

**TOWNSHIP OF SOUTH MIDDLETON
CUMBERLAND COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2019-02

**AN ORDINANCE ESTABLISHING A HERITAGE TREE PROGRAM; IDENTIFYING
AND PROMOTING THE PRESERVATION AND PROTECTION OF SUCH TREES;
AND CREATING INCENTIVES FOR PROPERTY OWNERS TO VOLUNTARILY
PRESERVE SUCH TREES**

IT IS HEREBY ENACTED AND ORDAINED by the Board of Supervisors in and for the Township of South Middleton, Cumberland County, Pennsylvania, as follows:

Section 1. Short Title

This Ordinance shall be known and may be cited as the South Middleton Township Heritage Tree Ordinance.

Section 2. Intent

The purpose of this Ordinance is to recognize, foster appreciation of, and protect large trees. It is further the intention of his Ordinance to provide awareness of the benefits of protecting trees as they improve air and water quality, reduce soil erosion, noise and glare, provides a habitat for desirable wildlife, counteract pollutants, provides shade and moderates the climate, and decreases wind velocities. The mature trees of the community are part of the Township's heritage, enhance community aesthetics, increases property values, and add to the quality of life valued by the Township's residents.

Section 3. Construction

In the interpretation of this Ordinance, the provisions shall be construed as follows:

- A. Any term used in the present tense shall include the future tense;
- B. Any term in the singular shall include the plural and *vice versa*, unless the context otherwise requires;
- C. Any term in the masculine shall include the feminine or other;
- D. The word "shall" is mandatory, the word "may" is permissive;
- E. The word "used" includes "designated, intended, built, or arranged to be used;"
and

- F. Any reference or statement indicating the "Township" taking action, in an administrative, enforcement, or other official capacity, shall be construed as the Township official, department, or committee, designated by the Board of Supervisors, as taking such an action, unless the specifically provided for herein;

Section 4. Definitions

The following words or phrases when used in this Ordinance shall be defined as follows unless the context otherwise requires:

Board of Supervisors: The Board of Supervisors of the Township of South Middleton.

Crown: The sum total of all the living branches of a tree.

Diameter at breast height (DBH): Standard measurement of a tree's diameter taken at breast height (4.5 feet above the ground, or approximately 1.5 meters).

Person: Any natural individual, corporation, company, estate, joint stock association, firm, partnership, trust, or any other public or private association or entity.

Property owner: Any person owning, leasing, occupying, or otherwise having a present possessory interest in any real estate in the Township

Registry: The South Middleton Township Heritage Tree Registry.

Removal: Any act that causes or may reasonably be expected to cause a tree to die, including: (1) uprooting; (2) severing the main trunk; (3) damaging the root system; or (4) excessive pruning.

Township: The Township of South Middleton.

Township arborist: Any qualified arborist employed or chosen by the Township.

Township manager: The Township official created by Ordinance No. 1994-07, or his designee.

Tree: A woody perennial plant with an elongated stem, or trunk, supporting leaves or branches, attaining a height of at least eight feet at maturity.

Deciduous tree: Any species of tree that seasonally sheds its leaves, usually in the autumn;

Evergreen tree: Any species of tree that is not a deciduous tree.

Heritage tree: A tree included on the Township's Heritage Tree Registry.

Protected tree: Any tree species listed as endangered, threatened, vulnerable, or rare by the Pennsylvania Rare, Threatened, and Endangered Plants list (*45 Pa Code § 45.1*), the Federal Register, or any tree species designated as protected by the Board of Supervisors.

Section 5. Powers and Duties of the Township Manager

Administration and enforcement of the rules and regulations promulgated herein shall be delegated to the Township Manager, or his designee, under the direction of the Board of Supervisors.

Section 6. Heritage Tree Program; Purpose

A Heritage Tree Program is hereby created. The purpose of this program is to identify large mature trees, and others, and to promote their protection and maintenance, and discourage their removal or any act that would threaten a heritage tree's long-term health. Designation of a heritage tree does not give or intend to give the public access to, or use or enjoyment of, private property to which such persons have no claim or entitlement.

Section 7. Criteria

For any individual tree, or grove of live trees, to be considered a heritage tree, it shall meet the following conditions:

- A. Has a 40 inch or greater DBH. A tree below this minimum threshold may be considered by the Board of Supervisors for inclusion on the Heritage Tree Registry provided it can meet two of the traits listed in Subsection D below.
- B. The tree shall be a tree that is considered a noninvasive species as established by the Pennsylvania Department of Conservation and Natural Resources or its successor agency.
- C. The tree shall be in good health as determined by the Township Arborist.
- D. In addition to the preceding conditions, the candidate tree shall also possess one or more of the following traits:
 - 1) The tree has a distinctive size, shape, or age that is exceptional for its particular species;
 - 2) The tree is of a rare species;

- 3) The tree is of historical significance. "Historical significance" shall be any tree that is connected to historical dates, events, people, or Township landmarks. In determining the status of such a tree, the Township shall rely on the opinion of an historian or historical society or committee that may be created by the Township in the future for such purposes.
- 4) The tree is of especially high ecological value. This determination will be based on a number of factors but generally includes any tree that may be an important roost, nesting site, or food source for certain wildlife species, is situated in a site where it plays a critical role in stabilizing soil or providing shade needed by other plant or animal species, or is an important genetic resource for a local tree population or the species as a whole. Input from trained biologists and ecologists may be necessary to document particular ecological values that may not be obvious to the general public;
- 5) Is a protected tree; or
- 6) Is over 75 years in age.

Section 8. Heritage Tree Registry

- A. The Township shall periodically conduct a survey of heritage and large trees within the Township for possible inclusion in or removal from the Township's Heritage Tree Registry. For the purposes of this Section, a "large tree" is any tree attaining a height of 45 feet or more at maturity. The public may make nominations for inclusion of a tree(s) to be placed on the Heritage Tree Registry, pursuant to Section 9.
- B. Only trees included in the Registry will be considered heritage trees. A copy of the Registry shall be posted on the Township's website and made readily available at the Township offices.
- C. No tree may be removed from the Heritage Tree Registry without the express approval of the Board of Supervisors.

Section 9. Designation Process

To receive status as a heritage tree, the owner of a tree must submit an application to the Township for staff review with the ultimate decision to be made by the Board of Supervisors.

- A. The following is the process for submittal and review of an application for heritage tree status:
 - 1) Along with the application, the applicant shall also submit a narrative stating the following:
 - a) How the tree meets the criteria listed in Section 7;
 - b) The tree's general location;

- c) General tree information, such as species, approximate height and age (if known); and
 - d) Methods used both in the past and those that will be used in the future to preserve the tree.
 - 2) At least four photographs of the tree taken in summertime, for deciduous trees (photographs of evergreen trees can be taken year-round), showing the entirety of the tree, one taken from each of the four cardinal directions (i.e. north, south, east, and west).
 - 3) Evidence that the owner will place a deed restriction on their property for their heirs and assigns to ensure that they are aware of the heritage tree status.
 - 4) A signed statement from the property owner where the tree is located stating that they are aware of the restrictions, as provided for in Section 11, that comes with owning a tree designated as a heritage tree, such as expected limitations on removal and the expectation that the tree will be kept the tree in good health.
- B. Upon receipt of a nomination, the Board of Supervisors shall have 90 days to approve or deny or require re-submittal of an application for inclusion of the nominated tree on the Registry. Failure of the Board of Supervisors to render a decision in this time will be deemed a denial of the application. The Board of Supervisors, with the approval of the applicant, may extend this review period.
 - C. Prior to action being taken on a heritage tree application, the applicant shall allow the Township access to do an on-site inspection of the tree.
 - D. Upon completion of review by Township staff, a report with a recommendation will be provided to the Board of Supervisors.
 - E. If the Board of Supervisors grants heritage tree status for a tree, it shall be noted through resolution to be adopted by the Board of Supervisors as such.

Section 10. Duties of the Township

The Township shall do the following after a tree is designated as a heritage tree:

- A. Prepare a plaque (if the owner chooses to have one) that will be placed on the property in the general vicinity of the heritage tree. Any replacement of a plaque may be at the cost of the property owner;
- B. Reimburse the owner for the costs incurred for recording changes to the owner's deed reflecting the status of heritage tree;

Section 11. Duties of the Owner of a Heritage Tree

- A. After a tree is designated as a heritage tree, the owner shall agree to trim and prune the tree in a manner that ensures its natural growth and appearance, and in accordance with national pruning standards as promulgated by the Tree Care

Industry Association (ANSI A300 Standards). Failure to adhere to these standards may result in the removal of the tree from the Heritage Tree Registry.

- B. The removal, or trimming of a heritage tree that results in the removal of two-thirds or more of the crown, or any other action that causes irreparable damage to the tree, shall result in the removal of the tree from the Heritage Tree Registry.

Section 12. Heritage Tree Easements

The Township may purchase an easement from the heritage tree owner to encourage the long-term health and maintenance of a heritage tree. Upon the purchase of a heritage tree easement, the Township may enter private property to inspect the heritage tree, after timely notice to the property owner, to ensure the tree's continued growth and proper maintenance.

Section 13. Severability

If any section, clause, sentence, part, or provision hereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, 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, clause, sentence, part, or provision had not been included.

Section 14. Repealer

All Township ordinances, parts of ordinances, policies, and regulations inconsistent with the provisions of this Ordinance are repealed insofar as they are inconsistent with the powers, duties, and responsibilities enacted hereby.

Section 15. Effective Date

This Ordinance shall be effective five days following enactment.

ENACTED AND ORDAINED this 28 day of Feb, 2019.

SOUTH MIDDLETON TOWNSHIP
BOARD OF SUPERVISORS


BRYAN A. GEMBUSIA, Chairman

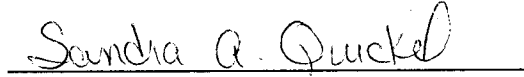

THOMAS E. FALEY, Vice Chairman


RONALD P. HAMILTON, Member

- Absent
R. DUFF MANWEILER, Member


WALTER G. REIGHARD, Member

ATTEST



SANDRA A. QUICKEL, Secretary