authorize an interference with the Borough or any of its agents or employees while they are engaged in planting, inspecting, maintaining or removing trees.

E. Supervise or authorize construction, alterations, repairs or demolition activities in the vicinity of any tree in any public area without first placing sufficient guards or protectors as shall prevent injury or destruction of said tree arising out of such activities. The placement of guards or

protectors shall be in accordance with written authorization by the Street Commissioner.

F. Place or maintain upon the ground any asphalt, cement, stone or other material or substance in such manner as may obstruct or further obstruct free access of air and water to the roots of any tree in any public area.

G. Fasten any rope, wire, electric attachment, sign or other device to any tree in any public area or to any guard about such tree without written permit from the Street Commissioner specific to the tree(s) involved.

H. Plant, prune, fertilize or apply fungicides, insecticides or other chemical substances to any tree in any public area without a written permit from the Street Commissioner specific to the tree(s) involved.

I. Remove or tamper with any object or device set forth for protection or treatment of any tree in any public area without a written permit from the Street Commissioner specific to the tree(s) involved.

J. Pile any building material or make any mortar or cement within six (6) feet of any tree in any public area.

K. Hitch or fasten any animal, bicycle or vehicle to any tree in any public area.

SECTION 108. - Penalties

Any person violating the provisions of this Ordinance shall, upon conviction before a District Justice of appropriate jurisdiction, be liable to pay costs of prosecution and a fine

as follows:

A. For willfully injuring or killing a living tree in any public area by cutting, debarking, breaking, by the use of herbicides, use of a vehicle or in any other manner wherein it is determined by the District Justice that such damage or destruction was intentionally inflicted, a fine of not less than One Hundred and 00/100 (\$100.00) Dollars nor more than Six Hundred and 00/100 (\$600.00) Dollars plus the cost of repairing or replacing each damaged tree shall be levied. If the person found guilty of violating this Ordinance is an abutting property owner, the cost of repair or replacing the damaged tree shall be assessed against the property in accordance with Section 104 of this Ordinance.

B. For failure of a property owner to remove, partially remove or treat a tree on private property, as ordered in accord with this Ordinance, the guilty person shall be fined not more than one Hundred and 00/100 (\$100.00) Dollars per day. Each day the property owner remains in violation shall constitute a separate offense.

C. For all other violations, where it is determined by the District Justice that such damage or destruction was not intentionally or willfully inflicted, a fine of not less than Twenty-five and 00/100 (\$25.00) Dollars nor more than One Hundred and 00/100 (\$100.00) Dollars plus the cost of repairing or replacing the damaged tree shall be levied. If the person found guilty of violating this Ordinance is an abutting property

owner, the cost of repair or replacing the damaged tree shall be assessed against the property in accordance with Section 104 of this Ordinance.

SECTION 109. This Ordinance shall become effective upon enactment by the Council of the Borough of Lilly, Cambria County, Pennsylvania.

ENACTED AND ORDAINED this 2nd day of April, 1996.

BOROUGH OF LILLY

John F. Nezniski
President

Chalmers J. Claar Jr.
Mayor

ATTEST:

Walter C. Lyske
Secretary

Gerald P. Neugebauer, Jr.
Borough Solicitor

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