

**SOUTH WHITEHALL TOWNSHIP  
LEHIGH COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 1084  
(Duly Adopted January 17, 2024)**

**AN ORDINANCE AMENDING PART II (GENERAL LEGISLATION) AND  
ESTABLISHING CHAPTER 330 “TREES” AS PART OF THE CODIFIED  
ORDINANCES OF THE TOWNSHIP OF SOUTH WHITEHALL AND PROVIDING  
FOR DEFINITIONS, PERMITS, PROHIBITED ACTIVITIES, TREES IN PUBLIC  
LANDS AND RIGHT OF WAY, TREES ON PRIVATE PROPERTY,  
ARBORICULTURAL WORK PERFORMANCE REQUIREMENTS, COMPLIANCE  
WITH TOWNSHIP ORDINANCES, SHADE TREE FEES, VIOLATIONS AND  
PENALTIES, SEVERABILITY, FAILURE TO ENFORCE NOT A WAIVER,  
REPEALER AND AN EFFECTIVE DATE**

**WHEREAS**, South Whitehall Township (“Township”) is a political subdivision, municipal corporation, and First Class Township of the Commonwealth of Pennsylvania, being a body corporate and politic, situated in Lehigh County, duly established and lawfully existing under and pursuant to the First Class Township Code of the Commonwealth of Pennsylvania, 53 P.S. §§ 55101 et seq., as amended; and,

**WHEREAS**, the Township has a vested interest in protecting the Township against the deterioration of the Township, the community, and the health, safety, welfare, and well-being of its residents via maintaining the integrity of the Township’s urban forest; and,

**WHEREAS**, the Board of Commissioners recognizes the urban forest as a necessary part of the Township’s infrastructure; and,

**WHEREAS**, the Board of Commissioners realizes the environmental, social, and economic benefits of this infrastructure to the Township; and,

**WHEREAS**, the Board of Commissioners realizes the challenges in adequately maintaining the urban forest has created the need to further protect and conserve this resource.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Board of Commissioners of South Whitehall Township, Lehigh County, Commonwealth of Pennsylvania as follows:

**SECTION I AMENDMENT TO PART II (“GENERAL LEGISLATION”) OF THE  
CODIFIED ORDINANCES OF SOUTH WHITEHALL TOWNSHIP**

Part II (“General Legislation”) of the Codified Ordinances of South Whitehall Township is hereby amended to create a new Chapter 330, which shall read as follows:

**§ 330-1 NAME**

This chapter shall be commonly known as “Trees”.

**§ 330-2 PURPOSE**

South Whitehall Township recognizes that the urban forest within the Township plays an integral part to the infrastructure of the Township. Therefore, the purpose of this Chapter is to support the goals and policies related to the urban forest, including but not limited to the permitting, planting, removal, maintenance, and protection of trees within the Township. These policies will help to maintain the neighborhoods within the Township and make them a safer and attractive place to live.

### **§ 330-3 DEFINITIONS**

Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular. As used in this chapter, certain terms are defined as follows:

#### **COMMISSION**

The Landscape and Shade Tree Commission of South Whitehall Township.

#### **COST OF CURE**

The total cost for the replacement of a given tree with one of equal size and condition as calculated by the standards of the International Society of Arboriculture (ISA).

#### **LAND DEVELOPMENT**

As defined by SALDO Section 312-6 Definitions.

#### **MAINTENANCE or MAINTAIN**

Clipping, pruning, fertilizing, spraying, treating for disease, insects or injury and any similar work done to promote health, growth or beauty to trees.

#### **NUISANCE**

The following are declared to be a nuisance under this chapter:

- (1) Any physical condition regarded as a public nuisance or attractive nuisance at common law.
- (2) Any condition which interferes with the normal use or enjoyment of any property or endangers human health, safety or welfare.
- (3) Any insect or disease infestation.
- (4) Any discharges, flowers, fruits, berries, or other seeds which create noxious odors or other offensive conditions.

#### **PERSON**

Any natural person, firm, partnership, association, corporation, company or any other organization of any kind.

#### **PLANTING**

Putting or setting into the ground.

#### **PLANTING STRIPS**

The unpaved area between the sidewalk and the curb.

## **SHADE TREE**

Any trees in a street right-of-way.

## **SHADE TREE COORDINATOR**

A South Whitehall Township employee or third-party individual or organization, as designated by the Township Manager, who is knowledgeable of shade trees and their maintenance to administer the rules and regulations of this Chapter. The Shade Tree Coordinator shall act as an advisor to the Commission on matters concerning shade trees within the public right-of-way. The Commission shall consider the advice of the Shade Tree Coordinator on matters concerning the application of this Chapter. The Shade Tree Coordinator shall carry out any duties and responsibilities so designated by this Ordinance and so delegated by the Commission.

- (1) The Shade Tree Coordinator shall keep full records of its business and shall submit a report of its activities to the Commission at least once a year.
- (2) The Township, having exclusive custody and control of all shade trees in the public right of way, may plant, remove, maintain and protect such shade trees. The Shade Tree Coordinator shall give recommendations and advice as to species selection, planting, maintenance or removal of trees on all public rights of way.
- (3) The Shade Tree Coordinator shall also work with all other concerned agencies in the planning of trimming, planting, transplanting and removal of shade trees in public right of way.

## **STREET RIGHT OF WAY**

As defined by SALDO Section 312-6 Definitions.

## **TOWNSHIP**

South Whitehall Township, Lehigh County, Pennsylvania

## **TREE VALUE**

Systematic approach to secure a value by using four major factors: size, species, condition, and location. With the four factors established, a Cost of Cure or Trunk Formula can be implemented to the result of a value for a tree. Formulas are based upon "Guide for Plant Appraisal (9th Edition)" by the Council of Tree and Landscape Appraisers and the ISA.

## **§ 330-4 PERMITS**

- A. No person, without first obtaining a Shade Tree permit from the Township, shall:
- (1) Prune, spray, plant, remove or cut any shade tree in public lands or a street right-of-way.
  - (2) Attach a guy rope, cable, electric wire, or other fixture to any tree, tree guard or support thereof in public lands or a street right-of-way. Temporary attachments shall be allowed if a permit is issued. The temporary attachments shall cause no harm to the tree, and there shall be a prescribed timetable for removal of the temporary attachments.
  - (3) Excavate, trench, tunnel, or bore within the dripline of any shade tree in public lands or a street right-of-way. Permit applications for such work will contain at a minimum an excavation plan indicating the tree protection zone and maintenance precautions to be used

during construction.

- (4) Install lighting within the tree crown of any shade tree in public lands or a street right-of-way. Any permit issued for a tree crown lighting shall include a specified time of installation and time of removal, not to exceed one calendar year.

B. The Township shall adopt regulations establishing the application procedure and technical requirements for all permits issued under this chapter.

C. Permit requirements.

- (1) Should a Shade Tree Permit be approved and issued with conditions, the Shade Tree Coordinator shall specifically state within said conditions the timeframe in which all conditions associated with the approval of the permit are to be met. The timeframe(s) shall be reasonable in consideration of the work associated with satisfying the conditions of approval.
- (2) The Shade Tree Coordinator may extend the duration of the permit for good cause shown.
- (3) If a tree is approved for removal, it shall be replaced in accordance with the Shade Tree Guide.
- (4) The Shade Tree Coordinator shall be notified within five days after completion of the work to allow for inspection.
- (5) Applicant shall obtain any additional required applications and permits. (Examples: Township Road Closure, PA One Call, etc.)

D. Appeals. A permit applicant may appeal the denial of a Shade Tree permit or conditions of approval of an approved Shade Tree permit.

(1) Submission of the Appeal

- (a) The property owner or owner's agent may appeal a Shade Tree Coordinator's decision by filing an appeal application with the Shade Tree Coordinator or other person designated by the Township Manager on a form provided by the municipality. The Township, at its sole discretion, may set fees as appropriate with regard to the appeal in the Township Fee Schedule.
- (b) The appeal shall be submitted within thirty (30) days of the denial or issuance of the Shade Tree permit. An appeal will automatically suspend an action to enforce an order to correct until the matter is resolved.
- (c) Unless the owner or owner's agent requests a hearing, the Landscape and Shade Tree Commission shall decide an appeal by reviewing documents and written brief or argument included in the appeal application. The Landscape and Shade Tree Commission shall review the appeal and make a decision within forty-five (45) days of receipt of the appeal application. The applicant and/or Shade Tree Coordinator need not be present before the Landscape and Shade Tree Commission during the review or decision.
- (d) Should the owner or owner's agent request a hearing, the Landscape and Shade Tree Commission shall schedule a hearing within 60 days of receipt of the appeal application (unless the applicant agreed in writing to an extension of time) and notify the owner or owner's agent and Shade Tree Coordinator of the date, time and place of the hearing.



- (2) Notification of Hearing. A notice of the hearing shall be published once in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The publication shall not be more than thirty (30) days and not less than seven (7) days before the date of the hearing. The notice of the hearing shall also be posted at an appropriate location on the Township website and at a visible location at the Municipal Building not less than seven (7) days before the date of the hearing.
- (3) Conduct of the Hearing.
  - (a) The hearing shall be conducted by, at a minimum, a quorum of the Landscape and Shade Tree Commission. Should a quorum not be available at the time and location of the hearing, the appellant may elect to commence the hearing with less than a quorum or agree in writing to an extension of time until a replacement hearing date, which shall be sufficiently distant to be properly noticed in accordance with subsection (2) above. To maintain continuity, once the hearing commences all members of the Landscape and Shade Tree Commission present for the initial hearing shall be present for any and all future hearings of the appeal, should additional hearings be required.
  - (b) The Landscape and Shade Tree Commission, at its discretion, may continue a hearing to a future date in order to accept new evidence or testimony or deliberate and render a decision. Such a continuation need not be noticed in accordance with subsection (2) above if the location, date and time of the continued hearing is announced prior to the adjournment of the current hearing.
  - (c) The Landscape and Shade Tree Commission members conducting the hearing shall establish rules for submission of evidence and testimony as appropriate.
- (4) Deciding the Appeal. The Landscape and Shade Tree Commission shall only consider the following factors when deciding an appeal:
  - (a) That the intent Chapter 330 and/or applicable Township policies or procedures was incorrectly interpreted.
  - (b) That the provisions of Chapter 330 and/or applicable Township policies or procedures do not apply.
  - (c) That an equivalent or better outcome with regard to the intent of Chapter 330 and/or applicable Township policies or procedures is proposed.
- (5) As part of the decision, the Landscape and Shade Tree Commission may add, alter or remove any or all of the conditions of approval of the permit so appealed.
- (6) Following the hearing before the Landscape and Shade Tree Commission, the Commission shall issue a written decision to the appellant and to the Shade Tree Coordinator within 15 days. The Landscape and Shade Tree Commission, through the staff so designated by the Manager of South Whitehall Township, shall keep copies of the appeal application, submitted exhibits and the written decision as part of the permanent record. Further appeal of the Commission decision shall be before the Court of Common Pleas of Lehigh County.

## **§ 330-5 PROHIBITED ACTIVITIES**

No person under any circumstances shall:

- A. Cut, break bark, or otherwise injure or disturb any tree, tree guard or support thereof in public lands or a street right-of-way, unless the work is being carried out as authorized under an approved Shade Tree permit;
- B. Fasten or maintain any sign or advertisement on any tree or tree guard or support thereof in public land or a street right-of-way;
- C. Reduce the size of an existing tree pit, planting strip, or root zone of an existing tree in public land or the street right-of-way;
- D. Deposit impervious material in such a way as to obstruct the free access of air and water to the roots of any tree in public land or a street right-of-way or cause compaction of any soil in public land or a street right-of-way;
- E. Allow any tree on public land or a street right-of-way to be injured or removed during the erection, repair, alteration or removal of any building or structure. No person in charge of such erection, repair, alteration or removal shall leave any tree in public land or in a street right-of-way in the vicinity of such a building or structure without such good and sufficient guards or means of protection as shall prevent injury to the tree, arising out of or caused by the erection, repair, alteration or removal, unless, upon review by the Shade Tree Coordinator, a permit allowing the same is granted. The aforesaid decision may be appealed to the Landscape and Shade Tree Commission, in the case of any determination against the request for such a permit;
- F. Cause or allow any boiler, heater, machine, or device generating fumes, fires, gas, smoke, or vapor to remain under or adjacent to any tree in public land or in a street right-of-way, or cause or allow it to be done;
- G. Fasten a bicycle, animal, or motor vehicle of any kind to any shade tree, tree guard or support thereof;
- H. Authorize the placement of any petroleum products, hot water, steam brine water, oil, dye, or other substance harmful to a tree's life or health on or into the soil about the base of a tree in any public land or street right-of-way;
- I. Build or kindle a fire near to any tree on any public land or street right-of-way, so as to endanger the trunk, limbs, foliage, or roots of such shade tree;
- J. Interfere, cause, authorize or procure any interference with the agents or employees of the Township, homeowner or contractors while they are engaged in the following:
  - (1) The planting, cultivating, mulching, pruning, spraying or removing of trees; or
  - (2) Removing stone or cement sidewalk or other materials or substances in the open ground maintained for the protection and care of any shade tree in public land or the street right-of-way;
- K. Attach any pipe, rain downspout or gutter, lumber, electrical components, including floodlights or any other building material of any kind to any shade or street tree, tree guard or support thereof on public land.

**§ 330-6 TREES IN PUBLIC LANDS OR RIGHTS-OF-WAY**

- A. Tree requirements:

- (1) General. All trees planted within the street right-of-way of all subdivisions, land developments, and improved properties, including land abutting existing streets as required herein or by SALDO and all applicable specifications and amendments thereto shall adhere to this chapter and regulations issued under this chapter. Shade trees shall be planted by the developer or owner in accordance with the approved plan or permit and within the time period specified.
- (2) Types of trees permitted. Trees shall be of nursery stock quality of a species approved by the Commission, grown under the same climatic conditions as the subject property. Site locations, land use, topography, natural features, and historical features shall be considered by the developer or owner and the Commission in selecting and approving species. Guidelines for selection shall be specified by regulation.
- (3) Tree protection. Before any earthwork, construction work or approved tree removal shall commence in connection with any subdivision, land development or land improvement, fencing or guards shall be placed around all existing shade trees to be protected to ensure that there is no unnecessary encroachment with the tree protection zone by changing grade, trenching, stockpiling of building materials or topsoil, parking and/or circulation of vehicles or construction equipment contributing to the compaction of the soil and roots. Such tree protection shall be accomplished with the specifications as outlined in the rules and regulations.
- (4) Tree replacement. The developer or owner shall make every effort to preserve and maintain all existing shade trees within the right-of-way and develop site designs and plans in order to accommodate such trees.
- (5) Unapproved removal. If an existing shade tree is removed without either prior approval as part of an approved plan, or a property owner does not possess either a valid permit for such tree removal, or a valid notice authorizing such tree removal, then:
  - (a) The owner shall be required to replace such trees as provided herein.
  - (b) The Shade Tree Coordinator shall determine the requirements of the tree to be replaced.
- (6) The Shade Tree permit fee will be determined by resolution by the South Whitehall Township Board of Commissioners at the adoption of the Township Fee Schedule.
- (7) Inspection. Upon completion of any required tree installation, the developer or owner shall submit a request for a final inspection to the Shade Tree Coordinator. The Shade Tree Coordinator shall ensure that all trees are installed per the issued permit or the approved plan.

**B. Tree Maintenance Care Provisions.**

- (1) The owner of any property abutting a street right-of-way that has shade trees growing in the street right-of-way shall trim each tree within the current arboricultural standards as described within the South Whitehall Township Shade Tree Ordinances, Policy and Guide, as amended, or cause such trees to be pruned of all branches interfering with the street right-of-way.
  - (a) Should the Township determine that the property owner neglected or refused to prune any shade tree as required by this chapter, the Code Enforcement Officer shall notify the property owner of the determination in the manner described in Section C below.

- (2) Should the Township determine that a shade tree growing in the street right-of-way is a risk to the life, health, safety, or property of the public, or which is afflicted with any contagious disease or insect infestation, or otherwise is a nuisance, the Code Enforcement Officer shall notify the abutting property owner of the determination in the manner described in Section C below.

C. Notice to remedy.

- (1) The notice to remedy shall include:
  - (a) The property address and owner's name as shown on the Township or Lehigh County property ownership records.
  - (b) A brief description of the condition that requires a remedy and the remedy required.
  - (c) A time period for compliance, the length of which is to be reasonable in consideration of the work to be accomplished.
  - (d) A statement that the notice may be appealed to the Commission along with contact information for initiating an appeal.
  - (e) A statement that failure to comply may result in criminal or civil action and the completion of the work required by the Township, with the costs to be collected from the property owner.
- (2) The Code Enforcement Officer shall be authorized to grant reasonable time extensions upon request.
- (3) If the property owner neglects or refuses to remedy such determination as required by this section within the time period specified in such notice, the Township or the Township contractor may cause such remedy to be done at the expense of the property owner; and the entire cost plus 10% shall be paid by the property owner within 30 days if no exception thereto is granted by the Code Enforcement Officer. If not paid by the property owner within 30 days, a lien upon such premises and a claim therefore shall be filed and collected by the Township in the same manner as municipal claims are filed and collected.
- (4) Any removed tree may be required to be replaced at the determination of the Shade Tree Coordinator, in accordance with the provisions of this Chapter. Tree replacement shall be at the property owner's expense as part of the cost of compliance.

### **§ 330-7 ARBORICULTURAL WORK PERFORMANCE REQUIREMENTS**

- A. All approved pruning, cutting, removal, spraying, fertilizing and arboricultural procedures to trees and shrubs in the street right-of-way shall be done only by a person who has met the requirements set forth by the International Society of Arboriculture (ISA) and provides proof of insurance sufficient to repay any damages caused by said person in performing said work, except as hereinafter provided for property owners. A Township Business Privilege License shall be secured by the company or individual prior to the start of any work.
- B. Property owner exemption.
  - (1) Minor tree work may be done by an individual property owner to trees or shrubs planted in the street right-of-way adjacent to his property, provided that a permit has been obtained from the Township.

- (2) The Shade Tree Coordinator shall advise the property owner whether or not the proposed work is minor. The property owner shall comply with accepted pruning standards as described within the South Whitehall Township Shade Tree Ordinances, Policy and Guide, as amended.

### **§ 330-8 COMPLIANCE WITH TOWNSHIP ORDINANCES**

All planting of shade trees in street right-of-way shall be in compliance with any and all applicable Township ordinances.

### **§ 330-9 SHADE TREE FEES**

- A. There shall be established a unique budget line number, entitled “Shade Tree Fees,” for the purposes set forth in this chapter.
- B. The “Shade Tree Fees” line item shall be administered by the Township exclusively in the manner and for the purposes set forth in this chapter and the regulations adopted under said chapter.
- C. The “Shade Tree Fees” line item shall be the repository for all funds received from:
  - (1) Fines, penalties, and restitution collected for violations of this chapter;
  - (2) Administrative fees collected for administering the provisions of this chapter;
  - (3) Grants, gifts and bequests given to the Township for any purpose relating to trees.
  - (4) Any additional funds as approved by the South Whitehall Township Board of Commissioners.
- D. The “Shade Tree Fees” line item shall be expended only for:
  - (1) Reimbursement to the Township for the expense incurred either internally by the Township, for work done by Township employees, or for the actual cost of contracting out work done by non-Township employees for all work done under the provisions of this chapter, to include at least:
    - (a) Tree planting of any kind;
    - (b) Tree removal, pruning or other maintenance;
    - (c) Professional services;
    - (d) Administrative expenses;
    - (e) Grant matching expenses;
    - (f) Professional training, education, and certification;
    - (g) Public education materials.

### **§ 330-10 VIOLATIONS AND PENALTIES**

- A. Violation of any provision of this chapter is a summary offense.
- B. Citation Fines. Any person, firm or corporation who shall fail, neglect or refuse to comply

with any of the terms or provisions of this Ordinance (including the failure to comply within the stipulated timeframe any conditions attached to an approved Shade Tree permit), or of any regulation or requirement pursuant hereto and authorized hereby shall, upon conviction, be ordered to pay a fine not less than One Hundred (\$100) dollars or more than One Thousand (\$1,000) Dollars on each offense or be imprisoned no more than thirty (30) days, or both.

- C. Restitution. The Magisterial District Judge may order the violator to make restitution where appropriate in an amount at least equal to the appraised tree value of the tree involved plus cost of cure as obtained from certified arborists and to pay the Township's costs of collection/citation proceedings and to pay the Township reasonable attorneys' fees associated with the prosecution of the same.
- D. For continuing violations of this chapter, each day that the violation continues shall be considered a separate offense.

## **SECTION 2 SEVERABILITY**

The provisions of this Ordinance are declared to be severable. If any sentence, clause, section, term, phrase 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, terms, provisions, or parts of this Ordinance. It is hereby declared the intent of the Board of Commissioners for South Whitehall Township that this Ordinance would have been adopted had such an unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

## **SECTION 3 FAILURE TO ENFORCE NOT A WAIVER**

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

## **SECTION 4 REPEALER**

- A. Any ordinance, resolution and/or other regulation of the Township or portions thereof regulating trees, which were made effective prior to the effective date of this chapter are hereby repealed. Such repeal includes but is not limited to §17-20 Landholder's Liability, §17-21 Removal of Diseased Trees, §17-22 Assessment Liens, §17-23 Maintenance by the Township, §17-24 Violations and Penalties, and §17-25 Disposition of Penalties of the Township Codified Ordinances.
- B. This repeal shall not affect or impair any act done or offense committed, or liability, penalty, forfeiture, or punishment incurred prior to the time such repeal takes effect, but the same may be enforced or prosecuted as fully and to the same extent as if such repeal had not been affected. Furthermore, all actions and proceedings commenced under or by virtue of the laws repealed hereby and pending immediately prior to the taking effect of the repeal of said laws may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

## **SECTION 5 EFFECTIVE DATE**

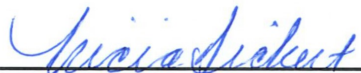
This Ordinance shall become effective on the first day of the month immediately following the date of adoption by the Board of Commissioners.

**DULY ORDAINED AND ENACTED** 17<sup>th</sup> day of **JANUARY 2024** by a majority of the Board of Commissioners of the Township of South Whitehall Township, Lehigh County, Pennsylvania, at a duly advertised meeting of the Board of Commissioners at which a quorum was present. As part of this Ordinance, the Board of Commissioners has directed that the President, or Vice-President in the absence of the President, execute this Ordinance on behalf of the Board.

**BOARD OF COMMISSIONERS  
SOUTH WHITEHALL TOWNSHIP**

  
\_\_\_\_\_  
Diane Kelly, President

**ATTEST:**

  
\_\_\_\_\_  
Tricia Dickert, Secretary