

NETHER PROVIDENCE TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA

ORDINANCE 738

AN ORDINANCE OF NETHER PROVIDENCE TOWNSHIP AMENDING THE CODE OF NETHER PROVIDENCE TOWNSHIP FOR PURPOSES OF ESTABLISHING CERTAIN RESPONSIBILITIES AND DUTIES FOR THE SHADE TREE COMMISSION, REQUIRING THAT CONTRACTORS PERFORMING TREE WORK OBTAIN A LICENSE, REQUIRING THAT PERMITS BE OBTAINED FOR CERTAIN TREE WORK, INCLUDING GRADING WORK AND HERITAGE TREE REMOVAL AND DISTURBANCE WORK, PROVIDING FOR THE REMOVAL OF HAZARD TREES, ESTABLISHING FURTHER DUTIES AND STANDARDS FOR THE PROTECTION OF STREET TREES AND IMPOSING PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, the Pennsylvania First Class Township Code (53 P.S. § 58020 et seq.) permits a Township to establish a Shade Tree Commission and adopt regulations to protect and promote shade trees; and

WHEREAS, the Township adopted Ordinance No. 610 on February 13, 1997, which was codified at Chapter 71 of the Code of the Nether Providence Township (the "Nether Providence Code"), pursuant to which the Township established a Shade Tree Commission; and

WHEREAS, the Township now desires to amend the provisions of the Nether Providence Code to expand the role of the Shade Tree Commission and establish regulations for the protection of shade trees; and

WHEREAS, by maintaining shade trees in the Township, the Township will make Nether Providence a healthier and safer place to live because it provides adequate tree cover and prevents soil erosion and aesthetic depreciation; and

WHEREAS, the Township has an interest in the preservation of exceptional trees in Nether Providence in order to preserve the historical and scenic attributes of the Township; and

WHEREAS, it is necessary to establish regulations for the removal of Heritage Trees (as hereinafter defined) within the Township in order to retain as many Heritage Trees as possible consistent with the purpose of this chapter and the reasonable economic enjoyment of private property.

NOW THEREFORE, IT IS HEREBY ORDAINED AND ENACTED by the Board of Commissioners of Nether Providence Township as follows:

Section 1. Addition of New § 71-2.1 to Chapter 71, entitled “Definitions. A new § 71-2.1, entitled “Definitions,” is hereby added to the Nether Providence Code to read as follows:

§ 71-2.1 Definitions

AREA OF DISTURBANCE - An area proposed to be disturbed in any manner temporarily or permanently, as a result of construction activities.

CALIPER – Standard measurement of a tree’s diameter taken at twelve (12) inch height.

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

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. This area is to be protected from all construction activities, including earth disturbance, compaction, foot or vehicular traffic and material stockpiling.

HAZARD TREE – Any tree on public or private property that poses an immediate danger to life or property, or any tree afflicted by a disease which threatens injury or destruction of other trees.

HERITAGE TREE – Any of the following:

- (1) A tree associated with a notable or regional historical event, person, structure or landscape;*
- (2) A tree of exceptional age or rare species; or*
- (3) A tree of thirty six (36) inch or greater caliper.*

LANDSCAPE ARCHITECT – A person who has completed a course of study from an approved school of Landscape Architecture or who has been trained and registered in landscape architecture in the Commonwealth of Pennsylvania.

OWNER -- The legal and beneficial owner of land. Where the legal and beneficial ownership of land is severed, the term shall include all persons holding legal and beneficial interests.

INVASIVE SPECIES – Species that invade ecosystems beyond their natural, historic range and harm the native ecosystem of Nether Providence Township or commercial, agricultural, or recreational activities dependent on that ecosystem.

PERMIT – A permit in writing as issued by the Township Manager or Township Engineer pursuant to application approval by the Shade Tree Commission.

PERSON – Any individual, firm, association, partnership, corporation or any other legal entity, other than the Township of Nether Providence.

PROTECTIVE TREE FENCE – A temporary fence installed, at minimum, around the drip line of any tree which is to be preserved during construction operations, inside of which no grading, storing or dumping of any material may occur.

PUBLIC STREET OR HIGHWAY - Any Township, County or State right-of-way, a portion of which is used for vehicular or pedestrian travel.

SHADE TREE – Any tree with a six (6) inch or greater caliper which is subject to review and/or approval by the Shade Tree Commission under any section of this Ordinance.

STREET TREE – Any tree within any public right of way.

TREE PROTECTION PLAN – A plan addressing issues related to protective fencing and protective techniques to minimize impacts to trees associated with grading, excavation, demolition, and construction.

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 – Replacement of any tree removed or recommended to be removed by the Shade Tree Commission as follows: one (1) replacement tree per every tree removed that is 12” – 18” in caliper; two (2) replacement trees per every tree removed that is greater than 18-24” in caliper;

three (3) replacement trees per every tree removed that is greater than 24-36" in caliper; four (4) replacement trees per every

*Heritage Tree to be removed that is 36" or greater in caliper.
Replacement trees should have a minimum 2" caliper.
Replacement trees for a Heritage tree shall have a minimum 3 ½" caliper.*

TOWNSHIP – The Township of Nether Providence

TOWNSHIP ENGINEER – The duly appointed Engineer of the Township or his designee.

TOWNSHIP MANAGER - The duly appointed Manager of the Township or his designee.

Section 2. Amendment of § 71-3 "Duties." § 71-3 of the Township Code is hereby amended by deleting the existing text in its entirety and replacing it with the following:

§ 71-3. Responsibilities and Duties.

The duties of the Shade Tree Commission shall be as follows:

A. General powers.

Excepting such powers as are reserved to the Township Commissioners under applicable law, or as herein reserved, the Shade Tree Commission shall have exclusive custody and control of the Street trees in the Township, and is authorized to plant, transplant, remove, maintain and protect trees along the streets and highways in the Township. To the extent funds for such purposes are budgeted by the Township Commissioners, it may employ and pay such superintendents, 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 Township Commissioners to budget funds for the foregoing purposes. The Shade Tree Commission may make and enforce regulations for the care and protection of the Street trees of the Township, provided that no such regulation shall be enforced until approved and ordained by the Township Commissioners.

B. Duties.

The specific duties of the Shade Tree Commission include, but are not limited to, the following:

1. *The Shade Tree Commission shall prepare a Heritage tree inventory within three (3) years of the effective date of this Ordinance and update that inventory at least every five (5) years thereafter. The Shade Tree Commission or the Township reserves the right to confer Heritage tree status on any suitable tree brought to its attention. The failure of the Shade Tree Commission to include a tree on the inventory shall not exempt a tree meeting the above definition of Heritage tree from the protections of this Ordinance.*
2. *The Shade Tree Commission may recommend suitable species of trees for planting along streets and in other areas, as well as appropriate size, spacing, planting, bracing, fertilization, maintenance and pruning of trees.*
3. *The Shade Tree Commission shall assist the Township in the dissemination of news and information about the establishment, protection and maintenance of shade trees in the Township.*
4. *The Shade Tree Commission shall hold public meetings on a regular basis, but not less frequently than three times a year, and shall publish its schedule of meetings and activities. Meetings and notices thereof shall be governed by the Nether Providence Township procedures.*
5. *The Shade Tree Commission may, with approval of the Board of Commissioners, consult a qualified arborist or landscape architect 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 Shade Tree Commission.*
6. *The Shade Tree Commission shall recommend to the Board of Commissioners rules and regulations to further carry out its duties and responsibilities, which may include the issuance of mandatory or voluntary guidelines governing the planting, maintenance and removal of trees.*
7. *The Shade Tree Commission shall administer the Shade Tree Fund, a fund comprised of contributions from interested persons and other entities, for the purpose of maintaining the wooded character of the streets and lands within the Township.*

8. *The Shade Tree Commission shall establish a list of invasive species exempt from protection under this ordinance and update that list at least every five(5) years.*

9. *The Shade Tree Commission shall assist the Township in the dissemination of news and information regarding: (a) the selection, planning and maintenance of trees within the municipality, whether the same be on private or public property and making such recommendations from time to time to the Township Board of Commissioners as to desirable legislation concerning the tree program and activities for the municipality; and (b) the handling of fallen leaves within the municipality, whether the same be on private or public property, and making such recommendations from time to time to the Township Board of Commissioners as to desirable regulations and practices concerning leaf mulching and leaf removal.*

C. *Reviews*

The Shade Tree Commission may review or cause to be reviewed all applications submitted to the Township for the following:

1. *Land development.*
2. *Subdivision.*
3. *Clearing on any undeveloped building lot of six or more trees of twelve (12") inches diameter or greater.*
4. *Removal, disturbance or pruning of a Heritage tree.*

D. *Reservation*

The Township Commissioners hereby reserve the following powers unto itself, its officers, employees, agents and contractors:

1. *Such power and authority as is reserved to it in the Pennsylvania Motor Vehicle Code to require owners of real property to remove any tree, plant, shrub or other similar obstruction, or part thereof, which by obstructing the view of any driver constitutes a traffic hazard.*
2. *Such power and authority as is reserved to it in the Pennsylvania First Class Township Code to accept, purchase and plant or contribute to the purchasing and planting of shade trees along the streets and sidewalks of the Township.*

3. *Such power and authority as is reserved to it in the Pennsylvania First Class Township Code and this chapter to assess liens.*

4. *Such power and authority as is reserved to it in the Pennsylvania First Class Township Code to accept the petition of a majority of the property owners upon any public street and, after receiving the counsel of the Shade Tree Commission, thereupon ordain the planting and replanting of suitable shade trees along and upon the sides of such streets by the owners of property abutting the points designated in such ordinance.*

5. *All powers and authority reserved to it under any other applicable law.*

Section 3. Addition of New § 71-4 to Chapter 71, Requiring that Contractors Performing Tree Work Obtain a License. A new § 71-4, entitled "License Requirement for Tree Work," is hereby added to the Nether Providence Code to read as follows:

§ 71-4 License Requirements for Tree Work.

A. License Required. *A contractor license is required for all arborists, tree surgeons or landscape companies to perform any tree work in Nether Providence Township on public or private land. Such work shall include but not be limited to felling, pruning, tree removal, stump grinding, etc., to the end that only responsible and qualified persons shall be permitted to engage in such activity in Nether Providence Township.*

B. Insurance required. *In order to apply for a license to perform tree work in Nether Providence Township an applicant shall be required to demonstrate possession of liability insurance covering the activities involved in minimum amounts of \$300,000.00 for bodily injury or death and \$100,000.00 for property damage. In addition they shall demonstrate proof of up to date workers compensation coverage.*

C. Application. *Application 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. One member of the business, partnership or corporation shall be sufficient for the issuance of a license.*

Section 4. Addition of New § 71-5 to Chapter 71, Requiring that Permits be Obtained for Certain Tree Work. A new § 71-5, entitled "Permits are Required for the Following Activities," is hereby added to the Nether Providence Code to read as follows:

§ 71-5. Permits Are Required For The Following Activities.

A. Grading and Clearing permits.

1. No person shall undertake any of the following activities without first applying for and obtaining a grading and clearance 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 of twelve inches or greater caliper are proposed to be removed; or

(c) grading or clearing on any undeveloped lot in which six or more trees of twelve inches or greater caliper are proposed to be removed.

2. An application for a grading and clearing 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 of Commissioners from time-to-time.

3. As part of the application for a grading and clearing permit the applicant shall submit a plan showing:

(a) The size, species and location of all trees with a caliper of twelve 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). A planting plan shall also be required illustrating the size, species and location of trees to be planted in compliance with the tree replacement formula. The plan shall include a chart summarizing sizes of trees to be removed and trees to be planted.

(d) *The location of protective tree fence around trees to remain, including a detail of such.*

4. *Additionally, the following measures must be addressed by the applicant and inspected by the Township Engineer prior to the start of work.*

(a) *Protective tree 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 or within fifteen (15) feet from any remaining trees, whichever is greater.*

(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 applicants permit fee as charged by the Township.*

(d) *Protective tree fence must be installed by the applicant and inspected by the Township Engineer upon issuance of a grading or clearing permit.*

5. *The Shade Tree Commission shall recommend for approval or disapproval each grading or clearing permit application before them and provide a written basis for its findings. If approved, the Township Manager may issue a grading or clearing permit. If a grading or clearing permit application is not acted upon within 30 days, it shall be considered to be approved by the Shade Tree Commission.*

6. *The grading or clearing permit shall be effective for such length of time as the Shade Tree Commission shall in each case determine, which length of time shall be indicated on the permit, and such permit may be revoked at any time by the Township Manager upon proof satisfactory to the Township Manager that the terms upon which the permit was issued have been violated.*

7. *The Shade Tree Commission can, in its discretion as a condition of a permit, require the applicant to file a bond or to deposit security satisfactory to it to guarantee compliance with the terms and conditions upon which the permit is issued.*

B. Removal or Disturbance of a Heritage Tree.

1. *No person shall undertake any of the following activities without first applying for and obtaining a Heritage tree removal/disturbance permit from the Township:*

(a) *removing or disturbing a Heritage tree;*

(b) *pruning more than twenty percent (20%) percent of the branches of a Heritage tree within a 12 month period.*

(c) *performing any work within the tree protection zone of any Heritage tree.*

2. *An application for a Heritage tree removal 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 of Commissioners from time-to-time.*

3. *The application for a Heritage tree removal permit shall be accompanied by a plan illustrating the size, species and location of the Heritage tree which is proposed to be removed and 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 proposed construction or clearing of area trees.*

5. *The Shade Tree Commission may recommend for approval or disapproval each Heritage tree permit application and provide a written basis for its findings. It shall have the authority to require that a Heritage tree be replaced in compliance with the tree replacement formula or that the owner pay the monetary equivalent into the Township's Shade Tree Fund. In determining whether there is good cause to approve a permit application, the Shade Tree Committee shall give consideration to the following:*

(a) *The condition of the tree or trees 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 long-term value of the species under consideration, particularly life-span and growth rate;*

(e) *The ecological value of the tree or group of trees, such as food, nesting, habitat, protection and shade for wildlife or other plant species;*

(f) *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.*

(g) *The availability of reasonable and feasible alternatives that would allow for the preservation of the tree(s).*

6. *If approved, the Township shall issue a Heritage tree removal permit, subject to such conditions as the Shade Tree Commission may impose. If a Heritage tree removal application is not acted upon within 30 days, it shall be considered to be approved by the Shade Tree Commission.*

7. *The Heritage tree removal permit shall be effective for such a length of time as the Shade Tree Commission shall in each case determine, length of time shall be indicated on the permit, and such permit may be revoked at any time by the Township Manager upon proof satisfactory to the Township Manager that the terms upon which the permit has been issued have been violated.*

C. Appeals Hearing. *Any person aggrieved by a denial of a permit notice, determination, refusal, act or failure to act issued, taken or omitted under this § 71-5 shall have the right to a hearing to be held by the Board of Commissioners. A notice of appeal must be filed within 30 days following the date of the denial or other action so appealed. In all cases, the aggrieved party shall be given personal notice by regular mail of the date, time and place of the meeting at which their appeal will be heard.*

Section 5. Addition of New § 71-6 to Chapter 71, Regulating the Removal of Hazard Trees. A new § 71-6, entitled "Hazard Trees," is hereby added to the Nether Providence Code to read as follows:

§ 71-6 Hazard Trees.

A Authorization for immediate removal. Notwithstanding anything contained in this ordinance to the contrary, the cutting and removal of hazard trees may occur without a permit if the following conditions exist by the assessment of a Township licensed arborist:

- 1. There exists an immediate danger to life or property*
- 2. The tree is afflicted by a disease which threatens injury or destruction of other trees.*
- 3. Federal, State or Township laws or regulations superseding this ordinance require tree removal.*
- 4. The tree has been substantially damaged or has died.*

B. Determination of Hazard Tree Status. Whenever it is determined, upon inspection by a certified arborist, that a tree is a hazard tree that constitutes a nuisance in fact or a menace to health or a threat to public safety, the Township Manager or his designee shall notify, in writing, the owner or the property on which such hazard tree is located of his determination. If notice as aforesaid cannot be given, then a copy of said notice shall be posted on the premises.

C. Notice of Abatement. At the time of the notification of determination aforesaid or at some later time, the Township Manager may also deliver or have delivered a written order of abatement directed to the owner requiring an abatement of the condition described within such time as may be specified in the order of abatement, and said order of abatement may provide for removal or any other relief deemed appropriate by the Township Manager.

D. Cost of removal. The owner is responsible for all costs for removal of hazard trees on private property.

E. Abatement by Township. In case such order of abatement is not obeyed within the time specified therein, the Township Manager may direct or engage the appropriate Township employees or other persons to remove, correct or abate the condition described, and the expense therefor shall be recoverable from the owner of the property involved, together with a penalty of 10% of such expense, in the manner provided by law for the collection of municipal claims.

Section 6. Addition of New § 71-7 to Chapter 71, Entitled “Street Tree Regulations.” A new § 71-7, entitled “Street Tree Regulations,” is hereby added to the Nether Providence Code to read as follows:

§ 71-7. Street Tree Regulations.

A. Maintenance of street trees

1. The cost and expenses of planting, pruning, maintaining, feeding, protecting and caring for street trees on Township right of way shall be borne by the Township when and only when the work is done by the Township.

B. Acts injurious to street trees

Except in case of necessity for protection of life or property, it shall be a violation of this chapter for any person to do any of the following acts without a permit:

- 1. To cut down any viable healthy street tree.*
- 2. To interfere with the roots of any street tree.*
- 3. To cut into, drive nails or spikes into, break, climb with spurs, or injure in any manner a street tree.*
- 4. To place any rope, guy wire, cable, sign, poster or other fixture on a street tree.*
- 5. To injure, misuse or remove any device placed to protect a street tree.*
- 6. To discharge or pour salt, saltwater, oil or other noxious liquids or materials on a street tree or around its base.*

7. *To place any stone, cement or other material on a street 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.*

Section 7. Addition of New § 71-8 to Chapter 71, Entitled “Violations and penalties.” A new § 71-8, entitled “Violations and penalties,” is hereby added to the Nether Providence Code to read as follows:

§ 71-8. Violations and penalties.

A. Any person violating any provisions of this chapter shall, upon summary conviction before any District Justice, be punishable as provided in Chapter 1, General Provisions, Art. II, Violations and Penalties, Section 1-17, Other violations. Each and every day in which any person, firm or corporation shall be in violation of this chapter shall constitute a separate offense.

Section 8. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Commissioners of the Township of Nether Providence hereby declare that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 9. Savings Clause. Nothing in this Ordinance hereby adopted shall be construed to affect any other suit or proceeding pending in any court or any rights acquired or liability incurred, or any cause of causes of action acquired or existing, nor shall any just legal right or remedy of any character be lost, impaired or affected by this Ordinance.

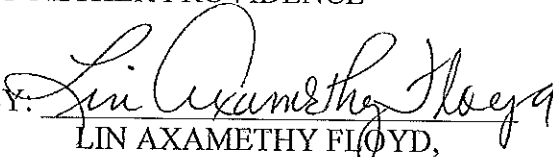
Section 10. Immediate Effect. This Ordinance and rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately from and after the date of its final passage and adoption.

Section 11. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

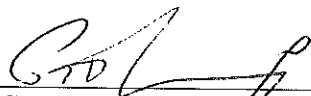
ORDAINED AND ENACTED by the Board of Commissioners of Nether Providence Township, Delaware County, Pennsylvania.

Enacted this 12th day of February, 2009.

COMMISSIONERS OF THE TOWNSHIP
OF NETHER PROVIDENCE

BY: 
LIN AXAMETHY FLOYD,
PRESIDENT

(TOWNSHIP SEAL)
ATTEST:

BY: 
GARY CUMMINGS,
TOWNSHIP MANAGER,
SECRETARY