



ORDINANCE NO. 2021-05

AN ORDINANCE OF THE BOROUGH OF GREENCASTLE, FRANKLIN COUNTY, PENNSYLVANIA, ABOLISHING THE SHADE TREE COMMISSION AND REVERTING THE CARE, CUSTODY, AND CONTROL OF SHADE TREES TO THE BOROUGH COUNCIL.

WHEREAS, pursuant to the Borough Code, 8 Pa. C.S. § 101, *et seq.*, the Borough of Greencastle (the "Borough") is authorized to make regulations as may be necessary for the health, safety, morals, general welfare, and cleanliness, beauty, convenience, comfort, and safety of the Borough, 8 Pa. C.S. § 1202(5); and

WHEREAS, the Borough Code at 8 Pa. C.S. § 2720 empowers the Greencastle Borough Council (the "Borough Council") with the exclusive care, custody, and control of shade trees in the Borough; and

WHEREAS, the Borough Code at 8 Pa. C.S. § 2721 also authorizes Borough Council to establish a shade tree commission and to delegate to it the exclusive care, custody, and control of shade trees in the Borough; and

WHEREAS, the Borough established a Shade Tree Commission pursuant to Ordinance No. 3-72 adopted June 5, 1972, subsequently amended in its entirety November 4, 2013, pursuant to Ordinance No. 2013-05, and codified at Chapter 11, Article III, Section 11-3 of the Code of the Borough of Greencastle (the "Code"); and

WHEREAS, Borough Council has determined that it is in the best interests of the health, safety, welfare, and convenience of the Borough and its residents to abolish the Shade Tree Commission to allow Borough Council to exercise exclusive care, custody, and control of the shade trees in the Borough.

NOW THEREFORE BE IT ENACTED AND ORDAINED, by the Mayor and Borough Council of the Borough of Greencastle, Commonwealth of Pennsylvania, as follows:

SECTION 1. Chapter 11, Article III "Shade Tree Commission", Section 11-3 "Establishment; powers and duties; composition; terms." of the Code is hereby deleted in its entirety and amended to read as follows:

(Reserved).

SECTION 2. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-1 "Definitions." of the Code is hereby amended to remove the term "Commission" and its definition, and to insert the term "Borough Council" after the term "Borough". "Borough Council" shall be defined as "The Borough Council of the Borough of Greencastle."

SECTION 3. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-2 "Planting and control of trees." of the Code, subsections A and B are hereby amended to read as follows:

- A. The Borough Council shall have charge and control of all trees growing now or hereafter in any public area in the Borough, and shall have the power to plant and maintain such trees in accordance with this article.
- B. The Borough Council shall have authority to determine all questions of a physiological, entomological or pathological nature relating to the disposition of any tree or group of trees in any public area in the Borough.

SECTION 4. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-3 "Permission to plant, treat or remove in public areas." of the Code, subsections A, B, and D are hereby amended to read as follows:

- A. No person shall hereafter plant, move, spray, fertilize, trim, do surgery work, climb with spikes, remove or damage any guard or device placed to protect any tree, cut above or below ground, disturb or alter any tree on any public area of the Borough, nor cause such

acts to be done by others, without first obtaining permission from the Borough Council which shall issue a permit for such work if, in its judgment, the work is necessary and the proposed methods of workmanship are of a satisfactory nature. A permit shall not be required to cultivate and water. The person receiving the permit shall abide by the arboricultural specifications and standards or practice adopted by the Borough Council.

- B. As a condition to the issuance of a permit to remove any tree in a public area, the Borough Council may require that the permittee plant one or more trees in place of the one removed. Whenever any such tree has been removed or destroyed pursuant to any such conditional permit, it shall be unlawful for the permittee to fail, refuse or neglect to plant another tree or other trees of the type, size and at the location specified in the permit, within the time specified by the Borough Council, unless the Borough Council determines that such replacement is unnecessary or undesirable.
- D. Upon failure of any permittee to comply with the terms of the permit, or the conditions imposed by the Borough Council, the Borough may undertake the work to be done and collect the cost thereof from the person who owns the property.

SECTION 5. Chapter 187, Article I “Shade Tree Rules and Regulations”, Section 187-4 “Contents of permit.” of the Code, is hereby amended to read as follows:

Every written permit issued by the Borough Council shall describe the work to be done, specify the species or variety, size, nursery grade, location, briefly specify the method of planting, method of support and trimming of all trees concerned, and contain a definite expiration date. Any permit may be declared void if its terms are violated.

SECTION 6. Chapter 187, Article I “Shade Tree Rules and Regulations”, Section 187-5 “Fastening materials to trees.” of the Code, is hereby amended to read as follows:

No person shall fasten any sign, wire, rope or other material to or around or drive any nail or spike through any tree in a public area in the Borough except by permission of the Borough Council, except in emergencies such as storms or accidents.

SECTION 7. Chapter 187, Article I “Shade Tree Rules and Regulations”, Section 187-7 “Protection of trees.” of the Code, subsections D, E, F, I, and K are hereby amended to read as follows:

- D. No person shall attach any electrical insulation to any tree in a public area or excavate any ditches, tunnels or trenches, or lay a driveway within a radius of 10 feet from any tree in a public area without first obtaining permission from the Borough Council.
- E. During construction of buildings or other improvements to real estate, the property owner or builder shall erect suitable protective barriers, with a radius of 10 feet, around trees in public areas which, in the judgment of the property owner, builder or Borough Council, will be endangered by such construction work.
- F. Whenever, in the judgment of the Borough Council, it becomes necessary to move, protect or temporarily cut off electric current from electric service lines so that any work on behalf of or at the direction of the Borough Council pursuant to these regulations can be safely and properly performed, written notice shall be given to the owners of such electric lines and such owners shall comply with such notice within 24 hours after receipt thereof.
- I. No person shall lay any sidewalk along or open, construct, curb or pave any street or do any like act so as to interfere with or do injury to any tree in a public area without permission of the Borough Council.
- K. Where in authorized excavations it becomes necessary to expose or cut roots more than one inch in diameter, it shall be the duty of the contractor to protect such roots in the manner required by the Borough Council.

SECTION 8. Chapter 187, Article I “Shade Tree Rules and Regulations”, Section 187-8 “Spraying of trees.” of the Code, is hereby amended to read as follows:

All spraying of trees shall be done only with materials approved by the Borough Council in accordance with all applicable state and federal regulations.

SECTION 9. Chapter 187, Article I “Shade Tree Rules and Regulations”, Section 187-9 “Work to be performed by approved professionals.” of the Code, is hereby amended to read as follows:

All pruning, cutting, removal, spraying, fertilizing and tree surgery shall be done only by a qualified tree surgeon or tree maintenance contractor approved by the Borough Council. All such surgeons or contractors shall possess general liability insurance coverage with a policy limit of not less than \$500,000 for each occurrence, and proof of said coverage shall be submitted to the Borough Council prior to commencing any work within the Borough.

SECTION 10. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-10 "Property owner's privileges." of the Code, is hereby amended to read as follows:

Minor work on trees planted in public areas may be performed by the abutting property owners of the said public areas, provided that permission has first been obtained from the Borough Council. The Borough Council shall have the authority to determine whether or not the proposed work on such trees is minor.

SECTION 11. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-11 "Declaration of nuisance; notice; abatement." of the Code, is hereby amended to read as follows:

Any tree, or parts thereof, growing in any public area or upon private property but overhanging or interfering with the use of any street, park or public area of the Borough and which, in the judgment of the Borough Council, endangers the life, health, safety or property of the public, is hereby declared to be a public nuisance and shall be corrected or removed. The owner shall be notified in writing of the existence of the nuisance and given 30 days to correct or remove it. If not corrected or removed within such time, the Borough Council shall request the nuisance be corrected or removed by the Borough and the cost thereof shall be assessed to the person who owns the property.

SECTION 12. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-12 "Permits to public utilities." of the Code, subsections A, B, and C are hereby amended to read as follows:

- A. All permits issued for the installation of public utilities that affect trees in public areas shall be approved by the Borough Council in accordance with accepted standards.
- B. When a permit is issued to a public utility to trim trees or perform other operations affecting trees in public areas, such work shall be done in a neat and workmanlike manner according to specifications of the Borough Council.
- C. The Borough Council may, if necessary, assign an inspector to supervise the provisions of the permit, and the cost of such service shall be charged to the public utility at cost.

SECTION 13. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-13 "Cooperation with other Borough departments." of the Code, is hereby amended to read as follows:

Borough departments, authorities and agencies, including the Planning and Zoning Commission, Police Department, Water Department, Sewer Department and Street Department, shall cooperate with and consult with the Borough Council when their work or functions affect trees in public areas.

SECTION 14. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-14 "Interference prohibited." of the Code, is hereby amended to read as follows:

It shall be unlawful for any person to prevent, delay or interfere with the Borough Council or any agent or employee of the Borough in the execution or enforcement of these regulations or any amendments hereto.

SECTION 15. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-16 "Enforcement." of the Code, is hereby amended to read as follows:

The provisions of this article shall be enforced by the Borough Council or its designees and the Greencastle Police Department.

SECTION 16. Chapter 187, Article I "Shade Tree Rules and Regulations", Section 187-18 "Municipal immunity and nonliability for damages." of the Code, subsection B, is hereby amended to read as follows:

- B. This article shall not be construed to hold Greencastle Borough, the Borough Council, the Mayor, or any of their respective officers, employees or their appointed agents (collectively referred to as "municipal parties") responsible for any damages, injuries, loss or death to person, persons or property by reason of any activity, omission or commission, or act by municipal parties authorized herein or otherwise arising under this article. The approval of

any tree or type of tree shall not constitute a representation, guaranty or warranty of any kind or nature by the municipal parties and shall create no liability upon, or a cause of action against, the municipal parties for any damage or loss.

SECTION 17. Chapter 99, "Cable Television", Section 99-21 "Trimming of trees." of the Code, is hereby amended to read as follows:

The grantee shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over streets, alleys, sidewalks and public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee. Borough representatives shall have authority to supervise and approve all trimming of trees conducted by the grantee. No trimming shall be done without first obtaining an annual permit from the Borough of Greencastle Borough Council, except minor trimming of trees that is performed in accordance with the specifications of the Borough Council and that does not result in a substantial change in appearance of the trees.

SECTION 18. REPEALER: All provisions of previous ordinances of the Borough of Greencastle, or parts thereof, which are contrary or inconsistent with this Ordinance, are expressly repealed.

SECTION 19. SAVINGS CLAUSE: In all other respects, the Code of the Borough of Greencastle shall remain as previously enacted and ordained.

SECTION 20. SEVERABILITY: The provisions of this Ordinance are severable and if any of its sections, clauses, or sentences shall be held illegal, invalid, or unconstitutional, such provisions shall not affect or impair any of the remaining sections, clauses, or sentences.

SECTION 21. EFFECTIVE DATE: This Ordinance shall take effect upon adoption.

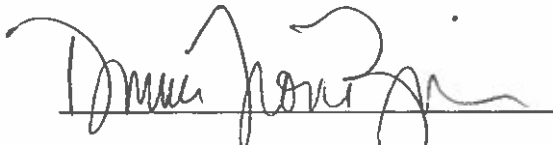
DULY ENACTED AND ORDAINED, this 7th day of September 2021, by The Council of the Borough of Greencastle, in lawful session duly assembled.

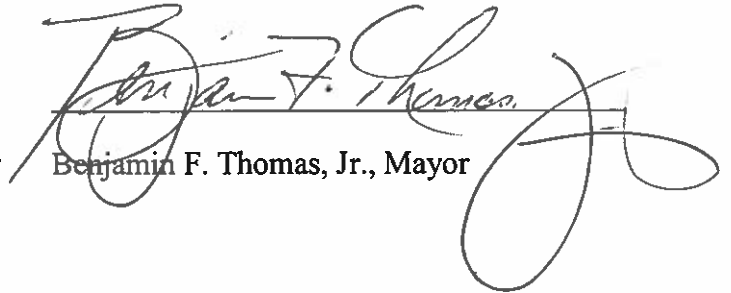
(SEAL)

BOROUGH OF GREENCASTLE,
Franklin County, Pennsylvania


Steven J. Miller, Council President

ATTEST:


Donna E. Irons-Zimmerman, Borough Secretary


Benjamin F. Thomas, Jr., Mayor