

RESOLUTION 03 OF 2023

A RESOLUTION OF THE BOROUGH OF SMITHTON, WESTMORELAND COUNTY, PENNSYLVANIA, ADOPTING A SHADE TREE PLAN CONSISTENT WITH ITS SHADE TREE ORDINANCE NO. 208-B, AS AMENDED BY ORDINANCE NO. 230 OF 2022.

WHEREAS, the Borough of Smithton has previously adopted a Shade Tree Ordinance No. 208-B, which adopted certain procedures and regulations governing the existence and maintenance of shade trees within its jurisdictional limits; and

WHEREAS, the Borough of Smithton amended its Shade Tree Ordinance by adopting Ordinance No. 230 of 2022; and

WHEREAS, the Borough of Smithton has determined the need to update its Shade Tree Plan in order to establish consistent and efficient enforcement of its Shade Tree Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Borough of Smithton, as follows:

Section 1 – Shade Tree Plan Adoption: The official Borough of Smithton Shade Tree Plan shall be adopted immediately as shown in Exhibit “A.”

Section 2 – Repealer: Any resolution or part of a resolution in conflict herewith is hereby repealed.

Section 3-Effective Date: This resolution shall be effective immediately.

RESOLVED, this 23rd day of January, 2023

The Borough of Smithton

  
Kevin Regotti, President of Council

ATTEST:

  
Jennifer Perry, Secretary

I, the undersigned, Mayor of the Borough of Smithton, Westmoreland County, Pennsylvania, do hereby certify that I have reviewed and approved the within Resolution this 23rd day of January 2023.

  
Christine Tutena, Mayor

# **EXHIBIT A**

## **DEFINITIONS AND WORD USE**

The following words and phrases, when used in these regulations, shall have the meanings hereby ascribed to them, except in those instances where the context clearly indicates a different meaning:

### **COMMISSION**

The Shade Tree Commission of the Borough of Smithton. The Shade Tree Commission of the Borough of Smithton is made up of Smithton Borough Council and Smithton Borough Mayor.

### **PERMIT**

Any permit, in writing, as issued by the Secretary

### **PERSON**

Any natural person, firm, association, partnership or corporation

### **PUBLIC HIGHWAY**

Any street, sidewalk or alley open to the public

### **SECRETARY**

The Borough Secretary

### **SHADE TREE**

Any tree, shrub or other woody plant on any public highway or public grounds in the Borough of Smithton, or that part of any tree, shrub or other woody plant which extends within the lines of any public highway or public grounds.

In these regulations, the singular shall include the plural, and the masculine shall include the feminine.

## **COMMISSION TO CONTROL TREES IN PUBLIC AREAS**

The Smithton Borough Council and Smithton Borough Mayor (the Commission) shall have exclusive custody and control of the shade trees in the Borough of Smithton and is authorized to plant, maintain and protect shade trees on the public highways or public grounds in the Borough.

## **PERMIT APPLICATIONS; REVOCATION AND SUSPENSION; BONDS**

The application for any permit required hereunder shall be made in writing to the Secretary. It shall specify the particular kind of work or operation the applicant desires to perform thereunder and shall state the exact location and the species of any tree affected. It shall be the duty of the Secretary to submit every such application promptly to the Commission for approval or disapproval. The permit shall be effective for such length of time as the Commission shall in each case determine, and such time shall be indicated on the permit. Any such permit may be revoked at any time upon proof satisfactory to the Commission that any of the terms or conditions upon which such permit was issued are or have been violated. The Commission, in its

discretion, may, as a condition precedent to the issuance of the permit, require the applicant to file a bond satisfactory to the Commission or to deposit security satisfactory to the Commission or to deposit security satisfactory to it to guarantee the compliance by the applicant with the terms and conditions upon which such permit is issued.

### **PERMITS REQUIRED IN PUBLIC AREAS; SPECIES**

No person shall plant any shade tree in, on, along or affecting any public highway or public grounds in the Borough of Smithton until such a permit therefor is granted, such permit to designate where such tree is to be planted. The Commission may refuse a permit to plant any species of tree which, in its opinion, is not suited to the location.

Permit fee of \$100.00 and replacement of tree either in Borough right-of-way, attached property of another place in the Borough Shade Tree Plan. (See attachment A. for acceptable Shade Trees, as well as a list of invasive, unacceptable trees).

### **REGULATIONS AND STANDARDS OF COMMISSION**

The Commission shall have the power to draft and enact such regulations and standards as it may, from time to time, deem proper and necessary to the establishment and continuance of good shade tree practices in the Borough of Smithton.

### **RESPONSIBILITY FOR MAINTENANCE**

All shade trees shall be kept trimmed by the owner of the property on or in front of which they are located. The minimum clearance of any public highway or public grounds of any overhanging portion thereof shall be nine feet, provided that the Commission shall have the authority to designate a higher clearance on any public highway or public grounds, where heavy traffic or other conditions make it expedient.

If any property owner shall neglect or refuse to trim any shade tree as required by this section, upon notice in writing by the Commission, within the time limit specified in such notice, the Commission may cause such trimming to be done at the expense of such owner, and the entire cost thereof shall be a lien upon said premises, and a claim therefor shall be filed and collected by the Borough Solicitor in the same manner as municipal claims are filed and collected.

No person shall, without first obtaining a permit therefor, cut, break, climb with spurs, injure in any manner or remove any shade tree; or cut down or interfere in any way with the main roots of any shade tree; or spray any shade tree with any chemical or insecticide; or place any rope, guy wire, cable, sign, poster or any other fixture on any shade tree or guard for any shade tree; or injure, misuse or remove any device placed to protect any shade tree, except in case of immediate necessity for the protection of life and property.

No person shall, without first obtaining a permit, place or hereafter maintain any stone, cement or any other substance which shall impede the passage of water and air to the roots of any shade tree unless such person shall have an open space of ground surrounding the trunk of such tree.

In connection with any building operation or the performance of any work whatsoever in the Borough in the vicinity of any shade tree, before any work shall be commenced, guards shall be

placed at all shade trees which might be affected by such work so as effectually to prevent injury to them.

No person shall pour salt water, oil or any other material at any place in such a manner that injury might result to any shade tree.

No person shall, without first having obtained a permit therefor, attach any electric wire, insulator or any device for the holding of an electric wire to any shade tree.

Every person having any wire charged with electricity running along or through a public highway or public grounds shall securely fasten such wire or place an adequate shield thereon, so that such wire shall not come into contact with any shade tree so as not to injure the same.

Whenever in order to take down or prune any shade tree in any public highway or having branches extending over any public highway or public grounds, it shall be deemed necessary to remove any wire running through or along such public highway or public grounds, the owner of such wire shall temporarily remove the same or cut off the flow of current therefrom within 24 hours after service of written notice from the Commission to do so.

A Shade Tree Commission is hereby created in and for the Borough of Smithton. Said Commission shall be constituted as provided by law and shall perform all the duties and may exercise all the powers conferred by law upon Borough Shade Tree Commissions.

Any tree removed, must have the stump ground below ground level.

## **VIOLATIONS**

(Ordinance No. 208B, 8-15-2011; Ordinance 230 for 2022, 4-11-22)

It shall be unlawful for any person to carry out any of the following activities concerning a public tree:

Top any tree, which is indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough (at least one-third (1/3) the diameter of the branch being cut) to assume the terminal role.

Climbing with spikes on any tree.

Cause or authorized a wire or other conductor charged with electricity to come into contact with any tree in a manner that may injure or kill it.

Cause or authorize an interference with a Borough or any of its agents or employees while they are engaged in planting, inspecting, maintaining or removing trees.

Place or maintain upon the ground any asphalt, cement, stone or other material or substances in such manner as may obstruct or further obstruct free access of air and water to the roots of any tree

Pile any building material or make mortar or cement within six (6) feet of any tree

## **PENALTIES**

(Ordinance No. 208B, 8-15-2011; Ordinance 230 for 2022, 4-11-22)

Any person violating the provisions of this part shall, upon conviction in a proceeding filed by the Commission before a magisterial district judge of appropriate jurisdiction, be liable to pay costs of prosecution and a fine as follows:

For willfully injuring or killing a living tree in any public area or within any tree protection zone by cutting, debarking, breaking, by the use of herbicides, use of a vehicle, or in any manner wherein it is determined by the magisterial district judge that such damage or destruction was intentionally inflicted, a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1000.00) plus the costs of prosecution and value of the destroyed or damaged tree and/or cost of repair shall be levied. The value of the tree or trees removed shall be determined by a certified Borough arborist or other certified arborist selected by the Borough using a valuation method approved by the International Society of Arboriculture.

For failure of a property owner to remove, partially remove or treat a tree on private property, as ordered in accord with this Part, the guilty person shall be fined not more than one hundred dollars (\$100.00) per day. Each day the property owner remains in violation shall constitute a separate offense

For all other violations, where it is determined by the magisterial district judge that such damage or destruction was not intentionally, willfully inflicted, a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred (\$100.00) plus the costs of repairing or replacing the damaged tree shall be levied. The value of the tree or trees removed shall be determined by a certified arborist using a valuation method approved by the International Society of Arboriculture.

## **ENFORCEMENT**

These regulations shall be enforced by the Commission in conjunction with the Mayor and the Borough police and Borough Code Enforcement Officer.

## INVASIVE TREES

DCNR has deemed these trees to be invasive on state lands

For a complete list of invasive plants, or for more information on invasive trees, visit:

<https://www.dcnr.pa.gov/Conservation/WildPlants/InvasivePlants/InvasivePlantFactSheets/Pages/default.aspx>

- **Amur maple**, *Acer ginnala*, is a small ornamental tree that spreads by numerous winged seeds.
- **Norway maple**, *Acer platanoides*, a common street and lawn tree that frequently escapes cultivation.
- **Sycamore maple**, *Acer pseudoplatanus*, a tall Eurasian tree invading urban and suburban woods in southern PA.
- **European black alder**, *Alnus glutinosa*, is often found along streams and other wet areas.
- **Tree-of-heaven**, *Ailanthus altissima*, grows throughout PA. Another immigrant from China introduced as an ornamental.
- **Mimosa**, *Albizia julibrissin*, has escaped cultivation to invade roadsides and woodland edges in eastern PA.
- **Japanese angelica tree**, *Aralia elata*, has sharp spines on the trunk and resembles our native devils walking stick.
- **Paper mulberry**, *Broussonetia papyfera*, is a common, small ornamental tree from Asia.
- **White mulberry**, *Morus alba*, is a fast-growing species that will hybridize with our native red mulberry, *Morus rubra*.
- **Princess-tree**, *Empress-tree*, *Paulownia tomentosa*, imported from China this purple-flowered tree has spread across southern PA by winged seeds.
- **Cork tree**, *Phellodendron amurense*, *P. japonicum*, *P. lavalleyi*, these Asian trees are problematic in urban and natural areas in southeastern PA.
- **Callery or bradford pear**, *Pyrus calleryana*, has established populations in fields and hedgerows in southeastern PA.
- **Bee-bee tree**, *Tetra dium daniellii*, is an uncommon landscape tree that is slowly spreading in south-central and southeastern PA.
- **Siberian elm**, *Ulmus pumila*, a fast-growing tree reaching 50-70 feet high.

## RECOMMENDED SHADE TREES

### CATEGORY I TREE SELECTIONS

THE TREES IN CATEGORY I REPRESENT THOSE WHICH MOST OFTEN MATURE TO APPROXIMATELY 30' OR LESS IN HEIGHT. THE MORE CONFINED GROWTH HABIT OF CATEGORY I TREES FREQUENTLY ALLOWS THEM TO BE CONSIDERED FOR LOCATIONS BENEATH UTILITY WIRES AND OTHER SIMILARLY RESTRICTED PLANTING AREAS.

COMMON NAME	SCIENTIFIC NAME
Trident Maple	<i>Acer buergeranum</i>
Hedge Maple	<i>Acer campestre</i>
Paperbark Maple	<i>Acer griseum</i>
Amur Maple	<i>Acer tataricum</i> ssp. <i>ginnala</i> (formerly <i>A. ginnala</i> )
Serviceberry	<i>Amelanchier arborea</i> - This species represents the primary <i>Amelanchier</i> sp. available within the nursery trade.
Eastern Redbud	<i>Cercis canadensis</i>
Chinese Redbud	<i>Cercis chinensis</i> - The white-flowered cultivar 'Alba' is also noteworthy to consider.
White Fringetree	<i>Chionanthus virginicus</i>
Chinese Fringetree	<i>Chionanthus retusus</i>
Japanese Cornel Dogwood	<i>Cornus officinalis</i>
Corneliancherry Dogwood	<i>Cornus mas</i>
Goldenraintree	<i>Koelreuteria paniculata</i>
Japanese Tree Lilac	<i>Syringa reticulata</i>
Japanese Zelkova	<i>Zelkova serrata</i> -Note improved cultivars such as 'Schmidtlow'
Sargent Cherry	<i>Prunus sargentii</i>
Japanese Flowering Cherry	<i>Prunus serrulata</i> -Numerous cultivar forms are available.
Yoshino Cherry	<i>Prunus x yedoensis</i>

## RECOMMENDED SHADE TREES

### CATEGORY II TREE SELECTIONS

THE TREES IN CATEGORY II REPRESENT THOSE WHICH MOST OFTEN MATURE TO APPROXIMATELY 30' OR MORE IN HEIGHT. CATEGORY II TREES ARE NORMALLY MEDIUM TO LARGE IN SIZE AND ARE MOST SUITABLE WHERE OVERHEAD UTILITY WIRES ARE NOT PRESENT.

#### COMMON NAME

#### SCIENTIFIC NAME

Thornless Common  
Honeylocust

*Gleditsia triacanthos* var. *inermis* - The cultivar 'Impole' is highly recommended. Thornless and fruitless selections are to be exclusively considered.

Red Maple

*Acer rubrum* - Particularly the cultivars 'Red Sunset', 'October Glory', 'Brandywine' and 'Red Rocket'. The latter two selections are of special value.

Sugar Maple

*Acer saccharum* - The planting of the Sugar Maple is cultivar dependent due to potential issue(s) with Leaf Scorch and Verticillium Wilt.

Katsura Tree

*Cercidiphyllum japonicum*

Yellowwood

*Cladrastis kentukea* - Formerly listed as *C. lutea*.

Ginkgo

*Ginkgo biloba* - Fruitless (male) selections only.

Sourwood

*Oxydendrum arboretum*

Black Gum or Tupelo

*Nyssa sylvatica* - The limited quantities of fruit produced by the Black Gum are relatively insignificant.

Oak sp.

*Quercus* sp. - The ample size of many mature oaks can be a limiting factor within many urban and suburban environments. Moreover, some species of oaks produce larger quantities of acorns than others.

#### Oaks which may potentially be considered as street trees include:

Sawtooth Oak

*Quercus acutissima*

Swamp White Oak

*Quercus bicolor*

Shingle Oak

*Quercus imbricaria*

Pin Oak

*Quercus palustris*

Willow Oak

*Quercus phellos*

Red Oak

*Quercus rubra*

Shumard Oak

*Quercus shumardii*

Japanese Pagodatree

*Sophora japonica*

Japanese Stewartia

*Stewartia pseudocamellia* - This species is closely aligned with *S. koreana*.

Littleleaf Linden

*Tilia cordata*

Crimean Linden

*Tilia x euchlora* (*T. cordata* x *T. dasystyla*)

Silver Linden

*Tilia tomentosa*

Chinese Elm

*Ulmus parvifolia*



**SMITHTON BOROUGH  
TREE PRUNING or REMOVAL APPLICATION**

Permit Number: \_\_\_\_\_ Tax Map#: \_\_\_\_\_

Property Owner's Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Property Owner's Mailing Address: \_\_\_\_\_

Property Owner's Phone: \_\_\_\_\_

Location of Tree(s) on Property: \_\_\_\_\_

Tree Species: \_\_\_\_\_

Approximate Age of Tree(s): \_\_\_\_\_ Diameter of Tree Trunk \_\_\_\_\_

Overall condition of Tree: \_\_\_\_\_

Reason for Tree Pruning/Removal:  
\_\_\_\_\_  
\_\_\_\_\_

Describe Proposed Tree Pruning: (Attach Photo)  
\_\_\_\_\_  
\_\_\_\_\_

Property Owner's Signature \_\_\_\_\_ Date: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Mail/Email completed application to:  
Smithton Borough Shade Tree Commission, PO Box 374, Smithton, PA 15479  
Questions: [smithtonboro@hotmail.com](mailto:smithtonboro@hotmail.com) or (724) 872-6406

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(For Internal Use)

Approved \_\_\_\_\_ Permit #: \_\_\_\_\_ Disapproved \_\_\_\_\_

Approved with Conditions \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_