ORDINANCE NO. 14863

FILE OF CITY COUNCIL

BILL NO. 100 - 2010

NOVEMBER 17, 2010

AN ORDINANCE

Amends Article 911, Shade Trees to more specifically outline the powers and duties of the Shade Tree Commission.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

SECTION ONE: That Article 911, Shade Trees be amended to read as follows:

ARTICLE 911
SHADE TREES

911.01 Definitions
911.02 Shade Tree Commission
911.03 Permits
911.04 Prohibited Activities
911.05 Trees in Public Land or in a Public Right of Way
911.06 Trees on Private Property
911.07 Licensing System
911.08 Compliance with Zoning Ordinance
911.09 Shade Tree Fees
911.99 Penalty

911.01 DEFINITIONS

Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular. As used in this Article certain terms are defined as follows:

1. **ADA** - the Americans with Disabilities Act of 1990

2. **Arborist License** - the City license issued under the provisions of Article 911.07.

3. **Caliber** – for existing trees, the diameter of a tree trunk measured at a point four and one-half (4 1/2) feet from the ground surface. For all new landscape trees planted in accordance with any City ordinance, the diameter of a tree trunk measured at a point six (6) inches above the ground surface.

4. **Champion Tree** – any tree designated by the Superintendant of Parks as such, due to unique qualities of size, location, age or other significant factors.

5. **City** – the City of Allentown, Pennsylvania.

6. **Commission** means the Shade Tree Commission of the City of Allentown.

7. **Cost of Cure** – the total cost for the replacement of a given tree with one of equal size and condition as calculated by the standards of the International Society of Arboriculture (ISA).

8. **Crown Density** – the ratio of the size of live branches in a tree to the total space occupied by the tree crown.

9. **Diameter Breast Height (DBH)** – the standard height above the surface of the ground for measuring the circumference, diameter or radius of a tree. For all existing trees, the diameter breast height is set at four and one-half (4 1/2) feet.

10. **Emergency Work** – any tree service performed for the purpose of preventing or mitigating damage to any trees or other property due to a sudden or unexpected tree hazard that threatens to or actually does cause such damage.

11. **Historic Tree** – any tree with a significant and documented historic event associated with such tree or with the property upon which the tree is located.

12. **Improvements Agreement** – any contract between the City and any property owner, developer or their representative or agent which memorializes the rights and obligations of the parties with respect to the installation of any property improvements required by any City Ordinance.

13. **Irrevocable Protective Covenant** – a binding obligation, running with the land, in favor of the City and binding the property owner and all successors in interest to maintain and protect the trees specified in the covenant.

14. **Land Development** –

a. The improvement of one (1) lot, or two (2) or more contiguous lots, tracts or parcels of land for any purpose involving:

1). A group of two (2) or more buildings, or

2). The division or allocation of land or space between or among two (2) or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups or other features.

b. A subdivision of land; land development shall include but not be limited to the constructing, installing, placing, planting or building of surface and/or subsurface structures, utility lines, shopping centers and malls, golf courses, residential structures, industrial complexes, schools, roads, parking areas or any other similar activity.

15. **Landscape Tree** – a single stemmed tree of 2.0"– 2.5" minimum caliber, with normal specie characteristics, no co-dominant stems, free of insects and disease with a root ball meeting the current Nursery Standards for the size of the tree. The lowest branch shall have a minimum clearance of seven (7) feet above the surface of the ground.

16. **Large Tree** – any tree with a height of forty-five (45) feet or more.

17. **Living Hazard** – any tree that is so structurally weakened by any cause, that all or any significant part of tree is likely to fall.

18. **Lot** – A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

19. **Lot Line** – a line dividing one lot from another, from a street or from any public place.

20. **Maintenance** or **maintain** ~~means~~ - clipping, ~~trimming~~ pruning, fertilizing, spraying, treating for disease, insects or injury and any similar ~~acts~~ work done to promote health, growth or beauty to trees.

21. **Medium Tree** - any tree with a height of at least thirty (30) feet, but less than forty-five (45) feet.

22. **Nuisance** – the following are declared to be a nuisance under this Article:

a. Any physical condition regarded as a public nuisance or attractive nuisance at common law.

b. Any condition, which interferes with the normal use or enjoyment of any property or endangers human health, safety or welfare.

c. Any insect or disease infestation.

d. Any discharges, flowers, fruits, berries or other seeds which create noxious odors, or other offensive conditions.

e. As further described in Title 53 P.S. Municipal and Quasi-Municipal Corporations, Part V. Cities of the Third Class, Chapter 81, Third Class City Code, Article XXIII, Public Health, B Abatement of Public Nuisances **§ 37320. Definition**

23. **Person** ~~includes individuals,~~ - any natural person, firm, partnerships, associations ~~and~~, corporations~~.~~ , company or any other organization of any kind.

24. **Planting** means putting or setting into the ground. (12241 §1 4/6/77)

25. Planting Strips – the unpaved area between the sidewalk and the curb.

26. **Public right of way** ~~means~~ – the strip of land between property lines set aside for public use or ownership as a street, alley, crosswalk, easement or ~~otherwise~~ other facility.

27. **Public Trees** – any shade or ornamental trees located within any right-of-way.

28. **Remembrance Tree** – any documented tree that was planted as a memorial to any person or significant event.

29. **Right-of-Way** – The width of a strip of land between property lines set aside for public or private use or ownership as a street, alley, crosswalk, easement, or other facility.

30. **Shade tree**~~, unless otherwise specified, includes all~~ - any trees, shrubs, and woody vegetation in ~~the~~ a public right of way.

31. **Small Tree** - any tree with a height of less than thirty (30) feet.

32. **Street** – A right-of-way dedicated to the public for the movement of traffic with space for utilities and providing access to abutting properties.

33. **Street Tree Management Plan** – a written plan that defines future objectives for sustaining the street trees. Such plan shall be derived from collected field data and inventories of existing trees, shall provide specific recommended arboricultural practices for the various different areas and growing conditions found in the City and shall seek to identify and maintain the benefits of the individual and collective trees in the urban forest.

34. **Street Line** – A line which separates the right-of-way from the lot upon which the street abuts.

35. **Tree Protection Zone Plan** – a plan designed to protect designated tree root structures, trunks and crowns from damage during construction or earth moving activity in proximity to the protected tree. At a minimum, such plan will provide for the protection of the entire tree structure within the tree drip line by specifying any necessary fencing, machinery restrictions and procedures to prevent soil compaction.

36. **Tree Value** –systematic approach to secure a value by using four major factors: size, species, condition, and location. With the four factors established a Cost of Cure or Trunk Formula can be implemented to the result of a value for a tree. Formulas are based upon "Guide for Plant Appraisal (9th edition) by the Council of Tree and Landscape Appraisers and the ISA.

37. **Shade Tree Fees** – the fund specifically established as a separately budgeted line item for the purposes set forth in this article.

38. **Urban Forest** – the aggregate population of all trees contained with the limits of the City.

39. **Urban Forester** – the person designated by the Superintendant of Parks to enforce the provisions of this Article.

40. **Urban Forestry Management Plan** – a written plan that defines future objectives for sustaining the urban forest. Such plan shall be derived from collected field data and inventories of existing trees, shall provide specific recommended arboricultural practices for the various different areas and growing conditions found in the City and shall seek to identify and maintain the benefits of the individual and collective trees in the urban forest.

911.02 SHADE TREE COMMISSION

A. Membership

1. The Shade Tree Commission is hereby created in accordance with the Municipal Planning Code and shall consist of a total of eight (8) members, five (5) appointed Commissioners and three (3) ex officio Commissioners. ~~three (3) City residents who are knowledgeable of shade trees and their maintenance. Initially, three (3) Commissioners shall be appointed to serve for three (3) years, one (1) Commissioner to serve for four (4) years, and one (1) to serve for five (5) years. On the expiration of the term of any Commissioner, he shall be reappointed or a successor shall be appointed to serve for a term of five (5) years. Commissioners shall be appointed by the Mayor with the advice and consent of Council. Ex-officio members of the Shade Tree Commission shall be the Mayor, the Park Superintendent, and one~~

~~(1) member of Council to be designated by the President of Council. The Shade Tree Commission shall promptly notify the Mayor of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. (14622 §1 8/26/08)~~

2. The appointed Commissioners shall be five (5) City residents who are knowledgeable in the subject of shade trees and their maintenance.

3. The normal term of office for an appointed Commissioner is five (5) years. The initial Commissioners shall be appointed to staggered terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years respectively. On the expiration of the term of any Commissioner, he shall be reappointed or a successor shall be appointed to serve a new term of five (5) years.

4. Commissioners shall be appointed by the Mayor with the advice and consent of Council.

5. *Ex-officio* Commissioners shall be the Mayor (or his designee), the Park Superintendent, and one (1) member of Council to be designated by the President of Council.

6. The Shade Tree Commission shall promptly notify the Mayor of any vacancies, which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.

7. Any Commission member may be removed at the discretion of the Mayor with the advice and consent of Council.

B. Organization

1. The Commission shall elect from its appointed Commissioners ~~own membership~~ a chairman who shall serve an annual term and who may succeed himself.

2. For the conduct of any meeting and the taking of any action, a quorum shall not be less than a majority of the voting members of the Commission. Majority vote of the quorum is necessary for the taking of action. The ex-officio members shall not have a vote in ~~Shade Tree~~ Commission issues nor be counted as part of the quorum.

3. The Commission shall keep full records of its business and shall submit a report of its activities to the Mayor and City Council at least once a year.

4. The Commission shall have the power to establish its own procedural rules, not inconsistent with this Article. Such rules may provide for the internal governance of its operations, to include provisions for a secretary or other officers.

~~C. Removal of Members **Powers and Duties**~~

~~Any Commission member may be removed at the discretion of the Mayor with the advice and consent of Council.~~

~~D. Functions~~

C. Powers and Duties

1. The Commission shall act as an advisory body to the Mayor on all matters concerning shade trees within or encroaching upon public land or ~~the~~ public right of way. The Mayor shall consider the advice of the Commission on matters concerning the application of this Article. The Commission shall carry out any duties and responsibilities conferred upon it by the Mayor including those herein conferred.

~~1~~ 2. The City, having exclusive custody and control of all shade trees in public lands and the public right of way, and may plant, remove, maintain and protect such shade trees. The Commission shall give recommendations and advice as to species selection, planting, maintenance, preservation or removal of trees on all public lands and public rights of way.

~~2~~.3. The Commission shall develop and establish an ~~Official Street and Sidewalk Planting Program~~ Urban Forest Management Plan to determine the streets and sidewalks to be planted as well as the varieties to be planted thereon, and shall have the right to establish rules and regulations pertaining thereto with the consent and advice of the Mayor. It is the responsibility of the Park Superintendent, or his designee, to enforce the regulations of the ~~Shade Tree~~ Commission.

~~3~~.4. ~~It shall be the duty of the~~ The Commission ~~to encourage and advise~~ shall require proper planting and maintenance of trees by private persons and concerned agencies to advise private persons and concerned agencies to plant according to the ~~Official Street and Sidewalk Planting Program~~ Urban Forestry Management Plan when planting shade trees in the public right of way and/or public lands. ~~For that purpose the~~ The Commission shall ~~furnish~~ make public advice on the desirable ~~kinds and types~~ species and cultivars of trees, methods of planting and maintaining trees and other educational information about trees.

~~4~~. 5. The Commission shall ~~also~~ work with all other concerned agencies in the planning of trimming, planting, transplanting and removal of shade trees in public lands and public right~~s~~ of way.

6. In order to document and illustrate the benefits of the Urban Forest, the Commission shall pursue, update and maintain a current inventory of the Urban Forest.

7. Plan Review

a. The Commission shall review the planting plan of shade trees within any new sub-division and/or land development for conformity with the Urban Forestry Management Plan.

b. All such planting shall be done in accordance with the planting specifications governing shade trees contained herein and such regulations as may be issued under the provisions of this Article.

c. The Shade Tree Commission shall review and provide recommendations regarding new subdivisions and/or land developments to the Planning Commission.

d. The Shade Tree Commission shall review and provide recommendations regarding all proposed work within public lands or the public right-of-way including, but not limited to, sidewalk construction and replacement, utility installation, replacement or repair and driveway construction. Such review shall be coordinated by allied city departments such as Engineering, Public Works, Building and Zoning.

8. The Commission shall have the power to issue rules and regulations regarding the details of the administration and enforcement of the powers and duties granted by this Article. Such regulations shall include recommending the fees charged for all permits issued under this Article.

~~E. Notice that Work is to be Performed~~

~~Any property owner directly affected by planting, transplanting or removal of shade trees in the public right of way shall be given ten (10) days advance notice by mail of the time and place of the meeting at which such work is to be considered.~~

D. Notification that Work is to be Performed

1. The Commission shall provide at least ten (10) days written notice to any property owner directly adjoining any scheduled planting, transplanting or removal of shade trees in public lands or public right-of-way.

2. The Superintendant of Parks may declare work done to rectify a public nuisance caused by weather, accident or any hazardous defects within a tree to be emergency work. In the case of emergency work, written notice to adjoining property owners is not required.

~~F. New Subdivisions~~

~~The Shade Tree Commission shall review the planting plan of street trees within the planting strips of any new subdivision for conformity with the Official Street and Sidewalk Planting Program. All such planting shall be done in accordance with the planting specifications governing trees in planting strips as provided by the Commission.~~

~~A landscape plan of the entire subdivision, including a foundation landscape plan, shall be submitted by the developer for review by the Shade Tree Commission. The Shade Tree Commission shall review and provide recommendations regarding the new subdivision landscape plan and forward the landscape plan to the Planning Commission for approval.~~

~~G. New Streets~~

~~Any proposed change in width in a public street right of way or any proposed street improvement shall, where feasible, include allowances for planting strips. Plans and specifications for planting such areas shall be integrated into general plan of improvements, and it shall be the duty of the City Engineer to coordinate the design of such improvements with the Shade Tree Commission, prior to completion of final overall plans. (12241 §1 4/6/77)~~

E. Subdivisions and Land Development

1. All Land Developments, Subdivisions and other development applications shall comply with the provisions of this Article.

2. Pursuant to the City of Allentown Codified Ordinance Section 1375.03 I 3 and Section 1375.04 E 9, all subdivision and land development plans approved in the City of Allentown shall be compliant with the provisions of this Article and the regulations issued under said Article.

F. Public Works within Public Lands or a Public Right-of-Way

1. Any proposed change in width in a public street right-of-way or any proposed street improvement shall, where feasible, include allowances for shade trees.

2. Plans and specifications for planting such areas shall be integrated into the general plan of improvements in compliance with the standards set forth in this Article and the regulations issued under this Article.

3. It shall be the duty of the City Engineer to coordinate the design of all such street improvements with the Shade Tree Commission, prior to completion of the final plans.

G. Private Works within the Public Right-of-Way

1. Any privately conducted modifications, alterations, renovations or construction within the public right-of-way shall be subject to review by the Commission for compliance with the standards set forth in this Article and the regulations issued under said Article.

2. It shall be the duty of the Director of Community and Economic Development to include in the permit review process a review for compliance with the standards set forth in this Article and the regulations issued under said Article.

911.03 PERMITS

A. No person, without first obtaining a permit from the Superintendent of Parks, shall:

1. Prune, spray, plant, remove or cut any shade tree in public lands or a ~~the~~ public right of way.

~~2. Cut, break bark or otherwise injure or disturb any such tree, tree guard or support thereof;~~

~~3.~~ 2. Attach a guy rope, cable, electric wire or other fixture to any ~~such~~ tree, tree guard or support thereof in public lands or a public right-of-way. Temporary attachments shall be allowed if a permit is issued. The temporary attachments shall cause no harm to the tree and there shall be a prescribed timetable for removal of the temporary attachments.

~~4. Fasten or maintain any sign on any such tree or tree guard support thereof;~~

~~5. Lay any pavement within an area of twelve (12) square feet around the base of the trunk of any tree on public right of way or deposit any stone, gravel, cement, lumber or other material in such a way as to obstruct the free access of air and water to the roots of any tree in such public right of way;~~

~~6. Allow a tree on public right of way to be injured or removed during the erection, repair, alteration or removal of any building or structure. No person in charge of such erection, repair, alteration or removal shall leave any tree on the public right of way in the vicinity of such building or structure without such good and sufficient guards or means of protection as shall prevent injury to the tree, arising out of or by reason of such erection, repair, alteration or removal;~~

~~7. Cause or allow any boiler, heater, machine or device generating fumes, fires, gas, smoke or vapor to remain under or adjacent to any tree in or on any public highway, street or avenue, or cause or allow it to be done.~~

3. Excavate, trench, tunnel, or bore, within the drip-line of any tree. Permit applications for such work will contain at a minimum an excavation plan indicating the tree protection zone and maintenance precautions to be used during construction.

4. Install lighting within tree crown. Any permit issued for tree crown lighting shall include a specified time of installation and time of removal, not to exceed one (1) calendar year.

~~B. All work required to be done under any permit issued hereunder shall be completed within the time period specified but not to exceed sixty (60) days from the date issued, unless the time period has been extended by the Superintendent of Parks. A permit shall be secured not less than five (5) days in advance of the time the work is to be done. The Bureau of Parks shall also be notified within five (5) days of completion of the work to allow for inspection.~~

B. The Commission shall by regulation set the application procedure, technical requirements and recommend fee schedules for all permits issued under this Article and the regulations issued under said Article.

C. Permit Time Requirements

1. A permit shall be secured not less than five (5) days in advance of the time the work is to be done.

2. All work done under any permit issued under this Article shall be completed within the time period specified on the permit, not to exceed sixty (60) days from the date issued.

3. The Superintendent of Parks may extend the duration of the permit for good cause shown.

4. The Superintendent of Parks or his designee shall be notified within five (5) days after completion of the work to allow for inspection.

~~C~~.D. A person who is refused a permit may make an appeal to the ~~Shade Tree~~ Commission in writing within twenty (20) days following the denial. ~~If permission is still not granted, an appeal may then be made to the Mayor. (12241 §1 4/6/77)~~ Following a notice and hearing before the Commission, the Commission shall issue a written decision within twenty (20) days. Further appeals of Commission decision shall be taken under the provisions of the Local Agency Law, 2 Pa.C.S.A. § 751 *et. seq.* to the court of common pleas of Lehigh County.

911.04 PROHIBITED ACTIVITIES

No person under any circumstances shall:

1. Cut, break bark or otherwise injure or disturb any tree, tree guard or support thereof in public lands or a public right-of-way;

2. Fasten or maintain any sign on any tree or tree guard support thereof in public land or a public right-of-way;

3. Reduce the size of an existing tree pit, planting strip, or root zone of an existing tree in public land or the public right-of-way.

4. Deposit any stone, asphalt, gravel, cement, lumber or other material in such a way as to obstruct the free access of air and water to the roots of any tree in public land or a public right-of-way or cause compaction of any soil in public land or a public right-of-way;

5. Allow any tree in public land or a public right-of-way to be injured or removed during the erection, repair, alteration or removal of any building or structure. No person in charge of such erection, repair, alteration or removal shall leave any tree in public land or in a public right-of-way in the vicinity of such a building or structure without such good and sufficient guards or means of protection as shall prevent injury to the tree, arising out of or caused by the erection, repair, alteration or removal. In all such cases, a tree protection zone plan shall be required as a part of the building permitting process.

6. Cause or allow any boiler, heater, machine or device generating fumes, fires, gas, smoke or vapor to remain under or adjacent to any tree in public land or in a public right-of-way, or cause or allow it to be done.

~~A.~~ 7. Fasten a bicycle, carriage, animal or motor vehicle of any kind to any shade tree, tree guard or support thereof;

~~B.~~ 8. Authorize or procure any gas, hot water, steam brine water, oil, dye or other substance ~~deleterious~~ harmful to tree life to ~~lie~~, life or health or to lay, pour, flow, leak or drip on or into the soil about the base of a tree in any public ~~highway, street or avenue~~ land or public right of way;

~~C.~~ 9. Build or kindle a fire near to any tree on any public land or public right of way, so as to endanger the trunk, limbs, ~~or~~ foliage or roots of such shade tree;

~~D.~~10. Interfere, ~~or~~ cause, ~~or~~ authorize or procure any interference with the agents or employees of the City while they are engaged in:

a. ~~or about the~~ The planting, cultivating, mulching, pruning, spraying or removing of trees, or

b. removing stone or cement sidewalk or other materials ~~of~~ or substances in the open ground maintained ~~as may be necessary~~ for the protection and care of any shade tree ~~in accordance with the requirements set forth in the section dealing with the area of open ground to be maintained about the base of the trunk of each shade tree~~ in public land or the public right of way~~; or.~~

~~E.~~ 11. Attach any advertisements to any tree or shrub in any ~~street, highway, avenue or any~~ public land or public right of way.(12241 §1 4/6/77)

911.05 TREES IN PUBLIC LAND OR IN A PUBLIC RIGHT OF WAY

A. ~~Notice to Remove Tree~~ **Tree Requirements:**

~~The owner of a property abutting a public right of way and having a shade tree growing in such public right of way, which is deemed by the Superintendent of Parks to be a danger to the life, health, safety or property of the public, or which is afflicted with any contagious disease or insect infestation, will be requested by mail by the City to remove such tree within a time period specified. If the property owner neglects or refuses to remove such tree as required by this Section within the time period specified in such notice, the City may cause such removal to be done at the expense of the property owner; and the entire~~

~~cost thereof shall be paid by the property owner within sixty (60) days. If not paid by the property owner within sixty (60) days, a lien upon such premises and a claim therefore shall be filed and collected by the City Solicitor in the same manner as municipal claims are filed and collected.~~

1. **General** - Shade trees shall be planted within the public right-of-way of all subdivisions, land developments, and improved properties including land abutting existing streets as required herein. The type and spacing of shade trees shall adhere to this Article and regulations issued under said Article. Shade trees shall be planted by the developer or owner in accordance with the approved plan and within the time period specified by the improvements agreement.

2. **Types of trees permitted** – Trees shall be of nursery stock quality of a species approved by the Shade Tree Commission, grown under the same climatic conditions as the subject property. Site locations, land use, topography, natural features and historical features shall be considered by the developer or owner and the Commission in selecting and approving species. Guidelines for selection shall be specified by regulation.

3. **Quality and Size** – Trees shall be of symmetrical growth, single stemmed, free of insect pests and disease, and deemed durable by regional nursery standards. Trees shall measure 2 (two) to 2-1/2 (two and one-half) inches caliber measured six (6) inches above grade, shall have a root ball to the approved Nursery Standards for the size of the tree with visible root flare upon removal of degradable burlap and twine. Trees shall have a minimum clear branching height of 7 (seven) feet above grade level at the time of planting. The Commission may modify the size requirements of trees upon presentation of unique and particular circumstances.

4. **Quantity and Location of street trees** – In all subdivisions, land developments and or improved properties, shade trees shall be planted within the street right-of-way at a quantity of not less than 1 per 50 feet of frontage on any public right-of-way, but in no case shall the required number of trees be less than one (1). Existing Shade Trees within the right-of-way may count toward this requirement provided that they are appropriate for the site/development, comply with all other aspects of this ordinance, and can be adequately protected during construction. The spacing of trees may vary depending on species and location specifics but in no case shall be more than fifty (50) feet on centers with exceptions relative to vehicular sight distance, under ground utility conflicts, ADA requirements or other circumstances determined to be necessary by the Shade Tree Commission. In the event the required number of trees cannot be planted due to circumstances identified in this section, the developer or owner shall be responsible for one of the following:

a. Install the required number of shade trees along a nearby right-of-way.

b. Install the required number of shade trees on private portions of the property with irrevocable protective covenants acceptable to the Commission.

c. A combination of the two options above or;

d. Pay the City of Allentown the equitable cost fee. Such funds to be used exclusively for new tree planting within the City as directed by the Commission.

5. **Tree Protection** – Before any earthwork, construction work or approved tree removal shall commence, in connection with any subdivision, land development or land improvement, fencing or guards shall be placed around all existing shade trees to be protected to insure that there is no unnecessary encroachment with the tree protection zone by changing grade, trenching, stockpiling of building materials or topsoil, parking and/or circulation of vehicles or construction equipment contributing to the compaction of

the soil and roots. Such tree protection shall be accomplished with the specifications as outlined in the Rules and Regulations.

6. **Tree Replacement** – The developer or owner shall make every effort to preserve and maintain all existing shade trees within the right-of-way and develop site designs and plans in order to accommodate such trees. If a tree is approved for removal it must be replaced on a one-for-one basis.

a. Any shade tree(s) or tree(s) encroaching into a public right-of-way or on public property shall be preserved if it can be classified as:

1). A **Historic Tree,** with a historic background, or

2). A **Champion Tree,** with significant features of the species, including size, age or specie traits or

3). A **Remembrance Tree,** planted as a memorial to an individual or event.

b. Only upon exhausting all remedial arboriculture practices under ISA ANSI A300 or the equivalent best design practices, will a removal permit will be issued for the removal of a tree protected under section 911.05A6a.

c. **Approved removal** – if the removal of existing shade trees was shown on an approved plan, as a tree to be removed, and if proposed replacement trees were shown on such approved plan, then the total number of replacement trees shall be not less than the total number of removed trees. For each existing shade tree approved for removal, the developer or owner shall provide and install one shade tree under the requirements of this Article.

d. **Unapproved removal** – if an existing shade tree is removed without either prior approval as part of an approved plan, or a property owner does not possess either a valid permit for such tree removal, or a valid notice authorizing such tree removal, then:

1). The owner shall be required to replace such trees as provided herein.

2). The replacement of trees shall be governed by a rule of replacing each inch of tree diameter removed with one inch of replacement tree diameter, such that for each inch of existing shade tree removed, as measured 4.5 feet above grade, in violation of this chapter or in violation of a plan approval, the developer or owner shall provide and install shade trees with a total sum of the diameters, as measured 4.5 feet above grade, equivalent to the diameter of the tree or trees removed.

3). The Superintendent of Parks or his designee shall make all determinations of diameter for any trees removed without authorization.

4). If the tree removed in error/violation is not available for measurement and if the tree in question cannot be identified by locale and if its size was not previously identified, the diameter will be established as twenty-four (24) inches.

e. In the event the required numbers of replacement trees cannot be planted due to circumstances relative to vehicular sight distance, under ground utility conflicts, ADA requirements or other circumstances determined to be necessary by the Shade Tree Commission, the developer or owner shall be responsible for one of the following:

1). Install the required number of shade trees along a nearby right-of-way.

2). Install the required number of shade trees on private portions of the property with irrevocable protective covenant.

3). A combination of the two options above.

4). Pay the City of Allentown the equitable cost fee. Such funds to be used exclusively for new tree planting within the City as directed by the Commission.

7. **Inspection** – Upon completion of any required tree installation, developer or owner shall submit a written request for a final inspection to the Superintendent of Parks or designee. The inspector shall insure that all trees are installed per the issued permit or the approved plan and will update the tree inventory.

B. Care Provisions

1. The owners of any property abutting a public right of way ~~and having~~ that has shade trees growing in ~~such~~ the public right of way, shall trim ~~or cause such trees to be trimmed of all branches interfering with free access on the public right of way to a~~ each tree within the current arboricultural standards (ANSI A300) or cause such trees to be pruned of all branches interfering with the public right-of-way. At a minimum, such trees shall be trimmed to maintain a minimum height of~~, at least,~~ ten (10') feet above the ~~sidewalk~~ right of way and ~~fourteen (14')~~ sixteen (16) feet above the street, highway or avenue, or higher ~~if deemed necessary for an~~ to maintain a clear sight triangle or other publicly necessary unobstructed view ~~of the public~~.

2. At the time of planting, all trees shall have a minimum branch clearance of seven (7) feet from the ground to the lowest branch. During the next five (5) years from date of planting, the property owner shall perform careful crown and structure pruning not to exceed twenty-five (25) percent of crown mass at any one pruning, to achieve a minimum height of ten (10) feet above right-of-way and sixteen (16) feet above streets, highways or avenues or higher if required to maintain a clear sight triangle or other publicly necessary unobstructed view.

3. If any property owner neglects or refuses to ~~trim~~ prune any shade tree as required by this ~~Section~~ Article upon notice by mail from the City ~~within the time limit specified on the notice~~ and after the expiration of the time limit specified on the notice, the City may cause such ~~trimming~~ pruning to be done at the expense of the owner. ~~and~~ The entire cost thereof shall be paid by the property owner within ~~sixty (60)~~ thirty (30) days. If not paid by the property owner within ~~sixty (60)~~ thirty (30) days, a lien upon such premises and a claim therefore shall be filed and collected by the City Solicitor in the same manner as municipal claims are filed and collected.

C. Notice to Remove or Remedy

1. The Superintendant of Parks shall provide a Notice to Remove or Remedy by first class mail to the owner of any property abutting a public right-of-way that has a shade tree growing in the public right-of-way, which is determined by the Superintendent of Parks or designee to be a risk to the life, health, safety or property of the public, or which is afflicted with any contagious disease or insect infestation, or otherwise is a nuisance.

2. The Notice to Remove or Remedy shall include:

a. The property address and owner's name as shown on the City's property ownership records.

b. A brief description of the condition that requires a remedy.

c. A time period for compliance, not to exceed 30 days.

d. A statement that the Notice may be appealed to the Commission along with contact information for initiating an appeal.

e. A statement that failure to comply may result in criminal or civil action and the completion of the work required, by the City, with the costs to be collected from the property owner.

f. A list of all current City Arborists' Licenses as issued under Section 911.07.

3. The Superintendent of Parks or designee shall be authorized to grant reasonable time extensions upon request.

4. If the property owner neglects or refuses to remove or remedy such tree as required by this Section, within the time period specified in such notice, the City may cause such removal to be done at the expense of the property owner; and the entire cost including an administration fee of $300.00 plus $5.00 per day non compliance penalty fee thereof shall be paid by the property owner within thirty (30) days. If not paid by the property owner within thirty (30) days, a lien upon such premises and a claim therefore shall be filed and collected by the City Solicitor in the same manner as municipal claims are filed and collected.

5. Any removed tree shall be replaced in accordance with Article 911.05, Section 6. Tree replacement will be at the at the property owner's expense as part of the cost of compliance.

~~C~~.D. Liability for Damage

1. Any person who inflicts damage to a tree in public land or in a public right of way, either willfully or negligently, shall be liable to the City for costs of professional care in the treatment of the tree wounds.

2. If the tree dies within ~~one (1)~~ three (3) growing season as a direct result of such damage, or if the damaged tree ~~shall be~~ is rendered unsuitable and condemned by the City, then the person responsible shall pay:

a. the current appraised tree value,

b. all costs ~~of~~ for the removal of ~~such~~ the tree and its stump,

c. ~~and~~ all costs of replacing ~~it~~ the tree with a young tree of approved specifications,

d. all costs of any required maintenance including watering, stake removal, fertilizing and pruning.

3. All work under this subsection ~~Such work~~ shall be performed by the City or contracted by the City, ~~and the~~ with all costs assessed to the responsible person.

4. If the damage described above shall be willful, then the responsible person shall also be subject to the penalties hereinafter provided for violations of this Article. (12241 §1 4/6/77)

911.06 TREES ON PRIVATE PROPERTY

A. Any shade tree or parts thereof growing upon private property but overhanging or interfering with the use of any street, highway, avenue or any public right of way in the City, and which, in the opinion of the City, endangers the life, health, safety or property of the public, is hereby declared a public nuisance.

B. A Notice of Public Nuisance shall be sent by first class mail to any property owner declared to have a public nuisance by the Superintendent of Parks or the designee. Such Notice shall comply with the requirements set forth in Section 911.06 C 2.

C. If the owner of any shade tree declared to be a public nuisance neglects or refuses to correct or remove the shade tree upon notice by mail from the City within the time limit specified on the notice, not to exceed thirty (30) days, the City may cause such correction or removal to be done at the expense of the owner, plus penalties and an administrative cost of $300. ~~and~~ The entire cost thereof shall be paid by the property owner within ~~sixty (60)~~ thirty (30) days. If not paid by the property owner within ~~sixty (60)~~ thirty (30) days, a lien upon such premises and a claim therefore shall be filed and collected by the City Solicitor in the same manner as municipal claims are filed and collected. (12241 §1 4/6/77)

911.07 LICENSING SYSTEM

A. All pruning, cutting, removal, spraying, fertilizing and ~~surgery~~ arboricultural procedures to trees and shrubs in the public right of way shall be done only by a person holding a City Tree Surgeon's License, except as hereinafter provided for property owners.

~~A. Tree Surgeon's License~~

~~This license shall be issued to those persons who have passed an examination prepared by and administered by the City of Allentown. A yearly license fee as required herein is to be established in accordance with the requirements of the Administrative Information Manual (AIM), shall be levied for each license. Licenses shall be renewed yearly without examinations; however, the City of Allentown may revoke, suspend, or refuse to renew any license or require re-examination of any license if, in the opinion of the Shade Tree Commission, the licensee has not performed in a satisfactory manner. Upon completion of any work done under permit, the Shade Tree Commission shall be notified and a designee of the Commission will inspect the work done. (12653 §1 4/17/85)~~

B. Arborist's License

1. A City Arborist's License (License) shall only be issued to individuals who have passed the required examination prepared by and administered by The International Society of Arboriculture (ISA) and are thereby certified as ISA Certified Arborists.

2. Each License shall bear a unique City Arborist Number and the name and street address of the License holder.

3. All applicants for a License shall make application and pay a fee. The Commission shall set the manner of application and fee schedule by regulation.

4. A yearly license fee shall be levied for each License. Licenses shall be renewed yearly upon presentation of current ISA certification.

5. The Commission may revoke, suspend, or refuse to renew any License, if the Licensee has failed to meet the professional standards of ISA Certified Arborists, lost ISA certification for any reason,

failed to perform to the current ANSI A300 Standards and ANSI Z133 Safety Standards or for other good cause shown.

6. At the time of adoption of this ordinance current Tree Surgeon Licenses shall remain valid until time of renewal or six (6) months from the time of this ordinance's adoption, whichever is greater.

~~B.~~ C. Property Owner~~'s Privilege~~ Exemption

1. Minor tree work may be done by an individual property owner to trees or shrubs planted in the public right of way adjacent to his property, provided he has obtained ~~prior written approval~~ a permit from the Commission.

2. The Commission shall advise the property owner whether or not the proposed work is minor. The property owner shall comply with accepted pruning standards ANSI 300.

~~C.~~ D. Additonal ~~Rules and~~ Regulations

1. The ~~Shade Tree~~ Commission may adopt reasonable rules and regulations governing the conduct of business by License holders.

2. Such regulations shall protect ~~licenses directly affecting~~ the public health and safety, and comply with all other State, Federal, or other lawful regulatory requirements. ~~may require the use of such safety appliances, apparatus, and equipment as are reasonably necessary for the protection of the workmen engaged therein, the public, and public and private property. All spraying of trees or shrubs in the public right of way shall be done only with approved materials specified by the Shade Tree Commission.~~

3. No ~~licensee~~ License holder ~~hereunder~~ shall violate, or ~~fail,~~ neglect ~~or refuse~~ to comply with any ~~of~~ such rules or regulations.

~~D.~~ E. Name and ~~Address to be Displayed~~ City Arborist Number on Vehicles and Equipment

1. ~~All~~ Each automobiles, trucks, ~~trailers~~ or other vehicles operated by any License holder ~~licensee for the transportation of the equipment~~ used ~~by him~~ in such business, ~~and all self-propelled, drawn or towed equipment used by any licensee in such business,~~ shall have the name and ~~address~~ City Arborist Number of such ~~licensee~~ License holder displayed on both sides thereof in plain and legible figures and letters not less than three (3") inches in height, which shall be kept in such condition as to permit the same to be readily distinguished and read at a distance of at least sixty (60') feet. It shall be unlawful and ~~a~~ grounds ~~of~~ for revocation of ~~his~~ the license for any ~~licensee~~ License holder to operate any such vehicle ~~or cause any such equipment to be operated or drawn or towed~~ upon the streets, alleys or other public ways ~~or places~~ within the City without such designation being so displayed thereon. (12241 §1 4/6/77)

911.08 COMPLIANCE WITH ZONING ORDINANCE

All planting of shade trees in public right of way shall be in compliance with the Zoning Ordinance or any amendments thereto. (12241 §1 4/6/77)

911.09 ~~PENALTY~~ SHADE TREE FEES

A. There shall be established a unique budget line number, entitled 'Shade Tree Fees' for the purposes set forth in this Article.

B. The 'Shade Tree Fees' line item shall be administered by the Commission exclusively in the manner and for the purposes set forth in this Article and the regulations adopted under said Article.

C. The 'Shade Tree Fees' line item shall be the repository for all funds received from:

1. Permit Fees and Inspection fees for Permits issued under this Article;

2. Initial and Annual City Arborist's License fees;

3. Fines, penalties and restitution collected for violations of this Article;

4. Administrative Fees collected for administering the provisions of this Article;

5. Damages collected under Section 911.05 D;

6. Equitable Cost Fees;

7. Grants, gifts and bequests given to the City for any purpose relating to trees.

D. The 'Shade Tree Fees' line item shall be expended only for:

1. Reimbursement to the City for the expense incurred either internally by the City, for work done by City employees, or for the actual cost of contracting out work done by non-City employees for all work done under the provisions of this Article to include at least:

a. Tree replacement of any kind;

b. Tree removal, pruning or other maintenance;

c. Professional services;

d. Administrative expenses for administering the provisions of this Article;

e. Grant matching expenses;

f. Professional training, education and certification;

g. Public education materials related to Urban Forest issues.

~~911.09~~ 911.99 PENALTY

A. Violation of any provision of this Article is a Summary Offense.

B. Any person violating any provisions of this Article shall be fined not more than ~~Three~~ Five Hundred (~~$3~~500.00) Dollars for each infraction, plus restitution in an amount at lease equal to the appraised value of the tree involved, plus cost of cure as obtained from Certified Arborists or imprisoned not more than ninety (90) days, or both. (12241 §1 4/6/77)

C. For continuing violations of this Article, each day that the condition continues shall be a separate offense.

D. The penalties contained in this section are in addition to any other remedies at law or in equity.

SECTION TWO: That this Ordinance will take effect January 1, 2011.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

	Yea	Nay
W. Michael Donovan	X	
Jeanette Eichenwald	X	
Julio A. Guridy	X	
Ray O'Connell	X	
Michael Schlossberg	X	
Peter G. Schweyer	X	
Michael D'Amore, President	X	
TOTAL	7	0

I hereby certify that the foregoing Ordinance was passed by City Council on December 1st and signed by the Mayor on December 3rd, 2010.

Michael P Healy

CITY CLERK

- **What Department or bureau is Bill originating from? Where did the initiative for the bill originate?**

  Department of Parks & Recreation.

- **Summary and Facts of the Bill**

  Revisions to the Shade Tree Ordinance including general definitions, outlining the responsibilities of the Shade Tree Commission, the permitting process, prohibited activities, trees in a public land or public right-of-way, trees on private property, the City's licensing system, compliance with the zoning ordinance and penalties.

- **Purpose – Please include the following in your explanation:**
  - **What does the Bill do – what are the specific goals/tasks the bill seek to accomplish**
  - **What are the Benefits of doing this/Down-side of doing this**
  - **How does this Bill related to the City's Vision/Mission/Priorities**

  The revised ordinance will help to protect historic and champion trees in the right-of-way as well as better ability by the City to react on trees that are a hazard to the public. The revised Shade Tree Ordinance more specifically outlines the powers and duties of the Shade Tree Commission, including the right to recommend revisions of development plans and notifications thereof, public and private work, prohibited activities, tree replacement(s), care provisions, notices and the permitting process.

- **Financial Impact – Please include the following in your explanation:**
  - **Cost (Initial and ongoing)**
  - **Benefits (initial and ongoing)**

  The revised ordinance establishes a separate revenue line item in the budget entitled 'Shade Tree Fees' for the purposes set forth in this Article.

  The 'Shade Tree Fees' line item would be administered by the Commission exclusively in the manner and for the purposes set forth in this Article and the regulations adopted under it.

  The 'Shade Tree Fees' line item shall be the repository for all funds received from:
  1. Permit Fees and Inspection fees for Permits issued under this Article;
  2. Initial and Annual City Arborist's License fees;
  3. Fines, penalties and restitution collected for violations of this Article;
  4. Administrative Fees collected for administering the provisions of this Article;
  5. Damages collected under Section 911.05 D
  6. Equitable Cost Fees
  7. Grants, gifts and bequests given to the City for any purpose relating to trees;

  The 'Shade Tree Fees' revenues would be expended only for:
  1. Reimbursement to the City for the expense incurred either internally by the City, for work done by City employees, or for the actual cost of contracting out work done by non-City employees for all work done under the provisions of this Article to include at least:
  2. Tree replacement of any kind;
  3. Tree removal, pruning or other maintenance;
  4. Plan reviews;
  5. Administrative expenses for administering the provisions of this Article;

6. Grant matching expenses;
7. Professional training, education and certification;
8. Public education materials related to Urban Forest issues;

- **Funding Sources – Please include the following in your explanation:**
    - **If transferring funds, please make sure bill gives specific accounts; if appropriating funds from a grant list the agency awarding the grant.**

Funds for the work covered under this ordinance would be provided by grant funds, license and permit fees.

- **Priority status/Deadlines, if any**

January 1, 2011

- **Why should Council unanimously support this bill?**

The revised ordinance is in the best interest of public safety and the City's green infrastructure.