

# Municipal Shade Tree Commissions

## Text For Governing Body

### Basic Ordinance

*Note: The R.S. references are indicated for the convenience of attorneys engaged for basic ordinance preparation. The fictitious political unit names of Lakeland Township and Eureka County are employed in lieu of gaps in the text.*

AN ORDINANCE PROVIDING FOR THE CREATION OF A SHADE TREE COMMISSION OF THE TOWNSHIP OF LAKELAND, AND THE APPOINTMENT OF COMMISSIONERS, FOR THE PURPOSE OF THE REGULATION, PLANTING, CARE AND CONTROL OF SHADE AND ORNAMENTAL TREES AND SHRUBBERY IN THE STREETS, HIGHWAYS, PUBLIC PLACES OF THE TOWNSHIP OF LAKELAND AND PROVIDING FOR THE ENFORCEMENT THEREOF.

PURSUANT TO THE AUTHORITY (TITLE 40: CHAPTER 64, SECTIONS 1-14, AS AMENDED PUBLIC LAWS OF NEW JERSEY 1996 - CHAPTER 42) VESTED IN THE MUNICIPALITIES OF NEW JERSEY:

THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKELAND, COUNTY OF EUREKA, STATE OF NEW JERSEY ORDAINS:

**Sec. 1. (Ref. R.S. 40:64-1). Commission; personnel; appointment.** The regulation, planting, care and control of shade and ornamental trees and shrubbery upon and in (1) the streets, highways, public places and (2) parks and parkways of the Township of Lakeland except State highways, unless the Department of Transportation shall assent thereto and except county highways, parks and parkways, if a county shade tree commission is operative and gives assent to, shall be exercised by and under the authority of Lakeland Township Shade Tree Commission, which is hereby created. The Commission shall consist of not less than five nor more than seven members, and may include not more than two alternate members. The members and alternate members shall be appointed by the Mayor (or other chief executive), who shall be residents of this Municipality and shall serve without compensation except as hereinafter provided.

**Sec. 2. (Ref. R.S. 40:64-2). First commission; subsequent commissions; terms.** The first Commissioners, shall be appointed within 60 days after the effective date of this ordinance, and their terms of office shall commence upon the date of their appointment and be for the respective periods: 5 members - of 1, 2, 3, 4, and 5 years; 6 members - of 1, 2, 3, 4, and 5 (2 appointees) years; 7 members - of 1, 2, 3, 4 (2 appointees), and 5 (2 appointees) years. The terms of each appointee shall be designated in his appointment. All subsequent appointments, except to fill vacancies, shall be for the full term of five years, to take effect on January 1, next succeeding such appointment. In event that the membership of any commission is increased, the new members shall be appointed in such manner that the terms shall expire in accordance with the foregoing.

If the ordinance provides for the appointment of two alternate members, the terms of each alternate member shall be five years commencing on January 1 of the year of appointment; provided, however, that in the event two alternate members are appointed the initial term of "Alternate No. 1" shall be five years, and the initial term of "Alternate No. 2" shall be four years.

# Municipal Shade Tree Commissions

## Text For Governing Body

### Basic Ordinance

An alternate member may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

**Sec. 3. (Ref. R.S. 40:64-3). Organization; salaries of officers and employees.** The Commission shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually by the election of one of its members as chairman, and the appointment of a secretary, who need not be a member. The salary of the secretary, who may be compensated even if a member of the Commission, shall be fixed by the governing body of the Municipality; the salary of all other employees shall be fixed by the Commission. All salaries shall be fixed as nearly as practicable in accordance with the salary schedule, if any, of the Municipality for corresponding positions.

**Sec. 4. (Ref. R.S. 40:64-4). Vacancies.** Any vacancy occurring by reason of the death, resignation or removal of any Commissioner shall be filled for the unexpired term by the Mayor or other chief executive of this Municipality.

**Sec. 5. (Ref. R.S. 40:64-5). Powers of commission.** The Shade Tree Commission organized under this ordinance shall have power to:

- a. Exercise full and exclusive control over the regulation, planting and care of shade and ornamental trees and shrubbery now located, or which may hereafter be planted in any (1) public highway and (2) park or parkway, except such as are excluded pursuant to Section I of this ordinance including the planting, trimming, spraying, care and protection thereof;
- b. Regulate and control the use of the ground surrounding the same, so far as may be necessary for their proper growth, care and protection;
- c. Move or require the removal of any tree, or part thereof, dangerous to public safety;
- d. Make, alter, amend and repeal, in the manner prescribed for the passage, alteration, amendment and repeal of ordinances by the governing body of this Municipality, any and all ordinances necessary or proper for carrying out the provisions hereof;
- e. Administer treatment to, or remove, any tree situated upon private property which is believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of this Municipality and enter upon private property for that purpose, with the consent of the owner thereof, provided the suspected condition is first confirmed by certificate issued by or on behalf of the New Jersey Department of Agriculture.
- f. Encourage arboriculture.

# Municipal Shade Tree Commissions

## Text For Governing Body

### Basic Ordinance

**Sec. 6. (Ref. R.S. 40:64-8). Cost of trees and improvements; charge and lien on property; exception.** Except as hereinafter provided the initial cost of all trees planted by the Commission, the cost of planting the same, the cost of the posts and boxes or guards used for the protection thereof, and the cost of the removal of any tree or part thereof dangerous to public safety shall, if the Commission shall so determine, in accordance with uniform rules and regulations promulgated for this purpose, be a charge upon the real estate in front of which such tree or trees shall be planted or removed as an improvement thereof. Such cost if it is so determined that it is to be paid by the owner shall, unless paid directly to the Commission, be certified by it to the collector of taxes of this Municipality, shall thereupon become and be a lien, upon said real estate, shall be included in the next tax bill rendered to the owner or owners thereof, and be collected in the same manner as other taxes against that property.

The provisions of this section shall not apply to:

- a. A planting to replace a tree or trees theretofore planted by the Commission;
- b. A planting in connection with Arbor Day exercises or other educational demonstration.

**Sec. 7. (Ref. R.S. 40:64-9) Planting and removal of trees; notice and hearing; emergencies.** In every case where the property of an abutting owner will be chargeable with the cost of the planting of any shade tree or trees, the Commission shall give notice of the meeting at which it is proposed to consider said planting by publishing the notice at least once, not less than twenty days before the meeting, in a newspaper circulating in the Municipality, or by personal service of a copy of the notice upon the abutting owner at least ten days before the meeting. The notice shall specify the street, streets, or portions thereof, on which such planting is proposed and require all persons who may object thereto to present their objections at the office of the Commission at or before the meeting. Before final action shall be taken, all objections so filed shall be considered. The Commission shall give reasonable notice of its intention to remove, or cause the removal of a tree, or part of a tree, dangerous to public safety, unless public safety requires immediate removal in which case no notice shall be necessary.

**Sec. 8. (Ref. R.S. 40:64-10). Public improvements affecting trees; consent of commission, county park commissions unaffected.** No statute giving any person or State, county or municipal board, body or official, power or authority to lay any sidewalk along, or to open, construct, curb or pave any street, or to do any similar act, shall be construed to permit or authorize any interference with or injury to a highway shade tree without the consent of the Shade Tree Commission within whose jurisdiction such tree shall be located. In all cases such Commission shall reasonably co-operate with such person, board, body or official for the general public good. Nothing contained in this ordinance shall be held to take away or diminish any of the powers or authority of the Eureka County Park Commission over the trees or shrubbery in any Eureka County Park or Parkway within its jurisdiction, or to give any other commission or board any power or authority with respect to such trees or shrubbery.

# Municipal Shade Tree Commissions

## Text For Governing Body

### Basic Ordinance

**Sec. 9. (Ref. R.S. 40:64-11). Annual appropriation; estimate; amount.** During the month of December in each year, the Shade Tree Commission shall certify to the governing body of this Municipality the estimated sum necessary for the proper conduct of its work during the ensuing fiscal year, which shall include the sums estimated to be expended for such of the following items as it is anticipated expenditure will be made for; namely,

- (1) Payment of wages and salaries of employees;
- (2) Expenses of Commission members in discharging official duties including expenses incident to attendance at professional meetings;
- (3) Purchase of trees and shrubbery; and
- (4) Purchase of necessary equipment and materials and the cost of services for the prudent promotion of the work.

The governing body of this Municipality shall annually appropriate such sum as it may deem necessary for said purposes.

**Sec. 10. (Ref. R.S. 40:64-12). Penalty, jurisdiction of courts; copy of ordinance as evidence.**

a. The Commission may prescribe a fine for violation of its ordinances in an amount not exceeding \$1500.00 for each violation, and the Municipal Court of Lakeland shall have jurisdiction over actions for the violation of such ordinances, and its ordinances shall be enforced by like proceedings and process as that provided by law for the enforcement of ordinances of this Municipality. The officers authorized by law to serve and execute process for the Municipal Court of this Municipality shall be the officers to serve and execute any process issued out of the Municipal Court for violations of the ordinances of the commission.

A copy of any ordinance of the Commission, certified to under the hand of its secretary, or chairman shall be received in any court of this State as full and legal proof of the existence of the ordinance, and that all requirements of law in relation to the ordaining, publishing and making of the same, so as to make it legal and binding, have been complied with, unless the contrary be shown.

b. In addition to the penalties authorized by subsection a. of this section, the commission may require a person who removes or otherwise destroys a tree in violation of a municipal ordinance to pay a replacement assessment to the municipality. The replacement assessment shall be the value of the tree as determined by the appraisal of a trained forester or Certified Tree Expert retained by the commission for that purpose. In lieu of an appraisal, the commission may adopt a formula and schedule based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed \$27.00 per square inch. The square inch cross section shall be calculated from the diameter at breast height and, if there is a multiple stem tree, then each trunk shall be measured and an average shall be

# Municipal Shade Tree Commissions

## Text For Governing Body

### Basic Ordinance

determined for the tree. For the purposes of this section, "diameter at breast height" shall mean the diameter of the tree taken at a point 4.5 feet above ground level. The commission shall modify the value of the tree upon its species variety, location and its condition at the time of removal or destruction.

c. Any public utility or cable television company that clears, moves, cuts, or destroys any trees, shrubs, or plants for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat or power, communication, or cable television services upon any lands in which it has acquired an easement or right-of-way, shall not be subject to any penalty imposed by a commission pursuant to subsections a. or b. of this section. This subsection shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent actions.

**Sec. 11. (Ref. R.S. 40:64-13). Disposition of penalties.** All moneys collected, either as fines or penalties, for any violation of a rule or regulation of a shade tree commission enacted by ordinance, or as a charge against real estate, under any provision of this ordinance shall be forthwith paid over to the custodian of the municipal funds.

**Sec. 12. Ordinances by shade tree commission.** The Shade Tree Commission is hereby authorized and empowered to promulgate such ordinances as may be necessary, pursuant to statute, and for the proper interpretation, administration and enforcement of this basic ordinance, provided that such ordinances do not conflict with this ordinance and conform to the general standards prescribed by this ordinance.

**Sec. 13. Public notice.** All regulations adopted by the Shade Tree Commission shall be filed with the municipal clerk for inspection by the public during regular business hours.

**Sec. 14. Severance.** If any section, subsection, paragraph, sentence, clause, phrase or word contained in this code shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code which shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared to be severable.