

BOROUGH OF WEST VIEW ORDINANCE # 1479

AN ORDINANCE OF THE TOWN COUNCIL OF THE BOROUGH OF WEST VIEW, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, AMENDING IN ITS ENTIRETY ORDINANCE NUMBER 190 OF JULY 7, 1915 (Ch. 129 of the 1977 Code) CHAPTER 265 OF THE CODE OF THE BOROUGH OF WEST VIEW AND ESTABLISHING A COMMISSION TO BE KNOWN AS THE "WEST VIEW SHADE TREE COMMISSION"

WHEREAS, Section XXVII of the Borough Code of Pennsylvania authorizes the regulation of trees by means of a WEST VIEW SHADE TREE COMMISSION; and

WHEREAS, the Borough of West View desires to establish a WEST VIEW SHADE TREE COMMISSION, which said Commission shall have all the powers and duties as conferred by said Borough as the same is now in effect or may hereafter amended and supplemented; and

NOW, THEREFORE, be it ORDAINED and it is hereby ORDAINED and ENACTED by the authority of the Town Council of the Borough of West View as follows:

SECTION 1 – Membership; terms of office; compensation; qualifications - The three person Commission shall be appointed by the Town Council of the Borough of West View, comprised of three Borough residents, serving without compensation, and the Town Council directs that two residents shall be appointed for a term of three years and the third resident shall be appointed for a term of two years. Subsequent appointments shall be for a four year term. Vacancies shall be filled by Town Council to any unexpired term and the appointment of a Shade Tree Commissioner from the Commission members shall be of Council's desire and discretion.

SECTION 2 – Custody and Control of trees – The West View Shade Tree Commission shall have full custody and control of the shade trees and other plant materials (grass excepted) within the right-of-way of public streets and highways and in all public areas within the corporate limits of the Borough of West View, with the exemption of the "Green Infrastructure" portion of Center Avenue between Hawthorne and Norwich Avenues.

SECTION 3 – Rules and Regulations – The WEST VIEW SHADE TREE COMMISSION shall prepare and recommend to Town Council rules and regulations necessary to manage shade trees and to institute proper arbor cultural practices. Such regulations shall be adopted by Ordinance.

SECTION 4 – Policy of Commission – It shall be the policy of said Commission to cooperate with the public and property owners insofar as possible at all times, and no planting or removal of any plant materials of a public nature shall be undertaken without notifying the property owner or owners in advance. This shall not include such minor items of work as pruning, bracing, bolting or spraying which may be of a seasonal nature or which may be done by reason of immediate danger to the safety of the public or for proper protection of the trees or shrubs.

SECTION 5 – Prohibited Conduct – No person, firm or corporation shall, without a permit duly issued by the Borough Manager, prune, bolt, spray, brace or paint or remove any tree, shrub or evergreen from within the limits of any public right-of-way, street, highway, park, parkway or public playground within the corporate limits of the Borough of West View nor shall they interfere with the main roots in any way nor place or affix any poster or any other fixture on any tree or tree guard, shrub or evergreen so located, nor remove any device placed to protect the same, nor shall they park a vehicle nor pile any harsh or heavy materials against, nor shall they hang anything from any tree, shrub or evergreen within the limits of any public right-of-way, street, highway, park, parkway or public playground within the corporate limits of the Borough of West View.

SECTION 6 – Interference with passage of air and water to roots – No person, firm or corporation shall place or hereafter maintain upon the ground within the right-of-way of any public street, lane, alley, park or public playground any stone, concrete, brick, mastic paving, gravel or any other substance which might impede the free passage of air and water to the roots of any tree, shrub or evergreen, without leaving a clear space of at least eight square feet surrounding the trunk of the tree or evergreen or the base of any shrub.

SECTION 7 – Protection of trees during building construction – Any person, firm or corporation or his, her, their or its agents or representatives in charge of the erection, repair or demolition of any structure or the excavation for the same, where trees, shrubs or evergreens within the public rights-of-ways, streets, highways, parks, parkways or public playgrounds within the corporate limits of the Borough of West View might be affected, shall not proceed with said work until they have placed adequate guards around all of said trees, shrubs or evergreens that may be so affected.

SECTION 8 – Liability for injuries to trees or shrubs – Any person, firm or employee of any corporation who shall injure in any manner any living tree, shrub or evergreen or ground cover (grass excepted) within the public rights-of-ways, streets, highways or any public property within the corporate limits of the Borough of West View shall be liable for damages and penalties as set forth in Section 21 of this Ordinance.

SECTION 9 – Trees overhanging streets – No person, firm or corporation or his, her, their or its agents or representatives shall maintain any trees, shrubs or evergreens overhanging the traveled or used portion of any public rights-of-ways, streets or highways, unless the same shall have an adequate clearance, wet or dry, to permit pedestrian and/or vehicular traffic. The WEST VIEW SHADE TREE COMMISSION shall have the right to designate, from time to time, what shall constitute an adequate clearance wherever the condition of the site shall warrant a specific clearance for public safety or convenience.

SECTION 10 – Abatement of nuisances – The Mayor or Borough Manager, when so authorized by the Council may, upon receipt of complaint from the WEST VIEW SHADE TREE COMMISSION, require of any owner or occupier of property having any shade trees, shrubs or evergreens within or overhanging the limits of any public right-of-way, street, highway, park, parkway or public playground within the corporate limits of the Borough, which may appear or threaten to be a public nuisance or dangerous to children, traffic or the public, or threaten or appear so to be, to remove or prune the same so as to abate the actual or threatened nuisance or dangerous condition, and on failure of the property owner or owners or occupiers so to do, after reasonable notice, the Mayor or Borough Manager may cause the same to be done, with percentage and costs added as hereinafter provided.

SECTION 11 – Removal of trees restricted – Only such trees or other items of plant material shall be removed from the public rights-of-ways, streets, highways or from public property as shall be considered by the WEST VIEW SHADE TREE COMMISSION to constitute a definite hazard to life or property, a public nuisance or a definite threat to the uninterrupted service of the public utilities within the Borough or because of a change or revision in the planting plans for the Borough trees.

SECTION 12 – Planting of trees restrictions and prohibited – All trees to be planted shall meet with the approval of the WEST VIEW SHADE TREE COMMISSION from the standpoints of a good appearance, longevity, freedom from insect and other diseases or trees of exceptional value in particular locations within the Borough. No tree shall be planted or removed without a written permit. The application for the permit will include information designating the type of tree and the place to be planted or removed. The Commission shall have the authority to approve or disapprove all actions. Prohibited trees along streets, lanes or highways of the Borough of West View or within 50 feet of any public sewer shall hereafter be unlawful. It is prohibited to plant or maintain any Carolina Poplar Tree or Callery Pear Tree within the Borough and the placing, planting or maintenance of the same is hereby declared to be a nuisance.

SECTION 13 – Specifications for trees to be planted –

- A. All trees to be planted within the public rights-of-ways, streets, highways or upon public property within the Borough shall not be less than 1 ½ inches in diameter, six inches above the ground and at least 10 feet in height, unless specifically specified otherwise by the WEST VIEW SHADE TREE COMMISSION for use in some particular location where smaller or balled type of tree may be advisable.
- B. All such trees shall have straight trunks, well developed leaders, tops and roots characteristic of the species or variety to be planted; free from all diseases and insect pests or mechanical injuries and any other objectionable features. Bottom branches shall be 7 feet above the ground, unless otherwise specified by the Commission.

SECTION 14 – Placement and spacing of trees – All trees in public streets and highways of the Borough shall be planted in the center of the strip between the curb and the sidewalk unless otherwise specified or allowed by the Commission and shall be spaced at least 30 feet apart for such trees as hawthorns, dogwoods, flowering apples or cherries or other trees which do not grow to a normal height of over 30 feet. All trees growing to a normal height of 40 feet or over shall have a minimum spacing of at least 40 feet and preferably 60 feet if conditions will allow.

SECTION 15 – Planting and bracing – All trees (unless directed otherwise by the Commission) shall be planted in holes at least 4 feet in diameter whenever space will allow, and the holes shall have a minimum depth of 3 feet with extra side drainage from the bottom in the case of poorly drained or very hard soil areas. At least ½ new topsoil shall be provided, together with 3 shovelfuls of peat moss. Trees shall be triple guyed, unless otherwise ordered by the Commission, with upright stakes at least 2 ½ inches in diameter set 4 feet in the ground and secured to tree with rubber hose and wire at least 5 feet above the ground.

SECTION 16 – Work standards – All work in connection with planting, pruning, spraying, bolting or painting shall be done and performed in accordance with best accepted arboricultural or horticultural practice, including sterilization of shears, pruning saws, etc., after being used on diseased trees.

SECTION 17 – Method of tree removal – When trees are removed, they shall be cut as close to the ground as conditions will permit with a power saw, and all stumps shall be treated immediately with an approved root and stump destroyer.

SECTION 18 – Exceptions to application of ordinance – The foregoing provisions of this article shall not apply where they materially interfere with lawful and public improvements, maintenance or repair of public streets and highways, public parks and public playgrounds, by the Borough of West View, its duly authorized agents and employees or by the county, state or federal governments.

SECTION 19 – Insurance required for employees – No person, firm or corporation nor employee thereof shall be employed by the Borough of West View or its WEST VIEW SHADE TREE COMMISSION in connection with any of the work covered or contemplated under the provisions of this article unless and until he, she, it or they have furnished to the Borough Manager proof of satisfactory workers compensation insurance so as to afford proper protection to the Borough and the Commission.

SECTION 20 – Bond or liability insurance required for work; waiver –

- A. Any person, firm or corporation or employee thereof granted a permit to remove, spray, bolt, brace or prune any tree, shrub, evergreen or ground cover, with the exception of grass, within the public rights-of-way or on public property within the Borough shall post a bond or furnish evidence of the same to the Borough Manager in an amount and form to be approved by the Manager or the Mayor or shall have taken out or take out and maintain satisfactory public liability and property damage insurance in the amount of \$100,000.00 combined CSL.
- B. This provision of this article may be waived by the Borough Manager as far as the bond and insurance are concerned, if and when the Borough Manager shall decide that the work to be performed is not likely to be of an 7y foreseeable injury of a bodily nature to the public or to public or private property, but any person operating under such waiver must furnish evidence to the Borough Manager that he or she carries full public and comprehensive liability of a reasonable nature, as well as workers compensation, and he or she shall waive all rights for compensation or damages by the Borough of West View and to include naming the Borough of West View as an additional insured.

SECTION 21 – Violations and penalties –

- A. Any person, firm or corporation violating any of the provisions of this article shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.00, plus costs of prosecution, and in default of payment of such fine and costs, by imprisonment for not more than 30 days for any single violation of this article, or the Borough may elect to collect such judgments and costs by execution or other process as provided by law. Such fine shall be recoverable as like penalties are by law recoverable. Each succeeding 24 hours that said tree or trees are maintained after the time fixed by this chapter for removal shall be deemed and taken as a new offense.
- B. In lieu of or in addition to the penalty hereinabove provided, the Borough of West View, at its option, may require the person, firm or corporation so injuring or removing any trees, shrubs or evergreens in violation of this article to cause the same to be replaced or the damage caused thereby corrected and, in default thereof, may cause the replacement or correction to be made or done and all costs thereof to be collected by suit which assumes it or the filing of a lien with a record of costs and percentages added as provided by law.
- C. Permit fees shall be set by resolution of the Borough Council and may be adjusted from time to time by resolution adopted by Borough Council.

SECTION 22 – Municipal trees and vegetation / Municipal streets and sidewalks –

- A. Any vegetation abutting any street, alley, cart-way or right-of-way or on an owner's real property which poses an imminent and clear and present danger to persons, real property, personalty or the likelihood of same, violates this article.
- B. Any vegetation abutting any street, alley, cart-way or right-of-way or on an owner's real property that interferes with or is likely to interfere with electricity lines or communication lines violates this article.
- C. Any vegetation abutting any street alley, cart-way or right-of-way or on an owner's real property that interferes with pedestrian or vehicle traffic or which is causing damage to sidewalks, streets, alleys and/or Borough cart-way or right-of-way violates this article.

SECTION 23 – Violations and abatement –

- A. Emergency – whenever any vegetation abutting any street, alley, right-of-way or situate on an owner's real property which has caused a dangerous condition; the property owner must take immediate, safe and proper abatement measures. Upon

failure of the owner to act, or where an owner cannot be contacted, the Borough may cause the abatement to be done and to levy a charge against the property for any cost incurred.

- B. Imminent danger – whenever any vegetation abutting any Borough street, alley, cart-way or right-of-way or on an owner’s real property presents an imminent and clear and present danger of causing damage to persons, real property or personalty, the real property owner will have 48 hours to remove or abate the hazard in a manner acceptable to the Borough of West View. Upon failure of the owner to comply with such notice, the Borough may cause the removal of the hazard and levy a charge against the property for costs incurred.
- C. Obvious Danger – whenever any vegetation abutting any Borough street, alley, cart-way or right-of-way or an owner’s real property presents an obvious or potential danger of causing damage to persons, real property or personalty, the real property owner shall have 45 days to remove or abate the potential hazard in a manner acceptable to the Borough of West View.

SECTION 24 – Notice of violation; failure to respond, issuance of citations –

- A. Notice of violation –
 - 1. The West View Borough Police Department, West View Volunteer Fire Department or designated Code Enforcement Officer will attempt to notify the property owner of any violation of the above.
 - 2. Upon observation or having received an opinion from an arborist or upon information received from the Code Enforcement Officer, shall notify the offending property owner by first class mail of any violation of the above.
- B. Failure of owner to respond –
 - 1. When the property owner does not immediately respond or timely response is not available under a violation of this ordinance, the Borough may take appropriate abatement measures, including pruning, removal and cleaning using West View Borough Employees or a contracted service.
 - 2. If the property owner does not comply with any requirement of this ordinance and any time frame required by the appropriate section, the Borough’s Code Enforcement Officer or any West View Police Department Officer shall issue a non-traffic citation to the real property owner.
 - 3. Any person convicted of violating any section of this article shall pay a fine not exceeding \$1,000.00 and costs of abatement including wages, costs and contracts to third parties, shall be a lien on the owner’s real property as well as collectable jointly and severally against owners by civil suit in addition to actions for collections by the judicial system.

SECTION 24 – Any ordinance or part of ordinance in conflict with the provisions of this ordinance are hereby repealed to the extent of said conflict.

ORDAINED and ENACTED this 10th day of April 2014

BOROUGH OF WEST VIEW

BY: _____

BY: _____

Chief of Police Bruce A. Fromlak, Sec./Mgr.

Barry G. Schell, President of Town Council

EXAMINED and APPROVED this 10th day of April 2014

BY: _____

J. R. Henry, Mayor