

Chapter 45

SHADE TREE MANAGEMENT BOARD

GENERAL REFERENCES

Parks — See Ch. 136.

Streets and sidewalks — See Ch. 166.

§ 45-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADVISE THE SUPERINTENDENT OF PUBLIC WORKS — Wherever this chapter refers to the Shade Tree Management Board acting with the advice of the Superintendent of Public Works, it shall mean that the Shade Tree Management Board shall notify the Superintendent of Public Works so that the Superintendent may coordinate the work and inform the Shade Tree Management Board as to:

- A. Date.
- B. Time.
- C. Workload of the Department of Public Works.
- D. Such other factors as the Superintendent determines could affect the planting, pruning or removal of trees and shrubs.
- E. Proper notification to affected property owners and/or utilities in the case of planned removals or pruning of trees or shrubs that have an impact on private property.

BOROUGH — Borough of Madison, New Jersey.

BOROUGH COUNCIL — The Borough Council of the Borough of Madison.

BOROUGH SHRUB — A shrub located on land owned by the Borough or which is otherwise located on a street, highway, public place, right-of-way, Borough easement, park or parkway or within the sidewalk lines.

BOROUGH TREE — A tree located on land owned by the Borough or which is located on a street, highway, public place, right-of-way, Borough easement, park or parkway or within the sidewalk lines.

BUILDING — A combination of materials to form a construction adapted to permanent, temporary or continuous occupancy and having a roof.

DRIP LINE — A line connecting the tips of the outermost branches of a tree projected vertically onto the ground.

EMERGENCY — An event or events, disease or condition which has damaged or destroyed a tree or trees, such that the continued presence

of such damaged or destroyed tree or trees imminently threatens life or property in proximity thereto.

LANDMARK TREE — Any tree designated and identified as such by the Shade Tree Management Board pursuant to the standards set forth herein.

NONBOROUGH TREE — Any tree other than a Borough tree as heretofore defined.

PERSON — Any individual, partnership, corporation, agency or other entity.

PROTECTIVE BARRIER — A barrier constructed to protect the root system or trunk of a tree from damage during construction or from equipment or soil or material deposits.

ROOT SYSTEM — Tree roots within the drip line perimeter.

SHRUB — A woody plant that does not have a center trunk and does not grow over 10 feet high.

TREE — Any living, woody perennial plant having a diameter greater than four inches measured at a point four feet above the ground.

§ 45-2. Establishment; membership.

A Shade Tree Management Board is hereby established, to be known as the "Shade Tree Management Board of the Borough of Madison." The Management Board shall consist of seven members, and may include not more than two additional alternate members. The members and alternate members shall be appointed by the Mayor with the advice and consent of the Council. In the event that the Mayor fails to make a nomination at least 15 days prior to the date of the second regular public meeting of the Council after a position becomes vacant or the Borough Council fails to confirm a nomination, then the appointment shall be made by the Borough Council by the vote of a majority of the members present at the meeting, provided that at least three affirmative votes shall be required, with the Mayor to have no vote thereon except in case of a tie.

§ 45-3. Terms of office.

The first Shade Tree Management Board members shall be appointed within 60 days after the effective date of this chapter, and their terms of office shall commence upon the day of their appointment and be for the respective periods of one, two, three, four and five years. The initial terms of the sixth and seventh members of the Management Board shall be such that they expire simultaneously with the expiration of the initial terms of the fourth and fifth members of the Management Board respectively. The term of each appointee shall be designated in his appointment. All subsequent appointments, except to fill vacancies, shall be for the full five-year term, to take effect on January 1 next succeeding such appointment. If the ordinance provides for the appointment of two alternate members, the terms of each alternate member shall be five years commencing on January 1 of the year of appointment; provided, however, that in the event that two alternate members are appointed, the initial term of "Alternate No. 1" shall be five

years, and the initial term of "Alternate No. 2" shall be four years. An alternate member may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

§ 45-4. Organization.

The Management Board shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year and thereafter annually by the election of one of its members as Chairman and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated even if a member of the Management Board, shall be fixed by the Madison Borough Council.

§ 45-5. Vacancies.

Any vacancy occurring by reason of the death, resignation or removal of any member shall be filled for the unexpired term by the Mayor with advice and consent of the Council.

§ 45-6. Powers and duties.

- A. The selection, planting, care and control of shade and ornamental trees and shrubbery upon and in the streets, highways and public places of the Borough of Madison, except state highways and except county highways, parks and parkways, shall be exercised by the Shade Tree Management Board with advice to the Superintendent of Public Works. The powers of the Shade Tree Management Board shall include:
- (1) Exercise full and exclusive control over the selection, planting and care of shade and ornamental trees and shrubbery, including the planting, trimming, spraying, care and protection thereof.
 - (2) Control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection.
 - (3) Move or require the removal of any Borough trees or shrubs or part thereof under the conditions set forth herein.
- B. The duties of the Shade Tree Management Board shall include:
- (1) Develop and maintain a community Forestry Management Plan in compliance with the New Jersey Shade Tree and Community Forestry Assistance Act.¹
 - (2) Encourage arboriculture.
- C. The Management Board shall develop any plans and specifications needed to solicit bids for planting, care or removal of Borough shade

1. Editor's Note: See N.J.S.A. 13:1L-17.1 through 13:1L-17.9.

trees. Bids for such work, when required, shall be let by the Borough according to the applicable statutes, ordinances and regulations. Nothing in this section shall be construed to delegate to the Management Board the power to solicit bids directly for planting, care or removal of Borough shade trees.

§ 45-7. Maintenance and removal of Borough trees and shrubs.

- A. All Borough trees and Borough shrubs located on property owned by the Borough or on a street, highway, right-of-way, park or parkway or within the sidewalk lines of any street shall be maintained by the Shade Tree Management Board.
- B. No Borough trees, as heretofore defined, shall be removed except by order of the Shade Tree Management Board, who shall advise the Superintendent of Public Works unless otherwise provided in this section. The Shade Tree Management Board may remove such Borough tree if, but only if:
- (1) Such tree is so diseased or so infested so as to be a danger to other trees in the Borough or surrounding communities.
 - (2) Such tree is dead or dying and its presence would cause hardship or endanger the public or an adjoining property owner.
 - (3) Such a tree or shrub is a hazard to the public safety because it obstructs the view of motor vehicle operators or otherwise interferes with traffic or pedestrian safety. In the event that the full removal of the tree or shrub is not required, it may be pruned pursuant to § 45-8.
 - (4) Such a tree, if the Shade Tree Management Board determines for other reasons, is necessary to be removed.
 - (5) In the case of construction on Borough property as provided in Subsection C below:
 - (a) The presence of such tree would cause hardship or endanger the public or an adjoining property owner.
 - (b) Such tree is located in an area to be occupied by buildings, driveways, recreation areas or other construction or within a distance of 15 feet around the perimeter of such construction, depending on tree species and conditions to be determined by the Shade Tree Management Board.
 - (c) Such tree is located in an area to have a cut or fill of land deemed injurious or dangerous to such tree. The determination of the Shade Tree Management Board in this respect shall depend on the species of trees and degree of injury.
- C. If the Borough Council directs the construction of any building, driveway, recreation area or anything else upon the property owned by

the Borough, such construction shall be located to the extent practicable so as to conserve a maximum number of trees consistent with the appropriate and practical use and enjoyment of the land in question. The Shade Tree Management Board shall be advised prior to the start of such work and shall advise the Borough or other party performing the work how the work can be accomplished, minimizing the number of trees to be removed and the damage done to remaining trees. To prevent damage to remaining trees, no material, machinery or temporary soil deposits shall be placed within the drip line of any existing tree, and proximity of said construction shall be established to prevent damage to such tree during construction.

- D. The electric utility of the Borough of Madison shall have the right to remove trees, without the prior approval of the Management Board, when an emergency as defined herein exists and when obtaining the prior approval of the Management Board is not practical. At all times, the electric utility shall have the right to trim trees which reasonably are required to be trimmed for the purpose of ensuring continuous electric utility service or to avoid danger to the public or electric utility personnel or equipment.
- E. In the event that the governing body has reason to believe that the removal of a Borough tree at the direction of the Shade Tree Management Board, or otherwise, does not meet the criteria set forth in this section or will be detrimental to the welfare of the Borough, the Council may stay the removal of said tree pending a report on the reasons for removal, which report shall be submitted promptly by the Shade Tree Management Board. After consideration of the Shade Tree Management Board's report and such other information as is pertinent to the decision to remove the tree, the Council shall either approve or disapprove the removal of the tree.
- F. In the event that the governing body has reason to believe that the Shade Tree Management Board's refusal to agree to a requested removal of a Borough tree is inconsistent with the criteria of this chapter or will be detrimental to the welfare of the Borough, the Council may order the Shade Tree Management Board to submit a report explaining its reason for refusing to remove the tree, which report shall be promptly submitted by the Management Board. After consideration of the Shade Tree Management Board's report and such other information as is pertinent to the decision of whether or not to remove the tree, the Council shall either approve the Shade Tree Management Board's refusal to remove the tree or order the removal of the tree, which the Shade Tree Management Board shall promptly do.

§ 45-8. Permission required for certain actions.

- A. It shall be unlawful to commit any of the following acts with respect to Borough trees without the prior written consent of the Shade Tree Management Board:

- (1) Cut, prune, break, injure, alter or remove any tree; or cut, unduly disturb or interfere in any way with any root of a tree or trees, except as provided in § 45-7.
 - (2) Fasten any object, rope, wire, sign, insulator or other device to a tree or trees or to any guard about such a tree or trees in any public street or park.
 - (3) Install, remove or injure any guard or device placed to protect trees.
 - (4) Close or obstruct any open spaces provided about the base of a tree or trees to permit the access of air, water and fertilizer to the roots of such tree or trees.
 - (5) Cut any tree roots within 10 feet of any trunk or any roots four inches in diameter.
 - (6) String or bury wires or lines through a public park.
- B. The Shade Tree Management Board shall grant such written permission if the activity for which such permission is requested is in the public interest and is not likely to injure any Borough tree. The Shade Tree Management Board will notify the Superintendent of Public Works if written permission is granted for any of the above so that the terms of the consent are followed.
- C. Any person or persons who cause damage to any Borough tree or Borough trees by machines, autos, etc., shall be held liable for damages to said tree or trees. Damages shall be corrected or repaired and the liable person or persons billed for the damages.
- D. Any and every person having or maintaining any electric, telephone, telegraph or other wires or lines running through a public street or park shall securely fasten and maintain such wires and lines in such a manner as will safeguard Borough trees against any damage therefrom and shall make periodic adjustments whenever necessary to prevent damage to Borough trees and Borough shrubs.
- E. When necessary to prune or remove any Borough tree or Borough trees along a public street, any person having any wires or lines running through or along said public street shall temporarily remove such wires or lines within 24 hours after the serving upon the owner of said wires or lines, or his agent, of a written notice from the Superintendent of Public Works.
- F. Any person except the Madison electric utility having line clearance operations (tree trimming) done for them by any other person or persons shall first obtain the written approval of the Shade Tree Management Board.
- G. No person shall move or cause to be moved any building or large object along any street without having first obtained a valid permit from the

Borough Engineer, which, if the Borough Engineer deems necessary, may require the mover to furnish a bond or cash deposit in an amount sufficient to cover any damage to or destruction of Borough trees on such street or streets as a result of such moving operations.

- H. No person shall operate, place or maintain, within the dripline of any Borough tree, any machinery, equipment, heavy object, stone, rocks, cement, earth, soil or other substance which may harmfully affect such Borough trees by unduly compressing the earth or otherwise impeding or preventing the access of water or air to the roots of such tree or excavate around to remove earth or soil from or cause any water to flow upon the roots of any tree. The Borough Engineer may waive, in whole or in part, such provisions, but only to the extent absolutely necessary to alleviate undue hardship in the appropriate use and enjoyment of property. **[Amended 7-23-2018 by Ord. No. 42-2018]**
- I. The Shade Tree Management Board shall have the primary jurisdiction and responsibility to identify any violations hereunder and to refer those locations, in writing, to the Borough Zoning Officer for enforcement action pursuant to § 45-15, Violations and penalties. **[Added 7-23-2018 by Ord. No. 42-2018]**

§ 45-9. Non-Borough trees.

The Management Board shall not exercise any of the powers granted to it herein over care and planting of trees or shrubbery located on private property. In the following circumstances, the Management Board shall notify the owner of the tree of the existence of the danger or disease and report to the Council the need for action with respect to non-Borough trees, and the Council may direct such action as is necessary to protect the public safety and welfare:

- A. Where any non-Borough trees, whose drip line is partly within the area of any property owned by the Borough or within the area of any street, highway, public place, right-of-way, park or parkway or within the sidewalk lines of any street, endanger the public safety, interfere with public travel or traffic on sidewalks, streets, highways or the right-of-way or interfere with the lighting of sidewalks, streets, highways or the right-of-way.
- B. Where any tree is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the Borough.

§ 45-10. Advisory services.

- A. The Management Board will provide assistance to any Borough resident on the planting, treatment and care of non-Borough trees, including but not limited to:
- (1) Advice on the species of trees most appropriate for the owner's location and purpose.

- (2) Advice on minimizing or eliminating adverse impact on existing trees due to proposed construction.
- (3) Advice on whether tree removal is necessary and how best to effect removal.

B. Advisory work with Planning Board.

- (1) One copy of all plans for major and minor subdivisions and site plans submitted to the Madison Planning Board or Board of Adjustment shall be forwarded by the Planning Board/Board of Adjustment Secretary at the same time such plans are distributed to Planning Board/ Board of Adjustment members to the Chairman of the Management Board for his or her review. The Shade Tree Management Board, in appropriate cases, shall submit to the Planning Board/Board of Adjustment and the owner written recommendations with respect to the following:
 - (a) Minimizing removal of trees located on the property.
 - (b) Appropriate species of trees that could be used to replace trees that must be removed because of construction and appropriate locations for the trees.
 - (c) Minimizing damage that may occur during construction to trees that will not be removed.
 - (d) The number of shade trees, their species and variety, if any, to be placed within the Borough right-of-way at the property owner's expense.
- (2) All such recommendations shall be submitted to the Planning Board or Board of Adjustment on or before the date the matter is scheduled to be heard unless a shorter or longer period is directed by the Planning Board or Board of Adjustment. Failure of the Shade Tree Management Board to approve its recommendations to the Planning Board/Board of Adjustment within the required time shall be deemed a waiver of its right to submit comment.
- (3) Whenever the Planning Board or Board of Adjustment incorporates in its approval of plans the recommendation of the Shade Tree Management Board with respect to planting of trees on Borough property, it shall require each tree so planted to be nursery-grown stock, two inches to three inches in diameter, characteristic of its species, balled and burlapped and planted in accordance with American Nursery Association specifications. Each tree shall bear a two-year guaranty by the permit holder and shall be guaranteed further by a two-year maintenance bond or cash bond. If any tree so guaranteed must be replaced, a new two-year guaranty and maintenance or cash bond shall apply to the replacement. Upon acceptance, such trees shall become Borough trees. The Management Board's recommendations shall be advisory only.

§ 45-11. Landmark trees.

- A. The Shade Tree Management Board shall have, as one of its duties, the location, selection and identification of any trees, which qualify as "landmark trees." A tree may qualify as a landmark tree if it meets one or more of the following criteria:
- (1) The tree species is rare.
 - (2) The tree is more than 100 years of age.
 - (3) The tree has been connected with a significant historical event.
 - (4) The tree is of an outstanding trunk diameter or drip line diameter for a tree of its species.
 - (5) The quality of the tree foliage is outstanding for a tree of its species.
 - (6) The location, shade value, fragrance, erosion control, aesthetic features or scenic enhancement of such tree is of especial importance to the Borough.
- B. All trees designated as "landmark trees" by the Shade Tree Management Board shall be shown on an official Borough Map with appropriate code marks signifying each tree's designation, number, species, age, size and other distinguishing characteristics for ready reference and periodic monitoring.
- C. If the owner or owners of the property on which a landmark tree is located consent thereto; the Shade Tree Management Board shall identify such tree as a landmark tree by the placement of a suitable marker thereon.
- D. If and when any landmark tree is removed, the Shade Tree Management Board shall arrange for the necessary changes to be made to the official landmark tree inventory records and the Borough Map.

§ 45-12. Annual appropriation.

- A. During the month of October in each year, the Shade Tree Management Board, with consultation of Superintendent of Public Works, shall certify to the Mayor of the Borough the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for the following items, namely:
- (1) Expenses of the Management Board members in discharging official duties, including expenses incident to attendance at professional meetings.
 - (2) Purchase of trees and shrubbery.

- (3) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.
 - (4) Purchase of professional services.
- B. The governing body of this Borough shall annually appropriate such sums as it may deem necessary for said purposes.

§ 45-13. Public improvements affecting trees.

The laying of any sidewalk along any street within the Borough or the opening, constructing, curbing or paving of any such street or any similar act undertaken by the Borough or requiring the consent of the Borough, if done by a party other than the Borough, shall be done to the extent practicable so as to conserve a maximum number of trees consistent with the appropriate and practical construction of the public improvement. The Shade Tree Management Board shall advise the Superintendent of Public Works prior to the start of such work and the Superintendent shall advise the Borough or other party performing the work how the work can be accomplished without injury to any trees, and he shall monitor such project for the protection of any tree, consistent with the conditions set forth in § 45-7C. Nothing in this section shall be construed to prohibit or impede the construction of any public improvement.

§ 45-14. Notification of Management Board of trees and shrubs needing attention.

It is hereby declared to be the duty of all persons having knowledge thereof to immediately notify the Shade Tree Management Board or the Superintendent of Public Works of the Borough of Madison of any tree or shrub in or upon any street, highway, road, park or other property of or under the jurisdiction of the Borough of Madison which has suffered any accident or injury, is in need of attention or care or has become dangerous to the public or to the adjacent property. This provision shall be considered as directive only and for the public good, and no penalty shall be imposed for the failure to comply with this provision.

§ 45-15. Violations and penalties. [Amended 5-8-2006 by Ord. No. 19-2006]

Any person, firm or corporation who shall violate any of the provisions of this chapter shall be liable, upon conviction thereof, to a fine of not less than \$100 nor more than \$2,000 or imprisonment in the county jail for a period not to exceed 90 days, or community service not to exceed 90 days or a combination of fine, imprisonment and/or community service in the discretion of the judge, for each violation hereof. Each 24 hours of continuous violation of any of the provisions hereof shall be considered a separate offense and shall be punishable accordingly.

§ 45-16. Application for and issuance of permits.

- A. Applications for a permit, where required under this chapter, shall be made directly to the Borough Engineer pursuant to § 45-8G and H, with a copy to the Shade Tree Management Board, which application shall be filed with the office of the Borough Engineer and shall contain the name of the applicant, location of the property or street affected and, in addition thereto, the purpose for which the application is being made.
- B. Within seven business days after the submission of an application for a permit, the Borough Engineer, shall review the site and the application and either grant or deny said permit or extend for an additional seven business days the period for review, by the end of which he shall grant or deny said permit. Failure of the Borough Engineer to act within the aforesaid time shall be deemed approval of the application.
- C. Fees. There shall be no fee charged for the issuance of a permit by the Borough Engineer.
- D. Appeal. Any applicant shall have the right to appeal the decision of the Engineer to the Borough Council by filing with the Borough Clerk of the Borough of Madison a letter requesting such appeal within 14 days from the decision of the Borough Engineer. The Council may solicit the advice of the Shade Tree Management Board, Environmental Commission or other experts and shall review the decision of the Borough Engineer. The Council shall, by resolution duly adopted by it within 45 days of the submission date of the appeal, either affirm the denial of said permit or direct the Borough Engineer to issue such permit with such conditions as may be appropriate.

§ 45-17. Minutes of Shade Tree Management Board.

The minutes of the Shade Tree Management Board's regular meetings shall be presented to the Borough Clerk as soon as possible.

§ 45-18. Severability.

If any section, subsection, paragraph, sentence, clause, phrase or word contained in this code shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code, which shall remain in full force and effect, and to this end the provisions of this chapter are here declared to be severable.