

April 7, 2022

Members of the Lemoyne Borough Council,

During 2021, the Shade Tree Commission (STC) reviewed the Borough's Acceptable Tree List, Permit for Tree Planting and Removal, and how the Borough interpreted and put in practice the sections of code and ordinances regarding the STC.

We revised the Tree List, removing invasive species and broadening categories of trees recommended. Minor revisions were made to the Tree Permit Application form to make planting or removing a tree in the Borough's rights of way a transparent, easy and consistent process.

Review of wording in the Borough code and ordinance revealed a few sections of vague wording which made it difficult to process permits in a fair and consistent manner. In September STC presented these concerns in the form of three questions to Borough Council which were then referred to the Borough Solicitor, Ms. Sossong. In late October we received her response to our concerns. We received her additional input and clarifications in March 2022. A summary of the solicitor's responses and the Commissions subsequent comments is attached.

The Commission has prepared the enclosed list of nine Proposed Shade Tree Commission Guidelines for consideration by the Borough Council. Our goal is to develop best practices that can be consistently applied throughout Lemoyne Borough and over time despite the inevitable changes in Commission and Council membership and maintenance department staffing.

These proposed practices are consistent with those adopted by surrounding municipalities. Implementing these suggestions will provide residents in the entire Borough a consistent set of regulations and relieve the Borough maintenance department of time spent dealing with property owner's tree issues.

Thank you for considering our suggestions for improvement of Lemoyne's shade tree ordinances.

Respectfully,

Lemoyne Borough Shade Tree Commission

John Leverentz, Chair

Ed Dix

Marsha Everton

Shade Tree Commission (STC) Response to **Solicitor Memo Dated October 28, 2021 and March 2022 Input**

(excerpts from memo and additional Solicitor input noted in quotes)

Scope of Authority

STC question 1: What areas of the Borough does the STC have jurisdiction over, or should be consulted on?

Solicitor comments:

- “Therefore, shade trees are those trees that are located along the streets and highways of the Borough, traditionally interpreted as those trees (and shrubs) that are planted within the grassy area between the street and any sidewalk.”
- ‘...within the law the term is used in conjunction with the concepts of: “on the streets and highways”, “sides of streets”, “abutting streets” and “along the streets and highways”.’
- “...the STC only has jurisdiction over the street trees in the Borough – meaning those trees located between the curb and the sidewalk. Nothing else.”
- Code of the Borough of Lemoyne “provides that the STC shall recommend regulations for the care and protection of the shade trees in the Borough on the streets, highways and the parks thereof.”
- *Subsequent update and clarification from Solicitor:* “The Borough cannot assume authority over private property... The Borough only has authority over property within its right of way. The sidewalk area is part of the Borough right of way so that's why the Borough can assume control over the trees between the sidewalk and the street.”

STC response:

- Recommend that Borough Council confirm that only trees located between the curb and a sidewalk are within the jurisdiction of the STC. Specifically, if there is not a sidewalk, the STC has no jurisdiction.
- Limiting the authority to where there is a sidewalk is not consistent with past practice.

Enforcement of Ordinance

STC question 2: How strictly/fairly do you want the ordinance enforced?

Solicitor comments:

- “This is a policy question for Council. Any variation in treatment or approach must be viewed carefully to avoid any allegations of favoritism, discrimination, or arbitrary and capricious action.”

Ordinance 499-19 Violations and penalties:

- A. For any and every violation of any of the provisions of these regulations, the owner, general agent or contractor of a building or premises where such violation has been committed or shall exist, and the owner, general agent, contractor, lessee or tenants of any part of a building or premises in which part such violation has been committed or shall exist, and the owner, general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be liable on conviction thereof to a fine or penalty not to exceed \$300, which shall inure to the benefit and use of the Borough, and in default of such payment of fine and costs, suffer imprisonment in the county jail for not less than one nor more than 10 days.
- B. Whenever a person has been notified of a violation, by the initiation of a summary proceeding to impose the aforesaid penalty, or in any other way, each day the said person 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 the fines or penalties are now collected by law

STC response:

- Agree with use of a uniform approach throughout the Borough (in areas with and without sidewalks).
- Recommend consistent communication through Borough newsletters and other media to remind residents that tree planting and removal within three feet of Borough streets and highways must be approved through submission of the Lemoyne Borough Shade Tree Commission Application for Tree Planting or Removal.
- Recommend creation of an official “warning” process to property owners for any tree planting or removal that is reported and was not approved.
- Recommend Borough issuance of appropriate fines and other penalties for repeated violations by a property owner.
- To assure a uniform approach, the STC will propose a set of regulations for adoption by Borough Council and enforcement by the STC. A proposed set of regulations will be sent separately.

Subsequent update from Solicitor:

- “This can be incorporated into a policy or the ordinance can be amended. Whichever may be preferred by Council.”
- “Repeated violations are unlikely. Most residents only plant one tree during their period of ownership.”

Financial Responsibility for Removal and New Planting of Trees

STC question 3: Who removes a property owner’s tree?

Solicitor comments:

- Council has the authority to plant, transplant, remove, maintain and protect street trees and to pass regulations to carry out those obligations. (2720(a)). Council is granted specific authority, by ordinance, and without any permission of a landowner, to require the planting or replanting of shade trees where Council designates and at the expense of the property owner. (2720(b) and (d)). Council also has the power to require landowners to remove dead or affected trees (2720 (e)). If the landowner does not comply with the ordinance requirements, the Borough may do so and assess the costs against the landowner.
- “...the removal of a tree is done by the Borough with the costs to be billed to the adjoining landowner. This may or may not be how this has been handled in the past, but it is what state law and the Borough ordinances currently provide. It is also generally what other communities do.”

STC response:

- Recommend Borough Council, per State law (sections 2720.2 B and D and E) require the property owner to provide the labor and assume the cost for removal or planting of trees and removal of stump. Specifically recommend that the Borough minimize its physical and financial commitment to tree removal at the request of property owners.
- If and when the property owner does not comply with Borough tree planting and removal requirements, recommend that the Borough proceed with the work and assess the costs against the property owner. This is per State law (section 2720.2), which supports billing the property owner for removal or requested planting of trees by the Borough. Due to the very limited number of requests that have historically been received, Borough residents are unlikely to see this as a significant change in Borough practice.

Subsequent update from Solicitor:

- “This may be viewed as a bit of a change in past practice so it should be discussed and agreed to by Council and appropriately advertised so residents know.”

Proposed Shade Tree Commission Guidelines
for Adoption by Lemoyne Borough Council

1. Shade/Street trees are defined as those trees that are planted between the street and any sidewalk along the streets and highways of the Borough.
2. Shade/Street tree removal and replacement are the financial responsibility of the property owner.
3. No net loss of shade/street trees.
 - A shade/street tree that is removed must be replaced, at property owner's expense.
 - STC will have the authority to grant exceptions based on circumstances.
4. Any new shade/street tree planting must meet the conditions and species requirements of the Lemoyne Borough Appropriate Tree List.
5. All tree plantings and removal within STC jurisdiction must be approved through submission of the Lemoyne Borough Shade Tree Commission Application for Tree Planting or Removal.
6. Any tree planting or removal done without STC approval is subject to an official warning to the property owner from the Borough. Repeated violations are subject to established fines and other penalties per Borough ordinances.
7. Shade/street trees that are damaged by a person or their equipment, must be repaired or replaced by the party causing the damage.
8. Pruning of all shade/street trees is recommended in accordance within agricultural community standards. *(See Shade Tree Commission page on Borough website for resource materials, which includes guidelines provided by Penn State College of Agricultural Sciences Extension Program.)*
9. Trimming of shade/street trees and shrubs, for these specific circumstances, is the financial responsibility of the Borough:
 - Interferes with street lights and street signs.
 - Higher clearance needed for cartway traffic and Borough maintenance equipment (e.g. snow plows, street cleaning).