

TOWNSHIP OF SOUTH MIDDLETON
CUMBERLAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 2014-05

AN ORDINANCE TO PROVIDE FOR THE REGULATION OF THE HEIGHT OF GRASS AND THE GROWTH OF WEEDS AND OTHER VEGETATION, AS DEFINED HEREIN, TO DECLARE THE SAME TO BE A NUISANCE UNDER CERTAIN CONDITIONS, TO REGULATE THE CLEARANCE OF TREES ABOVE HIGHWAYS AND SIDEWALKS, TO PROHIBIT THE OBSTRUCTION OF FIRE HYDRANTS, TO ENSURE ACCESS TO PROPERTIES FOR EMERGENCY SERVICES PERSONNEL, TO ENCOURAGE THE USE OF NATIVE PLANTS AND MANAGED LANDSCAPING, TO AUTHORIZE THE TOWNSHIP TO CUT OR CAUSE THE REMOVAL OF HAZARDOUS OR NUISANCE VEGETATION, TO PRESCRIBE DUTIES OF PROPERTY OWNERS, TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF, AND TO MAKE A REPEAL

IT IS HEREBY ENACTED AND ORDAINED by the Board of Supervisors in and for the Township of South Middleton, Cumberland County, Pennsylvania, as follows:

SECTION 1 – INTENT

The purpose of this Ordinance is to authorize the Township to enact regulations concerning the proper care and maintenance of vegetation, including grass, weeds, shrubs, trees, and other flora as defined herein. For this purpose, the Board of Supervisors declares as follows:

- A. Pursuant to Sections 607, 1527, 1529, 2301, 2325, and 2326 of the Second Class Township Code collectively, it is the duty of the Board of Supervisors to ensure the general health, safety, and welfare of the citizens of the Township by making it unlawful to permit certain vegetation, as defined herein, to grow or exist within or encroach upon the public right-of-way, as set forth herein;
- B. Tall grass, unregulated weeds, neglected landscaping, and other overgrown vegetation can provide habitat for vermin, reptiles, insects, and other disease-spreading pests, including the Lyme Disease carrying deer tick, and therefore present a danger to the public's health, safety, and welfare;
- C. Dead, dying, or damaged trees and other vegetation encroaching on or near public areas present a hazard to the general public and to properties which are in close proximity to each other, and therefore have a negative impact on the general health, safety, and welfare of citizens in the Township and to the travelling public.

- D. It is necessary to ensure access to property and structures for emergency services personnel;
- E. The use of wildflowers and other native plants in managed landscape design can be economical, low-maintenance, effective in soil and water conservation, and may preclude the excessive use of pesticides, herbicides, and fertilizers;
- F. The Board of Supervisors seeks to encourage landowners to create and sustain a condition of ecological stability on their lands, that is, a state of good health and vigor, as opposed to one of impairment and decline;
- G. It is the express intent of the Board of Supervisors that it shall be lawful to grow native plants, including, but not limited to ferns, grasses, forbs, aquatic plants, trees, and shrubs in a landscape when these plants were obtained not in violation of local, state, or federal laws;
- H. While a variety of landscapes add diversity and richness to the Township's quality of life, there are, nonetheless, reasonable expectations regarding these sites which, if not met, may decrease the value of nearby properties, degrade the natural environment, or threaten the public's health, safety, or welfare; and
- I. It is in the public's interest, and within the purview of this Ordinance, to provide standards for the development and maintenance of the landscapes within the Township, whether corporate, private, or public.

SECTION 2 – CONSTRUCTION

In the interpretation of this Ordinance, the provisions shall be construed as follows:

- A. Any term in the singular shall include the plural and *vice versa*, unless the context otherwise requires;
- B. Any term in the masculine shall include the feminine or other;
- C. Any requirement or prohibition of any act shall respectively extend to and include the causing and procuring, directly or indirectly, of such act; and
- D. In the enforcement of this Ordinance, no provision hereof shall make unlawful any act necessarily performed by any officer or employee of the Township in line of duty or work as such, or by any person, his agent, or employees, in the proper and necessary execution of the terms of any agreement with or employment of the Board of Supervisors or Township.

SECTION 3 – DEFINITIONS

Agricultural and farm operations: As that term is defined by the Township's Zoning Ordinance.

Board of Supervisors: The Board of Supervisors of South Middleton Township.

Fire hydrant (or "hydrant"): All Pumper-type hydrants which are equipped with outlets placed for the purpose of and intended for supplying water to fire department pumpers, of which the number of outlets, outlet diameter(s), and thread specifications shall be designated by the local fire department, Municipal Authority, or the Township. The term shall also include "yard hydrants," which are those hydrants equipped with not less than two-and-one-half (2-1/2) inch outlets and are supplied with water from a siamese connect; "dry hydrants," which are those hydrants installed to an approved static water source equipped with one draft outlet and standard outlet diameter and thread specifications; and all other types of hydrants owned by a public or private entity.

Lot: Property owned by a single or joint party and shall include contiguous land even if separated by a private or public road or street.

Municipal Authority: South Middleton Township Municipal Authority.

Person: Any natural individual, corporation, company, estate, joint stock association, firm, partnership, trust, or any other public or private association or entity.

Shrub: A woody plant of relatively low height, having several stems arising from the base and lacking a trunk. The term shall also include a "bush" and "hedge." A shrub shall be distinguished from a tree by its multiple stems and shorter height.

Subdivision and Land Development Ordinance: Township Ordinance No. 2001-01, *as amended*.

Township: South Middleton Township.

Traffic control device: Any sign, signal, marking, or other device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction. The term shall include traffic signals.

Tree: A woody perennial plant with an elongated stem, or trunk, supporting leaves or branches, attaining a height of at least eight (8) feet at maturity.

Vegetation: Includes but is not limited to grass (*graminoids*), weeds, unmaintained shrubs, vines, and similar growths, but shall not include trees, or any part thereof not

located within or encroaching upon the public right-of-way, ornamental shrubbery, flowers, garden vegetables, compost piles, or other plants or vegetables customarily planted and/or cultivated for an agricultural or ornamental purpose.

Vine: Any plant with a growth habit of trailing or scandent (or climbing) stems or runners.

Weeds: All rank, noxious, poisonous, harmful, unhealthy vegetation deleterious to health, which shall include but not be limited to Canada thistle (*Cirsium arvense*), multiflora rose (*Rosa multiflora*), Johnson grass (*Sorghum halepense*), mile-a-minute vine (*Polygonum perfoliatum*), kudzu vine (*Pueraria lobata*), bull thistle (*Cirsium vulgare*), musk thistle (*Carduus nutans*), shattercane (*Sorghum bicolor* ssp. *drummondii*), jimsonweed (*Datura stramonium*), purple loosestrife (*Lythrum salicaria*), giant hogweed (*Heracleum mantegazzianum*), goatstrue (*galega officinalis*), burdock (*Arctium lappa*), poison ivy (*Toxicodendron radicans*), ragweed (*species of Ambrosia*), common cocklebur (*Xanthium strumarium*), and any other plant identified by the Pennsylvania Department of Agriculture's Noxious Weed Control List (7 Pa Code § 110.1) or the Pennsylvania Department of Conservation and Natural Resources as an invasive plant.

Zoning Ordinance: Township Ordinance No. 2007-03, *as amended*.

SECTION 4 – REGULATIONS FOR THE GROWTH OR ACCUMULATION OF VEGETATION

- A. It shall be unlawful and a nuisance for any person owning, leasing, occupying, or otherwise having a present possessory interest in any real estate in the Township to permit or maintain on any such lot or tract of land, including the area located between the property line and the middle of the alley adjacent to the property, the area located between the property line and the curb, the area of any curbs or sidewalks located on the property, and the area located ten (10) feet outside the property line where there is no curb the growth of grass to a height of twelve (12) or more inches, or any accumulation of weeds.
- B. Shrubs, vines, and similar plantings shall not be maintained or be permitted to:
 - 1) Envelope the dwelling or other buildings on a property to the point that the structures constitute a hazard to the residents of the property or passersby; or
 - 2) Cover or encroach upon any sidewalk or pedestrian access within the public right-of-way for a width of at least six (6) inches and to a height of at least seven (7) feet on either side or the paths leading to any doorway to dwellings or other buildings on the property for a width and height equal to the width and height of the door so as to allow access by emergency services personnel.

- C. With the exception of the prohibition against the accumulation of weeds which is prohibited throughout the Township, this section shall not apply to:
 - 1) Cultivated or maintained garden areas of real property.
 - 2) Agricultural and farm operations.
- D. Deed restrictions and homeowners' association regulations will supersede this Ordinance to the extent they are more restrictive and must be enforced by those members and not the Township.

SECTION 5 – RESPONSIBILITY FOR TRIMMING TREES

- A. It shall be the duty and responsibility of any person owning, leasing, occupying, or otherwise having a present possessory interest in any real estate in the Township to trim or cut any tree standing along the street abutting the front, side, or rear of said property to the following standards:
 - 1) Branches shall have a clearance of at least fourteen (14) feet above the cartway or paved area of the street along said property and shall have a clearance of at least seven (7) feet above the sidewalk or future sidewalk area; and
 - 2) No part of the tree shall obstruct any traffic control device, street lighting, or interfere with the wiring or proper maintenance of public utilities.
- B. The cost of trimming or cutting a tree, as required under this section, shall be borne by the property owner except where the work is specially required to protect or maintain utility wires, in which case the cost shall be borne by such utility.

SECTION 6 – VISION OBSTRUCTION ALONG STREETS PROHIBITED

In addition to the standards already provided in this Ordinance, any person owning, leasing, occupying, or otherwise having a present possessory interest in any real estate in the Township shall keep all trees, shrubs, hedges, and other vegetation cut, and maintained to the following standards:

- A. Within the public right-of-way, such plants shall not obstruct the vision of motorists or interfere in any manner with the public or Township use of the public right-of-way appurtenant thereto. For the purposes of this Ordinance, shrubs, hedges, or other vegetation height, width, or spread in excess of thirty (30) inches shall be presumed to obstruct the vision of motorists travelling any street bordering such a property or interfere with the public or Township use of the right-of-way appurtenant thereto; and
- B. Within the public right-of-way and at all intersections of streets, private roads, alleys, access drives, and driveways, such plants shall be maintained in order

to maintain such clear sight triangles required under the applicable provisions of the Township's Zoning Ordinance or Subdivision and Land Development Ordinance.

- C. At no time shall such plants or any part thereof, obstruct any traffic control device.

SECTION 7 – REMOVAL OF DEAD OR DYING TREES AND VEGETATION

It shall be unlawful and a nuisance for any person owning, leasing, occupying, or otherwise having a present possessory interest in any real estate in the Township to:

- A. Permit a dead or dying shrub, hedge, or other vegetation, or a dead, dying, or damaged tree, any of which might endanger the health or safety of persons or property and are located within the public right-of-way. For the purpose of this Ordinance, "dead, dying, or damaged tree which might endanger the health or safety of persons or property" shall mean any dead tree, any tree that is diseased, or any tree that has a dead, diseased, or broken limb or a dead, diseased, or broken trunk, or any tree that is totally or partially uprooted, if the height of the tree or the length of the limb or trunk is such that, if it were to fall, the tree, limb, or trunk could fall within the public right-of-way or on a sidewalk. The presence of such vegetation and trees shall be considered a safety hazard and a nuisance and, therefore, detrimental to the health, safety, and welfare of the public.
- B. A determination of whether a tree or part thereof is dead, dying, or damaged, or an otherwise healthy limb is a hazard to public or right-of-way, shall be made by a certified arborist or forester designated by the Township.

SECTION 8 – ENCROACHMENT OF EASEMENTS AND STORM WATER FACILITIES PROHIBITED

It shall be unlawful for any person owning, leasing, occupying, or otherwise having a present possessory interest in any real estate in the Township to permit any tree, shrub, hedge, and other vegetation to be planted or grow within the area of an easement or storm water management facility that would adversely affect the function of the easement or storm water management facility.

SECTION 9 – OBSTRUCTION OR BLOCKING OF FIRE HYDRANTS PROHIBITED

All hydrants shall be kept clear of weeds, rubbish, and all other obstructions for at least a three (3) foot space around the circumference of the fire hydrant, by the abutting property owner. Landscaping or decorations shall not be used to obstruct or hide the fire hydrant from clear view, nor prohibit access to the hydrant for use or maintenance.

SECTION 10 – CLEARANCE OF OBSTRUCTIONS OR ENCROACHMENTS INTO THE RIGHT-OF-WAY

The Township may remove, or cause to be removed, any tree, branch, tree limb, hedge, shrubbery, or other vegetation in the public right-of-way, or otherwise obstructs traffic, street lighting, traffic control devices, access to fire hydrants, or constitutes a danger to the passing public. Nothing in this Ordinance shall prevent the Township from performing maintenance to the public right-of-way, including the routine mowing and cutting of vegetation.

SECTION 11 – ENFORCEMENT

- A. **Enforcement Officer.** This Ordinance shall be enforced by such person(s) as designated by the Board of Supervisors.
- B. **Violation Notice.** After inspection, if any property is determined to be in violation of this Ordinance, a violation notice shall be given by personal service or certified mail upon the owner, lessee, or other person having a present interest therein. Where notice cannot be served in the above manner, notice may be served by posting a copy thereof in at least one (1) conspicuous place on said premises at least ten (10) days prior to taking subsequent action. Additional notices are not required for subsequent offenses. This paragraph may be suspended if, in the determination of the Township, the obstruction or encroachment constitutes an imminent danger to the health, safety, or welfare of the public.
- C. **Failure to Comply.** If said vegetation remains in violation beyond ten (10) days from service of the aforesaid notice, the Township may, at its option, cut or direct a third party to cut or remove, as the situation dictates, said vegetation.
- D. **Right of Entry.** The Township, or any person acting under its direction, may enter upon any premises or lands for the purpose of removing or destroying vegetation prohibited by this Ordinance. No person shall molest or interfere with any Township official or designee while they are engaged in carrying out the provisions of this Ordinance.
- E. **Assessment of Costs.** All expenses of such cutting or removal, to include equipment usage, transportation, man-hours involved, and overhead, including any and all costs incurred in the removal or relocation of debris, junk, or other miscellaneous obstructions which would be necessary or convenient to carry out

the requirements of this Ordinance shall be paid by the offending party plus an administrative charge of fifteen percent (15%), per parcel, per cutting.

SECTION 12 – TOWNSHIP NOT LIABLE FOR DAMAGE

In any instance where a property owner fails to adhere to the provisions of this Ordinance, which would authorize the Township to fulfill the owner's duties as provided for herein, the Township shall not be liable for any alleged damage to any property that might arise in the course of enforcing the provisions of this Ordinance. "Property" shall include but not be limited to vegetation, including trees, buildings or structures, mailboxes, vehicles, fire hydrants, or any other permitted or non-permitted obstruction in the public right-of-way.

SECTION 13 – TOWNSHIP'S POWER AND AUTHORITY IS PERMISSIVE, NOT MANDATORY

Under no circumstances shall this Ordinance obligate the Township, or any employee or agent thereof, to undertake any particular action to enforce any of the terms of this Ordinance. All authority granted to the Township, its agents and employees, shall be permissive and not mandatory, and the Township, its agents and employees, shall have complete discretion to determine whether or not enforcement action of any type should be undertaken and if so, the nature of the enforcement action itself.

SECTION 14 – PENALTIES

- A. Any person who violates the provisions of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than \$250 plus costs of prosecution for the first offense.
- B. If the vegetation remains in violation beyond ten (10) days from service of the first citation, an additional fine of not more than \$50 plus costs of prosecution shall be levied each day thereafter, and shall constitute a separate offense.
- C. Violations of this Ordinance shall also subject the violator to such additional sanctions, remedies, and judicial orders as are authorized and provided for under Pennsylvania law.

SECTION 15 – SEVERABILITY

If any section, clause, sentence, part, or provision hereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of

this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included.

SECTION 16 – REPEALER

All Township ordinances, parts of ordinances, policies, and regulations inconsistent with the provisions of this Ordinance, including but not limited to Ordinance No. 1994-06, are repealed insofar as they are inconsistent with the powers, duties, and responsibilities enacted hereby.


SECTION 17 – EFFECTIVE DATE

This Ordinance shall be effective five (5) days following enactment.

ENACTED AND ORDAINED this 29th day of May, 2014.

SOUTH MIDDLETON TOWNSHIP
BOARD OF SUPERVISORS


BRYANNA GEMBUSIA, Chairman

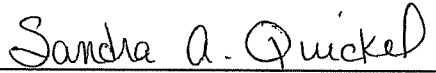

THOMAS E. FAHEY, Vice Chairman


RONALD P. HAMILTON, Member


R. DUFF MANWEILER, Member


WALTER G. REIGHARD, Member

ATTEST


SANDRA A. QUICKEL, Secretary