

ORDINANCE NO. 1062

**AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA,
AMENDING CHAPTER 25, TREES TO ESTABLISH A NEW PART 4, HERITAGE AND
SIGNIFICANT TREES.**

The Board of Supervisors of the Township of Ferguson hereby ordains:

Section 1—Chapter 25, Trees, is hereby amended by establishing Part 4, Heritage and Significant Trees attached hereto as Exhibit "A".

Section 2—The forgoing Section 1 shall be effective immediately upon the date of the enactment of this ordinance.

ORDAINED and ENACTED this 18th day of January 2021.

TOWNSHIP OF FERGUSON

By: 

Laura Dininni, Chair
Board of Supervisors

[SEAL]

ATTEST:

By: 

David G. Pribulka, Secretary

Exhibit "A"

CHAPTER 25, TREES; PART 4, HERITAGE AND SIGNIFICANT TREES.
ORDINANCE NO. _____

§25-401. Purpose.

The purpose of this chapter is to recognize, appreciate and provide for voluntary protection of trees that are of landmark importance due to age, size, species, horticultural quality or historic importance.

§25-402. Definitions.

Words and terms in this part shall have the meanings given herein. Unless expressly stated otherwise, and pertinent word or term not part of this part but vital to the interpretation of this part shall be construed to have their legal definition, or in absence of a legal definition, their meaning as commonly accepted.

1. Words used in the present tense shall include the future tense;
2. Words used in the plural number shall include the singular and plural number, and the plural number shall include the singular number;
3. The words "shall" and "will" are mandatory and are not discretionary;
4. The word "may" is permissive;
5. The word "lot" shall include the words "place," "parcel," and "premises";
6. The word "building" means a structure, including any part thereof having a roof and used for shelter or enclosure for persons or property;
7. The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for," or any other legal activity;
8. The word "person" shall include the words "individual," "corporation," "Governmental agency," "trust," "estate," "partnership," "association," "venture," "joint venture," "participant," or any other legal activity;

As used in this part, the following terms shall have the meanings indicated;

APPLICANT—The property owner or authorized representative; the term includes "developer".

ARBORIST—The Arborist for Ferguson Township. The Arborist is a professional in the practice of arboriculture. This term shall include the Township Arborist as well as any consultants engaged to perform similar services in the promulgation and enforcement of this Part and the Ferguson Township Tree Ordinance.

TREE RISK RATING—A method that ranks both the relative degree of risk and consequence of tree failure by considering tree condition and defects, the size of the tree part prone to failure and the vulnerability and value of any target that may be struck. Tree risk ratings include:

Improbable—Tree is not likely to fail even in severe weather.

Possible—Failure could occur but is unlikely during normal weather conditions.

Probable—Tree failure is expected under normal weather conditions.

Imminent—Tree failure has started or will occur in near future.

HERITAGE TREE—Any tree or stand of trees located on public or private property, of landmark importance due to age, size, species horticultural quality or historic importance that has a DBH greater than 36 inches or an age greater than 75 years, and has been approved as a heritage tree by the Board of Supervisors and which has been accepted by the tree owner or responsible party.

PROPERTY OWNER—Any person, agent, operator or corporation having a legal or equitable interest in the property; or recorded in the official records of the Commonwealth of Pennsylvania, County of Centre or Ferguson Township as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

SIGNIFICANT TREE—Any tree or stand of trees located on public or private property that is of landmark importance due to age, size, species, horticultural quality or historic importance that has been approved as a significant tree by Ferguson Township's Tree Commission and which status has been accepted by the tree owner or responsible party.

TREE COMMISSION—Ferguson Township's Tree Commission.

TREE—Any hard-wooded perennial plants, whether evergreen or deciduous, or a species which normally reaches a height of eight feet or more at maturity.

TREE CONDITION—An assessment of tree health and structure by the Arborist or a qualified arborist as approved by Ferguson Township's Arborist.

§25-403. General Provisions.

1. Heritage and Significant Trees may be of equivalent landmark importance due to age, size, species, horticultural quality or historic importance.
2. The Tree Commission may approve designation as a Significant Tree for a tree nominated as a Heritage Tree if the review body determines the tree is of lesser landmark importance, and still worthy of recognition.
3. A tree owner or responsible party may choose to nominate a tree as a Significant Tree rather than a Heritage Tree if they determine the tree is of lesser landmark importance, and still worthy of recognition, or if they desire no regulatory protection of the tree they would like to have recognized.

§25-404. Nomination and Designation of Heritage Trees.

1. Any person may nominate a tree or group of trees to be designated as a Heritage Tree. The nomination shall be submitted by the tree owner or responsible party or accompanied by the tree owner or responsible party's written consent. If the nominated tree is located on Township property, the nomination shall be submitted by the Township Manager or designee. Upon completion of the nomination process, the remaining portions of this subsection shall apply in the order listed.
2. After reviewing the nomination materials, and any supplemental information provided by the Township Arborist, the Tree Commission may decide by majority vote to:
 - a. Recommend approval of the tree to be designated as a Heritage Tree upon finding it is of landmark importance due to age, size, species, horticultural quality or historic importance, and forward their recommendation to the Board of Supervisors.

- b. Approve the tree to be designated as a Significant Tree upon finding it is of landmark importance due to age, size, species, horticultural importance. Upon receipt of the tree owner's or responsible party's written consent for designation as a Significant Tree, the tree shall be included in a publicly accessible inventory of trees.
 - c. Deny the tree as a Heritage Tree and Significant Tree.
- 3. When the Tree Commission recommends that the Board of Supervisors designate a tree as a Heritage Tree, the Township Arborist shall prepare for the tree owner or responsible party the paperwork necessary to record the Heritage Tree designation on the owner's or responsible party's deed, noting on such deed that the tree is subject to the provisions of this chapter. If the tree owner or responsible party fails to sign the necessary paperwork, the Heritage Tree Designation shall be void, the matter shall not move forward to the Board of Supervisors, and the provisions of this chapter shall cease to apply to the tree.
- 4. After reviewing the nomination materials, any supplemental information provided by the Township Arborist, and the Tree Commission's recommendation, the Board of Supervisors may decide by majority vote to:
 - a. Approve the tree to be designated as a Heritage Tree upon finding it is of landmark importance due to size, age, species, horticultural quality or historic importance, at which point the Township shall execute the necessary paperwork to record the Heritage Tree designation on the tree owner's or responsible party's deed, noting on such deed that the tree is subject to the provisions of this chapter. In addition, the tree shall be included in a publicly accessible inventory of trees.
 - b. Approve the tree to be designated as a significant tree upon finding it is of landmark importance due to size, age, species, horticultural quality or historic importance. Upon receipt of the tree owner's or responsible party's written consent for designation as a significant tree, the tree shall be included in a publicly accessible inventory of trees.
 - c. Deny the tree as a Heritage Tree and Significant Tree.
- 5. Ferguson Township Board of Supervisors may designate up to two (2) Heritage Trees per calendar year.

§25-405. Incentives for Heritage Tree Designation.

Designated Heritage Trees shall be eligible for the following incentives subject to availability of Township Funding and the Board of Supervisors approval.

- 1. Plaques which may be placed on or near Heritage Trees; and
- 2. Maintenance of Heritage Trees by the Ferguson Township Public Works Department or its contractor in a manner consistent with tree care industry standards including, but not limited to:
 - a. Pruning,
 - b. Pest control,
 - c. Unwanted plant removal along the perimeter,
 - d. Fertilization,
 - e. Soil amendment, and
 - f. Cabling and bracing.
 - g. Tree removal.

§25-406. Removal of Heritage Tree Designation.

Heritage Trees and Heritage Tree designations shall not be removed without prior written approval obtained through:

1. The Board of Supervisors shall use their discretion when issuing their decision of removal of Heritage Tree designation and should include but not be limited to the following considerations:
 - a. Quality of tree species, condition and location; contribution to the environment;
 - b. Tree presents such a clear and present danger to people, structures, infrastructure or utilities; and
 - c. Contribution to the community.
2. The tree owner or responsible party are encouraged to take photographs of the subject tree and obtain written documentation from the Township Arborist.
3. If the Board of Supervisors permits the removal of the Heritage Tree designation and the tree is cut down, the property owner shall pay the Township the appraised value of the tree. The appraised value shall be determined by an ISA Certified Arborist. The property owner is responsible for the cost of appraisal
4. If the Heritage Tree is deemed hazardous by the Township Arborist and approved by the Board of Supervisors, the tree may be removed without penalty.

§25-407. Removal of Heritage Tree.

1. No heritage tree shall be removed for any reason without the prior approval of the Board of Supervisors after recommendation by the Tree Commission and Township Arborist.

§25-408. Nomination and Designation of Significant Trees.

1. Any person may nominate a particular tree or group of trees to be designated as a Significant Tree. The nomination shall be submitted by the tree owner or responsible or accompanied by the tree owner or responsible party's written consent. If the nominated tree is located on Township property, the nomination shall be submitted by the Township Manager or designee. Upon completion of the nomination process, the remaining portions of this subsection shall apply.
2. After reviewing the nomination materials, and any supplemental information provided by the Township Arborist, the Tree Commission may decide by majority vote to:
 - a. Approve the tree to be designated as a Significant Tree upon finding it is of landmark importance due to size, age, species, horticultural quality or historic importance. The tree shall be included in a publicly accessible inventory of trees.
 - b. Deny the tree as a Significant Tree.

§25-409. Removal of Significant Tree Designation.

1. Significant tree designation shall be removed when requested in writing by the tree owner or responsible party.
2. The tree owner or responsible party shall notify the Township in writing of the removal of any Significant Tree.

§25-410. Administration and Enforcement.

1. Enforcement Officer.

- a. The Ferguson Township Arborist is hereby designated as the enforcement officer for this part. In furtherance of his/her authority as such enforcement officer, the Arborist shall have the following duties and powers:
 - i. Review all applications for Significant and Heritage Tree designations.
 - ii. Conduct an annual or more frequent inspection of all designated Heritage Trees in the Township of Ferguson to ensure compliance with the provisions of this chapter.
 - iii. Issue notices of violation to the owner, agent or person having the beneficial interest in the premises on which a Heritage Tree is located which is found to be in violation of this part.
 - iv. Maintain all records necessary to the appropriate administration and enforcement of this part, including applications for designation and appeals.
2. The Board of Supervisors of Ferguson Township.
 - a. The Board of Supervisors is hereby vested with the following jurisdiction and authority:
 - i. An appeal may be taken to the Board of Supervisors by any person aggrieved by an order, requirements, decision, or determination by the Arborist acting within the authority of this part.
3. Petition for Appeal.
 - a. An appeal shall be filed within 30 days after the alleged erroneous order, requirement, decision, or determination.
 - b. An appeal shall be filed on the official Township Heritage Tree Appeal Application form which includes the following:
 - i. The name(s), address(es), and telephone number(s) of the petitioner(s), the owner(s) of the property on which the Heritage Tree is located.
 - ii. A description of the appeal.
 - iii. Justification of the appeal.
 - iv. The location of the property on which the Heritage Tree is located.
 - v. A site plan of the property involved, showing accurate placement thereon of the Heritage Tree.
 - vi. Any other information as the Township Arborist may require to determine full compliance with this and other applicable ordinance of the Township of Ferguson.
 - c. Fees. Each appeal to the Board of Supervisors shall be accompanied by a fee as set by resolution of the Ferguson Township Board of Supervisors.
4. The Board of Supervisor's Decision. Within 30 days after reviewing the Heritage Tree Appeal Application at a public meeting, the Board of Supervisors shall provide a written conclusion to grant or deny the appeal.

§25-411. Violations and Penalties.

1. Any heritage tree removed without approval by the Board of Supervisors:
 - a. The applicant shall plant similar trees to replace the equivalent total cross-sectional area of the Heritage Tree which was unlawfully cut, broken, destroyed or removed. In all instances of replacement pursuant to this subsection, such replacement trees shall be sufficient to replace the total cross-sectional area as measured at diameter at breast height (DBH) of the tree removed. For example, a removed Heritage Tree that is thirty-six-

inches in diameter, shall be replaced with one thirty-six-inch tree, or eighty-one (81) four-inch trees, all in a manner satisfactory to and in locations approved by the Township Arborist.

- b. The applicant shall pay a fine of \$1,000.00 to Ferguson Township, as well as the appraised value of the Heritage Tree as determined by the Township Arborist in accordance with established ISA tree appraisal standards.
2. The penalties for any violation of this chapter, including, without limitation shall be guilty of a summary offense and upon conviction thereof shall be subject to the enforcement remedies within the Ferguson Township Code and any other applicable law.
3. Any person who violates this chapter, including property owners, occupants tree companies and gardeners, may be held for a violation of this chapter.