



**TOWNSHIP OF NEWTOWN**

**DELAWARE COUNTY, PENNSYLVANIA**

**AN ORDINANCE NO. 2020-01**

**AN ORDINANCE to Amend the Code of the Township of Newtown, by adding a New Chapter 158, Trees.**

The Board of Supervisors of Newtown Township does hereby ordain as follows:

**Section 1.** The Code of Township of Newtown shall be amended by adding a new Chapter 158, to provide as follows:

**ARTICLE I  
GENERAL PROVISIONS**

**Section 158-1. Short Title**

This Chapter shall be known as the “Newtown Township Tree Ordinance” or interchangeably, “Chapter 158, Trees, of the Code of the Township of Newtown.”

**Section 158-2 Statement of Findings**

The Township recognizes the vital role that trees play in the Township’s ecosystem, the health and quality of life of its residents, and economic welfare generally. The Township is committed to protecting and enhancing the suburban forest for the many benefits that trees provide. The tree canopy is a key component to minimize the damaging effects of stormwater runoff to the Township, Darby Creek, Crum Creek and other streams, and, ultimately, the Delaware Valley River Basin. Trees reduce air temperature; reduce heating and cooling costs resulting in lower greenhouse gas emissions; improve property values; enhance physical and psychological health; and reduce air pollutants. Trees help people reconnect with nature.

**Section 158-3 Purpose**

The purpose of this Chapter is to promote the public health, safety and welfare within Newtown Township by establishing a Commission to protect, manage, and exercise stewardship of the trees of Newtown Township within (a) public right-of-ways, (b) Township parks and open spaces, and (c) elsewhere in the Township. The Chapter defines the mission of the Commission and authorizes the Commission to establish rules and regulations to encourage the planting of appropriate shade trees, provide for the proper maintenance of the trees, protect shade trees and provide guidelines for the removal and replacement of shade trees.

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

- A. Providing for the planting, protection, preservation, proper maintenance and replacement of Street Trees, Heritage Trees and other trees in the Township, thereby enriching the tree canopy of the Township.
- B. Promoting and maintaining the aesthetic value of the streets of the Township.
- C. Promoting the utilization of trees to mitigate stormwater runoff.
- 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 Township, with a strong emphasis on native trees.
- G. Establishing standards limiting and regulating the removal of (a) Street Trees, (b) Heritage Trees and (c) other trees to the extent regulated by this Chapter.
- H. Encouraging, (A) the planting and careful maintenance of trees on all private property in the Township, and (B) in conjunction with the Parks Board, the planting and careful maintenance of trees on all Public Property.
- I. Providing 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 Township ordinances.

#### **Section 158-4 Statutory Authority**

Newtown Township is empowered to establish a Shade Tree Commission with the powers described herein by the authority of, *inter alia*, the Second Class Township Code, Sections 2901 *et seq.*, 53 P.S. Section 67901 *et. seq.*

#### **Section 158-5 Establishment of Commission**

A commission to be known as the Shade Tree Commission is hereby established.

#### **Section 158-6 Personnel of Commission; Appointment; Terms; Vacancies.**

A. The Commission shall be comprised of five (5) residents of the Township. The members of the Commission shall initially be appointed to serve one, two, three, four and five year terms, respectively. On the expiration of the term of any Commissioner, a successor shall be appointed by the Board to a term of five years.

B. All members of the Commission shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

C. To the extent practicable, at least two of the members of the Commission should be professionally trained in horticulture, arboriculture, forestry or an associated field.

D. Vacancies in the office of Commission shall be filled by the Board for the unexpired term.

E. Any Commission member may be removed at the discretion of the Board.

#### **Section 158-7 Word Usage; Definitions.**

A. *Word Usage.*

- (1) Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of a masculine gender include the feminine gender; and words of the feminine gender include the masculine gender.
- (2) The word “includes” or “including” shall not limit the term to the specific example, but is intended to extend its meaning to all other instances of like kind or character.
- (3) The word “Person” includes an individual, firm, association, organization, partnership, trust, company, corporation, unit of government, or any other similar entity.
- (4) The words “shall” and “must” are mandatory; the words “may” and “should” are permissive.

(5) Words defined in other chapters or by law or regulation shall have the meaning and shall be interpreted in the context of the other chapters or the specific law or regulation.

*B. Definitions.*

As used in this Chapter, the following terms shall have the meanings indicated:

**APPLICANT** — A Landowner, Developer, or other Person who has filed an application for a Work Tree Permit within the jurisdiction of the Commission.

**AREA OF DISTURBANCE** — An area proposed to be disturbed in any manner, temporary or permanent, as a result of construction activities, plus a buffer zone of 20 feet.

**BOARD** — The Board of Supervisors of the Township of Newtown.

**CERTIFIED ARBORIST** — Any arborist certified by the International Society of Arborists (ISA).

**COMMEMORATIVE SHADE TREE FUND** — A fund comprised of contributions from interested persons and other entities, including payments in lieu of replanting requirements and fines levied, for the purpose of maintaining the wooded character of the streets and lands within the Township.

**COMMERCIAL DISTRICT** — The Township's A, A-O, O, C-1, C-2, I, SU-1 and SU-2 Zoning Districts.

**COMMISSION** — The Shade Tree Commission of Newtown Township.

**COMMISSIONER** — A duly appointed member of the Commission.

**DBH (DIAMETER AT BREAST HEIGHT)** — Standard measurement of a tree's diameter taken at breast height (54" above the ground level).

**DEVELOPER** — Any Landowner, agent of such Landowner, or tenant with the permission of such Landowner who makes, or causes to be made, a subdivision of land or a land development.

**DRIPLINE** — A limiting line established by a series of vertical drop points marking the maximum radius of the crown of an existing tree but not less than fifteen (15) feet from the tree trunk.

**EAC** – The Environmental Advisory Council of the Township.

**GRADING/DEMOLITION/CLEARING TREE WORK PERMIT** – A Tree Work Permit issued pursuant Section 158-10 B.

**HAZARD TREE** — Any tree on public or private property that a Certified Arborist has determined, in a writing, to be a tree that (1) poses an immediate danger to life or property, or (2) is so affected by a disease that it threatens injury or destruction of other neighboring trees.

**HERITAGE TREE** — A tree having a thirty-six (36) inch or greater DBH.

**HERITAGE TREE REMOVAL/DISTURBANCE TREE WORK PERMIT** – A Tree Work Permit issued pursuant Section 158-10 D.

**INVASIVE PLANTS** — Non-native species or strains that become established in natural plant communities and wild areas, replacing native vegetation. Invasive plants are introduced species that can thrive in areas beyond their natural range of dispersal. These plants are characteristically adaptable, aggressive, and have a high reproductive capacity. Their vigor combined with a lack of natural enemies often leads to outbreak populations.

**LANDOWNER** — The legal or beneficial owner of a subject property.

**LANDSCAPE ARCHITECT**— A Person who has completed course of study at an approved school of Landscape Architecture or who has been trained and registered in landscape architecture in the Commonwealth of Pennsylvania.

**PARKS BOARD** — The Parks Board of Newtown Township.

**PERSON** — Any individual, firm, association, partnership, corporation or any other legal entity, other than the Township.

**PLANNING COMMISSION** — The Planning Commission of Newtown Township.

**PROTECTIVE TREE PRESERVATION FENCE** — A temporary fence, not less than six feet high, installed, at minimum, around the Tree Protection Zone, that is to be preserved during construction or demolition operations, inside of which no grading, storing or dumping of any material may occur.

**PUBLIC PROPERTY** — All property owned or under the control of the Township, including all public parks, playgrounds, recreational facilities, and open space.

**PUBLIC TREE** — Any tree on Public Property.

**STREET TREE** — Any tree within the right-of-way of the public streets and highways in the Township, excluding State highways.

**TREE PROTECTION ZONE** — An area that is radial to the trunk of a tree. The tree protection zone shall be fifteen (15) feet from the trunk of the tree to be retained, or the distance from the trunk to the Dripline, whichever is greater. Where there is a group of trees or woodlands, the tree protection zone shall be the aggregate of the protection zones for the individual trees.

TREE REPLACEMENT FORMULA —

(1) Replacement of any tree removed or recommended to be removed by the Commission as follows:

(a) 3 to 6 inch DBH removed = 1 replacement tree

(b) 7 to 12 inch DBH removed = 2 replacement trees

(c) 13 to 19 inch DBH removed = 3 replacement trees, at least one being a large canopy tree

(d) 20 to 29 inch DBH removed = 4 replacement trees, at least two being large canopy trees

(e) 30 inch DBH or greater removed = 6 replacement trees, at least four being large canopy trees

(2) All replacement trees shall have a minimum two and one-half-inch to three inch DBH.

(3) The Commission will maintain on the Township website suitable species of trees for planting and replanting pursuant to the Tree Replacement Formula along streets and in other areas, as well as appropriate size, spacing, planting, bracing, fertilization, maintenance and pruning of trees.

TREE SPECIES — All existing and/or replacement trees shall include both the common name and botanical name (e.g., red maple-acer rubrum).

TREE WORK PERMIT — A permit in writing, as issued by the Township pursuant to application filed with the Township that authorizes the Applicant, or the Applicant's designee, to perform specific tree work in strict accordance with the provisions thereof.

TOWNSHIP — The Township of Newtown, Delaware County, PA.

TOWNSHIP ARBORIST — The duly appointed Township Arborist.

TOWNSHIP ENGINEER — The duly appointed Township Engineer.

TOWNSHIP MANAGER — The duly appointed Township Manager of the Township.

**Section 158-8 General Powers and Duties of the Commission.**

A. *General.* Excepting such powers as are reserved to the Board under applicable law, or as herein reserved, the Commission shall have exclusive custody and control of the Street Trees and Public Trees in the Township, as well as trees on Public Land, and is authorized to plant, transplant, remove, maintain and protect trees along the streets and highways in the Township and on Public Land. To the extent funds for such purposes are budgeted by the Board, the Commission may employ and pay such 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 the Board to budget funds for the foregoing purposes. The Commission may make and enforce regulations for the care and protection of the Street Trees and Public Trees in the Township, and other trees in the Township to the extent regulated by this Chapter, provided that no such regulation shall be enforced until approved and ordained by the Board.

B. *Duties.*

(1) The Commission shall consult the Township Arborist to advise on suitable species or trees, their planting, durability, rate of growth, litter tendencies, care, protection and treatment, tolerance to impervious coverage and traffic, and other such advice that may be useful or appropriate to the duties and responsibilities of the Commission.

(2) The Commission shall recommend and publish on the Township website suitable species of trees for planting and replanting pursuant to the Tree Replacement Formula or otherwise along streets and in other areas, as well as appropriate size, spacing, planting, bracing, fertilization, maintenance and pruning of trees.

(3) The Commission may periodically conduct a survey of Heritage Trees within the Township and shall encourage the protection of all such trees. No entry on private property shall be made without written or verbal permission from the Landowner. The failure of the Commission to include a tree on any such survey shall not exempt a tree meeting the definition herein of a Heritage Tree from the protections of this Ordinance.

(4) The Commission shall establish a list of Invasive Species exempt from protection under this ordinance and update that list at least every five (5) years.

(5) The Commission shall administer the Commemorative Shade Tree Fund.

(6) The Commission shall, and shall assist the Township in, (A) the dissemination of news and information regarding the selection, planning and maintenance of trees within the municipality, whether the same is on private or public property, (B) applying for funds from external sources for the planting and/or maintenance of trees in the Township.

(7) The Commission shall make recommendations from time to time to the Board as to desirable legislation concerning the tree program and activities for the municipality.

(8) The Commission shall hold public meetings on a regular basis, but not less frequently than six times a year, and shall publish its schedule. Meetings and notices thereof shall be governed by appropriate state law.

(9) At the end of each year the Commission shall submit an annual report to the Board summarizing its yearly activities and its plans for the next year.

(10) Encouraging, in conjunction with the Parks Board and the EAC, the planting and careful maintenance of trees on all Public Property.

C. *Review of Applications; Delegation.*

The Commission shall review, or cause to be reviewed, all applications submitted to the Township for Tree Work Permits made as contemplated by Sections 168-9 and 158-10. The Commission may delegate powers, including powers to review and approve or disapprove of certain categories of Tree Work Permits, to appointed officials of the Township. To the extent such delegations are made by the Commission, actions taken by such delegated officials shall be deemed to be actions of the Commission.

D. *Exempt Species.*

Notwithstanding the requirements of this section or any other section of this Chapter, the following species of Ash trees, including horticultural cultivars of each species, are exempt from the requirements of this Chapter: (1) Green (*Fraxinus pennsylvanica*); (2) White (*Fraxinus americana*); (3) Black (*Fraxinus nigra*); and (4) Blue (*Fraxinus quadrangulata*). Any species on a list of Invasive Species maintained by the Commission shall also be exempt from the requirements of this Chapter.

**Section 158-9 Street Trees and Public Trees**

A. *Planting.*

(1) Trees, including Street Trees, shall be planted by the Developer for any land development or subdivision as follows:

(a) Along new streets.

(b) Along new sidewalks.

(c) Along existing streets, highways, sidewalks, pedestrian ways, bicycle trails or pathways when they abut or lie within the subdivision or land development.



(d) Along access driveways to residential development.

(2) Subject to applying for and receiving the necessary Tree Work Permit, the Commission encourages all residents to plant, maintain and assume stewardship for Street Trees within the Township, the Commission will maintain on the Township website suitable species of trees for planting and replanting along streets and in other areas, as well as appropriate size, spacing, planting, bracing, fertilization, maintenance and pruning of trees. This Chapter and can be viewed on the Township's website. Careful attention should be given to encouraging proper planting, especially under utility wires.

(3) Whenever any Street Tree shall be planted in violation of this Chapter, or an unsuitable species is planted, or a Street Tree is planted in an inappropriate location due to traffic sight lines, overhead wires, insufficient area for root growth or similar conditions, the Township may remove the Street Tree at the cost of removal to the Owner of the property.

B. *Planting, Maintaining and Replacing Street Trees and Public Trees*

(1) The cost and expenses incurred by the Township in planting, pruning, maintaining, fertilizing, protecting and caring for Street Trees and Public Trees shall be borne by the Township unless the Township determines that a property owner is directly responsible for the conditions requiring such actions.

(2) Any firm, subcontractor, or other Person contracted to prune or otherwise maintain or remove a Street Tree must first apply to the Township for an annual license pursuant to Section 158-12 to perform such activities.

(3) Public utilities proposing to do routine maintenance shall apply to the Township for an annual Tree Work Permit to perform such activities. The Tree Work Permit application shall specify the kind of work the utility desires to perform, the specific pruning and other maintenance practices that the utility intends to employ, and the area where the operation will occur during the period of the Tree Work Permit.

(4) Whenever, in order for the Township to take down or prune any Street Tree or Public Tree, it shall be deemed necessary to remove or disconnect any wire or wires, every Person or utility having any such wire(s) running through a public street or highway or otherwise shall temporarily remove the same or cut off the flow of the current therefrom within 24 hours after notice from the Township Manager to do so. Notice may be made by regular or electronic mail. Tree trimming near energized electrical conductors may only be done by contractors trained to work in these conditions.

C. *Acts injurious to Street Trees.* Except as provided in Section 158-11, it shall be a violation of this Chapter for any Person, other than the Township, to do any of the following acts without first obtaining a Tree Work Permit:

- (1) To plant or cut down any Street Tree or Public Tree.
- (2) To interfere with the roots of any Street Tree or Public Tree.
- (3) To cut into, drive nails or spikes into, break, climb with spurs, or injure in any manner a Street Tree or Public Tree.
- (4) To place any rope, guy wire, cable, sign, poster or other fixture on a Street Tree or Public Tree.
- (5) To injure, misuse or remove any device placed to protect a Street Tree or Public Tree.
- (6) To discharge or pour salt, salt water, oil or other noxious liquids or materials on a Street Tree or Public Tree or around its base.
- (7) To place any stone, cement or other material on a Street Tree or Public Tree or around its base so as to impede the natural passage of water and air into its roots.
- (8) To attach any electrical wire, insulator or any device for the holding of an electrical wire to any Street Tree or Public Tree.

### **Section 158-10 Other Required Tree Work Permit**

A. *Land Development/Subdivision.* In addition to any applicable requirements Chapters 104 (Natural Features and Landscaping) and 148 (Subdivision and Land Development) of the Township's Code, Developers shall submit to the Commission the following information contemporaneously with the filing of a land development or subdivision plan:

- (1) A plan illustrating:
  - (a) The size, species and location of all trees, including Street Trees, with a DBH of six inches or greater which are in the proposed area of disturbance.
  - (b) All trees to be removed designated with an X; and listed in report form with species, size and general point of location on property.
  - (c) Approximate location of trees listed in plan form with species and size, on adjoining properties that are located within 10 feet of the property line

(said locations can be approximated from the subject property or via existing aerial photographic data).

(2) A planting plan illustrating the size, species and location of trees to be planted, all in compliance with the Tree Replacement Formula. The planting plan shall include a chart summarizing sizes and species of trees to be removed and trees to be planted.

(3) The plan(s) shall illustrate the location of Protective Tree Preservation Fence around trees to remain, including a detail of such. All trees to be removed within the Area of Disturbance must be clearly marked at the base of each tree with visible, permanent forestry-type paint in the color of pink indicating the status of each tree. All trees to remain within the Area of Disturbance must be clearly marked at the base of each tree with forestry-grade flagging tape in green color.

(4) In addition to the requirements of Chapter 104, Natural Features and Landscaping, shade trees and Street Trees shall be planted by the Applicant or Developer for any land development or subdivision as follows:

(a) Along both sides of new streets, highways, sidewalks, pedestrian ways, bicycle trails and pathways.

(b) Along new sidewalks.

(c) Along both sides of existing streets, highways, sidewalks, pedestrian ways, bicycle trails or pathways when they abut or lie within the subdivision or land development.

(d) Along both sides of access driveways to residential development.

(5) The Commission shall review the proposed application for compliance with the requirements of the Township's Tree Replacement Formula and all other applicable requirements of the Chapter 158. The Commission shall also consider the impact, if any, on all trees with a DBH of six inches or greater and shall make recommendations for the preservation of existing trees and for the species, location and size of new plantings. Such recommendations shall be made in writing to the Planning Commission.

(6) No Tree Work Permits in connection with land development and/or subdivision may be issued until final approval of the applicable subdivision and/or land development plan and the plans required by this Chapter and the escrow required by Section 158-13 of this Chapter has been established.

(7) In the event of any conflict between the provisions of this Chapter and the provisions of Chapters 104 or 148, the more restrictive provision shall control.

B. *Grading/Demolition/Clearing Tree Work Permits.*

(1) No Person shall undertake any of the following activities without first applying for and obtaining a Grading/Demolition/Clearing Tree Work Permit from the Township:

(a) Activity resulting in the movement of earth or stripping of vegetative cover from earth with an area in excess of 300 cubic yards;

(b) Paving a parking lot of five or more cars where two (2) or more existing trees having a DBH of six inches or greater are proposed to be removed;

(c) The demolition, as part of a single plan, of one or more structures having a 500 or greater aggregate square footage.

(d) Grading or clearing, as part of a single plan, on any lot on which six or more trees having a DBH of twelve inches or greater are proposed to be removed.

(2) An application for a Grading/Demolition/Clearing Tree Work Permit shall be made in writing upon forms furnished by the Township, together with such filing fee as may be established by resolution of the Board from time-to-time.

(3) As part of the application for a Grading/Demolition/Clearing Tree Work Permit the Applicant shall submit a plan to the Commission showing:

(a) The size, species and location of all trees having a DBH of six inches or greater which are in the proposed area of disturbance.

(b) All trees to be removed are to be designated with an X.

(c) Approximate location of trees on adjoining properties that are located within 10 feet of the property line (said locations can be approximated from the subject property or via existing aerial photographic data).

(d) A planting plan illustrating the size, species and location of trees to be planted and calculations demonstrating compliance with the Tree Replacement Formula. The plan shall include a chart summarizing sizes of trees to be removed and trees to be planted. All Grading/Demolition/Clearing Tree Work Permits and other tree removal applications shall meet the Tree Replacement Formula.

(e) The location of Protective Tree Preservation Fence around trees to remain, including a detail of such.

(4) The following measures must be addressed by the Applicant and inspected by the Township Engineer prior to the start of work.

(a) Protective Tree Preservation Fence must be installed and maintained until the work is complete and not removed until directed by the Township; no soil stockpiling, storage of building materials or equipment operation shall be permitted within the Tree Protection Zone of and tree to remain following the work.

(b) All trees to be removed within the Area of Disturbance must be clearly marked at the base of each tree with visible marking.

(c) The cost of such inspections will be covered by the Applicant's Grading/Demolition/Clearing Tree Work Permit fee as charged by the Township.

(d) Protective Tree Preservation Fence must be installed by the Applicant and inspected by the Township Engineer upon issuance of a Grading/Demolition/Clearing Tree Work Permit.

(5) The Commission shall approve or disapprove each Grading/Demolition/Clearing Tree Work Permit application before it and provide a written basis for its findings. If a Grading/Demolition/Clearing Tree Work Permit application is not acted upon within 45 days following a complete submission, it shall be considered to be approved by the Commission.

(6) The Grading/Demolition/Clearing Tree Work Permit shall be effective for such length of time as the Commission shall in each case determine, which length of time shall be indicated on the Tree Work Permit, and such Tree Work Permit may be revoked at any time by the Township Manager upon proof satisfactory to the Township Manager that the terms upon which the Tree Work Permit was issued have been violated.

C. *Tree Removal and Tree Planting in Commercial Districts.*

(1) The application for a Tree Work Permit for tree removal in a Commercial District shall be made in writing to the Township, together with the required filing fee, when one or more trees of two and one-half inches in DBH or larger are to be removed from a property in a Commercial District.

(2) A plan shall be submitted illustrating the size, species and location of the trees that are proposed to be removed, and the size, species and location of new trees to be planted in compliance with the Tree Replacement Formula.

(3) The Commission shall review the application for compliance with the requirements of the Township's Tree Replacement Formula.

(4) The Commission shall approve or disapprove each application it receives and provide a written basis for its findings. If a Tree Work Permit application for tree removal in a Commercial District is not acted upon within 45 days, it shall be considered to be approved by the Commission.

(5) In the event that replanting is impractical or impossible on site as determined by the Commission, the Applicant shall make payment to the Commemorative Shade Tree Fund in lieu of replanting in accordance with the Tree Replacement Formula, or shall plant the required trees in locations in need in the Township.

D. *Removal or Disturbance of a Heritage Tree*

(1) Removal or disturbance of a Heritage Trees is strongly discouraged. No Person shall undertake any of the following activities without first applying for and obtaining a Heritage Tree Removal/Disturbance Tree Work Permit from the Township:

(a) Removing a Heritage tree;

(b) Pruning more than twenty percent (20%) percent of the branches of a Heritage tree within a 12-month period; or

(c) Performing any grading or soil disturbance work within the Tree Protection Zone of any Heritage Tree.

(2) An application for a Heritage Tree Removal/Disturbance Tree Work Permit shall be made in writing to the Township Manager upon forms furnished by the Township, together with such filing fee as may be established by resolution of the Board from time-to-time.

(3) The application for a Heritage Tree Removal/Disturbance Tree Work Permit shall be accompanied by a plan illustrating the size, species and location of the Heritage Tree which is proposed to be removed or disturbed and, if the application is for removal, the size, species and location of new trees to be planted in compliance with the Tree Replacement Formula. In the case of the disturbance of a Heritage Tree due to construction or grading activities, a tree protection plan shall be prepared by a Certified Arborist or landscape architect which shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition, and construction.

(4) All Heritage Trees remaining on site shall be protected from disturbance by Protective Tree Preservation Fences.

(5) The Commission shall approve or disapprove each Heritage Tree Removal/Disturbance Tree Work Permit application and provide a written basis for its findings. The Commission shall have the authority to require that a Heritage

Tree be replaced in compliance with the Tree Replacement Formula or that the Landowner pay the monetary equivalent into the Commemorative Shade Tree Fund. In determining whether there is good cause to approve a Heritage Tree Removal/Disturbance Tree Work Permit application, the Committee shall give consideration to the following:

- (a) The condition of the tree or trees, including with respect to disease, danger of falling, proximity to existing or proposed structures and interference with utility services;
- (b) The necessity to remove the tree or trees in order to construct proposed improvements to the property;
- (c) The topography of the land and the effect of the removal of the tree on erosion, soil retention and diversion or increased flow of surface waters;
- (d) The desirability and long-term value of the species under consideration, particularly life-span and growth rate;
- (e) Any significant historic events associated with the Heritage Tree;
- (f) The ecological value of the tree or group of trees, such as food, nesting, habitat, protection and shade for wildlife or other plant species;
- (g) The number, size, species and location of existing trees in the area and the effect the removal would have upon shade, privacy impact and scenic beauty.
- (h) The availability of reasonable and feasible alternatives that would allow for the preservation of the tree(s).

6. If the application is approved, the Township shall issue a Heritage Tree Removal/Disturbance Tree Work Permit, subject to such conditions as the Commission may impose. If a Heritage tree removal application is not acted upon within 45 days, it shall be considered to be approved by the Commission.

7. A Heritage Tree Removal/Disturbance Tree Work Permit shall be effective for such a length of time as the Commission shall in each case determine, length of time shall be indicated on the Tree Work Permit, and such Tree Work Permit may be revoked at any time by the Township Manager upon proof satisfactory to the Township Manager that the terms upon which the Tree Work Permit has been issued have been violated.

*E. Bond.*

The Commission may, in its discretion as a condition of any Tree Work Permit, recommend that the Applicant file a bond or to deposit security satisfactory to the Township to guarantee compliance with the terms and conditions upon which the Tree Work Permit is issued.

*F. Payments to Commemorative Shade Tree Fund.*

In the event that replanting is impractical or impossible on site as determined by the Commission, the Applicant shall make payment to the Commemorative Shade Tree Fund in lieu of replanting in accordance with the Tree Replacement Formula, or may plant the required trees in locations in need in the Township that are designated by the Commission.

**Section 158-11 Hazard Tree Removal**

A. *Hazard Tree Removal When Identified by Landowner.* A Landowner shall give the Township twenty-four hours' prior notice before removing a Hazard Tree unless such notice is clearly impracticable because of imminent danger to life or property. A Hazard Tree may be removed by the Landowner without first obtaining a Tree Work Permit otherwise required under any provision of this Chapter unless the Township disputes the status of the tree as a Hazard Tree. The Landowner or designee shall report the removal of the Hazard Tree to the Township within ten (10) days of removal. Such report shall append the required report of the Certified Arborist as to the status of such tree as a Hazard Tree.

B. *Hazardous Tree Removal When Identified by Township.* If the Township Arborist determines that a tree or trees on private property are Hazard Trees, the Township shall notify, in writing, the Landowner of such property of such determination. The Landowner shall remove, or cause to be removed, at the Landowner's expense, the Hazard Tree or Trees within five (5) days of his or her receipt of notification from the Township. If the Hazard Tree is not removed within five days of the Landowner's receipt of such notice, the Township may take such action as necessary to remedy the situation and charge the Landowner for its cost in doing so.

**Section 158-12 License Requirements**

A. *License Required.* Effective the date of this Chapter, a contractor license, as required by Section 69-5 of the Township Code, shall be required for all arborists, tree surgeons or landscape companies that perform, for compensation, any tree work (including, without limitation, felling, pruning, tree removal, stump grinding, etc., and including contractors retained by public utilities) on public or private land in the Township. Such license shall be valid, unless revoked, for a twelve-month period.

B. *Application.* Applications for license shall be made on a form provided by the Township and shall include name and address of the business, partnership or corporation,



and the name of the individual to be licensed, along with any additional information which the Township may require.

C. *Insurance Requirements.*

(1) All applications for a license shall include proof of general liability insurance coverage and worker's compensation insurance coverage in the following amounts:

(a) General liability: coverage for personal injury in a minimum amount of \$1,000,000 per occurrence and in the aggregate, and property damage in a minimum amount of \$250,000 per occurrence and in the aggregate. In the alternative, a combined coverage of \$1,000,000 of personal injury and property damage per occurrence and \$1,250,000 in the aggregate may be provided.

(b) Worker's compensation: coverage as is required by the Commonwealth of Pennsylvania.

(2) All policies shall be issued and in full force and effect before commencement of any construction. All insurance coverages shall not be altered, modified or canceled during the period a Township license is in effect without the express written consent of the Township.

**Section 158-13 Escrow**

A. The Commission may require that an escrow agreement be established by the Applicant with the Township in connection with the approval of any Tree Work Permit.

B. An escrow agreement is to guarantee the Applicant's compliance with the conditions of any approved Tree Work Permit under this Chapter. If required, such escrow agreement shall be established in a form and manner to be approved by the Township prior to the commencement of any work for which the Tree Work Permit was issued.

C. Prior to the removal or planting of any required trees, an Applicant may be required, at the discretion of the Commission, to place in escrow up to the following amounts:

(1) An amount equal to \$500 per tree scheduled to remain up to a maximum aggregate of \$7,500, unless waived or modified by the Township Engineer;

(2) An amount equal to a minimum of \$18 per lineal foot of Tree Protection Preservation Fence or the amount set annually by the Board, as required by the approved Tree Work Permit;

(3) An amount equal to \$500 per newly installed replacement tree; and

(4) In the event that replanting is impractical or impossible on site, the Applicant shall make payment to the Commemorative Shade Tree Fund in lieu of replanting in accordance with the Tree Replacement Formula, or may plant the required trees in locations in need in the Township that are designated by the Township.

D. In the event that an Applicant removes any tree in violation of an approved Tree Work Permit, the Applicant shall, in addition to any other remedies imposed under this Chapter, forfeit \$500 for each tree as a penalty and an additional \$500 necessary to replace the tree removed in violation of an approved Tree Work Permit.

#### **Section 158-14 Fines and Penalties; Enforcement**

A. For each violation of this Chapter, the Landowner shall be fined not more than \$1,000 plus all court costs, plus reasonable attorneys' fees incurred by the Township as a result of the violation. Each day the violation continues shall constitute a separate violation. Such fines or penalties shall be collected in the same manner as fines or penalties are generally collected by the Township. The provisions of this section are in addition to any other remedy provided by this Chapter.

B. If any tree has been injured, cut down or removed in violation of this Chapter, the Person responsible for such action shall replace the tree with a new tree or trees of a size and species to be recommended by the Commission. The (a) cost of the replacement tree, and (b) maintenance of the new tree for a period of two years, shall, in each case, be the responsibility of the violator. If, during which time the violator shall be responsible to maintain a replacement tree, the tree if it dies or becomes diseased, the Person responsible for the maintenance of such replacement tree shall replace the dead or diseased tree with a second replacement tree or trees of a size and species to be recommended by the Commission. The (a) cost of the second replacement tree, and (b) maintenance of the second replacement tree for a period of two years, shall, in each case, be the responsibility of the original violator.

#### **Section 158-15 Disposition of Penalties or Assessments**

All penalties, fines and assessments imposed and paid under this Chapter shall be paid to Newtown Township and deposited in the Commemorative Shade Tree Fund.

#### **Section 158-16 Appeals**

A. Any Person who wishes to contest any decision of the Commission or other Township officials made pursuant to any provision of this Chapter, or any fines and/or penalties imposed pursuant to the provisions of this Chapter, shall have the right to appeal, in writing, to the Board, within 30 days of the date of the alleged action pursuant to the Local Agency Law.

B. On any appeal to the Board, the Board shall consider individual hardship considerations of the Landowner with respect to cost, property maintenance and stewardship of the property, and such other factors deemed appropriate by the Board.

**Section 2.** Nothing in this ordinance or in Chapter 158 of the Code of the Township of Newtown, as hereby enacted, shall be construed to affect any suit or proceedings in any court, any rights acquired or liability incurred, or any permit issued, or causes of action existing, prior to the effective date of this ordinance.

**Section 3.** The provisions of this ordinance are severable, and if any section, sentence, clause, part or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board of Supervisors that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

**Section 4.** This ordinance shall take effect and be in force from and after [its approval as required by law] **OR** [ \_\_\_\_\_, 2020].

**ENACTED and ORDAINED** at a regular meeting of the Board of Supervisors for Newtown Township on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
Stephen M. Nease  
Township Manager

BOARD OF SUPERVISORS OF  
TOWNSHIP OF NEWTOWN

By: \_\_\_\_\_  
John A. Nawn, P.E.  
Chairman

I hereby certify that the foregoing Ordinance was advertised in \_\_\_\_\_ on \_\_\_\_\_, 20\_\_, a newspaper of general circulation in Newtown Township and was duly enacted and approved as set forth at a regular meeting of the Newtown Township Board of Supervisors held on the \_\_\_\_ th day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Stephen Nease  
Township Manager