

ORDINANCE NO. 1994- /

AN ORDINANCE OF THE TOWNSHIP OF MARION, BERKS COUNTY, PENNSYLVANIA, CREATING A SHADE TREE COMMISSION AND ESTABLISHING ITS MEMBERSHIP, POWERS, DUTIES, OBLIGATIONS, TERM OF OFFICE, AND AUTHORIZATION TO PRESCRIBE REGULATIONS FOR SHADE TREES, AND REQUIRING AN ANNUAL REPORT; REQUIRING PERMITS IN CERTAIN SITUATIONS; REGULATING THE PLANTING, MAINTENANCE, PROTECTION, AND REMOVAL OF TREES IN THE PUBLIC STREETS AND PUBLIC AREAS; PROVIDING FOR THE PRUNING AND REMOVAL OF TREES ON PRIVATE PROPERTY WHICH ENDANGER PUBLIC SAFETY; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS

BE IT ENACTED AND ORDAINED by the Board of Supervisors of Marion Township, Berks County, Pennsylvania, and it is hereby Enacted and Ordained by the authority of the same as follows:

ARTICLE I. SHORT TITLE

This Ordinance shall be known and may be cited as the Municipal Tree Ordinance of the Township of Marion.

ARTICLE II. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word shall is mandatory and not merely directory.

Board of Supervisors shall mean the Board of Supervisors of the Township of Marion, Berks County, Pennsylvania.

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

Property Owner shall mean the person or entity owning such property of record, or the equitable owner if such can be ascertained.

Public Place shall include grounds owned by the Township.

Shade Tree Commission shall mean the commission established under Article III of this Ordinance.

Public Tree shall mean all trees now or hereafter growing either (1) on any Street, or (2) on any public area owned or controlled by Township.

Street means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular and pedestrian traffic.

Township shall mean the Township of Marion, Berks County, Pennsylvania.

Township Code Enforcement Officer shall mean the Zoning Officer of the Township or such other person appointed to act as such by the Township Board of Supervisors.

Tree-lawn is that part of a street adjoining or located within any particular property which is not covered by sidewalk or other paving, and which lies between the outer limit of the street right-of-way and that portion of the street usually used for vehicular traffic.

ARTICLE III. SHADE TREE COMMISSION

Section 1. Creation of Commission; Membership; Powers, Duties, and Obligations. The Board of Supervisors hereby creates a Shade Tree Commission, to be composed of three (3) residents of the Township, who shall be appointed by the Board of Supervisors and shall serve without compensation for their terms of office and with all the rights, powers, duties, and obligations provided for by law.

Section 2. Appointments; Term of Office. The members of the Shade Tree Commission shall be appointed by the Board of Supervisors for terms of five (5) years; provided, for the first members of said Commission, one (1) member shall be appointed for

a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years. On the expiration of the term of any commissioner, a successor shall be appointed by the Board of Supervisors to serve for a term of five (5) years. Vacancies in the office of commissioner shall be filled by the Board of Supervisors for the unexpired term.

Section 3. Express Authority of Shade Tree Commission. The collection of assessments, the filing of liens, the levying of taxes and the collection of penalties, whether by the Shade Tree Commission or on behalf of the Township, are expressly authorized as provided for in the law.

Section 4. Rules and Regulations Authorized; Penalty for Violation. The Shade Tree Commission is hereby authorized to prescribe such rules and regulations, and to impose such penalties for the violation of same, as it may deem necessary and proper, provided that the rules and regulations are approved by the Board of Supervisors and are not in conflict with this or any other ordinances of the Township, and provided further that such rules, regulations, and penalties are established and set as provided by law.

ARTICLE IV. PERMITS REQUIRED

Section 1. Permits

Within the CC - Community Core Zoning District, no Person shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any Public Tree without first filing an application and procuring a permit from the Township Code Enforcement Officer. Any Property Owner desiring to plant a tree within any Street located within the CC - Community Core Zoning District of the Township shall first obtain a permit from the Township Code Enforcement Officer and follow specifications contained therein. No planting may be done on Tree-lawns less than eighteen inches (18") in width.

Section 2. Application

Application for permits must be made at the office of the Township Code Enforcement Officer during regular office hours prior to the time the work is to be done.

Section 3. Standards of Issuance

The Township Code Enforcement Officer shall issue the permit provided for herein if there is compliance with the provisions of this Ordinance. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

Section 4. Notice of Completion

Notice of completion of the work referenced on the permit shall be given within five (5) days after completion of the same to the Township Code Enforcement Officer for his or her inspection.

Section 5. Tree List

(A) Trees must be chosen, and planted, from a list of trees approved by the Board of Supervisors. A copy of said tree list is attached hereto, made a part hereof and marked Exhibit "A".

(B) The tree list attached hereto may be amended and supplemented by Resolution of the Board of Supervisors as may from time to time be determined to be in the best interest of the Township. The Shade Tree Commission shall offer recommendations to the Board of Supervisors on the need to amend or supplement the said tree list.

Section 6. Application Data

The application required herein shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting, and such other information as the Township Code Enforcement Officer shall find reasonably necessary to a fair determination of whether a permit should be issued.

Section 7. Improper Planting

Whenever any tree shall be planted or set out in conflict with the provisions of this Ordinance, it shall be lawful for the Township Code Enforcement Officer to remove or cause removal of the same, and the exact cost thereof shall be assessed to the Property Owner as provided by law as in the case of special assessments. In the case of Tree-lawns where there are existing

trees, any new tree shall be planted in the same line as other trees in existence.

ARTICLE V. OBSTRUCTION - TREES TO BE PRUNED

It shall be the duty of any Person or Persons owning or occupying real property bordering on any Street upon which there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any Street or alley intersection. The minimum clearance of any overhanging portion thereof shall be ten feet (10') over sidewalks and twelve feet (12') over all Streets.

Section 1. Notice to Prune

Should any Person or Persons owning real property bordering on any street fail to prune trees as herein above provided, the Township Code Enforcement Officer shall order such Person or Persons to so prune such trees within thirty (30) days after serving of written notice to do so.

Section 2. Order Required

The order referenced in Section 1 above shall be served by mailing a copy of the order to the last known address of the Property Owner by certified mail.

Section 3. Failure to Comply

When a Person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the Township to prune such trees, and the exact cost thereof shall be assessed to the said Property Owner as provided by law as in the case of special assessments.

ARTICLE VI. ABUSE OR MUTILATION OF PUBLIC TREES

No Person shall intentionally damage, cut, carve, transplant or remove any Public Tree; attach any rope, wire, nails, advertising posters or other contrivance to any such tree, allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them, or set fire or permit any

fire to burn when such fire or the heat thereof will injure any portion of any such tree.

ARTICLE VII. RIGHT OF ACCESS

No Person shall hinder, prevent, delay or interfere with the Township Code Enforcement Officer or any of his or her assistants while engaged in carrying out the execution or enforcement of this Ordinance; provided however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any Court of competent jurisdiction for the protection of property rights by the owner of any property within the Township.

ARTICLE VIII. PROTECTION OF TREES

All Public Trees located near any excavation or construction of any building, structure or street work, shall be guarded with a good substantial fence, frame or box not less than four feet (4') high and eight feet (8') square or at a distance in feet from the tree equal to the diameter of the trunk in inches D.B.H., whichever is greater, and all building material, dirt or other debris shall be kept outside the barrier.

No Person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten feet (10') from any Public Tree without first obtaining a written permit from the Township. No Person shall excavate or damage the major root structure of any Public Tree.

ARTICLE IX. PLACING MATERIALS ON PUBLIC PROPERTY

No person shall deposit, place, store or maintain upon the Public Place or Street of the Township, any stone, brick, sand, concrete or other materials within eight feet (8') from the trunk of any tree growing therein, or within a distance in feet from the tree equal to the diameter of the trunk in inches D.B.H., or within a distance which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein, whichever distance may be greater.

ARTICLE X. SPECIFICATION FOR SELECTING, PLANTING AND
MAINTENANCE OF STREET TREES

Section 1. Shade Tree Commission Review

Shade Tree Commission shall review and comment on all applications for permits under this Ordinance in order to help assure compliance with the criteria set forth in this Ordinance.

Section 2. Materials

(A) If the Property Owner is confronted with an unforeseen problem pertaining to tree species on the approved tree list, the Shade Tree Commission may be consulted for advice and recommendations.

(B) Only plant material grown in nurseries shall be procured for shade tree planting. Trees should be true to form and typical of the species.

(C) Each tree shall be at least eight feet (8') in height above ground level and shall have a diameter of at least two and one-half inches (2½") measured at a height of three feet (3') above ground level.

(D) As different trees require different soil conditions, it may be necessary to add materials such as fertilizers, sand, etc. to the existing soil prior to planting.

Section 3. Construction Methods

(A) The actual location of each individual tree shall be determined only after consideration of visibility, proximity of utility poles, overhead and guy wires, driveways and subsurface utility installations, and any other relevant factor.

(B) Trees shall be planted at least thirty feet (30') from street intersections, at least fifteen feet (15') from driveways and alleys, at least ten feet (10') from utility poles, and at least ten feet (10') from any sewer line or lateral. In all cases the clear sight triangles specified in the Marion Township Subdivision and Land Development Ordinance shall be maintained.

(C) Spacing of trees should be determined by the Shade Tree Commission according to (1) local conditions, (2) the species, cultivars or varieties used; and (3) their mature height, spread

and form. Generally, all trees shall be planted forty feet (40') to sixty feet (60') apart on center. Whenever possible, shade trees shall be planted alternately along each side of all streets of a development.

Section 6. Maintenance

(A) Tree maintenance shall begin immediately after each tree is satisfactorily installed and shall continue until final inspection by the Township Code Enforcement Officer or Shade Tree Commission.

(B) Tree maintenance shall include, but need not be limited to, replacing mulch that has been displaced by erosion or other means, maintaining stakes and guys as originally installed, watering when needed or directed, and performing any other work required to keep the trees in a healthy condition. An adequate moisture supply is estimated to be the equivalent of one inch (1") of water per week, delivered at weekly intervals in the form of rain or augmented by periodic watering.

(C) The Property Owner shall remove, and may replace if desired, all dead, defective and rejected trees.

ARTICLE XI. VIOLATION AND PENALTY

Any Person violating any of the provisions of this Ordinance shall, upon judgment or summary conviction thereof before a District Justice, be fined a sum not in excess of Six Hundred Dollars (\$600.00) for each and every offense. In default of the payment of fine and costs, such Person or Persons shall be committed to the Berks County Prison for a period not exceeding thirty (30) days. After notice of violation has been given in writing, each day of any subsequent violation of any of the provisions of this Ordinance shall constitute an additional violation hereunder.

Furthermore, a violation of this Ordinance shall entitle the Board of Supervisors, or, with their approval, an officer of the Township, in addition to other remedies, to institute in the name of the Township any appropriate action or proceeding to prevent, restrain, correct or abate such violation, or to prevent any act, conduct or use constituting a violation.

ARTICLE XII. LEGALITY OF ORDINANCE AND PARTS THEREOF

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

ARTICLE XIII. REPEALER

All Ordinances or parts of Ordinances which are inconsistent herewith, except to the extent otherwise provided herein, are hereby repealed, including, but not limited to, any conflicting provisions referenced in Section III(a) of Marion Township Ordinance No. 1988-1.

ARTICLE XIV. EFFECTIVE DATE

This Ordinance shall become effective five days after the date of its enactment.

ENACTED AND ORDAINED this 30TH day of JUNE, 1994.

BOARD OF SUPERVISORS OF THE
TOWNSHIP OF MARION, BERKS COUNTY,
PENNSYLVANIA

Richard G. Meffer
Chairman

Harold E. Zechman
Supervisor

Kenneth L. Keppley
Supervisor

Attest:

Doris E. Yulberger
Secretary

EXHIBIT "A"

MARION TOWNSHIP MUNICIPAL TREE ORDINANCE
APPROVED LIST OF TREES

For Tree-lawns of 18 to 30 inches. Mature height of tree is 15 to 30 feet.

1. Ivory Silk Japanese Tree Lilac (*Syringa reticulata*) *
2. Summer Snow Japanese Tree Lilac (*Syringa reticulata*) *
3. Crimson Cloud Hawthorn (*Crataegus laevigata*) *
4. Madonna Crabapple (*Malus*) *
5. Red Jewel Crabapple (*Malus*) *
6. Snow Drift Crabapple (*Malus*) *

For Tree-lawns of 31 to 48 inches. Mature height of tree is 20 to 40 feet.

1. Harvest Gold Crabapple (*Malus*) *
2. Centurion Crabapple (*Malus*) *
3. Redbud Crabapple (*Malus*) *
4. Columnar Sargent Cherry (*Prunus sargentii*)
5. Robin Hill Serviceberry (*Anelanchier x grandiflora*) *
6. Cumulus Serviceberry (*Anelanchier x grandiflora*) *

For Tree-lawns greater than 48 inches. Mature height of tree is 35 to 75 feet.

1. Hodge Maple-Queen Elizabeth (*Acer Campestre*)
2. Pioneer Elm (*Ulmus*) #
3. Crimson King Norway Maple (*Acer Platanoides*)
4. Bowhall Red Maple (*Acer Rubrum*)
5. Champaign County White Ash (*Fraxinus americana*) #
6. Princeton Century Ginkgo-MALE ONLY! (*Ginkgo Biloba*)
7. Sweet Gum (*Liquidambar Styraciflua*) #
8. Blackgum (*Nyssa sylvatica*) #
9. Chanticleer Callery Pear (*Pyrus calleryana*)
10. Redspire Callery Pear (*Pyrus calleryana*)
11. Macho Amur Corktree (*Phellodengron amurense*)
12. Ruby Red Horsechestnut (*aescuius x carnea*)
13. Goldenrain Tree (*Koelrevteria paniculata*)
14. All Seasons Hackberry (*Celtis laevigata*)
15. Green Vase Japanese Zelkova (*Zelkova serrata*)

KEY

* Denotes trees appropriate for under wires.

Denotes trees appropriate for backyards and boulevards.

IMPORTANT NOTE: Any resident wishing to plant a tree that is not on this list may contact the Shade Tree Commission or the Township Code Enforcement Officer who will review information about the tree request and will make a determination regarding the same.