

ORDINANCE NO. – 2019

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF WEST CHESTER, SPECIFICALLY CHAPTER 102 TITLED, “TREES”, TO REPLACE CHAPTER 102 IN ITS ENTIRETY AND TO ENACT NEW REGULATIONS AND INCENTIVES FOR PROPER PLANTING, REMOVAL, MAINTENANCE AND PROTECTION OF TREES ALONG STREETS, SIDEWALKS, RIGHTS OF WAY, AND WITHIN PARKS AND PUBLIC OPEN SPACES AND TO ENCOURAGE THE PRESERVATION OF HERITAGE TREES ON PRIVATE PROPERTY.

BE IT ENACTED AND ORDAINED, and it is hereby enacted by authority of the Council of the Borough of West Chester, as follows:

SECTION 1. Chapter 102 of the Code of the Borough of West Chester, titled, “Trees” is hereby amended to delete and repeal the existing Chapter 102 and enact the following new Chapter 102:

**“CHAPTER 102
TREES**

§ 102-1. Goals and Purposes.

The West Chester Borough Tree Ordinance acknowledges the urban forest as a necessary part of the Borough’s infrastructure. Green infrastructure provides crucial benefits to the Borough – including low-cost ecosystem services (storm water management, carbon sequestration, energy savings, and support of urban wildlife habitat), social benefits (human health, psychological healing, and quality of life), and economic advantages (increased property values, increased business activity and revenue, and decreased utility costs). The manmade urban environment, however, can conflict with the needs of an urban tree canopy, creating a strong need for regulations that protect and conserve this valuable resource.

The purposes of this Ordinance are to:

1. Prioritize a full and healthy urban tree canopy by creating sound regulations and incentives for the proper planting, removal, maintenance,

and protection of trees along streets, sidewalks, and rights-of-way, and trees within parks and public open spaces.

2. Protect and strengthen our neighborhoods and make them more desirable, safer, attractive places to live.
3. Maintain and strengthen the social and economic value of private and public property.
4. Preserve and enhance the visual character and natural beauty of the Borough.
5. Preserve, protect and restore, through preservation of existing trees and an expansion of the tree canopy, a healthy natural environment that contributes to improved water quality, reduced storm water runoff, reduced air pollution, and increased biodiversity and wildlife habitat.
6. Further the educational goals, objectives and strategies set forth by the West Chester Tree Commission in the Administrative Code and Comprehensive Tree Program materials.
7. Foster the safety of persons and property by requiring trimming and removal of trees that may cause property damage or personal injury.
8. Achieve the goals of the Borough's stormwater management program by promoting replanting and retention of trees which provides stormwater retention and carbon sequestration.

§ 102-2. Definitions.

For purposes of this Ordinance, the following words, terms and phrases shall have the meanings indicated in this Section 102-2. Terms used in this Chapter that are defined in other Chapters of the Code shall have the meanings set forth therein. Terms not defined in the Code shall have their ordinary meanings.

APPLICABLE TREE LAW – provisions of the Borough Code and Borough rules and regulations, as amended from time to time, applicable to trees, including tree conservation, preservation, care, protection and replacement.

APPROVED LIST OF STREET TREES – Trees designated on the *West Chester Borough Street Tree List* approved by the Tree Commission and as amended from time to time.

APPROVED LIST OF PUBLIC TREES – Trees designated on the *West Chester Borough Parks and Yard Tree List* approved by the Tree Commission and as amended from time to time.

BOROUGH – the Borough of West Chester.

BOROUGH ARBORIST – the person appointed by the Borough Council to advise the Director of Public Works on the administration and enforcement of this Ordinance. Such person shall have, at a minimum, the same or higher qualifications as those required for contractors pursuant to Section 102-5 of this Ordinance.

BOROUGH CODE – the duly-enacted Code of the Borough of West Chester.

BOROUGH COUNCIL – the duly-elected governing body of the Borough.

CALIPER – the diameter of a tree trunk measured at a point six inches from the ground surface at the center of the base of the tree. This dimension is used to measure nursery stock for new plantings.

COMPREHENSIVE TREE PROGRAM – A program that addresses all management and care needs of the Borough urban forest and reflects the goals of the community.

DAMAGED TREE – A tree harmed or damaged by disease, insect infestation or abiotic factors like faulty pruning, storms, flooding, lightening, car accidents, improperly developed root systems, premature or late frost, and other unusual climate conditions.

DBH- means diameter at breast height and is the diameter of a tree trunk measured at a point four and one half feet (4 ½') from the ground surface at the base of the trunk. This dimension is used to measure the size of existing plantings.

DEPARTMENT – the Department of Public Works of the Borough.

DISEASED CONDITION – a pathological condition in a tree causing decline from normal growth patterns.

DRIP LINE – the area defined by the outmost circumference of the tree canopy where water drips from the tree and onto the ground.

HAZARDOUS TREE – A street tree or part of a street tree that may fail or fall due to a diseased condition, mortality, a structural defect or other condition that, as a result, may cause property damage or personal injury.

HERITAGE TREE – a tree with a dbh of twenty-four inches (24") or greater located within the Borough on private or public land except for trees that are listed on the list titled "List of Trees that are Excluded From Heritage Tree Designation" which is

attached hereto as Exhibit A and which shall be attached to this Chapter as an appendix.

ISA – International Society of Arboriculture.

LARGE TREE – a tree with a DBH of twenty inches (20”) or greater.

MEDIUM TREE – a tree with a DBH of ten inches (10”) or more but less than twenty inches (20”).

PERSON – any individual, firm, company, partnership, association, corporation, or organization or entity of any kind.

PROPERTY OWNER – the legal owner listed in the tax assessment records of Chester County, Pennsylvania of a property subject of the requirements of this Ordinance.

PUBLIC TREE – A tree located in or along any public park, trail, greenway or open space in the Borough, owned, leased or managed by the Borough or another governmental entity.

REMOVAL ORDER – An order issued by the Tree Commission requiring a Property Owner to remove a Hazardous Tree.

SALDO PLAN – an application and plan filed with the Borough under Chapter 97, Subdivision and Land Development.

SMALL TREE – a tree with a DBH of less than ten inches (10”).

STREET TREE – A tree located adjacent to, along or upon the side of any street and within the public right-of-way.

TREE – a perennial, deciduous, woody plant having one or more main trunks and usually a distinct crown or canopy

TREE COMMISSION – a commission appointed by Borough Council to provide advice to Council on tree management and to perform functions authorized and required by this Ordinance and Applicable Tree Law.

TREE CONTRACTOR – A professional hired to perform tree work in the Borough meeting the requirements of § 102-4.B.

TREE PROTECTION ZONE- an area where construction activities are prohibited or restricted to prevent injury to preserved trees, especially during pre-construction and construction, and includes the critical root zone.

YARD TREE- A woody plant which normally grows with one main trunk to a height in excess of 20 feet and has a canopy which screens and filters the sun in the summer and winter, respectively.

§ 102-3. Responsibility for Removal and Maintenance of Street Trees and Public Trees.

A. Responsibility.

The Property Owner of the property adjacent to a public right-of-way is responsible for the removal of Street Trees located on private property but within the right-of-way. The Borough is responsible for the planting, transplanting, pruning and treating Street Trees and Public Trees.

B. Street Trees determined to be Hazardous Trees.

Street Trees that the Tree Commission determines are Hazardous Trees may be condemned and ordered removed. The Tree Commission shall send a Removal Order by USPS certified mail, return receipt requested, to the Property Owner of the property where the Hazardous Tree is located. Property Owners shall also be responsible to restore the land area surrounding the removed Hazardous Tree to the condition existing prior to removal and to replace and/or repair any sidewalk or curbing removed or damaged during the tree removal. If the certified mail Removal Order is returned to the Tree Commission unclaimed, the Removal Order shall be sent USPS first class mail, postage prepaid. Property Owners so ordered shall have thirty (30) days following receipt of the certified mail Removal Order or the date of the USPS first class mail, as applicable, to remove the Hazardous Tree, unless an appeal is filed in accordance with Section 102-3.C hereinbelow.

C. Appeals.

Appeals from a Removal Order must be filed by the Property Owner with the Tree Commission within thirty (30) days of receipt of the certified mail Removal Order or the date of the USPS first class mail, as applicable. The appeal shall be in writing and state reasons why the tree is not a Hazardous Tree and should not be removed. The Tree Commission shall notify the Property Owner of the time and place of the meeting where the appeal will be heard. The Property Owner shall have the right to present any information and evidence that the Property Owner deems relevant on the appeal. The Tree Commission shall render a written decision on the appeal within thirty (30) days of the conclusion of the meeting. The Property Owner shall have the right to appeal the decision of the Tree Commission to the Court of Common Pleas of Chester County in accordance the Local Agency Law. Following a final determination of the appeal by the Tree Commission or the courts as applicable, the Property Owner shall comply with

the Removal Order within sixty (60) days of the final determination by the Tree Commission or court, as applicable.

D. Noncompliance with Removal Order.

If the Removal Order is not complied with within the time period specified, the Borough may cause the removal, as appropriate, to be done at the full expense of the Property Owner, including the entire cost plus an administrative fee prescribed by the Borough. Upon failure of the Property Owner to pay the amounts due to the Borough within thirty (30) days of the date of an invoice from the Borough, the Borough shall be entitled to collect all amounts due by any available means, including by filing a municipal claim against the property.

E. Compensation for Hazardous Tree Removal.

Upon written certification by the Property Owner of compliance with the Removal Order and proof of payment for the removal, the Borough will reimburse to the Property Owner 50% of the cost of removal of the Street Tree that was ordered to be removed. Reimbursements are predicated on compliance with the permitting and contractor requirements of this Chapter 102 and Applicable Tree Law.

F. Public Trees determined to be Hazardous Trees

The Tree Commission may determine that a Public Tree is a Hazardous Tree and notify the Borough in writing. The Borough may remove, prune or treat the Hazardous Tree as the Borough deems appropriate.

G. Borough Responsibility.

Except for trees that are required to be removed in accordance with a Removal Order in accordance with § 102-3.B and trees that are required to be planted in accordance with § 102-4, the Borough is responsible for planting, transplanting, cutting, pruning and treating Street Trees and Public Trees.

H. Property Owner Responsibility.

Property Owners who wish to plant, transplant, cut, prune, or treat any Street Tree or portion thereof, or remove a Street Tree that has not been condemned by the Tree Commission, shall apply for and be issued a permit in accordance with the permitting procedures of Section 102-9 of this Chapter 102 prior to performing any work.

Section 102-4. Tree Planting.

- A. The following activities and projects require tree planting in accordance with current International Society of Arboriculture (“ISA”) guidelines and the guidelines set forth in Section 102-4.D below. Trees shall be selected from the Approved List of Street Trees or the Approved List of Public Trees, as applicable.
1. Street Tree removal. Appropriate Street Trees shall be planted to replace any removed Street Tree, in accordance with the ANSI Part 6 - Planting and Transplanting 2012 replanting schedule and guidelines approved by Borough Council in the future.
 2. Sidewalk installation/repair/replacement abutting a Street Tree well that is empty, contains a stump, or contains a Hazardous Tree.
 3. Sidewalk installation/repair/replacement where Street Trees are required in accordance with Applicable Tree Law, including the Street Tree spacing plan and specifications prescribed in Chapter 97, Subdivision and Land Development. New tree wells must be constructed according to specifications in Applicable Tree Law.
- B. Conflict with Utilities. Tree planting near underground utilities shall be governed by the PA One Call system. Where overhead utilities exist, only Medium Trees are permitted as listed on the Approved List of Public Trees and Approved List of Street Trees, as applicable. The Director of Public Works shall specify the species and size of trees to be planted near utilities.
- C. Tree Wells.
1. During reconstruction of sidewalks, no existing tree well shall be bricked over, paved over, abandoned, or otherwise removed/eliminated. Relocation or abandonment of tree wells is permissible only with approval of the Borough Arborist and Tree Commission. The Application for Highway Occupancy Permit must be completed and submitted to the Borough Arborist to request an exception. Responses shall be provided to applicants within 35 days.
 2. During sidewalk repair/reconstruction projects, tree wells must be installed, relocated and or repaired in compliance with the specifications and spacing requirements outlined in the applicable Borough codes, ordinances and standards and Chapter 97 of the Borough Code.

§102-5. Contractor Minimum Qualifications.

All individuals performing tree work in the Borough must meet the following qualifications and be listed on the Borough’s tree contractor list: a) be certified by the

International Society of Arboriculture (“ISA”) as a Certified Arborist; b) provide proof of liability insurance in an amount of not less than \$1,000,000 per occurrence and workers compensation in an amount determined by statute; c) provide a written certification that the contractor will adhere to the ISA Code of Ethics; (d) comply with public utility and Pennsylvania Department of Transportation requirements and guidelines; and (e) comply with ANSI Z133 Tree Safety Standards and ANSI A300 Tree Care Standards and Regulations. Tree contractors shall not subcontract work to any individual or entity that does not meet the foregoing qualifications.

§102-6. Heritage Tree Protection on Private Property.

- A. In order to encourage the protection and preservation of Heritage Trees located in the Borough, prior to cutting, pruning, trimming, felling, or removing a Heritage Tree on private property, the property owner shall contact the Borough Arborist to discuss the proposed work on the Heritage Tree. The Borough Arborist shall be given an opportunity to meet with the property owner and provide input and recommendations for best practices for such proposed work. Property owners shall be encouraged to retain a certified arborist to assist in the proposed work and to be on site if the Heritage Tree is proposed to be removed.

- B. To encourage the protection and preservation of Heritage Trees on private property, property owners shall be entitled to a credit against the stream protection fee that is charged against all developed property (as defined in the Borough’s Stream Protection Fee Ordinance), which is codified in Chapter 94A of the Borough Code. The amount of the credit shall be based on the total number of Heritage Trees on the Developed Property (as defined in Chapter 94A) and the number of Heritage Trees that are preserved. If there is only one (1) Heritage Tree on the Developed Property, and such Heritage Tree is preserved, the property owner shall be entitled to a credit equal to 33% of the annual stream protection fee assessed against the Developed Property where the Heritage Tree is located. If there is more than one Heritage Tree on the Developed Property, the property owner shall be entitled to a credit equal to: (i) 33% of the annual stream protection fee if one (1) Heritage Tree is preserved; (ii) 50% of the annual stream protection fee if two (2) Heritage Trees are preserved; (iii) 75% of the annual stream protection fee if three (3) Heritage Trees are preserved; and (iv) 100% of the annual stream protection fee if more than three (3) Heritage Trees are preserved.

§ 102-7. Land Development Plans.

- A. Consistent with Section 3-38.N of the Code, all SALDO Plans shall be reviewed by the Tree Commission at a public meeting and the Commission will provide written comments and recommendations to the Planning Commission prior to the Planning Commission issuing its recommendation to Borough Council. The Tree Commission’s comments shall be included in the Planning Commission

recommendation to Borough Council. The written comments shall include a determination on the effect of the proposal on any existing tree(s) and include recommendations on revisions necessary for compliance with this Chapter 102 and all Applicable Tree Law.

- B. When trees have been required pursuant to approved SALDO Plans, property owners are required to maintain trees in the locations approved on the SALDO Plans in perpetuity, unless the property owner has extenuating circumstances as to why such trees may not be perpetually maintained. Trees that are removed must be replanted within sixty (60) days. Owners desiring permanent tree removal must file a formal request with the Borough Arborist, which shall be reviewed and approved or denied by the Tree Commission within thirty-five (35) days of the filing date of the formal request.

§ 102-8. Protecting Trees During Construction.

The protections provided herein shall apply to all Street Trees, Public Trees and Heritage Trees, including but not limited to trees required by an approved SALDO Plan, and any activity requiring a building, demolition or other permit under Chapter 43 or any other Chapter of the Borough Code, including but not limited to construction or reconstruction of parking lots and sidewalks, underground utility repair and construction, and the construction and/or demolition of buildings and structures.

- A. **Barriers.** In the erection or repair of any buildings or structure, the builder, contractor or owner thereof shall place protective barriers around all trees to effectively prevent injury to them.
- B. **Appraisal.** Prior to approval of a SALDO Plan or the approval and issuance of a permit under Chapter 43 or any other permit required by Applicable Tree Law, the applicant shall obtain a tree appraisal in accordance with the latest edition of the Council of Tree and Landscape Appraisers' *Guide for Plant Appraisal 10th edition*, for all trees within the limits of disturbance of the development site.
- C. **Tree Protection Requirements.**
 - 1. To the maximum extent possible, all trees within the limits of disturbance of the development site shall be preserved and the loss or damage to trees existing on-site which are to remain shall be minimized. A tree shall be considered preserved if there is no disturbance within the Tree Protection Zone (TPZ) as hereinafter defined. Disturbance includes earth disturbance, earth compaction, vehicular and foot traffic, material stockpiling, and/or the construction of all proposed improvements and utilities.

2. A permanent TPZ surrounding both preserved and planted trees shall be established to protect the critical root zone and tree canopy. The TPZ shall apply during the construction phase as well. The TPZ shall be protected by appropriate barriers in accordance with the standards set forth in *A Guide to Preserving Trees in Development Projects* published by the Penn State College of Agricultural Sciences and Cooperative Extension and in ANSI A300 Part 5. All tree protection will be reviewed and monitored by the Borough Arborist.
 - a) The TPZ shall extend to the dripline of the tree at the minimum. The TPZ shall be larger if recommended by *A Guide to Preserving Trees in Development Projects* published by Penn State Agricultural Research and Cooperative Extension.
 - b) Prior to the start of any clearing, grading, or other earth disturbance, all trees and other vegetation to be preserved shall be protected by a conspicuous six-foot high tree protection barrier to prevent encroachment into the TPZ by people, material, and vehicles. The tree protection barrier installation must be approved by the Borough Arborist and monitored periodically.
 - c) Barriers may be erected around individual trees or groupings of trees, where feasible.
 - d) Use of immobile chain link fence or a similar highly immovable material is recommended. Welded wire fencing or other effective barriers may be used upon approval by the Borough Arborist.
 - e) Fencing or barriers around trees shall be placed outside the TPZ, unless otherwise approved by the Borough Arborist.
 - f) The tree protection barrier shall be maintained by the applicant while in place. It shall be removed only after all earth moving and construction activities that may impact tree roots or canopy are completed and approved by the Borough Arborist.
 - g) A sign shall be placed on the tree protection barrier to explain the purpose of the TPZ. Text for the sign shall be furnished by the Borough Arborist.
3. There shall be no disturbance within the TPZ, including but not limited to intrusion into the soil such as digging, trenching and grading, no activities that will compact the soil, and no stockpiling of construction materials.

- a) No grading shall be permitted within the TPZ that would impact roots. No grade change shall be permitted in excess of a two-inch cut or two-inch fill of topsoil, sod or mulch.
 - b) The routing of underground utility lines shall be around and away from all TPZs. In the event underground utilities cannot be rerouted, installation shall be through directional drilling rather than cutting open trenches.
 - c) No building materials, dirt, debris, oils, paints, or any other materials, equipment, or vehicles shall be placed or deposited within the TPZ nor shall any trenching or paving be done within the protection area. A separate off-site staging and parking area for the stockpiling of materials, equipment and vehicles shall be provided for construction sites constrained by limited size.
 - d) In order to protect tree roots from excessive compaction during construction where vehicles and/or equipment must pass within a TPZ, special cushioning measures shall be provided in accordance with accepted best practices.
4. The entire tree canopy shall be protected from all construction related activities.
 5. The specifications in *A Guide to Preserving Trees in Development Projects* published by Penn State Agricultural Research and Cooperative Extension and ANSI A300 Part 5 shall be regarded as best practices and contractors/owners shall demonstrate their understanding of and adherence to these criteria including but not limited to the TPZ required for particular species.
 6. In order to avoid damage to newly planted trees, trees shall be planted only after all major construction activities have been completed. Planting may occur only when approved by the Borough Arborist, and only in planting seasons otherwise permitted and as appropriate to the species.
 7. All proposed tree protection practices, including delineated TPZs, shall be provided on all development and permit plans, as applicable, including but limited to SALDO Plans and any plan required by a building, demolition or other permit under Chapter 43 or any other Chapter of the Borough Code, including but not limited to construction or reconstruction of parking lots and sidewalks, underground utility repair and construction, and the construction and/or demolition of buildings and structures.
 8. Should any Medium Tree, Large Tree or Heritage Tree on the development site not scheduled to be removed be irreparably damaged

during site development or building construction activities to the extent the Tree will not survive, as determined by the Borough Arborist, the Tree shall be removed by the developer or the permit holder who shall be subject to a fine in accordance with Section 102-12. In addition, the developer or permit holder shall plant three (3) replacement trees a minimum of 3 inches in caliper listed on the Approved Public Tree List and in accordance with ISA guidelines for tree replanting. Permits need to be reviewed, approved or denied by the Tree Commission.

§ 102-9. Permitting Provisions.

A. **Permit Required.** A tree work permit shall be required for:

1. Planting, transplanting, cutting, pruning, treating or removing any Street Tree, or portion thereof.
2. Hanging lights and other seasonal or holiday displays on Street Trees or Public Trees. When permitted, all such displays shall be removed on a date designated in the permit.
3. Renovation or construction of any wall greater than 3 feet in height within 10' of a Street Tree or Heritage Tree.
4. Any provision of this Chapter 102 that specifies that a permit is required.

B. **Permit Application.** The permit shall be submitted on an application provided by the Borough. All information required by the application shall be submitted. A permit fee established by the Borough fee resolution, as may be amended from time to time, shall be submitted with the application.

C. **Permitting Conditions.**

1. Trees which are subject of any permit shall be listed on the Approved List of Street Trees or the Approved List of Public Trees. Provided, however, the Borough may deny a permit to plant any type of tree which, in its opinion, is not suitable to the location.
2. A permit may be revoked at any time upon proof satisfactory to the Borough that any of the terms or conditions upon which such permit was issued are or have been violated.
3. All newly-planted Street Trees shall be warranted by the tree contractor or, in the case of a SALDO Plan be guaranteed and financially secured by the Developer, for a period of eighteen (18) months. Any tree that dies within the 18 month period shall be replaced. A Except for trees planted as part

of a SALDO Plan, a copy of the warranty shall be provided to the Borough. If the Borough Arborist determines during the warranty period that the Street Tree is defective or was improperly planted or maintained and is unlikely to survive, the tree contractor or Developer shall remove and replace the tree and perform any repairs necessary to adjacent sidewalks and curbs. The replaced Street Tree shall be warranted as provided herein above. If the Street Tree should die after the period of warranty expires, the Property Owner shall replace the tree in accordance with all applicable provisions of this Chapter 102.

D. **Review of Other Permit Applications.** All applications for driveway permits, sidewalk permits, building permits, or other permits for work that may impact Large Trees, Street Trees or Heritage Trees, including but not limited to demolition, construction or expansion, but excluding permits related to an approved SALDO Plan, shall be referred by the appropriate Borough personnel to the Borough Arborist for review. Within five (5) business days of the receipt of the applicable permit application from the appropriate personnel, the Borough Arborist shall determine the need for and location of TPZ fencing around all Large Trees, Street Trees and Heritage Trees located on or adjacent to the site subject of the permit application. Where determined necessary by the Borough Arborist or his designee, the permit applicant shall install a staked construction fence at least six (6) feet high, or alternative as approved by the Borough Arborist, around all portions of the TPZ, excluding any portions occupied by sidewalks, street cart way, curbs/gutters or a driveway.

E. **Denial and Revocation of Permits.**

1. Denial. A request for a tree permit shall be denied if the information submitted is incomplete or erroneous or if the application fee is not remitted in full.
2. Revocation. The Public Works Director may revoke a permit issued under the provisions of this Chapter if it is determined that any false statement or misrepresentation of fact exists on the application or on the plans on which the permit was based in addition to:
 - a) Violation of any condition of the permit.
 - b) Violation of any provision of this Chapter or any other applicable ordinance or law relating to the work.
 - c) The existence of any condition or the committing of any act constituting or creating a nuisance or endangering the lives or property of others.

3. Written notice of such revocation shall be served by personal delivery or by certified mail upon the person to whom the permit was issued or his agent or employee engaged in the work and posted on the property subject of the permit. Such notice shall also contain a brief statement of the reasons for revoking such permit.

F. Borough Departments, Public Utilities.

1. Borough departments, agencies and authorities shall be exempt from permitting requirements when the work to be performed is completed by Borough personnel. All contractors performing work under contract for the Borough shall obtain all necessary permits. However, all work performed shall be performed in accordance with all Applicable Tree Law.
2. In the event that Street Tree work is necessitated by emergencies, tree work permits shall be obtained on the first regular business day on which the Borough is open for business, and such permit shall be retroactive to the date when the work was begun. A person performing tree work for an emergency must verify the nature of the emergency in writing to the Public Works Director within five (5) days after such emergency.

§102-10. Administration and Enforcement.

- A. **Permit required.** All permits must be applied for and issued by the Borough in accordance with the §102-9, Permitting Provisions, of this Chapter before doing any work on trees subject to the requirements of this Chapter. All work required to be done under any permit issued by the Borough shall be completed within the time period specified on the permit, or if no time period is specified on the permit, the time period shall not exceed three (3) months from the date issued unless it has been extended by the Borough. All tree work shall be done directly by the tree contractor listed on the permit and may not be subcontracted.
- B. **Enforcement.** The provisions of this Chapter shall be administered and enforced by the Department in consultation with the Borough Arborist or other employees and consultants of the Borough. It shall be the duty of the Department and/or the Borough Arborist or designated officers to inspect or examine premises, order in writing remedies for any conditions found to violate any provisions of this Chapter, and issue permits in accordance with this Chapter. This Chapter shall be enforced in accordance with §§ 102-11 and 102-12.
- C. **Records.**

1. The Department shall keep a record of all applications for Street Tree permits and a record of all permits issued.
2. The Borough Arborist shall prepare a monthly report for the Tree Commission summarizing for the period all Tree permits issued, all complaints and enforcement action taken by the Department.

§ 102-11. Assessments and Liens.

- A. **Assessments.** The Borough reserves the right to assess Property Owners for unpaid tree work. All costs incurred in planting, transplanting, pruning and removing trees that is the responsibility of Property Owners, permit holders and developers shall be assessed. Those assessed shall have an opportunity to make written objections to proposed assessments, which shall be considered by the Public Works Director. The amount each property owner is to pay shall be determined and certified by the Public Works Director. Thereafter, the Borough shall give written notice by certified and regular mail to each person against whose property an assessment has been made. The assessment notice shall state the nature and amount of the assessment and the time and place for payment thereof.
- B. **Liens.** Ninety (90) days after the date of the assessment notice, the Borough shall certify to the Borough solicitor the names of the owners, if known, together with a full description of the properties against which assessments have been made under this Chapter and which remain unpaid, either in whole or in part. The Borough solicitor shall enter liens for the unpaid assessments and all other amounts due and shall from time to time proceed to collect the assessments or the part thereof remaining unpaid according to law and all other amounts due the Borough, including but not limited to accrued interest, penalties and attorneys' fees allowable by law.

§ 102-12. Financial Security and Enforcement.

- A. **Financial Security.** Prior to the issuance of any permit required by this Chapter, the permit applicant shall provide to the Borough financial security for the work to be performed, as follows:
 1. Small tree: \$500 per tree.
 2. Medium tree : \$1,000 per tree.
 3. Large Tree: \$2,000 per tree.

4. Financial security shall be in the form of cash or bank check or a letter of credit in form and substance satisfactory to the Borough. The financial security shall be held by the Borough to guarantee the completion of the work in accordance with the issued permit. The financial security will be released and returned to the permit holder upon certification by the Borough Arborist and/or Department that the work has been completed in accordance with the permit. If the work is not completed in accordance with the permit as determined by the Borough Arborist and/or the Department, the financial security may be used by the Borough to complete the work.

B. Liability for damages

1. Any person damaging or destroying any Street Tree or Public Tree shall be liable for repairs to the tree, the cost of its removal and replacement, if needed, and/or the appraised value of the tree. Fines will be assessed at \$200 per inch of diameter at breast height (DBH).
2. Any person damaging, paving over, or destroying an existing tree well shall be liable for restoration of the tree well and/or the cost of its renovation, which must be done in accordance with the specifications set forth in this Chapter 102 and all applicable Borough codes, ordinances and standards.
3. Any person using or traveling on any public street who damages any public tree meeting the minimum clearance requirement outlined in all applicable Borough codes, ordinances and standards shall be liable to the tree owner for any damage to the tree.

C. Fines.

1. It shall be unlawful for any person to carry out any of the activities requiring a permit or an approval in accordance with this Chapter 102 without first obtaining a permit or approval. Violation of any provisions of this Chapter 102 by any person, property owner or tree contractor shall, upon conviction thereof in a summary proceeding brought before a District Justice, be guilty of a summary offense and shall be subject to payment of a fine not less than \$100 and not more than \$1000, plus the costs of prosecution. Upon default of payment thereof, the defendant may be sentenced to imprisonment in the county jail for a period of not more than 30 days. Each section of this Chapter 102 shall constitute a separate offense, and each day or part of a day in which a violation of each section of this Chapter 102 is found to exist shall constitute a separate offense, each of which violations shall be punishable by a separate fine imposed

by the District Justice of not less than \$100 and not more than \$1000, plus the costs of prosecution. Upon default of payment thereof, the defendant may be sentenced to imprisonment in the county jail for a period of not more than 30 days. In addition to the fines set forth herein, the Borough shall be entitled to reasonable attorneys' fees and costs incurred in enforcing this Chapter 102. The said fees shall be added to any fines set forth above.

2. Without limiting the scope of any other provision of this Chapter 102, each of the following activities are prohibited and shall result in a summary proceeding wherein a fine of not less than \$100 and not more than \$1000, plus the costs of prosecution shall be assessed:
 - a) Breaking, injuring, mutilating, killing, breaking, climbing with spurs or in any other way harming any Public Tree or Street Tree.
 - b) Removing any Public Tree or Street Tree without a permit from the Borough.
 - c) Interfering in any way with the roots of any Public Tree or Street Tree.
 - d) Placing any rope, guy wire, cable, guard, sign, poster or any other fixture on any Public Tree or Street Tree. Tree guards, regardless of height or material, and metal tree grates are strictly prohibited.
 - e) Injuring, misusing or removing any device placed to protect any Street Tree or Public Tree, except in case of immediate necessity for the protection of life and property.
 - f) Placing any stone, concrete or any other substance which shall impede the passage of water and air to the roots of any Public Tree or Street Tree unless an open space of ground surrounding the trunk of such tree is maintained in accordance with the standards set forth in the Applicable Tree Law.
 - g) Treating any Public Tree or Street tree or the soil within the TPZ with any chemical or pesticide.
 - h) Driving any construction equipment or vehicles, or any vehicle, for any purpose within a TPZ, except over any existing street, alley, driveway, access drives and other rights of way.
 - i) Removing or tampering with any object or device set for the protection or treatment of any Public Tree or Street Tree in any public area or within any TPZ.

- j) Piling any building material or placing any mortar or cement within 6 feet of any Public Tree or Street Tree in any public area or within any TPZ.
- k) Hitching or fastening any animal, bicycle or vehicle to any Public Tree or Street Tree.
- l) Causing or authorizing in any public area or within any TPZ, any oil, gasoline, herbicide, paint, brine, hot water, steam or other gas, liquid or solid substances harmful to the tree to contact any Public tree or Street Tree or to enter the soil about the base or root system of a Public Tree or Street Tree in any manner that may injure or kill it.
- m) Supervising or authorizing construction, alterations, repairs or demolition activities in the vicinity of any Public Tree or Street Tree or within any TPZ without first placing sufficient guards or protectors as shall prevent injury or destruction of said tree arising out of such activities, in accordance with Department rules and regulations or with written authorization of the Borough Arborist or the Public Works Director.”

SECTION 2. SEVERABILITY. 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 hereof. It is hereby declared as the intent of Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 3. REPEALER. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS _____ DAY OF _____, 2019.

ATTEST:

**COUNCIL FOR THE BOROUGH
OF WEST CHESTER**

Michael A. Perrone, Secretary

By:

Diane C. LeBold, President

APPROVED THIS _____ DAY OF _____, 2019.

Dianne T. Herrin, Mayor

EXHIBIT A

LIST OF TREES THAT ARE EXCLUDED FROM HERITAGE TREE DESIGNATION

Acer pseudoplatanus (sycamore maple)

Acer ginnala (Amur maple)

Ailanthus altissima (tree-of-heaven)

Aralia elata (Japanese angelica tree)

Broussonetia papyrifera (paper mulberry)

Morus alba (white mulberry)

Paulownia tomentosa (princesstree)

Pellodendron amurense (Amur cork-tree)

Pyrus calleryana (callery pear)