

ORDINANCE .3-14
(Replaces Ordinance 3-2)

SHADE TREE ORDINANCE

AN ORDINANCE AUTHORIZING AND GOVERNING THE PLANTING,
TRANSPLANTING, MAINTENANCE, CARE, REMOVAL, AND PROTECTION OF
SHADE TREES IN THE BOROUGH OF MERCERSBURG, FRANKLIN COUNTY,
PENNSYLVANIA BY THE OWNER OR OWNERS OF THE PROPERTY
CONTAINING OR ABUTTING SUCH SHADE TREES

WITNESSETH

WHEREAS, the Borough Code gives Borough Council the exclusive care, custody, and control of shade trees within the Borough, including the power to plant, transplant, remove, maintain, and protect shade trees in the Borough; and

WHEREAS, by Resolution dated February 4, 1963, the Borough Council of the Borough of Mercersburg (hereinafter "Council") elected to assume the exercise of the rights and performance of the duties and obligations imposed by law in lieu of appointing a Shade Tree Commission; and

WHEREAS, Council desires to promulgate appropriate regulations to implement its powers with regard to Shade Trees, including, but not limited to the determination of the existence of Dutch Elm or other disease on any property within the Borough of Mercersburg; the identification and remediation of Shade Trees that damage, obstruct, hinder, or otherwise interfere with Borough operations or public streets, walkways, or curbs; the notice required to be given to owners of property which may contain or abut plants, shrubs or trees requiring removal; the powers of Council to inspect plants, shrubs or trees suspected of having any such disease or interfering with Borough operations or public streets, walkways, or curbs; and the power of Council to enter upon property to cause the cutting and removal of the same at the expense of the property owner, and the collection of the cost thereof, if the owner fails to take the required action.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Borough of Mercersburg, and it is hereby ordained as follows:

Section 1. Definitions: As used in this Ordinance, the following words have the following meanings:

- a) **Borough.** The Borough of Mercersburg.
- b) **Diseased Tree.** Any plant, tree or shrub within the Borough afflicted with the Dutch Elm or other disease which threatens to injure or destroy plants, shrubs or shade trees in the Borough.
- c) **In.** In, on, upon, under, or overhanging the right-of-way area of any street, avenue or highway; including any portion of a tree in, on, upon, under, or overhanging the curb or

sidewalk adjacent to any street, avenue, or highway.

- d) **Owner.** The legal and beneficial owner of land. Where the legal and beneficial ownership of land is severed, the term shall include all persons holding legal and beneficial interests.
- e) **Person.** An individual, partnership, corporation, unincorporated association or other similar entity.
- f) **Shade Tree.** Any deciduous tree (i.e., not an evergreen tree).
- g) **Street.** The public streets, highways, roads, avenues, alleys and similar areas, including public walkways appurtenant thereto, to the extent of the public right-of-way in such areas.
- h) **Stump Removal.** Removal of the tree trunk to ground level, provided that, where a replacement tree is to be planted in the same proximity, removal to a depth of at least 18 inches below ground level. Removal shall include the entire crown and main stem.
- i) **Tree.** A woody perennial plant with one main stem or trunk which develops many branches, usually at some height above the ground. The term includes roots, trunks, limbs, branches, leaves, and fruits or seed pods.
- j) **Tree Lawn.** That part of the street or highway not covered by sidewalks or other paving lying between the adjacent property line and the portion of the street or highway usually used for vehicular traffic or parking.

Section 2. Powers of Council:

- a) Borough Council shall have exclusive custody and control of the shade trees in the Borough and is authorized to plant, transplant, remove, maintain and protect shade trees in the streets and highways in the Borough or to cause property owners to remove shade trees afflicted with Dutch Elm or other disease or that damage, obstruct, hinder, or otherwise interfere with Borough operations or public streets, walkways, or curbs. To the extent funds for such purposes are budgeted by Borough Council, it may employ and pay such superintendents, engineers, foresters, tree wardens, or other assistants, as the proper performance of the duties devolving upon it shall require. Nothing herein shall be construed to require Borough Council to budget funds for the foregoing purposes.
- b) Where Council determines that any of the following conditions exists, Council shall notify the owner of the real estate adjacent to or containing such tree or condition of the existence of the condition and the appropriate actions to take:
 - 1. A shade tree, shrub, or plant in or overhanging a public street or highway in the Borough is dead or so dangerous as to require removal in whole or part.
 - 2. A shade tree, shrub, or plant in a public street or highway is afflicted with any insect or disease which threatens to injure or destroy plants, shrubs and shade trees in the Borough.

3. A shade tree, shrub, or plant abutting a public street or highway is growing in such a manner as to damage, obstruct, or otherwise interfere with any public street or highway or sidewalk or curb adjacent thereto as to require removal in whole or part.
 - c) The notification required under this Section shall advise the owner to notify Council in writing within 30 days of receiving the notification that the owner will have the requested actions performed himself or that the owner would like a hearing under Section 4 of this Ordinance. In the case of the required removal of a tree, plant or shrub, in whole or in part, the work shall be performed within 60 days of the notification to the property owner.
 - d) If the owner fails to complete the requested actions by the deadline specified, or fails to request a hearing within 30 days of receiving the notification, Council shall proceed to have the work it finds necessary performed.
 1. Notwithstanding the above, before Council may have the work performed it must consider the work at a public meeting, notice of which meeting, detailing the street or highway or portion thereof to be affected, shall have been published in a newspaper of general circulation in the Borough once a week for two weeks immediately preceding the time of the meeting. The notices may be published prior to the expiration of the time period provided in the notice to the owner. The amount the owner is to pay for such work shall be ascertained and certified to the Borough Council.
 - e) In the event the owner shall request a hearing to contest any proposed action under this subsection, notice of such hearing shall be published as set forth above, and thereupon Council shall consider the matter under the hearing procedure set forth in Section 4 of this Ordinance. In the event Council determines, upon the conclusion of the required hearing or meeting, that a tree must be removed in whole or part, Council shall proceed to have the work performed and the cost certified as provided heretofore.
 - f) Upon the filing of the certificate with the Council, the Borough Secretary shall cause 30 days' written notice to be given to every person against whose property an assessment has been made. The notice shall state the amount of the assessment and the time, place, and manner of payment and shall be accompanied by a copy of the certificate. The amount assessed against the real estate shall be a lien from the time of the filing of the certificate with the Council, and if not paid within the time designated in the notice, a claim may be filed and collected by the Borough Solicitor in the manner provided by law.
 - g) In the case of a shade tree in or overhanging a public street or highway which poses a serious threat of imminent harm to public health or safety in the nature of an emergency, necessitating the tree's removal in whole or overhanging part, Council may cause its immediate complete or partial removal with only such notification to the owner of the abutting or containing property as required by the Pennsylvania Motor Vehicle Code, or other applicable law, to have the work done himself or herself as the exigencies of the

situation, in Council's reasonable judgment, permit. In such event, costs shall be borne by the owner and the amount owed for such work shall be ascertained and certified as set forth above; and the filing, notice and collection procedures of this Ordinance shall be applicable and followed.

- h) In addition, Borough Council hereby reserves the following powers unto itself, its officers, employees, agents and contractors:
1. Such power and authority as is reserved to it in the Pennsylvania Motor Vehicle Code to require owners of real property to remove any tree, plant, shrub or other similar obstruction, or part thereof, which by obstructing the view of any driver constitutes a traffic hazard.
 2. Such power and authority as is reserved to it in the Pennsylvania Borough Code to accept, purchase and plant or contribute to the purchasing and planting of shade trees along the streets and sidewalks of the Borough.
 3. Such power and authority as is reserved to it in the Pennsylvania Borough Code and this chapter to assess liens.
 4. All powers and authority reserved to it under any other applicable law.
- i) Borough Council shall meet at least once each year to determine policies with respect to the planting, removal, maintenance and protection of the shade trees of the Borough on or abutting the streets and highways in the Borough.

Section 3. Hearings.

- a) Any person aggrieved by a notice, determination, refusal, act, or failure to act issued, taken, or omitted under this Ordinance shall have the right to a hearing to be held by Borough Council. In the event of a notification for the proposed planting, replanting or removal, in whole or in part, of any shade tree, notice shall be provided as required in Section 2 of this Ordinance. In all other cases, notice of the time and place of the meeting at which said hearing shall occur shall be given according to law. In all cases, the aggrieved party shall be given personal notice by regular mail of the date, time and place of the meeting, which notice shall generally specify the rights granted to the party under law. Should Council uphold the prior notice, determination, refusal, act, or failure to act, the cost of the work and any penalty imposed by Council shall be filed as a municipal lien as set forth in this chapter and as provided by law.

Section 4. Payment by owners, assessment of costs, filing of liens.

- a) The costs of removing any shade trees or the necessary and suitable guards, curbing or grading for their protection and of the replacing of any pavement, sidewalk, guards, curbing, or grading necessarily disturbed in the execution of such work shall be paid by the owner of the real estate abutting the location of the work or containing the tree. Any penalties imposed by Council under the provisions of this chapter shall be assessed

against the real estate abutting the location of the work, or containing the tree, or upon which the violation was committed.

- b) The collection of assessments, the filing of liens, the levying of taxes and the collection of penalties are hereby expressly authorized as provided for in Chapter XXVII(b) of the Borough Code of 1966, P.L. (1965) 1656, as amended.

Section 5. Violations and penalties.

- a) Any person, partnership or other entity who or which fails to comply or violates any provision of this Article shall be subject to a civil penalty not to exceed \$600 per violation. Any person found guilty of violating this Ordinance may be assessed court costs and reasonable attorneys' fees incurred by the Borough in enforcing this Ordinance. Each day or portion of a day that an original violation continues, after written notice from Council to the offender, and each section of this Ordinance which is found to have been violated shall be considered a separate offense.

Section 6. Severability.

- a) The provisions of this Ordinance are severable, and if any section, clause, sentence, part or provision thereof shall be held illegal or invalid, the decision of the Court shall not be deemed to affect or impair any of the remaining sections, clauses, sentences, parts or provisions of the Ordinance, it being hereby declared by the Mayor and Town council that this Ordinance would have been enacted if such section, clause, sentence, part or provision had not been included herein.

Section 7. Effective date.

- a) This Ordinance shall become effective immediately.

ENACTED AND ORDAINED, this 18th day of May, 2015.

Borough Council of the Borough of
Mercersburg, Franklin County,
Pennsylvania

By: Thomas Suddeth
Thomas Suddeth,
President of Borough Council

ATTEST:

Wawn L. Scheller

Secretary

James C. Zeger

James Zeger,
Mayor of the Borough of Mercersburg