

Chapter 25

Trees

Part 1 Shade Trees

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Part 1**Shade Trees****§25-101. Title and Short Title.**

1. *Title.* An ordinance establishing rules, regulations, and standards governing the planting, replanting, removal, care of shade trees located along the various public ways of the Borough of Nesquehoning; the procedures to be followed relative to the administration of, and compliance with, these rules, regulations, and standards; and setting forth the penalties for the violation thereof.

2. *Short Title.* This Part shall be known and may be cited as the “Borough of Nesquehoning Shade Tree Ordinance of 2011.”

(*Ord. 2011-3, 6/28/2011, §1*)

§25-102. Authority and Jurisdiction.

1. *Authority.* The Borough Council is empowered to adopt, by ordinance, rules, regulations and standards regarding the custody and control of shade trees in the Borough pursuant to Article XXVII of the Borough Code, Act of February 1, 1966 (1965 P.L. 1656, No. 581), 53 P.S. §47701 *et seq.*, as amended. The Borough Code Officer is empowered to enforce this Part and to prosecute any violators of this Part.

2. *Jurisdiction.* The Borough Council shall have the exclusive custody and control of the shade trees along and within the rights-of-way of the highways, streets, alleys, sidewalks, and other public ways of the Borough of Nesquehoning, and may plant, remove, trim, maintain, and protect said shade trees, and may require the planting, removal, trimming, and/or maintenance of said shade trees. This jurisdiction shall also apply with respect to the trimming of any shade tree, the branches of which extend over and above any such public rights-of-way, as above enumerated, or to any shade tree, the continued existence of which shall be deemed a hazard to the public welfare.

(*Ord. 2011-3, 6/28/2011, §2*)

§25-103. Purpose.

The purpose of this Part is to provide a uniform set of rules and regulations governing the care and control of shade trees located along and within the various public ways of the Borough of Nesquehoning in order to promote the general welfare and safety of the community.

(*Ord. 2011-3, 6/28/2011, §3*)

§25-104. General Terms.

The following terms and phrases, when used in this Part, shall have the meaning ascribed to them as set forth below, except in those instances where the context already indicates a different meaning. All terms of the singular shall include those of the plural and vice versa. The masculine shall include the feminine and vice versa. The term “may” is permissible; “shall” is mandatory.

(*Ord. 2011-3, 6/28/2011, §4*)

§25-105. Specific Terms.

Person—any individual, firm, association, partnership or corporation.

Right-of-way—the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular or pedestrian traffic.

Roadway—that portion of a highway improved, designed, or ordinarily used for vehicular travel.

Shade tree—any tree, shrub, or woody plant along or within the rights-of-way of the Borough of Nesquehoning, or that part of any tree, shrub, or woody plant which extends within the public rights-of-way of said Borough.

Sidewalk—that portion of a street between curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

Substantial trimming—the pruning of a shade tree in such a manner and to the extent that said tree may be permanently damaged or destroyed.

(Ord. 2011-3, 6/28/2011, §5)

§25-106. Trimming of Shade Trees.

1. *Property Owners Responsible.* It shall be the responsibility of every person owning property in the Borough of Nesquehoning to trim, and to keep trimmed, all shade trees growing on such property, and which also are located within the public rights-of-way and/or the branches of which extend over the said rights-of-way and/or the public sidewalks so that:

A. There shall be a minimum clearance of the branches thereof of 14 feet above the roadway and 9 feet above the public sidewalk.

B. There shall be no obstruction of any parking or traffic control and regulatory signs as may be present.

C. There shall be sufficient line-of-sight distances afforded to the operators of vehicles upon the public roadways within the Borough.

D. There shall be no excessive obstruction of the illumination of the public street lights of the Borough.

2. *Authority of Borough to Intercede.* Should any person, responsible under subsection .1, fail, neglect, or refuse to trim, or cause to be trimmed, any shade tree as required hereby, within 10 days after notice from said Borough to do so, the Borough shall have the authority to cause said work to be accomplished in the manner in which it deems to be most expedient, and to collect the cost thereof, together with an additional amount of 10 percent of said cost, from such property owner in default.

(Ord. 2011-3, 6/28/2011, §6)

§25-107. Removal of Shade Trees.

1. *Damaged or Diseased Shade Trees Presenting Imminent Hazards.* When any shade tree, which is located within the public rights-of-way and/or the branches of which extend over said public rights-of-way and/or the public sidewalks, shall become damaged by storm and/or are affected by any contagious disease or insect infestation, to the point where said shade tree endangers the life, health, safety, or property of the

general public, and said shade tree should be removed or substantially trimmed to mitigate the aforesaid hazards, it shall be within the discretion of the Borough of Nesquehoning to determine the degree of the remedy necessary to correct the identified hazard. To these instances, the following procedure shall prevail:

A. The owner of the property, upon which the diseased/damaged shade tree is located, shall be notified, in writing, of the deficiency and of the required remedy.

B. Said notification shall include:

(1) The specified number of days in which the property owner shall be required to have completed, or to have caused to be completed, the specific remedy.

(2) Any other conditions as may be imposed pursuant to the terms of this Part.

C. It shall be the responsibility of the property owner, upon whose property said identified shade tree is located, to insure compliance with this notification.

D. In the event that the property owner should fail, neglect, or refuse to comply with said notification within the required time period or, should the Borough be unable to identify the subject property owner, the Borough shall then have the authority to cause the remedy to be accomplished in the manner in which it deems most expedient and to collect the cost thereof, together with an additional amount of 10 percent, from such property owner once he has been identified.

2. *Treatment of Stumps.* Any stump, which remains subsequent to the felling of a protected shade tree, shall be excised so that, at a minimum, the top-most portion of any remaining stump is level with or below the surrounding surface of the ground.

3. *Coordination of Efforts.* Any property owner or person who shall proceed with the removal or substantial trimming of a shade tree shall coordinate the proposed efforts with the Borough of Nesquehoning Street Department and/or Police Department prior to the commencement of efforts. This coordination is to determine if the proposed efforts will require closure, or partial closure, of any of the various public ways of the Borough, and to insure that measures, satisfactory to the Borough, will be taken to protect the general welfare and safety of the public.

(Ord. 2011-3, 6/28/2011, §7)

§25-108. Violation.

It shall be unlawful for any person to plant, replant, remove, substantially trim, or fail to maintain any protected shade tree in a manner contrary to the provisions of this Part.

(Ord. 2011-3, 6/28/2011, §8)

§25-109. Penalties.

1. Any person who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay 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 90 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. Penalties imposed under the provisions of this Part shall be a lien upon the real estate of the offender and may be collected as municipal claims are collected. All penalties or assessments imposed under this Part shall be paid to the Borough of Nesquehoning. [*Ord. 2013-1*]

2. Provided, such fines and costs may be in addition to any expenses and additional amounts imposed elsewhere in this Part.

(*Ord. 2011-3, 6/28/2011, §9; as amended by Ord. 2013-1, 6/26/2013*)