

ORDINANCE NUMBER 16-2023

An Ordinance to Amend the Lambertville City Code, 2014, Chapter 3, Municipal Officers; Procedures; Departments, Boards and Commissions, Section 16, Shade Tree Commission

CHAPTER 3. MUNICIPAL OFFICERS; PROCEDURES; DEPARTMENTS, BOARDS AND COMMISSIONS

ARTICLE IV. BOARDS, COMMITTEES, COMMISSIONS

3-16. SHADE TREE COMMISSION

3-16.1. MEMBERS; APPOINTMENT

- a. The Mayor is hereby authorized to appoint seven persons to act and be known as the Shade Tree Commission for the City of Lambertville, New Jersey. In the event of a vacancy, the appointment of the new member shall be made to complete the unexpired term. All appointments, except to fill vacancies, shall take effect on January 1, and shall be for five years.
- b. Ord. No. 10-2018 creates two additional positions on the Shade Tree Commission, changing the board from a five-member to a seven-member board. For the first year of the appointment, the first position shall be for five years, expiring on December 31, 2023, and the second position shall be for a four-year appointment expiring on December 31, 2022.
- c. The Mayor is hereby authorized to appoint two (2) persons to serve as Alternate Members on the Shade Tree Commission, to be designated at the time of appointment as “Alternate No. 1” and “Alternate No. 2.”. For the first year of appointment, the term of Alternate No. 1 shall commence on the date of appointment and shall expire on December 31, 2028, and the term of Alternate No. 2 shall commence on the date of appointment and shall expire on December 31, 2026. Thereafter all appointments, except to fill vacancies, shall take effect on January 1, and shall be for five (5) years.
- d. In the event of a Commissioner’s absence or an unfilled vacancy, Alternate No .1 shall serve as a Commissioner for the duration of the Commissioner’s absence or vacancy.

3-16.2 STATUTORY AUTHORIZATION

The provisions of N.J.S.A. 40:64-1 to 40:64-14 as amended wherein the amendments apply to a municipality shall be part of this section.

3-16.3 PURPOSE

- a. The Mayor and Council of the City of Lambertville have determined that the preservation of Shade Trees within the City is beneficially linked to the health, safety, and well-being of the City’s inhabitants, and enhances the aesthetic and historic character of the City. It is also recognized that Trees perform beneficial ecological functions related to air quality, temperature and noise modulation as well as control of stormwater runoff. This section provides for the protection of Trees within the Shade Tree Commission’s Jurisdiction Zone from indiscriminate destruction, harm to, or removal as set forth below.
- b. The establishment of standards for the removal and maintenance of Trees existing on private property, that also share space within the Commission’s Jurisdiction Zone, is in keeping with the recognition that actions undertaken on individual properties can have a significant impact on neighboring properties. Land use and zoning regulations provide the framework for establishment

and preservation of beneficial standards of environmental, social, economic and aesthetic land use management, which benefit the maintenance of a healthy urban forest and Tree canopy.

3-16.4 SCOPE OF REGULATORY POWERS AND ADVISORY AUTHORITY

- a. **Regulatory Powers:** The Shade Tree Commission shall have authority over policy, planning, management and maintenance of any and all Trees, that exist wholly within, or whose Dripline extends into, the Shade Tree Commission's Jurisdiction Zone. These powers shall include, but shall not be limited to, approval and/or disapproval of maintenance, planting, and removal of Shade Trees, enforcement against violations pursuant to Lambertville City Code Section 1-5 General Penalty, and entering onto private property for the purpose of inspection, advising, planting, removal, bracing, shaping, trimming, watering, fertilizing and treatment for pests and disease, and assessment of Shade Tree Hazards.
 1. **Private Property within the Jurisdiction Zone:** The Property Owner is responsible for all matters pertaining to Shade Tree planting, removal, disease control and maintenance subject to Commission review and approval pursuant to the terms and conditions set forth herein at the Property Owner's sole expense.
 2. **City Owned Property:** The Shade Tree Commission shall have authority over all Shade Trees on City-owned property and shall coordinate with the Chairperson of the City's Parks and Recreation Commission and the Department of Public Works, as necessary and appropriate, regarding planting, removal, disease and pest control and maintenance of Shade Trees at the City's sole expense. However, Tree maintenance work as might be necessary and appropriate within parks and other properties owned by the City shall not be subject to the Shade Tree Action Request Procedures set forth in Section 3-16.9.
- b. **Advisory Role to City Agencies:** The Shade Tree Commission may provide advice and consultation to the City Council, boards, commissions and personnel, and shall be given a period not to exceed sixty (60) calendar days to provide review, consultation and recommendations to the Planning Board, Parks and Recreation Commission, City Council, City Engineer, Construction Official and the Director of Public Works, as appropriate, regarding the following:
 1. Tree planting, location, number, species and size or Tree removal as part of any City sidewalk and/or street construction projects;
 2. Tree planting in connection with the site plan approval process for private developments; and
 3. Tree pruning, trimming and other Tree maintenance work within parks and other properties owned by the City.
- c. **Educational Role:**
 1. **Tree Maintenance Information.** The Shade Tree Commission shall provide information about Trees to the public. This information will include, but not be limited to, proper planting and trimming practices, fertilizing, treatment and prevention of diseases and pests and general maintenance of Trees.
 2. **Recommended Shade Tree List:** The Commission will also maintain a publicly available Recommended Shade Tree list. The list will identify native species and will recommend their use where, when or if the species is appropriate, available and best for a particular location.

3. Interagency Coordination. The Commission may also participate in and coordinate with other agencies, Commissions, and organizations to raise awareness of the importance of supporting an ecologically balanced and biodiverse urban forest.

3-16.5 DEFINITIONS

The following defined terms shall appear with first letter capitalized when used in §3-16.1 et seq., and shall have the meanings indicated:

APPLICANT (ELIGIBLE)

The eligible person who completes and submits the Shade Tree Action Request Form to the Commission. For the purposes of this Subsection, an Eligible Applicant shall be restricted to the entities listed below:

- a. The Property Owner - The owner of the property where the Shade Tree is located or where a proposed Shade Tree is to be planted; or
- b. The Adjoining Property Owner - In the event the branches of a Shade Tree encroach across the property boundary to an adjoining property, the adjoining Property Owner suffering said encroachment shall be an eligible Applicant; or
- c. The Authorized Agent of a Business Property Owner - In the event the Shade Tree is located or proposed to be located on property that is owned by a business entity (e.g. A corporation, LP or LLC), the business entity's Authorized Agent shall be the eligible Applicant and documentation of the Authorized Agent's authority to represent the business entity shall be provided; or
- d. The Authorized Agent of an Individual Property Owner - In the event the owner of the property where the Shade Tree is located is unable to complete the Shade Tree Action Request Form, the Property Owner may submit a signed statement which names an Authorized Agent and states the scope of the Agent's authority to act on behalf of the Property Owner.
- e. Property Owner in a Home Owners' Association - In the event an Applicant wishes to request approval to take an action related to a Shade Tree within a Home Owners' Association's property boundaries, the governing body of the Home Owners' Association must furnish written authorization for the Applicant to make such a request.

AUTHORIZED AGENT OF THE PROPERTY OWNER

A person having the written authorization to act on behalf of the person who is the deed holder on a property, or who has the written authorization to act on behalf of the governing body of the business entity that is the deed holder on the property.

AUTHORIZED REPRESENTATIVE OF THE CITY

Any employee of the City's Department of Public Works, as designated by the Mayor, or any member of the Shade Tree Commission.

CALIPER

The measurement of the diameter of a Shade Tree at twelve (12) inches above ground. This measurement is used to determine the Shade Tree size for planting.

COMMISSION

The Lambertville Shade Tree Commission

DIAMETER AT BREAST HEIGHT (DBH)

The diameter of the main stem of a Tree, or the combined diameters of a multi stemmed Tree, measured four and a half (4.5) feet above the surface of the uphill side of the Shade Tree. Where the roots have girdled upward, the measurement shall be taken from the beginning of the clearest uphill vertical trunk line. The top diameter of a Stump less than four and a half (4.5) feet tall shall be considered the “DBH” of an illegally destroyed Shade Tree for the purpose of calculating recompense.

DRIPLINE

The area directly under the outer perimeter of a Tree’s branches.

JURISDICTION ZONE

The area or space bordering any public street, sidewalk or pedestrian walkway which is reserved for public purposes inclusive of Shade Tree growth and protection. The Jurisdiction Zone shall extend from the outer edge of the sidewalk or walkway to the outer edge of the opposite sidewalk or walkway. Where no opposite sidewalk or walkway exists, the Jurisdiction Zone shall extend eight (8) feet beyond the edge of the street.

LETTER OF DETERMINATION

An official letter from the Commission which grants or denies approval and/or sets conditions for actions applied to a specific Shade Tree Action Request.

ROOT BARRIER

A physical barrier that is designed and installed to redirect root growth down and away from sidewalks and other infrastructure.

NOTICE OF SHADE TREE HAZARD

A letter from the Commission which notifies a Property Owner that a Shade Tree on the Property Owner’s property presents a Shade Tree Hazard as defined herein and which directs appropriate measures to mitigate said Shade Tree Hazard as may be appropriate.

NOTICE OF VIOLATION

A letter from the Commission which notifies a Property Owner regarding the specifics of a violation of Article IV § 3-16. of the City Code for which the Property Owner is liable and sets forth the Property Owner’s obligations with respect to said violation.

SHADE TREE

Any Tree located wholly or in part within the Jurisdiction Zone, or on private property, which has a Dripline or roots extending into the Jurisdiction Zone.

SHADE TREE ACTION REQUEST FORM

A standardized form available from the Commission and on the City’s website that Applicants must submit to the Commission to request approval for any Commission-regulated action within the Jurisdiction Zone.

SHADE TREE EMERGENCY

A sudden and unexpected event in which a fallen Shade Tree(s) or Shade Tree branches result in pedestrian or traffic obstruction(s), damage or injury to persons or property or damage to utilities.

SHADE TREE HAZARD

A condition involving a Tree within the Jurisdiction Zone that requires immediate action to reduce a risk of falling branch(es) or structural failure which poses a danger of injury or damage to persons or property, or obstructs the movement of pedestrian or vehicular traffic, or obstructs the line of vision in such a manner that drivers and/or pedestrians are blinded to on-coming traffic.

STUMP

The part of the Tree and its surface roots which remains fixed in the ground after the Tree is felled.

TREE

A woody perennial plant having a singular usually elongated main stem usually with few or no branches on its lower part.

TREE CONTRACTOR

A Certified Tree Operator or Licensed Tree Expert pursuant to N.J.S.A. 45:15C-11 et seq.

TREE (LIVING)

A Tree that exhibits any leaves or healthy cambium at a height six (6) feet or greater above the ground.
§3-16.6 Shade Tree Maintenance in Jurisdiction Zone

3-16.6 SHADE TREE MAINTENANCE IN JURISDICTION ZONE

- a. Property Owners: The maintenance, care or removal of any existing or newly planted Shade Tree within the Jurisdiction Zone as defined herein, which requires compliance with any provision of this section shall be the responsibility of the Property Owner on whose property the Shade Tree is located. When a Shade Tree trunk is on a property line, the responsibility for Shade Tree maintenance shall be with the owner of the property containing the largest percentage of Shade Tree trunk circumference. In cases where the Property Owner's lot line does not extend to the edge of the street bordering Property Owner's lot, the Property Owner shall be responsible for maintenance of Shade Trees within the Jurisdiction Zone bordering said Property Owner's property just as if the Property Owner's lot lines extended to the edge of the street.
 - 1. Trimming: Property Owners shall keep All branches of mature Shade Trees trimmed to a branching height of ten (10) feet over streets and seven (7) feet over sidewalks, except where the Commission may require greater height clearances to eliminate obstacles and other hazards to vehicular and pedestrian traffic and other hazards. Shrubbery and any vegetation shall be trimmed back to the edge of the sidewalk.
 - 2. Fallen Leaves and Tree Litter: Fallen leaves, twigs, and branches shall not be raked into the street or into storm drains.
 - 3. Shade Tree Hazards: Wherever, in the opinion of the Commission, a safety hazard is caused by a Shade Tree, whether dead or alive, the Commission may issue a Notice of Shade Tree Hazard and directive to the responsible Property Owner to take action to correct the condition. If, after thirty (30) calendar days from the date of receipt of a Notice of Shade Tree Hazard from the Commission, the responsible Property Owner fails to take corrective action as required and directed by the Commission, the City may have the required work accomplished to address the hazard and may bill assess the responsible Property Owner for the completed work. In the event title to the property is transferred before completion of the hazard remediation measures directed by a Notice of Shade Tree Hazard, the Property Owner's obligation to complete the directed hazard remediation shall not be vacated and shall run with the title to the property.
 - 4. Care and Protection: Property Owners shall be responsible for care and protection of their Trees within the Jurisdiction Zone. Unauthorized removal, trimming, chemical treatment, physical or other damage to Trees in the Jurisdiction Zone shall be deemed to be caused by the Property

Owner and subject to penalties therefor unless the Property Owner can prove otherwise.

- a. Adjoining Property Owners: Whenever Shade Trees in the Jurisdiction Zone grow across property boundaries and encroach upon adjoining properties, the owner of the adjoining property may exercise rights and authority as an eligible Applicant and submit a Shade Tree Action Request to the Commission to remove the encroaching condition.
- b. City of Lambertville: Notwithstanding the Property Owner's responsibilities for Shade Tree maintenance as set forth above, upon good faith efforts to provide notice to the Property Owner, the City's Shade Tree Commission and Department of Public Works retain the right to perform such routine trimming of low branches as may be necessary from time to time in the interest of providing clear passage for pedestrian and vehicular traffic.

3-16.7 ACTS REQUIRING PERMISSION FROM THE COMMISSION

Except in the case when the Property Owner has been required to take the action pursuant to a written notice or directive issued by the Commission, person or Tree Contractor shall do, or cause to be done, any of the following acts within the Jurisdiction Zone without the written approval of the Commission pursuant to the Shade Tree Auction Request procedures detailed in Subsection 3-16.9 below:

- a. Plant any Tree.
- b. Remove any Tree.
- c. Cut or trim branches greater than eight (8) feet above a walkway or greater than eleven (11) feet above a street., or cut or trim back encroaching branches more than three (3) feet away from a structure's siding or more than eight (8) feet above the roof of a structure;
- d. Install or repair a sidewalk within four (4) feet of an existing Shade Tree (Ord. 9/21/53, §3);
- e. Install plants, or place planting containers edging borders, structures, brick, stone, concrete, or any other hard material or surface about the base of Shade Trees or anywhere within the Jurisdiction Zone;
- f. Fasten or attach any sign notice, rope, wire, electric attachment or any item to a Shade Tree;
- g. Close or obstruct any open space provided about the base or within the Dripline of a Shade Tree.;
- h. Engage in any actions-which, in the opinion of the Commission, might cause harm or death to a Shade Tree;
- i. Apply chemical treatments or pesticides to a Shade Tree; or
- j. Engage in any actions that could limit or impair the use of the Jurisdiction Zone for the growth and protection of Shade Trees.

3-16.8 CONDITIONS APPLICABLE TO SHADE TREE REMOVAL

The removal of a Shade Tree, if approved by the Commission, shall be conditioned upon the following:

- a. Planting of Replacement Shade Trees. Upon the Commission's determination to approve a request to remove a Living Shade Tree, the size and number of replacement Shade Trees shall be consistent with the approved Shade Tree Replacement Schedule per Subsection 3-16.10 and planted at the direction of the Commission, within one (1) year of removal of a Living Shade Tree. The Commission may waive the requirement for Shade Tree replacement where it determines that a Shade Tree must be removed owing to its death by natural causes.
- b. Contribution in Lieu of Tree Replacement. Alternatively, upon approval of the Commission, a contribution shall be made to the Shade Tree Planting Trust Fund, as established in § 3-16.11 hereof, within thirty (30) calendar days of the approval date, the amount being based upon the Shade Tree Replacement Schedule in Section 3-16.10. Failure to submit the contribution will constitute a violation of this section and shall be subject to the same penalty as if the Living Shade Tree in

question had been removed without approval.

- c. Stump Removal. Except where the Commission makes a written determination that the process of Stump removal would adversely impact the health and/or survival of neighboring Trees, Tithes Stump of any Shade Tree or shrub shall be removed or ground down to twenty (20) inches below grade. Failure to remove the Stump within one (1) year of Shade Tree removal may result in the City's undertaking the Stump removal process with the Property Owner's being responsible for reimbursement to the City for any and all associated costs incurred, and the Property Owner may be subject to monetary penalty for noncompliance.

3-16.9 SHADE TREE ACTION REQUEST PROCEDURES

- a. Submission of Shade Tree Action Request Form. Applicants wishing to perform any of the above regulated activities must first submit a Shade Tree Auction Request Form via the City's website or by hard copy to the Commission. No request will be considered without a fully completed Shade Tree Auction Request Form. All requests will be reviewed and considered at the first regularly scheduled meeting of the Commission occurring at least seven (7) business days after the submission of the Shade Tree Auction Request Form.
- b. Applicant Attendance at Commission Meeting. Applicants are encouraged to attend the Commission Meeting to present supporting documentation for their requests and to provide clarification where necessary, but attendance is not mandatory.
- c. Commission Determination
 1. The Commission shall review each Shade Tree Auction Request Form and shall grant or deny said request within ninety (90) business days of first review. If the request is granted, the Commission shall state in a Letter of Determination the type of species of Shade Tree to be planted or removed, cut, trimmed or pruned or other action involving a Shade Tree and may set forth specifications and conditions for doing the same. It shall then be unlawful to take any action contrary to any and all specifications set forth in the Letter of Determination. Applicants will be notified in writing by hand delivery or United States Postal Service mail of the Commission's determination.
 2. The Commission may determine to waive or modify the requirements for Tree replacement as set forth in 3-16.10.a below where the Commission finds that the site constraints impose significant limitations to the chances of survival or the long-term health of the replacement Shade Tree or would interfere with utilities or pedestrian or vehicular.
- d. Duty to Post Authorization During Approved Shade Tree Work. Applicants issued a Letter of Determination by the Commission are required to post a copy of said letter in a visible location or present it upon request to any Authorized Representative of the City while work is done by a Tree Contractor or by the Property Owner. Failure to produce a Letter of Determination upon request shall be cause for the Authorized Representative of the City to direct that all work being performed on the Shade Tree is to immediately cease. The cease work directive shall remain in effect until such time that a Letter of Determination is presented which authorizes the work.
- e. Duty to Comply with Commission Conditions and Requirements. Failure to comply with any or all conditions set forth in the Letter of Determination by the Commission may result in enforcement action by the Commission as if none of the conditions were met and the Shade Tree action had taken place without any prior approval.
- f. Sunset of Determinations. The Commission's Letter of Determination for Tree actions shall expire

after eighteen (18) months of the issuance of the Commission’s Letter of Determination except that approvals to remove a Shade Tree and/or Stump shall have no expiration date and shall transfer to subsequent Property Owner(s).

3-16.10 NEW AND REPLACEMENT SHADE TREE REQUIREMENTS

- a. Replacement Shade Tree Size and Number. Unless the Commission determines that site conditions necessitate otherwise to better assure establishment of a healthy Tree, the Shade Tree Commission shall require that all new and replacement Shade Trees be a minimum size of 2 ½ inch caliper and be planted in accordance with accepted planting practices as directed by the Commission. In the event the Commission issues a Letter of Determination approving the removal of a Living Shade Tree, an Any replacement Shade Tree must be provided and planted by the Property Owner in accordance with the following Shade Tree Replacement Schedule:

Shade Tree Replacement Schedule

Size of Living Shade Tree(s) Removed/destroyed	Required No. of Replacement Trees(s) for Each Living Shade Tree Removed/Destroyed	Fee per Replacement Shade Tree in Lieu of Planting
1 to 4.99 in. DBH	1	\$500
5 to 10.99 in. DBH	2	\$1,000
11 to 16.99 in. DBH	3	\$1,500
17 or greater in. DBH	4	\$2,000

- b. Annual Adjustment of Replacement Fees. The Shade Tree replacement fees contained in the Shade Tree Replacement Schedule may be reviewed annually and adjusted to reflect current pricing.
- c. Shade Tree Selection and Placement. The Shade Tree Commission’s approval is required for determining the species, size and planting location of any new or replacement Shade Tree within the Jurisdiction Zone.
- d. Shade Tree Replacement Deadline. When the Commission determines that replacement of a Living Shade Tree is required, the Property Owner shall be required to supply and plant the replacement Shade Tree(s) within one (1) year from the date of the Commission’s Letter of Determination regarding removal of a Living Shade Tree and replacement. Any replacement Shade Tree or shrub must survive in good health for a period of two (2) years from the date of planting. If, in the opinion of the Commission, the a replacement Shade Tree dies or fails to thrive for two (2) years following the date of planting, that Shade Tree must be replaced by the Property Owner. Any subsequent replacement Shade Tree shall be subject to the same conditions as stipulated in the Commission’s original Letter of Determination for a period of two (2) years from the date of planting.
- e. Payment in Lieu of Shade Tree Planting. In the event the Commission approves removal of a Living Shade Tree(s), and the Commission determines that the location of said Shade Tree(s) would not be conducive to the health of a required replacement Shade Tree(s), the Commission may direct the Property Owner/Applicant to make a monetary contribution to the City’s Shade Tree Planting Trust Fund in lieu of planting a replacement Shade Tree(s). This contribution in lieu of planting a replacement Shade Tree shall be made within thirty (30) business days of receiving the Commission’s

Letter of Determination regarding the Shade Tree removal. The amount of said contribution shall be as defined under this section and pursuant to the Shade Tree Replacement Schedule in Subsection 3-16.10.a. and as specified in the Commission's Letter of Determination.

- f. Installation of Root Barrier. Whenever a new Shade Tree is planted, a root barrier of a type and size approved by the Commission may be required.

3-16.11 SHADE TREE PLANTING TRUST FUND

There is hereby established a "trust fund" account, which shall be known and designated as the "Shade Tree Planting Trust Fund." (No Change)

- a. Funds from the Shade Tree Planting Trust Fund account shall be separate and distinct from the Commission's annual budget and shall only be used for the purchase and planting of Shade Trees within the Jurisdiction Zone.
- b. Contributions or donations from individuals, groups or businesses, for memorial purposes or any other reason, may be made directly to the Shade Tree Planting Trust Fund. (No Change)
- c. Withdrawals and transfers from the Shade Tree Planting Trust Fund shall require the signed authorization of the Shade Tree Commission.

3-16.12 PROTECTION OF SHADE TREES

Property Owners shall cause no actions within the Jurisdiction Zone which could impair the viability of existing or future Shade Trees, and Property Owners shall nurture existing Shade Trees within the Jurisdiction Zone and protect them from actions and conditions that could impair their health or threaten their survival including, but not limited to the following:

- a. From Wires and Utility Work.
 - 1. Utility Wires. Any person, having control over any wire for the transmission of electric current, telephone or other communications or media cable, or any other utility service along a public street, highway, pedestrian way, or Commission Jurisdiction Zone, shall at all times protect all Shade Trees from harm caused by wires or from the current carried by them.
 - 2. Wiring for Decorative Lighting. In order to protect against girdling, Shade Trees shall not be wrapped with wires for any period in excess of forty-five (45) calendar days.
 - 3. Duty to Provide Notice. Prior to undertaking any work on the utility wires, cables or appurtenances in contact with or affecting any Shade Tree, the utility company shall provide at least ten (10) business days prior written notice to the City Clerk, Shade Tree Commission, and the abutting Property Owner and shall detail the nature of the work and the necessity therefor upon which notice the Shade Tree Commission and Property Owner shall be provided with an opportunity to request measures to protect the impacted Shade Tree(s) and recommend appropriate mitigating measures
- b. Chemicals. Except as approved by the Commission for treatment of disease or for pest control by a New Jersey Certified Pesticide Applicator, or for feeding as determined necessary and appropriate by a Certified Tree Operator or Licensed Tree Expert pursuant to N.J.S.A. 45:15C-11 et seq., Property Owners shall protect Shade Trees from chemicals. No persons shall cause or permit any injurious chemicals to come in contact with the stem, trunk, canopy, or roots of any Shade Tree within the Jurisdiction Zone including but not limited to: brine, gas, gasoline, motor oil, diesel fuel,

solvents, or other toxic substances. (Ord. 9/21/53§5)

- c. Actions Likely to Cause Tree Harm or Death. No person shall perform or permit any intentional or negligent act that will cause harm or death to a Shade Tree. Negligent or intentional damage shall include, but shall not be limited to:
 1. Damage inflicted to the root system by machinery or cutting tools;
 2. Storage or operation of heavy equipment, or storage of heavy materials, or other practices which cause soil compaction within the Dripline of a Shade Tree;
 3. Change of natural grade of soil above or below the root system or around the trunk;
 4. Damage inflicted on a Shade Tree which exposes the cambium of a Shade Tree and creates an opportunity for decay organisms, fungus, pests, bacteria or other infestations to infect a Shade Tree;
 5. Improper pruning, flush cutting, or thinning of a Shade Tree including removing in excess of 20% of the living crown, and/or topping, tipping, trimming or pruning which is so excessive that it threatens the health of the tree, or excessive thinning of the crown leading to the failure to thrive;
 6. Paving over the root system of a Shade Tree with any impervious materials within such proximity as to be fatally harmful to the Shade Tree;
 7. Application of toxic substances except as set forth in subsection 3-16.12.b above;
 8. Trenching of roots, cutting, girdling or inflicting other severe mechanical injury to the trunk, roots or other vital sections of a Shade Tree;
 9. Deliberately or negligently setting fire to a Shade Tree;
 10. Except in the case of Shade Tree removal as approved by the Commission, Tree climbing practices that expose the cambium such as spiking, trimming, or use of climbing spurs or gaffs; and
 11. Attachment of any item to a Shade Tree by means of mechanical fasteners such as nails, screws, spikes, or staples which penetrate the bark and enter the cambium.

3-16.13 INTERFERENCE WITH SHADE TREE COMMISSION PROHIBITED

No person shall prevent, delay or interfere with any lawful work undertaken by the Commission or an Authorized Representative of the City.

3-16.14 PENALTY

- a. Any person who shall violate any of the provisions of this section shall be liable to the penalty in Chapter 1, § 1-5, for each and every such violation to be recovered as provided by law (N.J.S.A. 40:49-5). The ordinances shall be enforced by like proceedings and processes. Enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the City.
- b. Any public utility or cable television company that clears, moves, cuts, or destroys any Shade Trees

for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures, necessary for the supply of electric light, heat, 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. This section shall not exempt any public utility or cable television company from any penalty or replacement assessment imposed for negligent or injurious actions as determined by the Commission.

3-16.15 NO LIABILITY FOR DEATH OR INJURY

Nothing in this section contained shall be construed to make the Shade Tree Commission or any member thereof, or any volunteer participating in a community forestry program as provided for by Section 4 of P.L. 1996, c. 135 (N.J.S.A. 13:1L-17.4), responsible for the death or injury of any person, or for an injury to any property or highway tree or shrub. Liability for any such death or injury shall be governed by the provisions of Section 16 of P.L. 1996, c. 135 (N.J.S.A. 59:4-10) and any other relevant provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. Emergencies

3-16.16 EMERGENCY

All matters related to a Shade Tree Emergency as defined in Section 3-16.5 hereof fall under the jurisdiction of the City's Emergency Management Coordinator, and are outside the scope of Section 3-16.1 et seq.

3-16.17 SEVERABILITY

If any sentence, clause, section, or part of this section is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this section.

3-16.18 CONFLICTING ORDINANCES

In the event this section conflicts with or overlaps with any other ordinance, the provisions of this section shall take precedence rendering inapplicable any conflicting or overlapping ordinance provisions. (No Change)

3-16.19 EFFECTIVE DATE

The terms and conditions of this section shall take effect upon adoption by the Lambertville City Council. (No Change)

INTRODUCTION AND FIRST READING:	May 18, 2023
PUBLIC HEARING AND SECOND READING:	June 15, 2023