

**ORDINANCE NO. 2018 -**

**BOROUGH OF PHOENIXVILLE  
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE BOROUGH  
OF PHOENIXVILLE FOR THE PURPOSE OF REPEALING THE CURRENT  
CHAPTER 25 “TREES” IN ORDER TO ENACT AN UPDATED CHAPTER 25  
“TREES”**

The Council of the Borough of Phoenixville, Chester County, Pennsylvania, hereby ORDAINS that:

**SECTION 1:**

The text of Chapter 25 “Trees” of the Code of Ordinances of the Borough of Phoenixville is hereby repealed in its entirety and replaced in its entirety as follows:

**§ 25-101. Purpose.**

1. Pursuant to the Pennsylvania Borough Code, the Phoenixville Borough Council has determined that it is in the best interest of the citizens of Phoenixville to promote and protect their health, safety and welfare to adopt a Tree ordinance. The Borough Council recognizes the role that trees play in the Borough's ecosystem. Phoenixville is committed to enhancing the urban forest for the many benefits that trees provide. The tree canopy is a key component to minimize the damaging effects of storm water runoff to the Borough, the French Creek, Schuylkill River and other streams, and ultimately, the Delaware Valley River Basin. Trees reduce air temperature, reduce heating and cooling costs and thus greenhouse gas emissions, improve property values, enhance physical and psychological health, and reduce air pollutants. Trees help people reconnect with nature. In order to establish a responsible program for planting, maintenance, protection, or removal of trees or shrubs in the Right-of-Way of the Borough of Phoenixville, the Borough Council finds it necessary to establish this Chapter.
2. This Chapter establishes policies, regulations, and standards necessary to ensure that the Borough will continue to realize the benefits provided by trees. The provisions of this Chapter are enacted for the purpose of:
  - A. Provide for the protection, preservation, Replacement, and proper maintenance of trees along the streets, in the parks, and on properties of the Borough.
  - B. Promoting and maintaining the aesthetic value of the streets of the Borough.
  - C. Providing for an orderly and efficient means of maintaining and protecting trees along the streets and in the parks of the Borough.

- D. Promoting the public health, safety, comfort and general welfare.
- E. Saving trees from indiscriminate destruction or unnecessary Removal.
- F. Diversifying the Tree species in the Borough.
- G. Establishing standards limiting and regulating the Removal of trees.
- H. Establishing an education program providing information and guidelines for Tree preservation and maintenance.
- I. Provide the minimum regulation necessary to ensure these important resources are preserved wherever possible while accommodating the landowner's property rights to make reasonable use of their property through compliance with other standards of this and other applicable Borough ordinances.
- J. Promoting the utilization of public and private trees to mitigate storm water runoff.

**§ 25-102. Word Usage; Definitions.**

- A. Word usage. For the purposes of this chapter, words and terms used herein shall be interpreted as follows:
  - (1) Words in the present tense include the future tense.
  - (2) The singular shall include the plural, and the plural shall include the singular.
  - (3) The masculine gender shall include the feminine and the neuter and vice-versa.
  - (4) The words "shall" and "must" are always mandatory, and the words "may" or "should" are always permissive.
  - (5) The word "used" or "occupied" as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be occupied."
  - (6) The word "Person" includes "individual," "company," "unincorporated association," "corporation" or other similar entities.
  - (7) The words "Cartway," "street," "road" and "highway" shall have the same meaning.
  - (8) The word "structure" includes "building"; both terms shall be construed as if followed by the phrase "or part thereof."

- (9) The words "such as," "includes," "including" and "specifically" shall provide examples which shall not, by themselves, limit a provision to the examples specifically mentioned if other examples would otherwise comply with the provision.
- (10) Unless stated otherwise, the male gender is neutral and includes the female gender.
- (11) The word "lot" includes the word plot or parcel.
- (12) The word "abut" shall include the words "directly across from," "adjacent" and "next to."
- (13) Whenever a governmental or nongovernmental agency is cited, it shall be construed to be followed by the words "or successor agency."
- (14) If a word or term is not defined by this chapter, but is defined in the Borough Subdivision and Land Development Ordinance (SALDO) or Zoning Ordinance, then the SALDO or Zoning definition shall apply. If a word or term is not defined in this chapter, the SALDO or the Zoning Ordinance, then the word or term shall have its plain and ordinary meaning within the context of the section. In the latter case, a standard reference dictionary should be consulted.

B. Definitions. The following words and phrases, as used herein, shall have the meanings hereby ascribed to them, except in those instances when the context clearly indicates a different meaning:

#### **ANNUAL LICENSE**

A license is required of commercial tree companies that plan to prune, remove, or apply pesticides to trees over eight (8) inches in diameter on private property or prune or apply pesticides to trees in public property in the Borough of Phoenixville. An Annual License shall be obtained from the Department of Public Works, for a fee, upon showing proof of liability insurance in the amount of \$500,000 and Worker's Compensation Insurance as required by State Law.

#### **ARBORIST**

The Arborist/Horticulturist of the Borough of Phoenixville, as supervised by the Borough Manager or his or her designee, or any urban Tree professional employed or contracted by the Borough and designated with the responsibilities as set forth in this chapter.

#### **BOROUGH**

The Borough of Phoenixville, Pennsylvania.

#### **BOROUGH MANAGER**

The Borough of Phoenixville Borough Manager or his or her designee.

**CALIPER**

The measure of the diameter of the trunk of balled or burlapped Nursery trees at a point six inches above the ground, or 12 inches above the ground for trees over four inches in Caliper. See also "DBH, diameter at breast height." It should be noted that "Caliper" and "diameter at breast height" are both used in this chapter and carry different meanings, and should not be used interchangeably.

**CARTWAY**

The paved surface of a street or alley available for use by vehicular traffic.

**COMMISSION**

The Tree Advisory Commission (TAC) of the Borough.

**COUNCIL**

The Council of the Borough of Phoenixville.

**DBH, DIAMETER AT BREAST HEIGHT**

The diameter of a Tree at breast height, which shall be measured at 4 1/2 feet above ground. On multi-stem trees, the largest diameter stem shall be measured. See also "Caliper."

**DEPARTMENT**

The Department of Public Works of the Borough.

**DECIDUOUS TREES**

Trees that lose their leaves in winter.

**DIRECTOR**

The Director of the Department of Public Works or her/his designee.

**DRIPLINE**

An imaginary vertical line that extends downward from the outermost tips of the Tree branches to the ground.

**NATIVE TREES**

Trees that are indigenous and original to a particular geographical area.

**NOTICE**

Either publication in one newspaper of general circulation, written notification sent by first-class mail to Property Owners immediately affected, or notification posted on the affected tree.

**NUISANCE**

Anything or act that annoys, unreasonably disturbs, hurts a Person's use of his or her property, or violates the public health, safety and welfare.

**NURSERY**

A licensed plant or Tree Nursery whose trees are planted and grown for sale to the general public in the ordinary course of the licensee's business.

**PARK**

Includes all public Parks within the Borough under the jurisdiction of the Department of Public Works.

**PERMIT**

Any Permit, in writing as issued by the Borough Manager or his or her designee.

**PERSON**

Any Person, firm, partnership, association, corporation, company, or organization of any kind.

**PROPERTY OWNER**

The owner of record of a parcel of land.

**PUBLIC AREAS**

Includes any public Right-of-Way, including street, alley, avenue, boulevard, road, highway, freeway, lane, viaduct and any other dedicated and accepted public Right-of-Way, and any public Park, trail, greenway, recreational facility, or open space under the jurisdiction of the Borough, as well as any Borough agency, Commission, and board.

**PUBLIC STREET**

Any Public Street, road, highway, public easement, sidewalk, alley, curb lawn, or public waterway, and includes the entire width of any Right-of-Way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

**REAL PROPERTY**

Real property, sometimes referred to as real estate, realty or immovable property, is composed of any designated portion of land and anything permanently placed on or under it. The elements on or under the land can include natural resources and/or human-made structures.

**REGULATED TREE**

Any tree, Shrub or other woody plant in or upon any Public Street, highway or avenue, or public Park, trail, greenway or open space in the Borough, or that part of any tree, Shrub or other woody plant which extends within the lines of any Public Street, highway or avenue, or public Park, trail, greenway or open space in the Borough. For the purposes of this chapter, a Shade Tree shall also include any tree, Shrub or other woody plant located within any properly executed and recorded easement on private property.

**REMOVE or REMOVAL**

To cut down a Tree or Remove 50% or more of the crown, trunk, or root system of a tree; or to damage a Tree so as to cause the Tree to decline and/or die. It does not include normal trimming or pruning.

**REPLACEMENT**

The evaluation of planting a new Tree to replace the old Tree that died or was damaged within the constraints of location, soil conditions, Utilities and other factors to select the best tree for the location.

**REPLACEMENT PLAN**

A Tree Replacement Plan by Borough Council that divides the Borough into twelve sectors and beginning in 2018 through 2030 provides for the Removal of a certain number of aged, dying, or damaged trees so that a Replacement Tree can be planted in order to ensure that each sector of the Borough remains sensitive to ecological and economic benefits and sustains a healthy Regulated-Tree canopy. For the purpose of this Chapter, this does not necessarily include the Removal of trees as requested by residents through the Tree Advisory Commission.

**RIGHT-OF-WAY (ROW)**

A line or lines delineating the extent or dimensions (usually expressed in feet) of the width of a public or private street or alley and which abuts two or more lots or property lines. The total width of any land used, reserved or dedicated as a street, alley, driveway, sidewalk or utility easement.

**SHRUB**

A multi-stemmed woody plant differing from a Tree by its low stature and habit in branching from the base.

**STREET TREE**

Any Regulated Tree planted in the Right-of-Way, including but not limited to between a street curb or Cartway and a sidewalk. For the purpose of this chapter, a Street Tree shall also include any Regulated Tree located within any properly executed and recorded easement on private property on the owner's side of a sidewalk.

**TREE ADVISORY COMMISSION (TAC)**

The Borough of Phoenixville Tree Advisory Commission as appointed by Borough Council.

**TOPPING**

Severe cutting back of limbs to stubs larger than three inches in diameter within the Tree crown to such degree so as to Remove the normal canopy and disfigure the tree.

**TREE**

As used herein, "tree" shall mean "Regulated Tree." The following Tree size designations are based upon trees available through the Borough's Tree Planting Program:

- (1) Large trees are designated as those attaining a height of 45 feet or more with a mature spread of 30 feet or more.
- (2) Medium trees are designated as those attaining a height of 30 feet to 45 feet with a mature spread of 20 feet or more.
- (3) Small trees are designated as those attaining a height of less than 30 feet with a mature spread of 10 feet or more.

### **TREE MANUAL**

The Borough of Phoenixville regulations and standards for arboriculture work for the planting, care, and maintenance of trees and Shrubs.

### **TREE PROTECTION ZONE (TPZ)**

The TPZ extends from the Tree trunk a distance equal to 12 times the trunk diameter at breast height, or to the tree's Dripline plus five feet, whichever distance is greater.

### **TREE WORK**

Includes, but is not limited to, pruning, shaping, thinning, cabling, stump Removal, root pruning, Topping, fertilizing, removing, planting, and spraying for insect and disease control of a Tree requiring a Permit as set forth herein.

### **UTILITIES**

Those entities that provide electric, gas, sewer, water, telephone, communication, stormwater system, and cable services to properties within the Borough.

### **§ 25-103. Jurisdiction.**

1. The Borough Council hereby vests the Borough Manager with exclusive and absolute custody and control of and power to plant, set out, Remove, replace, maintain, protect and care for public Regulated Trees of the Borough of Phoenixville, and no such trees may be planted or Removed except by order of the Borough Manager. The Borough Council hereby directs the Tree Advisory Commission to provide the Borough Manager, at his/her request, with written recommendation regarding the Borough Manager's proposed actions.
2. The Borough of Phoenixville shall have control and regulatory authority of all Street Trees, Shrubs, and other plantings now or hereafter in any street, Park, public Right-of-Way or easement, or other public place within the Borough limits.
3. No Person shall cut, trim, mutilate, injure or destroy any Tree without first having obtained a recommendation to do so from the TAC to the Borough Manager in the case of trees standing on Borough rights-of-way or easements. However, nothing in this Section shall be construed to prohibit the trimming or cutting by the Borough, of trees or parts thereof on or extending over any street or other rights-of-way belonging to the

Borough when such trimming or cutting is necessary to prevent interference with any Borough-owned utility, or to Remove any dangerous condition, or for any other Borough purpose.

**§ 25-104 Tree Advisory Commission (TAC).**

Purpose. The Tree Advisory Commission, working in conjunction with the Director of Public Works, works to maximize the ecosystem services derived from Shade Trees by establishing policies for the planting, Removal, maintenance and protections of trees along Borough streets, sidewalks, municipal Parks and public open space. The policies and procedures within which the Tree Advisory Commission functions are set forth in Chapter 1 of the Code of the Borough of Phoenixville.

**§ 25-105. Protection and Planting of Trees on Public Rights-of-Way.**

1. Permit required. Except for Borough generated plantings, a Tree Work Permit shall be required for:
  - A. Planting, transplanting, cutting, pruning, treating or removing any Regulated Tree, or portion thereof, in the Right-of-Way and other Public Areas.
  - B. Fastening or causing to be fastened any sign, wire, rope or other materials to, around or through any Shade Tree.
  - C. Depositing, placing, storing or maintaining any stone, brick, sand, concrete or other material which may impede the free passage of water, air or fertilizer to the roots of any Regulated Tree.
  - D. Move any building or other object on or over any Public Street or public Right-of-Way in such a manner as to damage or injure any Regulated Tree.
  - E. Hanging lights and other seasonal or holiday displays. When Permitted, all such displays shall be Removed within 30 days following the holiday or end of season.
  - F. No Person shall break, injure, mutilate, kill or in any other way harm any Regulated Tree.
2. Application. The application for any Permit shall be made in writing to the Director of Public Works on the form provided. Such Permit application shall describe the work to be done, specify species or variety, size, Nursery grade and location and briefly specify the method of planting, method of support and pruning of all trees or Shrubs concerned and contain a definite expiration date.
  - A. All applications for a Tree Work Permit shall be reviewed by the Tree Advisory Commission (TAC) and approved by the Director.



- B. The application for a Regulated Tree Permit may be waived by the Borough Manager when the work is done at the direction of, and carried out by, the Department.
3. Conditions attached to Permits.
- A. All Regulated Trees Removed by Permit shall be replaced within a period of one year from the date of Removal.
    - (1). The Property Owner may, in lieu of replacing a tree, pay a fee, equal to the Replacement value of a tree.
    - (2). The option of paying a fee in lieu of replacing a Tree may only be exercised when absolute circumstances prohibit planting a Tree in the location from which it was Removed. Such a determination will be made by the Borough Manager.
  - B. In the event of a Tree Removal where the Tree will not be replaced, the Property Owner is required to contract for the Removal of the stump immediately following the Removal of the Tree and to make any necessary repairs to the sidewalk at the homeowner's own expense.
  - C. The Department shall have the authority to designate a suitable type of Tree and may refuse a Permit to plant any type of Tree which, in its opinion, is not suitable to the location. The Permit may be revoked at any time upon proof that any of the terms or conditions upon which such Permit was issued are or have been violated.
  - D. The Department, in its discretion, may, as a condition precedent to issuance of a Permit, require a contractor, authorized by the Property Owner to plant a tree, to guarantee such Tree for a period of 18 months against defects in materials or workmanship. If death of the Tree results within this time period and for the aforementioned reasons, the contractor shall incur the cost of Removal, including cost of sidewalk repairs, new Tree cost and replanting for each Tree planted. However, if the Tree should die after the period of warranty has expired, the Property Owner shall replace said Tree in accordance with all provisions herein.
  - E. A contractor hired to perform any Tree Work is required to have an Annual License.
  - F. As a condition to any Permit to move any building or any oversized object on or over any Public Street or other public right of way, the Borough may require the applicant to furnish a bond in an amount sufficient to cover any damage or injury to any Regulated Tree caused by the applicant or his agent(s) and it may direct the route of any such moving so as to minimize damage or injury to Regulated Trees.

4. Review of land development plans. The Director of Planning shall forward one copy of any sketch, preliminary, or final and land development or subdivision plan submitted for review to the TAC for a review of the proposed land development's effect on any Regulated (street) tree(s). The TAC shall provide written comments on the effect of said land development on any tree(s) within ten (1) days of their regular scheduled meeting after receiving said plans.
  - A. All land development plans or landscape plans shall show all existing trees, clearly labeling all trees proposed to be protected and those slated for Removal. All Regulated Trees abutting said projects shall also be shown on the plans along with the required Tree Protection Zone.
5. Review of other Permit applications. All applications for driveway or sidewalk permits, zoning permits, or other permits for work that may impact trees, including but not limited to demolition, construction or expansion, and not a land development, shall be referred to the Director for review as provided for hereunder. Within five business days of the receipt of the applicable Permit application from the Borough Engineer, Zoning Officer, Codes Official or other entity, the Director shall determine the need for and location of the TPZ fencing around all Regulated Trees located on or adjacent to the site. Where determined necessary by the Director, the Property Owner shall install a staked construction fence at least four feet high, or alternative as approved by the Director, around all portions of the TPZ, excluding any portions occupied by sidewalks, street Cartway, curbs/gutters or a driveway. No activity is Permitted within the TPZ without a Permit issued in accordance with this section. Any activity occurring within the TPZ in violation of this Chapter shall be addressed as provided for in § 25-118 of this Chapter.
6. Denial and revocation of Permits.
  - A. Denial. A request for a Tree Permit shall be denied if the information submitted therewith is incomplete, erroneous or otherwise unsatisfactory, or if the application fee is not remitted in full.
  - B. Revocation. The Director may revoke a Permit issued under the provisions of this chapter if it is determined that any false statement or misrepresentation of fact exists on the application or on the plans on which the Permit was based in addition to:
    - (1) Violation of any condition of the Permit.
    - (2) Violation of any provision of this chapter or any other applicable ordinance or law relating to the work.
    - (3) The existence of any condition or the doing of any act constituting or creating a Nuisance or endangering the lives or property of others.

- C. Written Notice of such violation shall be served upon the Person to whom the Permit was granted or his agent or employee engaged in the work. Such Notice shall also contain a brief statement of the reasons for revoking such Permit. Notice may be given either by Personal delivery thereof to the Person to be notified or by United States mail, addressed to such Person to be notified.
- 7. Approved Tree Species. Borough Council shall adopt the Phoenixville Tree Manual, by Resolution, from time to time. The Phoenixville Tree Manual provides a list of approved Tree species, based upon Tree size and classification. The TAC shall recommend a tree-planting list that shall have three classes of trees, based on the mature height and width of the tree. The Borough of Phoenixville recognizes that there is no perfect Tree for all situations. Trees shall be approved based on the location of the planting. In an effort to prevent a mature Tree from growing into the overhead wires, a size-appropriate species shall be selected.
  - 8. Location of Tree Planting. All trees shall be planted in accordance with the Phoenixville Tree Manual.
  - 9. Nullification of Permit. Any Permit issued in conflict with the provisions of this chapter shall be null and void and may not be construed as waiving any provision of this chapter.
  - 10. Borough departments, agencies, and authorities; public Utilities
    - A. The obtaining of a Tree Work Permit by Borough departments, agencies and authorities shall be waived when the work to be performed is completed by their own Personnel. All contractors performing work under contract for the Borough or its agencies and authorities shall obtain all necessary Permits including but not limited to the Tree Work Permit.
    - B. Public Utilities shall obtain a Tree Work Permit for any Regulated Tree Work, including but not limited to pruning and Removal, performed by their own forces or by contractors.
    - C. In the event that Regulated Tree Work is necessitated by emergencies, Tree Work Permits shall be obtained on the first regular business day on which the office of the Borough is open for business and such Permit shall be retroactive to the date when the work was begun. A Person performing Tree Work for an emergency must verify the nature of the emergency, in writing, to the Director within five days after such emergency.
    - D. Irrespective of the provisions herein, no Tree Work shall be performed without the review of the Director.
  - 11. Fees. The fee for Permits shall be set in the Borough's Master Schedule of Fees.

**§ 25-106. Tree Maintenance.**

1. The maintenance of trees shall be governed by this Section.

A. Tree Maintenance by Owner.

- (1) The Property Owner shall be responsible for the normal maintenance and care of the Street Tree and shall regularly inspect and remove minor defective conditions, as is practical.
- (2) The Borough shall not be liable for injury, damage, or loss to Person or property caused in whole or in part by the defective or dangerous condition of any Tree located in or upon a Right-of-Way.
- (3) It shall be the duty and responsibility of every Person owning any property within the Borough to keep all trees on that property trimmed in such a manner that there is a clearance of at least 14 feet above any street or alley and a clearance of at least eight (8) feet over any sidewalk.
- (4) The owner of any corner lot or premises in the Borough shall keep trees, hedges and growth at the corners of intersecting streets, whether between the curblines and the private lot line or within the private lot or premises, so trimmed that the height of the same shall not exceed three feet above the curb level for a distance of 30 feet measured horizontally in any direction from the point of intersection of the property lines at street corners.

B. Tree Maintenance by Borough.

- (1) The Borough shall have the primary responsibility and shall bear the cost of maintenance and care of the Street Tree and shall regularly inspect and remove defective conditions that are beyond what is expected in Section 25-106 1A(1) above.
- (2) The Borough shall have the right to plant, prune, maintain, and remove trees located within the public Right-of-Way or private property as may be necessary to protect public safety or to preserve or enhance the appearance of public property or private property.
- (3) The Borough may remove, or order after Notice to be Removed at the expense of the responsible Property Owner, any non-Regulated Tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electrical power lines, telephone or cable service lines, natural gas lines, waterlines, or other public improvements, interferes with the line of site of traffic signs, or is affected with any injurious fungus, insect, or other pest.

C. Maintenance Practices.

- (1) Tree Topping. The practice of Topping of any Street Tree shall be discouraged. Topping is the cutting back limb to stubs. This practice is done to reduce or remove the normal canopy of the tree. Trees under utility wires that require Topping for the protection of the utility infrastructure may be exempt from this Section.
- (2) Removal of Stumps. All stumps of Street Trees shall be removed to a minimum depth of four inches below the surface of the ground within ten (10) business days of the original removal date. Residual chips shall be Removed and the ground made level.
- (3) Trimming of Roots. The practice of root pruning is not allowed on any Borough Tree without the consent of the Director of Public Works under the advice of the Borough Arborist.
- (4) Obstruction.
  - (a) It shall be the duty of any Property Owner to keep the private or Regulated Trees pruned in a manner that will not obstruct the passage of pedestrians on sidewalks, obstruct vision, obstruct the view of any street or alley intersection, or obstruct the view of any traffic signage. The minimum clearance of any overhanging portion thereof shall be at least eight (8) feet over sidewalks and fourteen (14) feet over all streets.
  - (b) When a Property Owner is notified of an obstruction due to a private or Regulated Tree and does not correct the violation within 45 days of Notice, the Borough shall have the right to have the violation corrected and bill the Property Owner for all cost.

**§ 25-107. Tree Removal.**

1. Criteria.

- A. No Person shall Remove a Street Tree without obtaining a Permit from the Public Works Director. Permits to Remove Street Trees will be granted only if one of the following conditions exist:
  - (1) The Tree is dangerous and may be made safe only by its Removal.
  - (2) The Tree is dead or dying and its condition cannot be reversed.

- (3) The Tree is diseased and presents a potential threat to other trees within the Borough.
  - (4) If the Tree has damaged the roadway facilities (including but not limited to the sidewalk, curb, gutter and pavement) and further damage cannot be prevented by reasonable Tree maintenance procedures or by reasonable relocation or redesign of the damaged facilities..
- B. A Tree that is in proximity to a sanitary sewer line from a building shall be considered for removal only if the sewer lateral pipe cannot be replaced due to the size or location of the tree.
  - C. A Tree may be considered for removal if it is impairing the health and growth of adjacent and more valuable trees or if the branches are affecting utility lines, is growing too close to a utility pole, or is growing too close to another immovable obstruction.
2. Procedure.
- A. Any Street Trees that are approved for a property owner removal permit by the TAC shall be replaced at the Property Owner's expense. The Property Owner may replace the Tree at an approved location or pay in lieu a sum to the Tree Replacement Fund for a Replacement tree. The location where the Tree has been removed must conform to the requirements for planting a new tree. If the same location is not approved for replanting, then an alternate location shall be identified for the Replacement tree. The Replacement Tree must have a minimum Caliper of two (2) inches at four-foot height and be of a species that meets height requirements at maturity.
  - B. When a Tree has been Removed from the Borough Right-of-Way without a Permit, the Director shall have the authority to require the Property Owner to replace that Tree with another Tree at the Property Owner's sole expense. The installation and planting of the Replacement Tree shall conform to the requirements for planting a new tree. All Permits to Remove a Street Tree shall be issued for no more than 60 days from the date of issue. All work shall be completed within that sixty-day Permit period.

## **§ 25–108 Tree Replacement**

The Replacement of trees established in this Chapter is divided into three (3) distinct categories

- 1 Replacement Plan. Beginning in 2018 Borough Council hereby establishes a Tree Replacement Plan. The Tree Replacement Plan divides the Borough into twelve sectors and provides for the Removal of a certain number of aged, dying, or damaged trees so that a Replacement Tree can be planted. This timely Removal and Replacement of trees is intended to ensure that each sector of the Borough remains sensitive to ecological and

economic benefits and sustains a healthy Regulated-Tree canopy. For the purpose of this Chapter, this does not necessarily include the removal or pruning of trees as requested by residents through an application submitted to the Borough or the Tree Advisory Commission. A Map of the Tree Replacement Plan is available on the Borough's website and at the Borough Offices during normal business hours.

2. Replacement of Street Trees.

- A. Any Person seeking to remove any Tree under the jurisdiction of the Borough shall apply for and obtain a Permit under this Chapter prior to such removal.
- B. If the Borough Manager or his designee approves a Removal request for a tree, issuance of a Permit under this Chapter shall require the applicant to pay a fee sufficient to cover the cost of replacing any Tree proposed to be Removed as set forth in this Chapter, unless otherwise Permitted by law. The applicant shall indicate in writing whether they intend to plant the required number of Replacement trees, as directed by the Director of Public Works, or requests that the Department plant such Replacement trees at applicant's cost.

3. Replacement of Trees on an approved Subdivision or Land Development Plan.

- A. No tree shown to remain on an approved subdivision or land development plan shall be removed without prior Township approval unless it is the cause of immediate danger to life or property.
- B. No tree shown to remain on an approved subdivision or land development plan other than that which is the cause of immediate danger to life or property shall be removed without Borough approval based upon a determination that any of the following considerations exist:
  - (1) Affliction by a disease which threatens injury or destruction of other trees.
  - (2) Federal, state or Borough laws, ordinances or regulations superseding this chapter require removal.
  - (3) The tree has been substantially damaged or has died.
- C. In the event that a tree over three-inches caliper which is shown on an approved plan to remain and which must be removed in accordance with Subsection B (1) or (2) above, such tree shall be replaced with a tree a minimum of three inches in caliper of the same species or as approved by the Borough at a rate of one new tree for every tree removed.

**§ 25-109 Determination of Replacement Trees**

1. Determination of Replacement trees. The number of trees needed to replace each Tree approved for removal shall be determined by calculating the size, condition, species and location rating of the Tree proposed for removal. If a Removal Permit is recommended by the TAC and approved by the Director of Public Works, no later than ninety (90) days following the filing of a completed application for a Permit, shall inform the applicant, based on the factors herein, the number and size of Replacement trees to be planted and the period of time during which the Replacement trees shall be planted and the fee for such Replacements. In order to determine the applicable rating for any Tree approved for Removal the Director shall take into consideration the following:

- A. Size. The size rating of a Tree shall be determined by measuring the diameter of the Tree at breast height (four and one half (4 ½) feet above the ground) and then calculating the cross sectional area of the trunk in square inches.
- B. Condition. The condition rating of a Tree shall be based on the following factors:
  - (1) The structure and health of its roots;
  - (2) The structure and health of its trunk;
  - (3) The structure and health of its branches;
  - (4) The health of its small branches and twigs; and
  - (5) The health of its foliage and/or buds.

However, if the Director determines, after consulting with the applicant, that a Tree requested for Removal is dead or seriously diseased, or otherwise represents a hazard to public safety, such Tree will not result in any required Replacement trees unless the hazard was caused by actions of the applicant.

- C. Species. The species rating of a Tree shall be based on the magnitude and longevity of the services and benefits the species provides in the Borough. Magnitude and longevity are established by Tree stature at maturity (i.e., mature height), and expected Tree lifespan.
- D. Location. The location factor of a Tree shall be determined by considering how well the site supports the tree's biological, physical and nutritional needs; and a tree's placement in the landscape with respect to both the tree's positioning within and its relationship to its surroundings.
  - (1). The rating of the site where a Tree is growing is established by considering the following:
    - (a) whether the site is in a Park or landscaped area with ample belowground and overhead growing space;
    - (b) whether the site is in the street but there is enough above and below ground space to support the tree;
    - (c) whether the species of Tree is tolerant of the site's difficult growing conditions, if any;



- (d) whether the site is physically limiting to the tree, but the tree's stature and root system are appropriate for current adjacent infrastructure (e.g., small stature under utility wires or next to a building or retaining wall);
- (e) whether the Tree is negatively impacted by existing site infrastructure;
- (f) whether the site contains objects, such as houses, power lines, or playgrounds, in the path of Tree should it fall and the Tree is of a structurally sound species;
- (g) whether physical space limitations at the site will challenge the success of the Tree over time;
- (h) whether the species of Tree is only moderately tolerant of the site's difficult growing conditions, if any;
- (i) whether the tree's stature or root system is inappropriate for adjacent current site infrastructure (e.g., large Tree under utility wires or too close to a building foundation or bridge parapet); and
- (j) whether the site contains objects, such as houses, power lines, or playgrounds, in the path of Tree should it fall and the Tree is of a structurally weak species.

(2). The rating for a tree's placement in its surrounding landscape is determined by considering the following:

- (a) whether the Tree is a native species in or adjacent to a natural area or large Park;
- (b) whether the Tree is a historic specimen or part of a grove, or is an original planting in a historic landscape;
- (c) whether the Tree is the only, or one of a few, in the area;
- (d) whether the Tree is extremely complimentary to or prominent within an adjacent view, land use, structure or natural landscape element;
- (e) whether the Tree is one of a group of plantings and its individual loss would have minimal visual or environmental impact on the entire group of plantings;
- (f) whether the Tree is very important within a group of other plantings, such as an alley or along an even-aged block, and its loss would be of high impact to that planting group; and
- (g) whether the Tree provides exceptional services based on its location  
(e.g., shade in a playground or sitting area, property value in front of a building, stormwater absorption in or near a wetland).

E. Replacement sizes; alternatives for Subdivision or Land Development.

- (1) Trees of 10 inches caliper or more which are proposed to be removed during any stage of development, grading and/or construction within a

subdivision or land development shall be replaced with an approved tree or trees of the type provided for in this chapter. Said replacement trees shall meet the following size limitations:

- (a) Trees with a diameter of 10 inches or more but less than 18 inches which are removed shall each be replaced with no less than four trees measuring 2 - 2 1/2 inches in caliper.
  - (b) Trees with a diameter of 18 inches or more but less than 30 inches which are removed shall each be replaced with no less than seven trees measuring 2 - 2 1/2 inches in caliper.
  - (c) Trees with a diameter of 30 inches or more which are removed shall each be replaced with no less than 10 trees measuring 2 - 2 1/2 inches in caliper.
- (2) All trees to be removed shall be measured at a height of 4 1/2 feet above finished grade level. All replacement trees to be planted shall be measured at a height of six inches above the finished grade level in accordance with ANSI A300.
  - (3) Replacement trees may be planted within, but not in place of, the required buffer trees or the required parking lot trees.
  - (4) Replacement trees shall be selected in compliance with the Borough's Tree Manual. The priority shall be to plant the trees at the subdivision or land development site from which the trees are removed unless, with the Borough's approval, the developer makes a payment to the Borough in lieu of the onsite improvement.
    - (a) A replacement tree capital account ("tree bank") will be established by the Borough where fees in lieu of on-site improvement shall be deposited. These funds shall be used for the purpose of planting replacement trees at approved locations in the Borough.
    - (b) The contribution by the developer to the tree bank will be \$315 per replacement tree.
    - (c) The contribution to the tree bank will be due at the time of the final execution of the development agreement with the Borough.
- F. Calculation of Fee for a Tree Removal Permit. The Director of Public Works will determine the total fee for a Tree Removal Permit by multiplying the number of required Replacement trees by the cost per tree, which is determined by calculating the average planting price for a 2 – 2 1/2 inch Caliper Street Tree.

- G. The timing for planting Replacement trees shall be determined by the Director of Public Works and stated within the Permit unless otherwise Permitted by law. However, each Replacement Tree under such a Permit shall be planted no later than sixty (60) days after the project for which the Tree Removal was requested has been completed, or in the next ensuing spring or fall season after such project is completed or earlier as agreed by the applicant and the Department.
  - H. Size of Replacement Trees. All Replacement trees will be 2 – 2. 1/2 inch Caliper, unless otherwise authorized by the Director.
2. Payment to the Borough.
- 1. If a Person granted a Permit requests that the Department plant any required Replacement trees, such Person shall pay the required fee to the Borough prior to the issuance of any such Permit unless otherwise Permitted by law.
  - 2. If a Person granted a Permit intends to plant any required Replacement trees, such Person shall notify the Department in advance and pay the required fee to the Borough prior to the issuance of any such Permit. If the required Replacement tree(s) are planted by the Permittee as directed by the Director, the Director shall return any such fee within sixty (60) days of confirmation by the Director that such trees were properly planted by Permittee. If any such tree(s) is not replanted as directed by the Department by the time specified within the Permit, the Borough shall retain such fee for the purpose of planting said Replacement trees.
3. Irreparable Tree Damage. If a Tree is damaged beyond recovery or if it is damaged so that it poses a safety risk, as determined by the Director of Public Works, it shall be removed, including its stump, at the Permittee's expense if a Permit is in effect pursuant to this Chapter or at the expense of the person responsible for such damage if no Permit is in effect. In such instances, the Tree shall be evaluated for Replacement purposes pursuant to this Chapter based on its condition prior to suffering irreparable damage.
4. Destruction and Tree Removal. If a Tree is destroyed and Removed without a Permit pursuant to this Chapter, there shall be a rebuttable presumption that such Tree was in perfect condition prior to such Removal. In this instance the Tree shall be evaluated pursuant to this Chapter for all other factors. However, the size of the Removed Tree shall be determined either by the diameter of the remaining stump or from existing Department records. The cost of the total number of Replacement trees to be planted shall equal the appraised value of the destroyed or Removed tree.
5. Injured Trees. If a Tree is damaged or injured, but not destroyed or Removed, the Director of Public Works will make the following two (2) appraisals using the method established in this Chapter in order to determine the value of the damaged or injured tree. The first appraisal shall account for the tree's condition prior to damage or injury. The second appraisal shall account for the tree's condition after damage or injury, with all other factors being equal. The difference between the two appraisals shall equal the

Replacement value caused by the injury and the sum for which the Permit holder or Person responsible for the injury is responsible.

6. The location of Replacement trees shall be determined by the Director of Public Works unless otherwise Permitted by law. To the extent practicable, Replacement trees shall be planted within the same community district from which the tree(s) that were the subject of the Permit were Removed. Where the Director determines that it is not feasible to plant the total number of Replacement trees at the subject location, the Person granted the Permit under Chapter shall be required to plant the remaining Replacement trees at locations capable of accommodating such planting, either as close as possible to the property from which the original trees were Removed, destroyed or severely damaged, or as the Director deems feasible. The Person granted the Permit under this Chapter may propose in writing to the Director alternate locations, so that provision may be made for the planting of all required Replacement trees. Where it is determined that a proposed alternate location or the number of Replacement trees proposed to be planted at an alternate location is not feasible, the Director may select other locations to accommodate the planting of all required Replacement trees.

**§ 25-110. Removal of Diseased Plants, Shrubs and Trees from Private Property.**

The Council may, upon such Notice as may be provided by ordinance, require owners of Real Property in the Borough to cut and remove plants, Shrubs and trees afflicted with the Dutch elm or other disease which threatens to injure or destroy plants, Shrubs and Regulated Trees in the Borough. Upon failure of any such owner to comply with such Notice, the Borough may cause the work to be done by the Borough, and levy and collect the cost thereof from the owner of the property. The cost of such work shall be a lien upon the premises from the time of the commencement of the work, which date shall be fixed by the Borough Manager. Any such lien may be collected by action in assumpsit or by lien filed in the manner provided by law for the filing and collection of municipal claims.

**§ 25-111. Public Utility Companies.**

Public utility companies shall notify the Borough Manager prior to pruning any Tree located on Borough-owned property for the purpose of maintaining safe line clearance and shall carry out all such work in accordance with accepted arboricultural standards. A utility tree-trimming policy must be reviewed by the utility company and Borough Tree Advisory Commission with approval from the Borough Manager prior to any trimming by the utility company. If accepted arboricultural standards are not followed, the Borough Manager will immediately file a formal complaint with the Pennsylvania Public Utility Commission.

**§ 25-112. Development and Construction.**

1. The developer shall be responsible for tagging those trees they are proposing to be saved and or removed

2. The developer or builder shall be required to replace trees originally intended to be preserved when such trees are damaged during construction. The Replacement requirements for such damaged trees shall be consistent with Section 25-108 of this Chapter.
3. If any of the trees required to be retained or trees planted as part of the landscaping plan should die within a period of twelve (12) months after completion of the activities associated with the Tree Removal Permit, the owner of the property shall replace the trees within six (6) months at a ratio of one-to-one with an approved Tree having a minimum of three (3) inch Caliper or eight (8) feet in height for evergreens. Shrubbery or other plantings that die within twelve (12) months of completion of the activities shall be replaced in kind within six (6) months.

**§ 25-113. Display of Tree Permit.**

The Tree Permit grantee shall conspicuously display the Permit on-site. The grantee shall display the Tree Permit conspicuously while trees are being Removed or replaced or while activities authorized under the Permit are performed. The Tree Permit grantee shall allow Borough representatives to enter and inspect the premises at any reasonable time. Failure to allow inspection shall constitute a violation of this section.

**§ 25-114. Appeals.**

1. Any action of the TAC may be appealed to and heard by the Tree Appeal Board. The Appeal Board shall be comprised of the Borough Manager, one or both Councilperson(s) from the Ward where the appeal is from and the Director of Public Works. Any appeal must be filed within 10 days after the decision of the Director. The appeal shall be in writing and shall be filed with the Borough Manager for placement before the Appeal Board. The appeal shall clearly specify the reasons for which a hearing is requested. After a hearing, the Appeal Board shall render its decision. In the event that the applicant is not in agreement with the Appeal Board's decision, a final appeal may be made to Borough Council. The appeal to Borough Council shall be filed with the Borough Manager's office in writing within 10 days of the Appeal Board's date of mailing to the applicant. The Borough Council shall hold a public hearing on the requested appeal and render a decision. The decision of the Borough Council shall be final.

**§ 25-115. Emergency Situations.**

1. If Personal injury or property damage is imminent due to the hazardous or dangerous condition of a Tree located in the Right-of-Way, the Tree may be Removed, pruned or trimmed or other necessary action taken without a Permit so long as the action taken is in response to the emergency situation and is reasonable under the circumstances and does not exceed the type of action necessary to address the emergency situation.

2. When any emergency work is performed under these provisions, the Property Owner or Person performing the work shall promptly notify the Public Works Department about the emergency situation, advise the Public Works of the work to be done and apply for a Permit for any further work to be performed to address the situation.
3. In the case of Removal of a Tree under such an emergency situation, the Person removing the Tree shall promptly notify the Public Works Department about the emergency, advise the Public Works Department of the work performed and apply for a Permit to replace the tree. The Replacement Tree shall meet all requirements for planting a new tree.

**§ 25-116. Payments, Assessments, and Liens.**

1. **Payments.** The cost of planting, transplanting, maintaining and removal of trees in the public Right-of-Way, together with the cost of necessary curbing, sidewalks or grading, shall be paid by the owner of the abutting property. This Part does not apply to work conducted under Sections 25-106, 25-107, or 25-108.
2. **Assessments.** In the event the Borough undertakes a streetscape project or a contractor hired by the Borough performs necessary Tree Work for which payment is required as set forth in this Chapter, and the cost of said work is not paid, and the Borough chooses to assess the owner of the property abutting the Tree pit, the full cost of such work shall be assessed said owner. Owners shall have an opportunity to make written objections to proposed assessments, which objections shall be considered by the Director prior to approval. All costs incurred in planting, transplanting, pruning and removing trees, as provided in this chapter, shall be assessed. The amount each Property Owner is to pay shall be determined and certified by the Director. Thereafter, the Borough shall cause 30 days' written Notice to be given to each Person against whose property an assessment has been made. The Notice shall state the nature and amount of the assessment and the time and place for payment thereof.
3. **Liens.** Within three months after the completion of any Tree Work for which an assessment was levied, the Borough Finance Director shall certify to the Borough Solicitor the names of the owners, if known, together with a full description of the properties against which assessments have been made under this chapter and which remain unpaid, either in whole or in part. The Borough Solicitor shall enter liens for the unpaid assessments and all other amounts due and shall from time to time proceed to collect the assessments or the part thereof remaining unpaid according to law and all other amounts due the Borough, including but not limited to accrued interest and penalties imposed by law.

**§ 25-117. Easements.**

The Borough is authorized to accept easements from Property Owners to plant and maintain trees on private property where there is insufficient space for mature trees within the public Right-of-Way. All easements shall be within 12 feet of the boundary of a public Right-of-Way and visible from said Right-of-Way, or as determined by the Borough. Such easements shall be in writing, in

a form acceptable to the Borough, properly executed, and acknowledged by such Property Owners, and shall be recorded in the office of the Lancaster County Recorder of Deeds. The Borough shall have the right to authorize the planting and maintaining of Regulated Trees within said easement which shall be deemed a public area insofar as the trees situated thereon are concerned. The owner shall have the right to use and occupy the area within the easement in any manner not inconsistent with the grant stipulated in the easement agreement, except that the owner shall have no right to plant Regulated Trees or other plantings except groundcovers, or to erect any structures within said area, without prior approval of the Borough. The owner shall be required to maintain any lawn or ground cover within said area, and to notify the Arborist in the event of damage or a dangerous condition caused to or by the Regulated Trees.

**§ 25-118. Violations and Penalties.**

This chapter is immediately enforceable by citation by designated employees of the Borough.

1. Violations.

- A. It shall be unlawful for any Person to carry out any of the activities requiring a Permit without first obtaining said Permit.
- B. In addition to 1(A) above, the following activities shall constitute a violation of this chapter:
  - (1) To Remove or tamper with any object or device set for the protection or treatment of any Regulated Tree in any public area or within any TPZ.
  - (2) To pile any building material or make any mortar or cement within six feet of any Regulated Tree in any public area or within any TPZ.
  - (3) To hitch or fasten any animal, bicycle or vehicle to any Regulated Tree in any public area.
  - (4) To attach any sign, poster, bill or other object to any Regulated Tree.
  - (5) To construct site access, such as curb cut for a driveway, whether permanent or temporary, within any TPZ, inconsistent with this chapter or other Borough regulations. This provision does not apply to the Borough installing federally mandated Americans with Disability Act curb ramps.
  - (6) To climb with spikes, disturb or prune the roots of, compact soil, or otherwise injure or destroy any Regulated Tree in any public area or to authorize such actions.
  - (7) To cause or authorize a wire or other conductor charged with electricity to come into contact with any Regulated Tree in any public area or within

any TPZ in a manner that may injure or kill it without a written Permit from the Borough, specific to the tree(s) involved.

- (8) To cause or authorize in any public area or within any TPZ, any oil, gasoline, herbicide, paint, brine, hot water, steam or other gas, liquid or solid substances harmful to the Tree to contact any Regulated Tree or to enter the soil about the base or root system of a Regulated Tree in any manner that may injure or kill it.
- (9) To interfere, cause or authorize an interference with the Arborist, Director, TAC, agents or employees of the Borough, or citizen volunteers while they are engaged in planting, inspecting, maintaining or removing trees.
- (10) To supervise or authorize construction, alterations, repairs or demolition activities in the vicinity of any Regulated Tree in any public area or within any TPZ without first placing sufficient guards or protectors as shall prevent injury or destruction of said Tree arising out of such activities, in accordance with Borough rules and regulations or with written authorization of the Director.

2. Notice of violation. The Director shall serve a Notice of violation to the Person in violation of this Chapter or of a plan approved thereunder or in violation of a Permit issued under the provisions of this Chapter. Such Notice shall direct the abatement of such violation.
3. Prosecution of violation. If the violation is not abated within the time specified in the Notice of violation, the Director may request the Borough Solicitor to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation.
4. Penalties.
  - A. Penalties. Any Person violating any of the provisions of this Chapter shall, upon conviction thereof, be fined not less than \$100 nor more than \$600 for each and every offense, together with costs, plus restitution in an amount no less than the appraised value of the Tree involved, plus cost of cure as obtained by the Director, and in default of payment thereof, be imprisoned for not more than 90 days. Each failure to obtain a Permit or, having obtained a Permit, to comply with any of the requirements of this Chapter and each day during which such violation continues shall constitute a separate offense.
  - B. Disposition of penalties or assessments. All penalties or assessments imposed under this chapter shall be paid to the Borough of Phoenixville.

## **SECTION 2.**



If any sentence, clause, section, or part of this Ordinance 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, parts, or section hereof. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, part or section thereof not been included herein.

**SECTION 3.**

All Ordinances or parts of Ordinances conflicting or inconsistent herewith are hereby repealed.

**SECTION 4.**

This Ordinance shall become effective upon enactment as provided by law.

**PASSED** by Borough Council this 10th day of July, 2018.

By: \_\_\_\_\_  
James C. Kovaleski  
President, Borough Council

**APPROVED** by the Mayor, this 10th day of July, 2018.

By: \_\_\_\_\_  
Peter J. Urscheler, Mayor

**ENACTED**, this 10th day of July, 2018.

By: \_\_\_\_\_  
E. Jean Krack, Borough Manager/Secretary

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of the said Ordinance duly adopted at a regular meeting of Borough Council held on the 10th day of July, 2018.

By: \_\_\_\_\_  
E. Jean Krack, Borough Manager/Secretary