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ORDINANCE 2008-02

AN ORDINANCE AMENDING CHAPTER 4 “ADMINISTRATION OF GOVERNMENT,” ARTICLE XIII, “SEPARATE AGENCIES AND BOARDS NOT ASSIGNED”; CHAPTER 170 “TREES”; CHAPTER 200 “LAND USE”, ARTICLE XIX “IMPROVEMENTS”; AND CHAPTER A205 “COUNCIL PROCEDURAL GUIDELINES” OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1999) BY CONVERTING THE SHADE TREE COMMITTEE TO SHADE TREE COMMISSION

WHEREAS, the Township of West Windsor wishes to convert the Township's Shade Tree Committee to a Shade Tree Commission to conform and comply with the New Jersey Statutes to ensure that the members and volunteers are protected from liability for actions taken; and

WHEREAS, doing so requires amending and supplementing sections of the Code of the Township of West Windsor Township;

NOW, THEREFORE, BE IT ORDAINED, by the West Windsor Township Council, County of Mercer, State of New Jersey, that the Code of West Windsor Township, be amended and supplemented as follows:

SECTION 1. Chapter 4 of the Revised General Ordinances of the Township of West Windsor (1999), Administration of Government, Article XIII, Separate Agencies and Boards Not Assigned, Section 4-55, Boards and agencies not assigned to Township departments, is amended by modifying subsection A as follows:

§ 4-55. Boards and agencies not assigned to Township departments.

- A. The following boards and agencies of Township government are not assigned to any department within the Township.
- (1) Affordable Housing Committee.
 - (2) Agricultural Advisory Committee.
 - (3) Board of Health.
 - (4) Board of Recreation Commissioners.
 - (5) Cable Television Advisory Board.
 - (6) Emergency Management Council.
 - (7) Environmental Commission.
 - (8) Human Relations Council.
 - (9) Local Assistance Board.
 - (10) Parking Authority.
 - (11) Planning Board.
 - (12) Shade Tree [Committee] **Commission**.
 - (13) Site Plan Review Advisory Board (SPRAB).
 - (14) Stony Brook Regional Sewerage Authority.
 - (15) Zoning Board of Adjustment.

- B. In addition to the appointments set forth herein, there may be appointed, where applicable, advisers and/or liaisons to the various boards/bodies/committees listed above for one year in the same manner as regular appointments are made to the boards and agencies listed above.
- C. Unless specifically provided otherwise, all members of and advisers and/or liaisons to the various boards/bodies/committees listed above shall be residents of the Township.
- D. Unless specifically provided otherwise, all terms of all members of and advisers and/or liaisons to the various board/bodies/committees listed above shall run from July 1 to June 30.

SECTION 2. Chapter 4 of such Ordinances, Administration of Government, Article XIII, Separate Agencies and Boards Not Assigned, is amended as follows:

§ 4-61.1. Shade Tree [Committee] **Commission.**

- A. Preamble. The Township has acquired and will continue to acquire various public lands, and the Township right-of-way has increased and will continue to increase with the future development of the Township. It is in the best interests of the Township to create a Shade Tree [Committee] **Commission** in order to encourage proper arboriculture and desirable horticultural activities, to develop and periodically update a community forest and shade tree plan for the care, planting and location of trees and shrubbery on public land and in public rights-of-way and to set policy for the maintenance of the trees and shrubbery in such areas.
- B. Creation; appointment; terms of office; vacancies; compensation.
 - (1) [There is hereby created a Shade Tree Committee consisting of five members appointed by the Mayor with the advice and consent of Township Council. They shall be residents of the Township and shall serve without compensation.] **There is hereby created a Shade Tree Commission, which shall be known as the "Shade Tree Commission of West Windsor Township". The Commission shall consist of five members appointed by the Mayor with the advice and consent of Township Council. The members shall be residents of the Township and shall serve without compensation.**
 - (2) The members shall serve for terms of [three] **five** years each. **However,** [T]he initial appointments shall be staggered [so that one term shall be for one year, two for two years and two for three years.] **for respective periods of one, two, three, four and five years. The initial term of appointment shall be designated at the time of appointment.** Terms shall expire on June 30 of the year of expiration.
 - (3) All appointments to fill vacancies shall be for the unexpired term.

(4) A Chair[man]**person** shall be elected annually by the [Committee] **Commission. The Chairperson shall serve without compensation.**

(5) A Secretary shall be elected annually by the Commission. The Secretary shall serve without compensation.

C. Powers. The [Committee] **Commission** shall have, but not be limited to, the following powers:

(1) Establish[ed] Township policy for the regulation, planting and care of shade and ornamental trees and shrubbery now located or which may hereafter be planted in any public right-of-way, park and all other property owned by the Township, except state and county highways unless the Department of Transportation or County of Mercer shall consent thereto. Tree and shrubbery care shall include trimming; removing any tree, or part thereof, dangerous to public safety; treating or removing any tree which is believed to harbor a disease or insects readily communicable to neighboring healthy trees; spraying; fertilizing; and other care and protection.

(2) Advise the Township concerning the appropriate use of the ground surrounding shade and ornamental trees and shrubbery insofar as may be necessary for their proper growth, care and protection.

(3) Encourage proper arboricultural practices throughout the Township.

(4) Encourage desirable horticultural planting and activities throughout the Township and particularly on public properties.

(5) Administer Arbor Day activities within the Township.

(6) Develop a community forestry and shade tree master plan for the Township, including a tree inventory and tree disaster plan.

(7) Recommend to the Planning Board plans and programs for inclusion in the Municipal Master Plan for the development and use of public land and rights-of-way.

D. Community forestry and shade tree master plan. It shall be a function and duty of the Shade Tree [Committee] **Commission** to make, adopt and adhere to a master plan for the planting of shade and ornamental trees and shrubbery. This plan shall be reviewed and updated periodically.

E. Municipal arborist. The Shade Tree [Committee] **Commission** may use the services of a Township employee as an arborist who shall consult with the [Committee] **Commission** on arboriculture tasks.

- (1) Qualifications. The arborist shall be thoroughly knowledgeable and experienced in tree species, tree diseases, insects affecting trees, tree damage, tree maintenance, soil conditions affecting trees and tree transplanting and shall be a certified tree expert (CTE).
- (2) Duties. The duties of the arborist may include:
 - (a) To inspect or supervise planting, maintenance and treatment work authorized by the Shade Tree [Committee] **Commission**.
 - (b) To assist the Township Engineer with inspection of plantings required with site development by the Planning Board, Zoning Board, Township Engineer or Township Council.
 - (c) To advise or assist the [Committee] **Commission** in evaluation of plans, drawings or specifications involving existing trees or proposed tree planting in or affecting the Township.
 - (d) To perform other tasks in the field of arboriculture related to the Township.
 - (e) To oversee administration of the West Windsor Trees Ordinance (Chapter 170 of the West Windsor Code) and this section.
- F. Annual appropriation; estimate; amount. During the month of September in each year, the Shade Tree [Committee] **Commission** shall forward to the Director of Community Development the estimated sum necessary for the proper conduct of its work during the ensuing calendar year. The Township Council shall annually appropriate such sum as it may deem necessary for said purposes.
- G. Removal of [Committee] **Commission** member. The Mayor may remove any member of the [Committee] **Commission** for cause on written charges served upon the member and after a hearing thereon before the [Committee] **Commission** at which the member shall be entitled to be heard in person or by counsel.

SECTION 3. Chapter 170 of such Ordinances, Trees, is amended as follows:

§ 170-3. Application for permit; issuance.

- A. Any person, including the owner or operator of a commercial farm, desiring to remove, injure, girdle or destroy one or more trees defined in § 170-1 shall file an application therefore with the Manager, Division of Land Use (Manager), on a form to be provided for this purpose. The owner or operator of a commercial farm is not exempt from making such an application. The application shall identify the lot or tract of land upon which the tree or trees are located, shall disclose the name and address of the owner and/or tenant or duly authorized agent of the owner or

shall show the actual location, species and diameter of the tree or trees sought to be destroyed, as well as the location of any existing buildings or proposed construction.

- B. If the applicant is the owner or operator of a commercial farm, then the Manager shall refer the application, together with any previous applications for removal of trees from the tract of land, to the Mercer County Agriculture Development Board (Board) with the Manager's recommendations. If the Manager determines that the application is made to benefit a land developer, then the application shall be denied, subject to review by the Board.
- C. The Manager shall refer all other applications, together with any previous application for removal of trees from the tract of land, to the Township Shade Tree [Committee] **Commission** for consideration as detailed below.
- D. Upon referral of an application from the Manager, Shade Tree [Committee] **Commission** or its authorized representatives shall examine the premises referred to in the application and inspect the trees referred to therein and the physical condition of the lands and the vicinity thereof.
- E. After completing the examination, the [Environmental] **Shade Tree** Commission or its representatives shall make a determination with respect to whether or not the permit should be granted in accordance with the standards provided for herein. If this determination is to grant the permit, it shall be endorsed upon the application and returned to the Manager, who shall either issue or deny the permit within one week thereafter. Issuance of permits shall not be approved unless one or more of the following conditions is found to exist:
 - (1) The tree or trees in question are in areas to be occupied by buildings, driveways, recreation areas, streets or drainage or underground utility easements as determined from plat maps for site construction as approved by the Township Planning Board.
 - (2) The tree or trees are located within 15 feet of any of the aforesaid structures or are within utility easements.
 - (3) The area requires an approved cut or fill of land deemed injurious or dangerous to the trees in question and no alternative grading methods are available.
 - (4) Presence of the tree shall in any way constitute a danger to the property owner or the public.
 - (5) Other adequate and special reason within the intent of this chapter.

SECTION 4. Chapter 200 of such Ordinances, Land Use, Article XIX, Improvements

§ 200-91. Construction, maintenance and installation standards for specific improvements.

P. Landscape standards. Every applicant for subdivision or site plan approval shall comply with the following minimum standards, except that, with respect to the alternative design concepts set forth below, the applicant may choose between the concepts or present an alternate design equal or superior to the design concepts in terms of quantity of landscaping materials and suitability to the site and to the proposed development. The board of jurisdiction may require additional landscaping if necessary to create an appropriate landscaping scheme for the site, given the nature of the site and the proposed development thereof. Where subdivisions only are applied for, the minimum standards shall apply only to street trees and to common open space and areas proposed to be dedicated to the public. The graphics included herewith illustrate design principles set forth below.

(2) Street trees. Street trees shall be provided for all streets and shall be in accordance with the West Windsor Township Comprehensive Master Street Tree Plan standards (Editor's Note: See also Ch. 170, Trees.) for location, species selection and spacing. One of the following street tree planting concepts or an alternative concept complying with the standards set forth above shall be used.

(a) Living garden community concept:

[2] The designer shall, in coordination with the Shade Tree [Committee] **Commission**, develop a concept for a specific development and a street tree theme which will reinforce this concept (i.e., New England village, sugar maples).

SECTION 5. Chapter A205 of such Ordinances, Council Procedural Guidelines

§ A205-10. Rule 10: Appointments.

A. Appointments to citizens' groups, boards, committees and other. According to the Administrative Code, responsibility for the appointment of various boards, committees and commissions shall be as noted below:

Board, Committee or Commission	Appointing Authority
Affordable Housing Committee	Mayor, with advice and consent of Council
Township Council member	Council
Agricultural Advisory Committee	Mayor, with advice and consent of Council
Board of Recreation Commissioners	Mayor
Alternate 1 and 2:	Mayor, with advice and consent of Council
Cable TV Advisory Board	Mayor, with advice and consent of Council

West Windsor Government Channel Committee Township Council representative	Council
Emergency Management Council Township Council member	Mayor Council
Environmental Commission	Mayor
Human Relations Council	Mayor, with advice and consent of Council
Local Assistance Board	Mayor, with advice and consent of Council
Parking Authority	Council
Planning Board Planning Board Class III member	Mayor Council
Shade Tree [Committee] <u>Commission</u>	Mayor, with advice and consent of Council
Site Plan Review Advisory Board	Mayor, with advice and consent of Council
Stony Brook Regional Sewerage Authority representative	Mayor, with advice and consent of Council
Zoning Board of Adjustment	Council

SECTION 6.

In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

SECTION 7.

This ordinance shall take effect twenty days after action or inaction by the Mayor as approved by law or an override of a mayoral vote by the Council, whichever is applicable; upon filing with the Mercer County Planning Board; and upon publication according to law.

INTRODUCTION: March 17, 2008
PUBLIC HEARING: April 7, 2008
ADOPTION:
MAYORAL APPROVAL:
EFFECTIVE DATE: