

**OFFICIAL
TOWNSHIP OF FORWARD
COUNTY OF ALLEGHENY, PENNSYLVANIA**

ORDINANCE NO. 13-7

AN ORDINANCE OF THE TOWNSHIP OF FORWARD, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, ADOPTING TIMBERING REGULATIONS.

WHEREAS, in order to promote and protect the health, safety and welfare of the residents and property of the Township of Forward, Allegheny County, Pennsylvania (the "Township"), the Township has determined that it is necessary to regulate and control timbering within the Township.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE SUPERVISORS OF THE TOWNSHIP OF FORWARD, ALLEGHENY COUNTY, PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY AND WITH THE AUTHORITY OF THE SAME THAT:

Section 1. Purpose. The purpose of this Ordinance is the following:

- A. To promote the woodland areas and the environmental and economic benefits they provide.
- B. To encourage the owners of woodland to continue that land use for the long-term production of timber, recreation, and wildlife habitat.
- C. To promote good forest stewardship.
- D. To protect the rights of adjacent landowners and public.
- E. To minimize the potential for adverse environmental impacts resulting from improper timber harvesting.
- F. To recognize timbering as a legitimate activity within the Township and avoid unnecessary restrictions on a property owners right to timber.

Section 2. Definitions. Wherever used in this Ordinance, the following words shall have the meanings indicated:

BUFFER ZONE

Land surrounding the immediate perimeter of a timbering and logging operation in which no cutting of trees and other vegetation shall occur except for the isolated cutting of individual trees which are dead, sick, infected or constitute an immediate danger to neighboring properties or the public generally.

CLEAR-CUTTING

A timbering and logging method that removes all trees from a tract of land or portions thereof.

CROWN

The aboveground portion of a tree consisting of branches, stems, buds, fruits and leaves. This may also be referred to as the canopy.

DBH (diameter at breast height)

The tree trunk measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

ENGINEER

The appointed Engineer of the Township of Forward.

EXCAVATION

Any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and shall include the conditions resulting therefrom.

FELLING

The act of cutting a standing tree so that it falls to the ground.

FILL

Any act by which earth, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported or moved to a new location and shall include the conditions resulting therefrom.

FORESTER

A person with a degree in forestry from a college or university accredited by the Society of American Foresters.

FOREST MANAGEMENT PLAN

A plan establishing the best conservation and management practices for a landowner.

GRADE

The elevation of the existing ground surface at the location of any proposed excavation or fill.

GRADING

Excavation or fill or any combination thereof and shall include the conditions resulting from any excavation or fill.

HAZARD

A danger to life, limb, health or property.

LANDING

A place where logs, pulpwood or firewood are assembled for transportation to a processing facility.

MAJOR TIMBERING OPERATION

Any cutting and removing of trees for commercial purposes from a tract of land that is greater than 10 acres in size.

MINOR TIMBERING OPERATION

Any cutting and removing of trees for commercial purposes from a tract of land that is less than 10 acres in size.

PERSON

A natural person but shall also include a partnership or corporation.

SITE

A lot, tract or parcel of land or a series of lots, tracts or parcels of land which are adjoining where timbering and logging is continuous and performed at the same time.

SELECTION METHOD

A method of selectively removing trees from a wooded area either singly or in small groups according to age, size or type, with provisions being made for natural or artificial vegetation.

SKIDDER

A large machine used in moving logs from a stump site to a landing.

SKIDDING

The act of moving logs from a stump site to a landing.

SLASH

The woody material or debris left on the ground after the area is timbered and logged.

TOPS

The upper portion of a felled tree that is unmerchantable because of small size, taper or defect.

TREE

Any self-supporting woody plant growing upon the earth which provides one main trunk and produces a more or less distinct and elevated head with many branches; also, any self-supporting woody plant usually having a single woody trunk and a potential DBH of two inches or more.

Section 3. Minimum Standards. The following shall be minimum standards for issuance of both minor and major timbering and logging permits:

- A. All timbering operations shall be by the selection method. Clear-cutting is prohibited.
- B. Timbering operations shall not be undertaken on any ground with a slope exceeding 25% nor in landslide or flood-prone areas.
- C. Removal of trees which have a DBH of more than 20 inches shall be reviewed by the Township Engineer before inclusion in any timbering operation.

2. Ordinance mandates that tree harvesting is permitted as a special exception or conditional use. The imposition of a special exemption process or conditional use for tree harvesting conflicts with and is preempted by the MPC, which provides that “timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.” 53 P.S. §10603(f). The MPC authorizes the imposition of a special exception in a zoning ordinance only in accordance with the provisions of the MPC. 53 P.S. §10603(c)(1). [Salisbury Township, Lehigh County, August 31, 2007; Municipality of Monroeville, Allegheny County, December 7, 2015]

- D. The diversity of the trees species shall be maintained within the permit area at generally the same ratio both before and after the timbering.
- E. Buffer zones of 25 feet along all abutting properties shall be maintained on the property on which the timber operation is being conducted.
- F. Buffer zones of 25 feet along any streets, streams and around any springs shall be maintained on the property on which the timber operation is being conducted.
- G. All cutting, removing, skidding and transporting of trees as part of the timbering operation shall be planned and performed in such a manner as to minimize the disturbance of or damage to other trees, vegetation and the land itself.
- H. Roads and trails shall be constructed, maintained and abandoned in such manner as to prevent soil erosion and permanent damage to soils and waterways.

- I. Roads and trails shall only be wide enough to accommodate the type of equipment used, and grades of such roads and trails shall be kept as low as possible.
- J. Where possible, stream crossing shall be avoided, but where deemed necessary, crossings shall be made at a right angle across suitable culverts or bridges.
- K. Skidding across live or intermittent streams is prohibited except over culverts or bridges.
- L. All limbs and stubs shall be removed from felled trees prior to skidding.
- M. All trees bent or held down by felled trees shall be promptly released.
- N. No trees shall be left lodged in the process of felling.
- O. Felling or skidding on or across property of others is prohibited without the express written consent of those property owners. Felling or skidding on or across any public street is prohibited without the written permission of the appropriate municipal, county or state government agency.
- P. No tops or slash shall be left within 50 feet of an adjoining property or public street; within 25 feet of any stream and/or historic or scenic trail; or within 10 feet of any drainage ditch.
- Q. The stumps of all felled trees shall be permitted to remain in the soil for stabilization purposes.
- R. Upon completion of the timbering operation, all roads shall be graded to eliminate any wheel ruts, and access to such roads from public streets by motor vehicles of any kind shall be effectively blocked.
- S. Both minor and major timbering permit applicants shall allow Township officials to inspect the sites at times to be determined by the Township.

Section 4. Permit required for minor timbering operation; exceptions. No person shall commence or perform any minor timbering operation without first having obtained a minor timbering permit from the Township. A separate minor timbering permit shall be required for each site. One permit may cover the timbering and logging undertaken on the same site. A minor timbering permit will not be required, however, in any one of the following situations, but in all other respects the provisions of this Ordinance shall apply:

- A. No minor timbering permit is required when the removal of trees is limited to reasonable, regular, normal maintenance and landscaping improvements by individual homeowners where standards in Section 2 of this Ordinance are not violated.
- B. Removal of trees is limited to site preparation for an approved building permit.
- C. Removal of trees is limited to site preparation for an approved site or subdivision plan.

Section 5. Application for minor timbering; special conditions.

- A. Every applicant for a minor timbering permit shall file a written application therefor with the Township in a form and number to be determined by the Township. Such application shall:
 - 1. Describe the land on which the proposed work is to be done by lot, block, tract or street address or similar description which will readily identify and definitely locate the proposed work;

2. State the estimated dates for the starting and completion of the timbering work;
 3. State the purpose for which the timbering application is filed;
 4. Include specifications setting forth the details of work, such as materials, methods, procedures and a certificate of insurance;
 5. Include a description of the type of tree removal project, identifying thinning, selective cutting, clear-cutting, and/or aesthetic improvement cut;
 6. Include a description of the area to be timbered, specifying the area to be timbered, the species mixture, a sampling of tree sizes and the existence of any unusual, scarce or endangered species;
 7. Include a one-hundred-percent inventory of all trees to be timbered, stating species, size and quantity. This inventory shall include those trees which are diseased, damaged or in otherwise unhealthy condition;
 8. Include a statement demonstrating how trees that are not proposed for removal are to be protected during the timbering operation;
 9. Include information as to how all trees will be marked for removal and those trees which are to remain on the site;
 10. Include a specific plan for replanting and reforestation; and
 11. Include a time schedule for the start and completion of all work within the timbering area.
- B. The edge of the designated area will not be disturbed and shall be maintained at a width of 25 feet. Ingress and egress points shall be located as determined and approved.
 - C. AJI trees shall be cut at a minimum of 18 inches to the ground.
 - D. The crowns of the felled trees shall be reduced to firewood length and stacked unless they are removed from the site as they are cut. Branches less than four inches in diameter shall be processed to wood chips and remain on the site.
 - E. AJI other federal, state and local laws, ordinances and resolutions shall be in full force and effect as they relate to any minor timbering operation.

Section 6. Issuance of minor timbering permit; expiration.

- A. A minor timbering permit may be issued by the Township upon:
 1. Payment of a fee based on a schedule set by resolution by the Board of Supervisors.
 2. Evidence of a certificate of insurance in a form and amount approved by the Township.
- B. The Township may impose reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to protect the health, safety and welfare of the Township and its residents.
- C. Every grading permit shall expire by limitation and become null and void if the work authorized by such permit has not been commenced within three months or is not completed within one year from the date of issue.
- D. Where, in the opinion of the Building Inspector or the Township, the work as proposed by the applicant is likely to endanger any property or person or any

street or alley or create hazardous conditions, the minor timbering permit may be denied.

Section 7. Permit required for major timbering operation. No person shall commence or perform any major timbering operation without first having obtained a major timbering operation pennit from the Township. A separate major timbering permit shall be required for each site. One permit may cover the timbering and logging undertaken on the same site.

Section 8. Application for major timbering permit; special conditions.

- A. Every applicant for a major timbering permit shall file a written application therefor with the Township in a form and number to be determined by the Township. An applicant for a major timbering permit must pay a fee based on a schedule set by resolution of the Board of Supervisors for the Township. Each application for a major timbering permit shall:
1. Describe the land on which the proposed work is to be done by lot, block, tract or street address or similar description which will readily identify and definitely locate the proposed work;
 2. State the estimated dates for the starting and completion of the timbering work;
 3. State the purpose for which the timbering application is filed;
 4. Include specifications setting forth the details of work, such as materials, methods, procedures and a certificate of insurance;
 5. Include a description of the type of tree removal project, identifying thinning, selective cutting, clear-cutting, and/or aesthetic improvement cut;
 6. Include a description of the area to be timbered, specifying the area to be timbered, the species mixture, a sampling of tree sizes and the existence of any unusual, scarce or endangered species;
 7. Include a one-hundred-percent inventory of all trees to be timbered, stating species, size and quantity. This inventory shall include those trees which are diseased, damaged or in otherwise unhealthy condition;
 8. Include a statement demonstrating how trees that are not proposed for removal are to be protected during the timbering operation;
 9. Include information as to how all trees will be marked for removal and those trees which are to remain on the site; **Directional felling.**
 10. Include a specific plan for replanting and reforestation;
SEE Attached: 3800-FM-BCW0539 Erosion and Sediment Control Plan (E&S) for a Timber Harvesting Operation
 11. Include a statement of all general soil conditions throughout the proposed timber area;
 12. Include a list of all equipment to be used in the operation; and
 13. Include a time schedule for the start and completion of all work within the timbering area.
- B. The edge of the designated area will not be disturbed and shall be maintained at a width of 25 feet. Ingress and egress points shall be located as determined and approved.
- C. All trees shall be cut at a minimum of 18 inches to the ground.

- D. The crowns of the felled trees shall be reduced to firewood length and stacked unless they are removed from the site as they are cut. Branches less than four inches in diameter shall be processed to wood chips and remain on the site.

25. Ordinance requires that all remaining tops and slash be removed from the site, or does not permit tops and slash to be left within a certain distance of various man-made and natural features such as streets, streams, trails driveways and drainage ditches, or limits the height of slash piles. In this case, the OAG consulted with a PSU School of Agriculture professor emeritus of forestry. This expert opines that tops/slash is an important component to timber harvest site productivity that should be left on site for several reasons. First, tops/slash contributes important elements back into the site. Secondly, tops/slash contributes immensely to organic material cycling which serves to release the micronutrients. If tops/slash are removed or collected in a concentrated area, the micronutrients do not come back into the nutrient cycle quickly or effectively. The tops/slash also help build the O-horizon. Tops/Slash has been shown to help facilitate forest regeneration by deterring deer browsing on actual trees. Much of the microorganism community depends on the habitat created by the tops/slash following harvesting. Another concern with the mandated removal of tops/slash is the impact on the site increases the amount of disturbance from the machinery used to gather and move the tops/slash. Doing this likely contributes to additional tree stem damage, soil compaction, organic matter disturbance, and the loss of habitat described above. While the cost of removing tops/slash is site and circumstance specific, in all cases, it presents the logistical challenge of how to gather it up, move it efficiently to a concentration point, and then chip it for removal from the site. Under any scenario, complete removal is expensive and could require specialized machinery. Tops and slash are good for the environment - not bad. For all these reasons, the township's requirement that tops/slash be removed or concentrated in various areas within the harvest site is a violation of state law as such a mandate constitutes an unreasonable restriction on forestry activities. [East Brandywine Township, Chester County, December 21, 2018; Lower Saucon Township, Northampton County, February 15, 2019; Hellam Township, York County, August 15, 2020; Pine Township, Allegheny County, May 6, 2021]

- E. All other federal, state and local laws, ordinances and resolutions shall be in full force and effect as they relate to any major timbering operation.

Section 9. Notification of neighboring property owners.

The applicant shall provide a list of names and addresses of all property owners within 1,000 feet of the property where an applicant intends to engage in a major timbering and logging operation. The applicant shall notify all affected property owners in writing of the proposed major timbering operation. **Is the 1000 feet measured from the center of property or from the boundary of the property. While the adjacent parcel owners would be well served with notification but those not adjacent have no vested interest in the Timber Operation.**

Section 10. Action by Board of Supervisors.

A completed application for a major timbering permit shall be approved or disapproved by the Township within 90 days of completion with all requirements of Ordinance. Failure to approve or disapprove a completed application for a major timbering permit shall not be considered a deemed approval of the completed application. The Township may impose reasonable conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to protect the health, safety and welfare of the Borough and its residents and property. This includes, but is not limited to, the imposition of bond and insurance requirements.

3. Ordinance stipulates that a timber harvesting permit is issued only after review/approval by the Municipal Engineer, Municipal Planning Commission, Code Enforcement Officer and/or the Council of the Municipality. These review requirements for issuance of a permit effectively change a timber harvesting operation from a permitted use by right to a conditional use, which is expressly prohibited by the MPC and AASL. 53 P.S. §10603(f). A use permitted by right is a use that is not required to be "allowed or denied by the governing body after recommendations by the planning agency and hearing." 53 P.S. §10603(c)(1). This type of review is specifically and only for uses designated as conditional uses as provided under the MPC. "In zoning terminology, the term 'permitted use' refers only to those uses allowed absolutely and unconditionally." *Neighbors of Keiners Lane v. Township of Robinson*, 550 A.2d 863,865 (Pa. Cmwlth 1988). When a "use is permitted under the zoning ordinance there is no basis for the imposition of restrictions on the use greater than those specified in the ordinance itself." *Id.* (citing ROBERT S. RYAN, 2 PENNSYLVANIA ZONING LAW AND PRACTICE § 9.4.18 (George T. Bisel Company, Inc. 2001). Moreover, a zoning officer or code enforcement officer only has authority to "administer the zoning ordinance in accordance to its literal terms" and has no authority to impose conditions not set forth in the ordinance itself. 53 P.S. § 10614. A special exception and conditional use are the types of uses that allow a governing body to impose other conditions as part of an approval. Thus, a permitted use must comply with requirements set forth in an ordinance, but the zoning officer has no authority to determine "reasonable conditions" outside the terms of the ordinance in approving a permit for a timber harvesting operation. [Municipality of Monroeville, Allegheny County, December 7, 2015; East Nantmeal Township, Chester County, April 13, 2016; Pennsbury Township, Chester County, February 20, 2018]

Section 11. Violation and Penalties.

- A. No person shall undertake any action which would be in violation of any provision of this Ordinance.
- C. Any person violating any of the provisions of this Ordinance shall be liable, on conviction thereof, to a penalty not exceeding \$300 plus costs of prosecution or to imprisonment for up to 30 days for each and every offense. Whenever such person shall have been notified by the Township that he is committing such violation, after such notification each day that he shall continue such violation shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected.

Section 12. Other remedies.

In case any work is performed by any person in violation of any of the provisions of this Ordinance, the proper officer of the Township, in addition to other remedies, may institute in the name of the Township any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful work and to restrain or abate such violation.

ORDAINED AND ENACTED this *01* day of *SEPTEMBER* , 2013.

ATTEST:

TOWNSHIP OF FORWARD

Secretary/Treasurer

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Chairman, Board of Supervisors

