

ORDINANCE NO. 2080

AN ORDINANCE OF THE BURGESS AND TOWN COUNCIL OF THE BOROUGH OF POTTSTOWN DELETING IN ITS ENTIRETY SECTIONS 901 THROUGH 903, OF PART A, SHADE TREE COMMISSION, OF PART 9, COMMISSIONS AND COMMITTEES, OF CHAPTER 1, ADMINISTRATION AND GOVERNMENT; AND DELETING IN ITS ENTIRETY SECTIONS 101 THROUGH 104 OF PART 1, POWERS AND DUTIES OF SHADE TREE COMMISSION, OF CHAPTER 25, TREES; AND ESTABLISHING A NEW PART 1, POTTSTOWN TREE ORDINANCE, OF CHAPTER 25, TREES, ALL OF THE CODE OF ORDINANCES OF THE BOROUGH OF POTTSTOWN, AS AMENDED.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Burgess and Town Council of the Borough of Pottstown, Montgomery County, Pennsylvania, and IT IS HEREBY ENACTED AND ORDAINED by the authority of same as follows:

**SECTION 1.** Sections 901 through 903 of subpart A, Shade Tree Commission, of Part 9, Commissions and Committees, of Chapter 1, Administration and Government, of the Code of Ordinances of the Borough of Pottstown, as amended, is hereby deleted in its entirety.

**SECTION 2.** Sections 101 through 104 of Part 1, Powers and Duties of Shade Tree Commission, of Chapter 25, Trees, of the Code of Ordinances of the Borough of Pottstown, as amended, is hereby deleted in its entirety.

**SECTION 3.** A new Part 1, Pottstown Tree Ordinance, of Chapter 25, Trees, of the Code of Ordinances of the Borough of Pottstown, as amended, is hereby created and shall provide as follows:

"Part 1. Pottstown Tree Ordinance.

§101. Purpose and Legislative Intent.

Pursuant to Article XXVII, Sections 2721, et seq., of the Pennsylvania Borough Code, the Pottstown Borough Council has determined that it is in the best interest of the citizens of Pottstown 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 and that they contribute to the quality of air, reduce noise and visual pollution, help to moderate climatic extremes and conserve energy. Council further recognizes the role trees play in enhancing property values and the general quality of life in the Borough. In order to establish a responsible program for planting, maintenance, or removal of trees or shrubs in the right-of-way of the Borough of Pottstown, the Borough Council finds it necessary to establish this ordinance.

This ordinance establishes policies, regulations, and standards necessary to ensure that the Borough will continue to realize the benefits provided by trees. The provisions of this ordinance are enacted for the purpose of:

1. Promoting the planting of trees along the streets of the Borough.
2. Promoting and maintaining the aesthetic value of the streets of the Borough.
3. Providing for an orderly and efficient means of maintaining and protecting trees along the streets of the Borough.
4. Promoting the public health, safety, comfort and general welfare.
5. Saving trees from indiscriminate destruction or unnecessary removal.
6. Diversifying the tree species in the Borough.

7. Establishing standards limiting and regulating the removal of trees.
8. Establishing an education program providing information and guidelines for tree preservation and maintenance.

§102. Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meaning given herein.

ANNUAL LICENSE - A license required by commercial tree companies that plan to prune, remove, or apply pesticides to trees over 12" in diameter on private property or prune or apply pesticides to trees on public property in the Borough of Pottstown. 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 Five Hundred Thousand Dollars (\$500,000.00) and worker's compensation insurance as required by state law.

CERTIFIED ARBORIST - A person who has met the criteria for certification from the International Society of Arboriculture or American Society of Consulting Arborists, and maintains his or her accreditation.

CONIFERS - Trees that remain green and do not lose their leaves.

DECIDUOUS TREES - Trees that lose their leaves in winter.

DIAMETER BREAST HEIGHT (DBH) - The diameter of a tree at breast height, which shall be measured at 4½ feet above ground.

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

NUISANCE - Any thing or act that annoys, unreasonably disturbs, hurts a person's use of his or her property, or violates the public health, safety and welfare.

PARK - Includes land designated as playgrounds, pools or other recreational facilities within the Borough under the jurisdiction of the Borough Council.

PARK TREE - A tree, shrub, bush, or other woody vegetation in public parks or areas to which the public has free access.

PERSON - Any person, firm, partnership, association, corporation, company, or organization of any kind.

PRIVATE INFRASTRUCTURE - A driveway apron or paved or concrete private walkway located within the Borough right-of-way.

PRIVATE LAND - Areas located within the Borough of Pottstown that are owned by a private person and/or entity and that are not owned by any political subdivision.

PRIVATE TREE - A tree, shrub, bush, or other woody vegetation located on private property other than a dedicated right-of-way or public easement, or public parks and grounds.

PUBLIC LAND - Property or areas located within the Borough of Pottstown that are owned by the Borough of Pottstown or any other political subdivision, including but not limited to streets, rights-of-way, public ways and parks.

PUBLIC NUISANCE - Any tree or other planting with an infectious disease or insect problem or dead or dying trees or plantings; or a tree or limb(s) or plantings that obstruct the sight triangle of street lights or traffic signs or the free passage of pedestrians or vehicles; or any tree or other planting that obstructs or interferes with public utilities; or a tree or planting that poses a threat to the public health, comfort, safety, and welfare, as determined by the Borough Manager's designee.

PROPERTY OWNER - The person holding legal title to the property or properties upon which a street tree, shrub, bush or other woody vegetation is located.

PUBLIC INFRASTRUCTURE - Public water and sewer lines, electric lines, gas lines, telephone or cable television lines, curbs, stormwater system, and sidewalks located within the public right-of-way, and other public improvements.

PUBLIC PLACES - Includes all grounds owned, leased or controlled by the Borough Council, for public use.

PUBLIC WAY - 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.

PUBLIC WORKS DIRECTOR - The Borough of Pottstown Public Works Director or designee.

ORNAMENTAL TREES - Deciduous, woody plants having a single, well-defined stem, normally growing to a mature height of less than thirty feet (30').

REMOVE OR REMOVAL - To cut down a tree, or remove fifty percent (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.

RIGHT-OF-WAY - Land, which by deed, conveyance, agreement, dedication, usage or process of law is reserved for use by the Borough.

STREET - A highway, road, avenue, lane, alley, culvert, embankment, or sidewalk, which the public has a right to use.

STREET TREE - A tree, shrub, or other woody vegetation on land, the trunk of which is located wholly or partially within the right-of-way along either side of a street, avenue or other way or within a dedicated side of a street, avenue or other way. A street tree may also be identified as a public tree or shade tree.

SHRUBS - Woody plants generally with no single well-defined stem used as accent, border or foundation plants, which can be maintained at a height of less than three feet (3').

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 - Includes any tree or other planting on public land or private land, as indicated by subsequent provisions of this chapter, and Resolutions enacted by Borough Council.

1. Small Tree - Any tree reaching a mature height of twenty-five feet (25').
2. Medium Tree - Any tree reaching a mature height of twenty-five feet (25') to forty feet (40').
3. Large Tree - Any tree reaching a mature height of over forty feet (40').

TREE LAWN - The green space adjacent to a street or highway, not covered by sidewalks or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

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.

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

§103. Jurisdiction.

The Borough of Pottstown 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.

No person shall cut, trim, mutilate, injure or destroy any tree without first having obtained permission to do so from the Director of Public Works in the case of trees standing on Borough right-of-ways 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 right-of-ways 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.

§104. Planting of Trees on Public Right-of-Ways.

A. Street Tree Planting Approval.

Before any tree is planted within the street, park, public right-of-way or easement, or other public place within the Borough limits, the Director of Public Works shall approve the planting location. In the event that a property owner is requesting to plant a tree in the public right-of-way, a tree planting application shall be completed and submitted to the Public Works Department. If the Borough plans to plant tree(s) in the right-of-way, each location shall have a planting application completed and each location will need to be approved. The review process shall include but not limited to the following items.

1. The Public Works Department shall research any plans that may provide information on underground pipes, wires or private systems. The review shall include the setback for hydrants, corners, other trees, poles, and water and sewer pipes.
2. The Public Works Department shall issue a PA One Call to have all utilities located for the planting location.
3. The Director of Public Works shall approve the selected location as being acceptable for the planting of tree(s).
4. The Public Works Department shall then present the property owner with information as to the responsibilities of having a street tree planted in front of their property. As part of the information that is given to the property owner, there shall be a form that the property owner signs to acknowledge the information and approve the planting of a tree(s) in front of their property.
5. The property owner shall then sign the form and return it to the Public Works Department before any tree(s) are planted. In the event that the designated location is not acceptable, an alternate location shall be provided if possible. If there is not an alternative location, then the application shall be rejected by the Director of Public Works.

When tree root barriers are required as part of the planting of a Street Tree, all installation work shall be in strict accordance with the methods recommended by the manufacturer and/or the Borough.

The Public Works Department shall establish areas of town where the planting of trees shall be located behind the sidewalk, but in the right-of-way. This would allow trees to share the balance of the right-of-way and not interfere with the sidewalk. This would not create line of sight problems and would not interfere with utilities that are located closer to the curb line, including overhead wires. The trees would have more of the yard to grow in and may not cause as much damage to sidewalks.

No tree, at any time, shall be planted directly in line with a doorway, which enters upon the sidewalk.

B. Approved Tree Species.

Borough Council shall adopt, by Resolution, from time to time, a list of approved tree species, based upon tree size and classification. Such Resolution shall include the tree planting area needed for each tree group, as well as, the size of the tree planting wells. The Public Works Department shall approve a tree-planting list that shall have three (3) classes of trees, based on the mature height and width of the tree. The Borough of Pottstown 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.

C. Location of Tree Planting.

The tree shall be planted halfway between the curb and sidewalk and halfway in the length of the planting bed area as required by the tree species group. In the event that the sidewalk area is not wide enough to allow for the above planting bed, then the sidewalk will need to be realigned to allow for the required planting area.

1. Distance from Curbs and Sidewalks.

The distance trees shall be planted from the curb and sidewalk shall be in accordance with the tree group list. No tree may be planted closer than the following:

Group A trees shall be planted 1.5 feet from the face of curb and 1.5 feet from the edge of the sidewalk.

Group B trees shall be planted 2 feet from the face of curb and 2 feet from the edge of the sidewalk.

Group C trees shall be planted 3 feet from the face of curb and 3 feet from the edge of the sidewalk.

2. Underground Utilities.

No tree shall be planted within ten feet (10') of any underground electric wire or conduit, gas pipe

or valve, communication wire or conduit, or water pipe, curb box, valve box, or any other facilities attached to the water system. No tree shall be planted within ten feet (10') of any sewer pipe, curb vent, clean-out pipe, stormwater pipe, or any other pipe that is connected to the sewer or stormwater systems. All distances shall be measured from the center of the tree trunk.

3. Overhead Electric Utilities.

Trees that are to be located under overhead wires shall be chosen from the Group A tree list. The Group A list will help to minimize interference with the overhead wires.

4. Street Lights and Poles.

The distance trees may be planted from telephone or electric poles or streetlights shall be in accordance with the following tree group species list:

Group A - 20 feet.

Group B - 30 feet.

Group C - 40 feet.

5. Distances from Street Corners and fire Hydrants.

No tree shall be planted closer than fifty feet (50') of any street corner. The setback shall be measured from the point of the intersection of the two curb lines and fifteen feet (15') from driveways and alleys. No tree shall be planted closer than ten feet (10') to a fire hydrant.

§105. Tree Maintenance.

The maintenance of trees shall be governed by this section. The Borough may adopt, by Resolution, a policy providing for rules and regulations for sidewalk maintenance, in conjunction with the maintenance of trees.

A. Tree Maintenance By Owner.

In consideration of the value and benefits derived from the beauty and enjoyment of a street tree, the Property Owner 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, as necessary.

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. The Property Owner shall defend and hold harmless the Borough from all claims for loss and damage arising from the Property Owner's failure to comply and maintain a street tree in front of their property.

It shall be the duty and responsibility of every person owning or occupying 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 fourteen feet (14') above any street or alley, and a clearance of at least seven feet (7') over any sidewalk.

The owner or occupant of any corner lot or premises in the town shall keep trees, hedges and growth at the corners of intersecting streets, whether between the curb line 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 (3') above the curb level for a distance of thirty feet (30') measured horizontally in any direction from the point of intersection of the property lines at street corners.

B. Tree Maintenance by Borough.

In the absence of appropriate maintenance by the responsible property owner, 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. The Borough may remove, or order after notice to be removed at the expense of the responsible Property Owner, any 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 television lines, natural gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest.

C. Maintenance Practices.

1. Tree Topping. The practice of topping shall be discouraged of any street tree. 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 (4") below the surface of the ground. When a street tree is removed and a new tree is not planted, any sidewalk that was removed to allow for a planting area must be replaced, as required. All tree stumps shall be removed within the permit period of the tree removal permit.
3. Trimming of Roots. The practice of root pruning should be limited to locations where other options listed under sidewalk repair options cannot be utilized. All root pruning shall be coordinated with an approved arborist.
4. Obstruction. It shall be the duty of any property owner to keep the street trees pruned in a manner that will not obstruct the passage of pedestrians on sidewalks, obstruct vision, or obstruct the view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be at least seven feet (7') over sidewalks and fourteen feet (14') over all streets.

When a property owner is notified of an obstruction due to a street tree and does not correct the violation within forty-five (45) days of notice, the Borough shall have the right to have the violation corrected and bill the property owner for all cost.

§106. Tree Removal.

A. Criteria.

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.

A tree that is affecting 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.

A tree may be considered for removal if it is affecting other trees in such a way that the growth needs to be thinned 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 (i.e., a flagpole).

B. Procedure.

1. Any street trees that are approved for removal shall be replaced at the property owner's expense. The property owner may replace the tree at an approved location or pay in lieu of a sum not to exceed Two Hundred Dollars (\$200.00) 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 2½ inches at four (4) foot height, be of a species that meets height requirements at maturity.
2. The removal of a tree from the Borough right-of-way shall be the responsibility of the property owner who shall bear all costs of the said removal and

the associated restoration of the right-of-way. In the event that a property owner fails to respond to a request for removal, the Director shall have the authority to perform such a removal and to bill the property owner for the costs thereof.

3. 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 60 day permit period.

§107. Appeals.

Any action of the Director of Public Works may be appealed to and heard by the Tree Appeal Board. The Appeal Board shall be comprised of the Borough Manager, the Councilperson from the ward where the appeal is from and the Director of Public Works. Any appeal must be filed within ten (10) days after the decision of the Director. The appeal shall be in writing and shall be filed with the Director 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 ten (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.

§108. Administration and Enforcement.

The Borough of Pottstown Public Works Department is charged with enforcing the Pottstown Tree Ordinance. The Public Works Director shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of trees on streets and other publicly owned property to ensure safety or preserve or enhance the aesthetics of such public sites. The Public Works Director shall have the authority to supervise or inspect all work done under a permit issued in accordance with terms of this ordinance.

- A. Licensing. An annual license is required by commercial tree companies that plan to prune, remove, or apply pesticides to trees within the Borough. An annual license may be obtained from the Department of Public Works, for the fee then in effect, upon showing proof of liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) and worker's compensation insurance as required by state law. The Director of Public Works shall issue the annual license to an individual or firm meeting the criteria specified above. The license shall be valid for the calendar year issued.
- B. Permits. No person shall plant, spray, fertilize, prune, remove, cut above or below ground, or otherwise disturb any tree on any street or municipal-owned property without first filing an application and procuring a permit from the Director of Public Works. The person receiving the permit shall abide by the arboriculture specifications and standards of the Borough.

In addition, the contractor is required to show adequate insurance coverage from potential damages during the execution of the work. Pruning, treating, or removing street or park trees shall be performed by or under the direct supervision of a Certified Arborist. Permits shall not be required by a Borough employee doing work on behalf of the Borough.

- C. Revocation of Permit. The Director shall have the authority to monitor and inspect any permitted work. A permit issued under this Chapter may be revoked by the Public Works Director if the conditions of the permit or any provision of this Chapter are being or have been violated or are not fulfilled in a timely manner or the permittee or his or her contractor is violating any other law or ordinance by engaging in or attempting to perform the permitted work.
- D. Penalty for Violation. Any person who neglects or refuses to comply with, or assists in the violation of, any of the provisions of this ordinance, or any order, permit, or notice issued pursuant thereto, upon conviction, shall be fined not more than Six Hundred Dollars (\$600.00) for each such violation and shall pay in addition the cost of replacement as provided in this section. Each day any such violation continues shall constitute a separate offense, and each tree removed or damaged shall also constitute a separate offense. The

cost of replacement shall be One Hundred Dollars (\$100.00) for each DBH inch of the removed or damaged tree. If the precise DBH cannot be determined, the cost of replacement shall be determined by the Director of Public Works estimate of the DBH of the removed or damaged tree. The property owner shall be responsible for the violation and shall pay the replacement cost to the Borough. The location, species, and planting specification for replacement trees shall be approved prior to replanting by the Director of Public Works.

§109. Emergency Situations.

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.

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.

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.

§110. Establishment of a Tree Fund.

There is hereby created a Borough of Pottstown Tree Fund for the purpose of receiving money paid to the Borough in lieu of required or tree plantings, or for compensation for damage or removal of Borough-owned trees, or funds received from issuing of licenses and/or permits, and other funds that are generated from the street tree program. The fund shall be used to support the street tree program.

**SECTION 4. Severability.** If any sentence, clause, section or other part of this ordinance is, for any reason, found to be

unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not effect or impair any remaining provisions, sentences, clauses, sections or other parts of this ordinance. It is hereby declared as the intent of the Burgess and Town Council of the Borough of Pottstown that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**SECTION 5. Repealer & Reenactment.** All ordinances, resolutions, and policies previously enacted in conjunction with trees, are hereby repealed. In all other respects, the remaining provisions of Chapter 1, Administration and Government, and Chapter 25, Trees, of the Code of Ordinances of the Borough of Pottstown, as amended, to the extent not inconsistent herewith are hereby reenacted and reordained.

**SECTION 6. Effective Date.** This ordinance shall become effective immediately upon enactment.

**ENACTED** and **ORDAINED** this 8th day of NOVEMBER, A.D., 2010.

**THE BURGESS AND TOWN COUNCIL  
OF THE BOROUGH OF POTTSTOWN**

BY: Steph M. Torony  
President

ATTEST: Virginia L. Takach  
Secretary

Approved this 8th day of  
NOVEMBER, A.D., 2010.

Bonnie Heath  
Mayor