

## Chapter 131

### STREETS AND SIDEWALKS

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[HISTORY: Adopted by the Borough Council of the Borough of Montoursville as indicated in article histories. Amendments noted where applicable.]

**GENERAL REFERENCES**

Tress — See Ch. 141.

Vehicles and traffic — See Ch. 150.

**ARTICLE I  
Placing Materials on Streets; Changing Grades  
[Adopted 8-2-1926 by Ord. No. 76]**

**§ 131-1. Placing material in streets and changing grades restricted.**

No person shall place in or upon any of the streets, lanes and alleys of the Borough dirt, ashes or other materials, or change the natural contour of the established grade thereof or the natural flow of surface water, waters changed or impeded, except under the direction and supervision of the Highway Committee of Council or its Street Commissioner upon grades and lines furnished by the Borough Engineer.

**§ 131-2. Failure to comply. [Amended 11-17-1986 by Ord. No. 308]**

Whenever the owner, tenant or occupant of any such real estate has not complied with the terms of this Article, the Borough may cause the dirt, ashes or other materials to be removed and collect the actual costs thereof, from the owner, tenant or occupant.

**§ 131-3. Violations and penalties. [Amended 11-17-1986 by Ord. No. 308; 3-3-1997 by Ord. No. 370]**

Any person who violates any of the provisions of this article shall, upon conviction thereof in a summary proceeding, be subject to the penalty as set forth in Chapter 1, General Provisions, Article II, General Penalty.

**ARTICLE II**  
**Street Widths**  
**[Adopted 12-31-1925]**

**§ 131-4. Widths of streets and alleys.**

No street or other public thoroughfare, except alleys, shall be laid out and opened for public use by the owner or owners of farms or vacant lands, lots or out-lots, within the corporate limits of the Borough of Montoursville of a width fewer than 50 feet, and no alleys of a width fewer than 18 feet.

**§ 131-5. Street plans to be adopted and recorded.**

No street, alley or other thoroughfare shall be laid out or opened for public use by the owner or owners of farms or vacant lands, lots or out-lots, until the width and location of such streets, alleys or other public thoroughfares be fixed by ordinance of the Borough in conformity with a plan or plot of the streets, alleys and public thoroughfares of the Borough, prepared by the Borough Engineer, adopted by Council and on file among the records of the Borough.

**ARTICLE III**  
**Plot and General Plan**  
**[Adopted 2-7-1955 by Ord. No. 139]**

**§ 131-6. General Plan.**

From and after the passage of this article, the plot or plan as prepared by Robert Swartz, Borough Engineer, and entitled "Plot and General Plan of the Streets of the Borough of Montoursville, Pennsylvania," and dated the seventh day of February 1955, shall be the General Plan of the streets of the Borough of Montoursville, Pennsylvania, and from and after the passage of this article the location of streets of the Borough of Montoursville shall be as shown on said plan or plot and the widths of said streets and the lines of the same shall be as shown on said plot or plan and the plot or plan includes and shall include streets laid out but not opened, streets newly located and streets heretofore opened or used.

**§ 131-7. Conformity required.**

From and after the passage of this article all subdivisions of property in the Borough of Montoursville shall be made to conform to said plot or plan, and that said plot or plan shall be filed in the office of the Engineer of the Borough of Montoursville.

**§ 131-8. Adoption by reference.**

The plot or General Plan of the streets of the Borough of Montoursville, Pennsylvania, hereinabove referred to in this article and filed in the office of the Engineer of said Borough, is adopted and approved and is incorporated by reference to this article and made a part of this article.<sup>1</sup>

**ARTICLE IV****Snow and Ice Removal**

[Adopted 2-17-1964 by Ord. No. 190]

**§ 131-9. Clearing of sidewalks and fire hydrants required. [Amended 8-21-2003 by Ord. No. 396; 12-3-2007 by Ord. No. 426]**

- A. It shall be unlawful hereinafter for the owner and/or occupant of any property on any street in the Borough where there is a sidewalk abutting said property to permit an accumulation of snow or sleet to remain upon said sidewalk for a period in excess of 24 hours after said snow or sleet ceases to fall thereon.
- B. Fire hydrants. No property owner or occupant of any dwelling, tenement, store, shop, place of business, church, school or any other building or premises, be it public or private, located adjacent to a fire hydrant located upon any public street or private street shall allow snow, ice, sleet, slush, hail or combination thereof to be pushed or dumped on or to accumulate on any fire hydrant as to impede access by fire emergency personnel to, from and/or around a fire hydrant. In cases involving heavy snowfall and accumulation, fire hydrants shall be cleared of all snow, ice, sleet, slush, hail or combination thereof within 24 hours following the storm; in any event, any accumulated snow, ice, sleet, slush or hail shall be removed not less than once in every twenty-four-hour period. Removal of accumulated snow, ice, sleet, slush, hail or combination thereof is necessary to allow for fire hose connections to be made to access water in the event of a fire. For purposes of this subsection, "fire hydrant" shall mean an upright pipe exposed aboveground with a closed nozzle or spout structure used by fire emergency personnel for drawing water from a public or private water main to use in fighting a fire.
- C. Effective date. This section shall take effect and be in force on January 1, 2008.

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1. Editor's Note: Said plot or plan is on file in the Borough offices.

**§ 131-10. Placing snow on sidewalks or streets prohibited. [Amended 12-17-1979 by Ord. No. 265]**

It shall be unlawful for any person to shovel, plow or cause snow to be placed upon any designated public walkway, sidewalk or any street within the Borough except for Borough employees, servants or contractors hired by the Borough.

**§ 131-11. Violations and penalties. [Amended 11-17-1986 by Ord. No. 305; 3-3-1997 by Ord. No. 370]**

Any person who violates any of the provisions of this article shall, upon conviction thereof in a summary proceeding, be subject to the penalty as set forth in Chapter 1, General Provisions, Article II, General Penalty. Each day's violation shall constitute a separate offense.

**§ 131-12. Costs and penalty if Borough removes snow. [Amended 12-17-1979 by Ord. No. 265; 8-21-2003 by Ord. No. 396]**

If the owner and/or occupant of said property permits, causes or allows said snow or sleet to remain upon or to be put upon said sidewalk in violation of this article, the Borough may cause such snow or sleet to be removed and shall charge the owner and/or occupant with the actual cost of such removal, together with a penalty of \$25, which cost and penalty shall be collected from the occupant and/or from the owner in the manner provided by law for the collection of municipal claims or by action of assumpsit, provided that the recovery of said costs and penalty may be in addition to the penalty imposed as provided in § 131-11 of this article.

## ARTICLE V

## Excavations

[Adopted 10-17-1988 by Ord. No. 322]

**§ 131-13. Definitions and interpretations.**

- A. The following words, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

**EXCAVATION** — Any activity within the right-of-way of any street, alley or cartway which involves cutting, breaking or disturbing the surface thereof. In this article, the term "opening" shall have essentially the same meaning as "excavation."

**PERSON** — Any natural person, partnership, firm, association, corporation or municipal authority.

**STREET** — Any public street, avenue, road, square, alley, highway or other public place located in the Borough of Montoursville and established for the use of vehicles, but shall not include state highways.

- B. In this article, the singular shall include the plural and the masculine shall include the feminine and the neuter.

**§ 131-14. Permit required to make opening or excavation.**

It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Borough of Montoursville without first securing a permit therefor, as hereinafter provided.

**§ 131-15. Application for a permit; fee.**

- A. Any person who shall desire to make any opening or excavation in any of the streets in the Borough of Montoursville shall make application to the Borough Council or its designated representative, in writing, for that purpose. Such application shall be made upon blanks to be furnished by the Borough of Montoursville and shall set forth the name of the applicant, the exact location of the proposed opening or excavation and the approximate size or depth thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough of Montoursville and the laws of the commonwealth in relation thereto, and that the applicant shall well and truly save, defend and keep harmless the demands, payments, costs and charges for or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner therefrom, or occurring in the prosecution of the work connected therewith, or from any other matter, cause or thing relating thereto.
- B. Before any permit shall be issued to open or excavate any street in the Borough of Montoursville, the applicant shall pay a permit fee in the amount designated by Borough Council from time to time by resolution, to cover cost of inspection, other incidental services in connection therewith and the cost of future repair and maintenance. When

application shall be made to open or excavate any longitudinal opening or excavation in excess of 10 feet, the applicant shall pay an additional fee at a rate to be set by Borough Council from time to time by resolution. [Amended 5-7-1990 by Ord. No. 335]

**§ 131-16. Issuance of permits restricted.**

Permits shall be issued only to persons furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made.

**§ 131-17. Information contained on permit.**

Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximate permitted size or depth thereof and the time within which the work for which the permit is granted is to be completed.

**§ 131-18. Permit approval/disapproval.**

A permit may be issued to the applicant after all the requirements therefor have been filed. If the application is disapproved, written notice of disapproval together with reasons therefor shall be given to the applicant.

**§ 131-19. Responsibility to contact utilities.**

The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, P.L. 852, No. 287, § 1 et seq., as amended or supplemented from time to time.<sup>2</sup> It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act. A partial list of utilities providing services in the Borough of Montoursville and their office addresses may be obtained from the County Recorder of Deeds.

**§ 131-20. Refilling of opening or excavation; restoration of surface; responsibility for defects.**

Any person who shall open or excavate any street in the Borough of Montoursville shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter and shall restore the surface to the same condition as it was before the opening or excavation, and such restoration shall be in accordance with the specifications of the Department of Transportation of the Commonwealth of Pennsylvania which are hereby adopted as specifications of the Borough of Montoursville for restoration of surfaces of streets in the Borough of Montoursville, as restored, the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. If within two years after the restoration of the surface as herein provided defects shall appear therein, resulting from defective backfilling by the applicant, the applicant shall

2. Editor's Note: See 73 P.S. § 182 et seq.

reimburse the Borough of Montoursville for the cost of all necessary repairs to the permanent paving.

**§ 131-21. Responsibility of permit holder for certain work; right of Borough of Montoursville to do certain work; charges therefor.**

All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this Article and to the supervision and approval of the designated official, provided that the Borough Council or its designated representative may if he deems it necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Borough of Montoursville, in which event the applicant shall pay the actual cost of the work performed by the Borough of Montoursville.

**§ 131-22. Requirements for work; correction of unsatisfactory work; completion of incomplete work.**

- A. No opening or excavation in any street shall extend from the curblin into the highway a distance greater than one foot beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.
- B. No more than 500 feet longitudinally shall be opened in any street at any one time.
- C. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their connections with the houses, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.
- D. No tunneling shall be allowed without the express approval of the Borough Council or its designated representative and permission therefor endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Borough Council or its designated representative, or an inspector designated by him, and shall be done only in a method approved by him.
- E. All openings or excavations shall be backfilled promptly with modified 2A stones and thoroughly compacted in layers, each of which layers shall not exceed eight inches in depth. Backfilling shall be placed to within 10 inches of the surface.
- F. A temporary paving of coldpatch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of 90 days.
- G. On concrete base streets, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be 16 square feet.
- H. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the

street in a safe and passable condition both day and night by guards, barriers, lanterns and other devices, and all excavating permits granted hereunder are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, save and keep harmless the Borough of Montoursville from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by said excavation, or by any leak, explosion or other injury from any pipe, apparatus, conduit or any other matter placed in said excavation.

- I. The applicant shall notify the Borough Council or its designated representative, when the opening or excavation is ready for backfilling before any backfilling is done, when backfilling work is completed, when the temporary paving has been installed and when the street has been permanently restored so that inspections may be made.
- J. In the event that any work performed by or for a permit holder shall, in the opinion of the Borough Council or its designated representative be unsatisfactory and the same shall not be corrected in accordance with his instructions within the time fixed by him, or in the event that the work for which the permit was granted is not completed with time fixed by the Borough Council or its designated representative, the Borough of Montoursville may proceed to correct such unsatisfactory work or complete any such work not completed and charge the cost thereof, plus 20%, to the applicant.

#### **§ 131-23. Emergency openings.**

In the case of any leak, explosion or other accident in any subsurface pipe, line, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction or apparatus, to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this Article are fully complied with. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line construction or apparatus, the Borough Council or its designated representative, after such notice as he shall deem necessary under the circumstances of the particular case, shall proceed to do the work necessary and required by such emergency and charge the same on the basis of cost, plus 20%, to such owner or person.

#### **§ 131-24. Restrictions regarding trees and shrubbery.**

The permission herein granted does not confer upon the permittee or its contractors the right to cut, work necessitating opening or excavation to be done prior to street improvement and not until five years thereafter remove or destroy trees or shrubbery within the legal right-of-way except under specifications, regulations and conditions as the Borough of Montoursville may prescribe.

#### **§ 131-25. Time limits for completion of work; exception; fee.**

- A. The Borough Council or its designated representative shall give timely notice to all persons owning property abutting on any street within the Borough of Montoursville

about to be paved or improved and to all public utility companies operating in the Borough of Montoursville, and all such persons and utility companies shall make all water, gas or sewer connections, as well as any repairs thereto which would necessitate excavation of said street, within 30 days from the giving of such notice, unless such time is extended, in writing, for cause shown by the Borough Council or its designated representative. New paving shall not be opened or excavated for a period of five years after the completion thereof, except in case of emergency, the existence of which emergency and the necessity for the opening or excavating or such paving to be determined by the Borough Council. If it is sought to excavate upon or open a sewer within five years after the completion of the paving, applicant shall make written application to the Borough Council, and a permit for such opening shall be issued only after express approval of the Borough Council.

- B. Work necessitating opening or excavation to be done after street improvement under the Federal Department of Transportation Code 192.727 and Pennsylvania Public Utility Commission Code 59.36 of inactive services, the fee shall be determined by Borough Council from time to time by resolution. [Added 5-7-1990 by Ord. No. 335]

**§ 131-26. Permittee responsibilities for future relocation of work.**

If at any time in the future the roadway is widened, reconstructed or the alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway at its own cost and expense.

**§ 131-27. Conditions for laying and extending utility lines.**

No new water, sewer, steam or gas main or electric, telephone or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any of the streets of the Borough of Montoursville until the plan therefor shall have been first filed with the Borough Council or its designated representative and such plan, and the exact location of such main or line, approved by him. The Borough Council or its designated representative shall not approve the location of any such main or line at a depth of less than 30 inches from the surface of the street, unless he shall be convinced that locating the same at a depth of more than 30 inches from the surface is impossible or impractical.

**§ 131-28. Bond required.**

No company, corporation or association shall dig up any street or alley without first giving to the Borough of Montoursville a bond with some acceptable trust or surety company as surety in the sum of \$10,000, conditioned for the faithful performance of these provisions and also for any and all damages, claims, demands, suits, costs and counsel fees occasioned or arising from the digging up, opening or closing of said streets and alleys.

**§ 131-29. Payment for work done by Borough of Montoursville.**

Payment for all work done by the Borough of Montoursville under the provisions hereof shall be made by the person made liable therefor under the provisions hereof within 30 days after a bill therefor is sent to such person by the Borough of Montoursville. Upon failure to pay such charges within such time, the same shall be collectible by the Borough of Montoursville by an action in assumpsit or in the manner provided by law for the collection of municipal claims.

**§ 131-30. Violations and penalties.<sup>3</sup>**

Any person, firm or corporation who or which shall violate any provision of this Article shall, upon conviction thereof, be subject to the penalty set forth in Chapter 1, General Provisions, Art. II, General Penalty. Every day that a violation of this Article continues shall constitute a separate offense.

**§ 131-31. Applicability.**

The provisions of this Article shall not apply to laying sidewalks or curbs.

ARTICLE VI  
Curbs and Sidewalks Specifications  
[Adopted 7-3-1989 as Ord. No. 328]

**§ 131-32. Authority of Borough to establish curbs and sidewalks.**

Pursuant to authority contained in the Borough Code,<sup>4</sup> the Borough shall establish a grade or grades for curbs and sidewalks along any street and, with the consent of the Secretary of Transportation of the commonwealth, along any state highway, which grade or grades may be separate and apart from the grade or grades established for the cartway or roadway. Further, the Borough shall fix the size and shape of all the curbs and sidewalks and may fix the location or locations of all curbs and sidewalks with respect to the lot lines fronting thereon as well as where pedestrian traffic requirements, in the opinion of Borough Council, dictate the need for said construction.

**§ 131-33. Requirements for new or reconstructed sidewalks and curbs.**

- A. Grades, grade receipts. All new sidewalks and curbs prior to construction shall first have a grade established by the Borough Engineer. The cost for the grade shall be as determined from time to time by resolution of Borough Council.
- B. Application for inspection; issuance of grade receipts. Upon the completion of the construction, reconstruction or repair of a curb or sidewalk, the person making the construction, reconstruction or repair, or the owner of the lot fronting thereon shall make written application to the Borough for the inspection of the curb or sidewalk by the

3. Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

4. Editor's Note: See 53 P.S. § 45101 et seq.

Borough, and for the issuance of a grade receipt. Upon inspection of the curb or sidewalk by the Borough, should the curb or sidewalk conform to the grade, location and specifications established and fixed by the Borough, the Borough shall issue a grade receipt to the owner of the lot fronting thereon. A grade receipt so issued shall be prima facie evidence that the curb or sidewalk conforms to the above-mentioned grade, location and specification established and fixed by the Borough. The Borough shall keep permanent records of grade receipts issued, which records shall show the grades, location and specifications established and fixed for the curb or sidewalk.

**§ 131-34. Sidewalks specifications.**

- A. Size and shape. Sidewalks shall be of a uniform depth of four inches, except where crossing driveways where the depth shall be six inches for residential driveways and #10 wire mesh and eight inches for commercial driveways with #6 wire mesh. The width shall be four feet by five feet except where matching existing sidewalks or where the Borough Engineer and Council deems a wider sidewalk is necessary.
- B. Forms. The forms used shall be of metal, but wood forms may be used when authorized. All forms shall be smooth, straight, free from warp and of sufficient strength to resist the pressure of the concrete without springing. Sufficient stakes shall be used to hold the forms firmly to line and grade.
- C. Material. Sidewalks shall be made of concrete. All concrete used shall conform to Pennsylvania Department of Transportation specifications for Class A concrete. It shall be composed of Type C normal strength air-entraining portland cement, fine aggregate and coarse aggregate mixed on a 1-1.6-3.75 basis with a minimum of six bags of cement per cubic yard of concrete. Mixing shall be carried out in accordance with the applicable sections of Form 408 of Pennsylvania Department of Transportation specifications for Class A concrete, as from time to time amended. Coarse aggregate for all concrete shall be composed of 2B crushed limestone or 2B crushed gravel meeting Pennsylvania Department of Transportation specifications. Fine aggregate shall be sand and meet the same specifications. Sidewalks may be constructed of amiesite along nonresidential zones where a substantial part of the property adjoining the sidewalk is paved with amiesite to form an apron for parking or means of access such as that used at gasoline stations and garages, provided that:
  - (1) The owner shall first secure the approval of Borough Council for a variance.
  - (2) The owner or occupant thereafter keep the sidewalk area outlined with highway type marker paint. The failure or neglect of the owner or occupant to keep the area distinctly so outlined shall constitute a violation of this Article. The Borough may at its option cause the walks to be outlined and bill the property owner or lessee for the work.
- D. Construction procedure.
  - (1) Forms for sidewalks shall be of metal, shall be sufficiently tight so as to prevent leakage of mortar, and shall be braced or tied together in such a manner so as to maintain the desired alignment, grade and shape during and after the placing of

concrete. Expansion joints shall be provided at the end of each block by using a steel template one-eighth (1/8) inch in thickness to separate adjacent blocks. This template shall be removed before the concrete is set hard and care shall be exercised in its removal, which shall then be tooled or alternate control joints may be tooled at intervals not to exceed five feet with three-fourth-inch deep jointer. Forms and templates, which have been used previously must be thoroughly brushed, cleaned and treated with an approved material to prevent concrete from adhering thereto, before being used.

- (2) Care shall be taken during the placing of concrete to flush the mortar to the surface so as to secure a smooth surface. The surface shall be finished by experienced finishers as soon after placing the concrete as conditions will permit. The schedule of placing concrete and removing forms shall be so arranged as to permit finishing before the concrete reaches a final hard set. The surface shall have a textured nonslip broom or float finish.
- (3) Care shall be exercised to prevent damage to the sidewalk after finishing and during the curing period. After finishing is complete, the sidewalk shall be covered with an approved moisture-retaining cover, and kept moist for a period of three days or use of a curing compound meeting ASTM C-309 requirements.
- (4) After the sidewalk has been finished and cured as hereinbefore set forth, the spaces on both sides shall be backfilled with acceptable material to a level even with the surface of the sidewalk.
- (5) During the excavation, construction, curing and backfilling of any sidewalk, adequate hazard warning to pedestrian traffic shall be placed and maintained by means of barricades, lights or similar means.
- (6) Repair or replacement of existing sidewalks. All sidewalks hereafter determined, by or through the Borough Council or the Borough Engineer, as needing extensive or substantial repairs shall be relaid in accordance with the provisions of this Article.
- (7) Maintenance in usable condition required. Except only under circumstances beyond the control of an abutting property owner, all sidewalks shall be kept at all times in safe and usable conditions and in good repair by the owner of the abutting property.
- (8) Backfilling sidewalk next to a radius. Where a curb radius and sidewalk are being constructed and/or replaced, the back side of the curb area where the sidewalk is to be placed, shall be backfilled and compacted with 2B gravel or larger.
- (9) Monolithic radius. Curb and walk may be poured together to prevent walk from sinking below curb. Walk and curb depths shall be maintained as defined in this Article. Radius shall meet PennDOT specs for handicap access ramp.

**§ 131-35. Curb specifications.**

- A. Size and shape. Curbs shall be 18 inches high, eight inches wide at the base and seven inches wide at the top, with one-inch batter on the face or roadway side of the curb.
- B. Material. Curbs shall be made of concrete and of no other material. All concrete used shall conform to Pennsylvania Department of Transportation specifications for Class A concrete. It shall be composed of Type C normal strength air-entraining portland cement, fine aggregate and coarse aggregate mixed on a 1-1.6-3.75 basis with a minimum of six bags of cement per cubic yard of concrete. Mixing shall be carried out in accordance with the applicable sections of Form 408 of Pennsylvania Department of Transportation specifications for Class A concrete, as from time to time amended. Coarse aggregate for all concrete shall be composed of 2B crushed limestone or 2B crushed gravel meeting Pennsylvania Department of Transportation specifications. Fine aggregate shall be sand, meeting said specifications.
- C. Construction procedures.
- (1) Forms for curb shall be of metal except that wood forms may be used on curves or short tangent sections when permission for such use is granted by the Borough Engineer. The curb shall be constructed in uniform lengths or sections of 10 feet with the exceptions of those areas requiring short transition sections. No section shall be less than four feet in length. Forms shall be sufficiently tight so as to prevent leakage of mortar, and shall be braced or tied together in such manner as to maintain the desired alignment, grade and shape during and after the placing of concrete. Care shall be taken during the placing of concrete to flush the mortar to the face of the curb by spading so as to secure a smooth face. Expansion joints shall be provided at the end of each section by using a steel template one-eighth-inch thickness to separate adjacent sections. This template shall be removed before the concrete is set hard and care shall be exercised in its removal to secure sharp clean edges adjacent to the joints. Forms and templates, which have been used previously, must be thoroughly brushed, cleaned and treated with an approved material to prevent concrete from adhering thereto, before being used.
  - (2) All exposed surfaces of the concrete curb shall be finished by experienced finishers as soon after placing the concrete as conditions will permit. The schedule of placing concrete and removing forms shall be so arranged as to permit finishing before the concrete reaches a final hard set. The top and roadway face of the curb shall be rubbed or floated to a textured finish. Brush finishing or plastering will not be permitted.
  - (3) Care shall be exercised to prevent damage to the curb after finishing and during the curing period. After finishing is complete, the curb shall be covered with canvas, burlap, sand or other approved moisture retaining cover and kept moist for a period of three days or use a curing compound meeting ASTM C-309 requirements.
  - (4) Backfilling. After the curb has been rubbed and finished and cured for the minimum of three days as hereinbefore set forth, the spaces in front and back of the curb shall be backfilled with acceptable material. Backfill shall be carefully

compacted and tamped so as to prevent any displacement of the curb from correct alignment.

- D. Curb openings for driveways or dropped curbs. All curb openings for driveways or dropped curbs shall conform with "Article 8 Access Driveway Regulations" of the Montoursville Zoning Ordinance.<sup>5</sup> Dropped curbs may be poured monolithic with apron, providing depths are maintained as outlined in the ordinance. Contraction joints in six-inch pavements shall be 1 1/2 inches deep, two-inches deep in eight-inch pavement.
- E. Replacement of existing curbs.
- (1) All curbs hereafter determined, by or through the Borough Council or the Borough Engineer, as needing extensive or substantial repairs, shall be relaid in accordance with the provisions of this Article.
  - (2) Capping curbs. Bad sections of curbing shall be chopped down at least six inches below pavement, drilled and pinned with one-half-inch rebar on angles, approximately two to three feet apart. Rebar pin shall be embedded at least four inches to old curb and four inches into new concrete.
- F. Maintenance in usable condition required. Except only under circumstances beyond the control of an abutting property owner, all curbs shall be kept at all times in safe and usable condition and in good repair by the owner of the abutting property.

**§ 131-36. Sale of home; sidewalk and/or curb specifications.**

- A. From and after the effective date of this Article, no property, parcel or lot of land within the Borough of Montoursville (whether the same be improved or unimproved) shall be sold, transferred or conveyed (whether by deed or Article of Agreement) without said owner first:
- (1) Alternate 1: constructing, reconstructing or repairing the sidewalk (and/or curbs) abutting said property, parcel or lot of land so as to bring the sidewalk (and/or curbs) into conformity with the specifications for the same as set forth in this Article.
- B. Any seller or sellers failing to comply with the terms and provisions of this section of this Article, shall remain liable to the buyer or buyers for the cost of constructing, reconstructing or repairing the sidewalk (and/or curbs) as to make the same conform to the specifications of this Article.
- C. Regardless of whether there is compliance with this section by any seller or sellers, any owner of property shall remain liable as is set forth in this Article.

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5. Editor's Note: See Ch. 158, Zoning.

**§ 131-37. Owner to comply upon notice.**

Every owner of property in the Borough of Montoursville shall, on 30 days written notice from the Borough Council, construct, reconstruct or repair a curb or sidewalk in front of and/or alongside of such property, which curb or sidewalk shall conform to the grade, location and specifications established and fixed by the Borough Engineer. The notice may be served upon the owner by mailing the same to him at his last known address by certified mail, return receipt requested.

**§ 131-38. Claims against owner if Borough does work.**

- A. Upon the neglect of any property owner to comply with the requirements as provided in the preceding sections of this Article or in the event that any property owner maintains a curb or sidewalk which has been constructed, reconstructed or repaired subsequent to the effective date of this Article and for which a grade receipt has not been issued, the Borough may cause the construction, reconstruction or repairing of the curb or sidewalk to be done at the cost of such owner and may collect the cost thereof and 10% additional together with all charges and expenses from such owner and may file a municipal claim therefore or collect the same by an action in assumpsit.
- B. All such notices shall be served upon the owner of the premises to which the notice refers, if such owner is a resident of the Borough. If the owner is not a resident, then the notice may be served upon the agent or tenant of the owner or upon the occupant of such premises, after such premises, if the owner has no agent or tenant or there is no occupier of such premises, then service shall be by notice posted upon the premises.

**§ 131-39. Curb or sidewalk construction projects. [Amended 3-3-1997 by Ord. No. 370]**

- A. When the Borough Council requires that curb or sidewalk be installed along one or more properties along a section of a street, the Borough may, with or without the consent of the property owners, or at the time a bid is awarded, cause the curb or sidewalk to be constructed along the properties and collect the cost thereof from such owners by allocating the contract price of the construction among such owners on a front foot basis; and in addition the Borough shall charge each such owner a fee as set from time to time by resolution of the Borough Council which costs and fees the Borough may collect by filing a municipal claim or by action in assumpsit.
- B. Curbs or sidewalks constructed under curb and sidewalk construction projects shall conform to the rules, regulations and specifications established and fixed by the Borough for all curbs and sidewalks.
- C. On curb and sidewalk construction projects in which the Borough causes the curb or sidewalk to be constructed with the consents of the property owners, the consenting property owners shall not be required to apply for or secure permits to construct the curbs or sidewalks; however, upon the completion of the construction to the satisfaction of the Borough, the Borough shall issue grade receipts to the property owners fronting on the curb or sidewalk constructed under the project.

**§ 131-40. Borough Engineer.**

The Borough Engineer or Borough Council shall have jurisdiction over all curbs and sidewalks constructed, reconstructed or repaired along any street, and strict compliance with the specifications established by the Borough Engineer or Borough Council shall be required whether the work is done under a contract with the Borough or under a contract between the property owner and a contractor or by the property owner himself. Where the work is done under a contract between the property owner and a contractor or by the property owner himself, the Borough Engineer or Borough Council may, at their discretion, require inspection of the work in progress at the expense of the property owner. The finished work on all curbs and sidewalks shall meet the approval of the Borough Engineer. Any curb rejected by the Borough Engineer shall be promptly removed and replaced at the expense of the person doing the work and at no expense to the Borough. The Borough Engineer or Borough Council may delegate authority to a Borough Inspector to inspect work.

**§ 131-41. Variations.**

Any property owner desiring a variation from the rules, regulations and specifications established and fixed by the Borough may make a written request therefore to the Borough specifying the variation requested. Such request shall be referred promptly to the Highway Committee, who shall investigate the request and may secure the recommendation of the Borough Engineer. The Highway Committee shall promptly make its report and recommendation to the Borough Council, which may grant such variation as it deems proper.

**§ 131-42. Time limit.**

All work performed under and pursuant to this Article shall be completed within 60 calendar days of the date such work is started.

**§ 131-43. Typical views.**

Diagrams showing typical cross-section and plain views of sidewalks or curbs constructed, reconstructed or repaired according to these regulations will be furnished upon request or where the Borough deems necessary.

**§ 131-44. Violations and penalties. [Amended 3-3-1997 by Ord. No. 370]**

In addition to the provisions before set forth for the collection of fees, charges, costs and expenses, any person, firm or corporation which shall violate any of the provisions of this Article shall, upon conviction before a District Justice, be guilty of a summary offense and shall be subject to the penalty as set forth in Chapter 1, General Provisions, Article II, General Penalty.

ARTICLE VII  
Driveway Permits  
[Adopted 11-6-2006 by Ord. No. 417]

**§ 131-45. Permit required for driveway construction.**

It shall be unlawful for any person to construct, reconstruct or replace any driveway in the Borough without first securing a permit.

**§ 131-46. Application; fee.**

Any person who shall desire to construct, reconstruct, replace or resurface any driveway, or any portion thereof, shall make application to the Borough in writing. The application shall be made upon forms to be furnished by the Borough, and the applicant shall pay a permit fee, if any, in the amount designated by Borough Council from time to time by resolution.

**§ 131-47. (Reserved)**

**§ 131-48. (Reserved)**

**§ 131-49. (Reserved)**

ARTICLE VIII  
Commercial Use of Sidewalks  
[Adopted 9-4-2007 by Ord. No. 424]

**§ 131-50. Definitions.**

As used in this article, the following terms shall have the following meanings:

**BRICK PAVERS** — The portion of the sidewalk constructed of brick.

**BUSINESS** — Any activity conducted on the first floor of any building in the 300 Block of Broad Street.

**PERSON** — Any natural person, partnership, association, firm or corporation.

**SIDEWALK** — The area between the street and any building used for pedestrian travel, including the curb, brick pavers and concrete walkway.

**§ 131-51. Commercial use prohibited; exceptions.**

In the 300 Block of Broad Street it shall be unlawful for any person to:

- A. Store or display any vending machines on the sidewalk except vending machines for the sale of newspapers or other publications.

- B. Store or display any merchandise on the brick pavers.
- C. Store or display merchandise within five feet of the edge of the brick pavers. For the purposes of this section "edge of the brick pavers" shall mean the edge which is adjacent to the concrete walkway.
- D. Store or display any merchandise on the sidewalk in front of a business without the consent of the owner of the business.
- E. Store or display any merchandise or any counters, cases, racks or other objects used to store or display merchandise other than during the regular business hours of the adjacent business.

**§ 131-52. Violations and penalties.**

Any person who shall violate any of the provisions of this article or offers or permits the same to be done on his behalf shall, upon conviction thereof, be subject to the penalty in Chapter 1, General Provisions, Article II, General Penalty.

## Chapter 136

### TAXATION

#### ARTICLE I

##### Earned Income and Net Profits Tax

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- #### ARTICLE II
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  - § 136-17. Recovery of unpaid tax; interest and penalty; employer records.
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  - § 136-19. Interpretation; validity.
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#### ARTICLE III

(Reserved)

§ 136-23. (Reserved)

§ 136-24. (Reserved)

§ 136-25. (Reserved)

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§ 136-27. (Reserved)

#### ARTICLE IV

##### Realty Transfer Tax

- § 136-28. Title.
- § 136-29. Definitions.
- § 136-30. Imposition of tax.
- § 136-31. Exempt and excluded transactions.
- § 136-32. Properties partially within the Borough of Montoursville.
- § 136-33. Time tax due; liability for payment.
- § 136-34. Statement of value.
- § 136-35. Documentary stamp.
- § 136-36. Rules and regulations.
- § 136-37. Duty of Recorder of Deeds.
- § 136-38. Interest and penalties.
- § 136-39. Unlawful acts.
- § 136-40. Violations and penalties.
- § 136-41. Legislative authority; continuation of provisions.

**[HISTORY: Adopted by the Borough Council of the Borough of Montoursville as indicated in article histories. Amendments noted where applicable.]**

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#### ARTICLE I

### **Earned Income and Net Profits Tax [Adopted 12-16-2002 by Ord. No. 392<sup>1</sup>]**

#### **§ 136-1. Title.**

This article shall be known and may be cited as the "Earned Income and Net Profits Tax Ordinance."

#### **§ 136-2. Imposition of tax.**

A tax for general revenue purposes of 1/2% is hereby imposed on earned income and net profits earned by residents of the Borough and by nonresidents for work done or services performed therein earned or paid on or after January 1, of any year, and continuing for each taxable year thereafter without annual reenactment.

#### **§ 136-3. Incorporation of statute.**

The provisions of the Local Tax Enabling Act, P.L. 1257, No. 511, December 31, 1965,<sup>2</sup> as hereinafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, are incorporated herein by reference.

#### **§ 136-4. Adoption of regulations.**

The regulations promulgated by the Municipal and School Income Tax Office, as amended, are hereby adopted.<sup>3</sup> All subsequent amendments to the Municipal and School Income Tax Office regulations may be adopted from time to time by resolution of the Borough Council.

#### **§ 136-5. Violations and penalties.**

- A. Any person who fails, neglects or refuses to make any declaration or return required hereunder, any employer who fails, neglects or refuses to register or to pay the tax deducted from his employees, or fails, neglects or refuses to deduct or withhold the tax from his employees, any person who refuses to permit the examination of his books, records and papers and any person who knowingly makes any incomplete false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of his net profits or earned income in order to avoid the payment of the

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1. Editor's Note: This ordinance superseded former Art. I, Earned Income Tax, adopted 1-3-1967 by Ord. No. 204, as amended.
  2. Editor's Note: See 53 P.S. § 6901 et seq.
  3. Editor's Note: Said regulations are on file in the Borough offices.

whole or any part of the tax imposed hereunder, shall, upon conviction thereof before any District Justice of a court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of said fine and costs, to be imprisoned for a period not exceeding 30 days. All fines and penalties collected by any District Justice shall be paid to the Officer of the Borough of Montoursville, to be credited to the account of the Borough of Montoursville.

- B. Any person who divulges any information which is confidential under the provisions of this article, shall, upon conviction thereof before any District Justice or court of competent jurisdiction, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of said fines and costs, to be imprisoned for a period not exceeding 30 days.
- C. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section hereof
- D. The failure of any person to receive or procure forms required for making the declaration or returns required hereunder shall not excuse him from making such declaration or return.

## ARTICLE II

### Local Services Tax

[Adopted 12-19-1966 by Ord. No. 203; amended in its entirety 12-3-2007 by Ord. No. 427<sup>a</sup>]

#### § 136-6. Short title; legislative authority.

This article shall be known and may be cited as the "Montoursville Borough Local Services Tax Ordinance." This article is enacted under the authority of the Local Tax Enabling Act, 53 P.S. § 6901 et seq., and continues and redesignates the emergency and municipal services tax as the local services tax pursuant to Act No. 7 of 2007.

#### § 136-7. Definitions.

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning.

**BOROUGH OF MONTOURSVILLE** — The area within the corporate limits of the Borough of Montoursville.

**COLLECTOR** — The person or agency appointed from time to time by the Montoursville Borough Council to assess and collect the tax imposed under, and to administer the provisions of, this article.

4. Editor's Note: This ordinance also provided that the local services tax shall be levied beginning 1-1-2008.

**EMPLOYER** — An individual, partnership, association, corporation, governmental body, agency or other entity employing one or more persons on a salary, wage, commission or other compensation basis, including a self-employed person.

**FISCAL YEAR** — The twelve-month period beginning January 1, 2008, and ending December 31, 2008, and each 12 months thereafter.

**HE, HIS, or HIM** — Indicates the singular and plural number as well as male, female and neuter genders.

**INDIVIDUAL** — Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the Borough of Montoursville.

**OCCUPATION** — Any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, carried on or performed within the corporate limits of the Borough of Montoursville for which compensation is charged or received, whether by means of salary, wages, commissions or fees for services rendered.

**TAX** — The local services tax.

**§ 136-8. Imposition of tax; exemptions.**

- A. Imposition of tax. Beginning January 1, 2008, the Borough of Montoursville (Borough) hereby levies and imposes, on each occupation engaged in by individuals within its corporate limits during the fiscal year of 2008 and each fiscal year thereafter, a local services tax. For the fiscal year 2008, said tax shall be in the amount of \$20 per annum and shall be collected for the sole benefit of the Borough of Montoursville. This tax does not include any occupational privilege tax or local services tax levied and collected separately by the Montoursville Area School District.
- B. This tax is in addition to all other taxes of any kind or nature heretofore levied by the Borough, and this tax shall continue in force, without annual reenactment, unless the rate of the tax is subsequently changed or this article is repealed.
- C. Exemptions. The following individuals shall be exempt from the local services tax:
- (1) Persons whose earned income and net profits from all sources within the Borough is less than \$12,000 per annum for the calendar year in which the tax is levied.
  - (2) Any person who served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, a person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans Administration or its successors to be a total, one-hundred-percent permanent disability.
  - (3) Any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year. For purposes of this subsection, "reserve component of the armed forces" shall mean the United States Army Reserve, United States Navy Reserve, United States Marine Corps

Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.

D. Exemption certificate.

- (1) Any person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the Borough and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the Borough of less than \$12,000 in the calendar year for which the exemption certificate is filed. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within the Borough for the year prior to the fiscal year for which the employee is requesting to be exempted from the local services tax. Upon receipt of the exemption certificate the Borough shall provide a copy of the exemption certificate to the Collector. Upon receipt of the exemption certificate by the employer and until otherwise instructed by the Borough, the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies.
- (2) With respect to a person who claimed an exemption for a given calendar year from the local services tax upon notification to an employer by the person or by the Borough that the person has received earned income and net profits from all sources within the Borough equal to or in excess of \$12,000 in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within the Borough in an amount equal to or in excess of \$12,000 in that calendar year, an employer shall withhold the local services tax from the person.

**§ 136-9. Duty of employer to collect; return and payment.**

Each employer who engages in business within the Borough of Montoursville is hereby charged with the duty of collecting, from each of his employees engaged by him and performing for him within the Borough of Montoursville, this tax and making a return and payment thereof to the Collector.

**§ 136-10. Withholding by employer.**

- A. Each employer is hereby authorized to deduct the tax from each employee in his employ, whether said employee is paid salary, wages or commission and whether or not part or all of such services are performed within the Borough.
- B. A person subject to the local services tax shall be assessed a pro rata share of the tax for each payroll in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the rate of the local services taxes levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest 1/100 of a dollar. Collection of the tax shall be made on a

payroll-period basis for each payroll period in which the person is engaging in an occupation.

- C. In the case of concurrent employment, however, the employer shall refrain from withholding the tax if the employee provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal placement of employment within two weeks of its occurrence.
- D. Taxes deducted from wages by an employer shall at all times be and remain the property of this Borough and shall constitute a trust fund in the employer's hands until remitted to the Collector. Deduction of taxes from wages shall, as between the employee and the Borough, constitute payment of the tax by the employee, regardless of any insolvency or failure to remit on the employer's part.

**§ 136-11. Return required; commission.**

- A. Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied by the Collector.
- B. Each employer, in filing this return and making payment of the tax withheld from his employees, shall be entitled to retain a commission calculated at the rate of 2% of the gross tax due and payable, provided that such tax is collected and paid over by the employer on or before the dates hereinafter set forth.

**§ 136-12. Remittance to Collector; annual report.**

Each employer shall remit the taxes collected to the Collector within 30 days of the end of each quarter. The employer shall submit an annual report detailing the number of employees, names of the employees and the amount collected within 30 days of the end of each calendar year.

**§ 136-13. Individuals engaged in more than one occupation within Borough.**

Each individual who shall have more than one occupation within the Borough shall be subject to the payment of this tax on his principal occupation, and his principal employer shall deduct this tax and deliver to him evidence of deductions on a form to be furnished to the employer by the Borough, which form shall be evidence of deductions having been made and, when presented to any other employer, shall be authority for such employer to not deduct this tax from the employee's wages, but to include such employee on his return by setting forth his name, address and the name and address of the employer who deducted this tax.

**§ 136-14. Self-employed individuals.**

All self-employed individuals who perform services of any type or kind or engage in any occupation or profession within the Borough shall be required to comply with this article on June 15 of the fiscal year or as soon thereafter as he engages in an occupation.

**§ 136-15. Nonresidents subject to tax.**

All employers and self-employed individuals residing or having their place of business outside the Borough but who perform services of any type or kind or engage in any occupation or profession within the Borough do, by virtue thereof, agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this article with the same force and effect as though they were residents of the Borough. Any individual engaged in an occupation within the Borough and an employee of a nonresident employer may, for the purpose of this article, be considered a self-employed person, and in the event this tax is not paid, the Borough shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

**§ 136-16. Duty of Collector; administration and enforcement of tax.**

- A. It shall be the duty of the Collector to accept and receive payments of this tax and to keep a record thereof showing the amount received by him from each employer or self-employed person, together with the date the tax was received.
- B. The Collector is hereby charged with the administration and enforcement of this article and is hereby charged and empowered to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of the payroll records of any employer subject to this article, the examination and correction of any return made in compliance with this article and any payment alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred. Any person aggrieved by any decision of the Collector shall have the right to appeal to the Court of Common Pleas of Lycoming County as in other cases provided.

**§ 136-17. Recovery of unpaid tax; interest and penalty; employer records.**

- A. In the event that any tax under this article remains due or unpaid 30 days after the due dates above set forth, the Borough may sue for the recovery of any such tax due or unpaid under this article, together with interest and penalty.
- B. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax shall be calculated beginning with the due date of said tax and an additional penalty of 1/2 of 1% of the amount of the unpaid tax shall be added and collected for each month or fraction thereof during which the tax remains unpaid. Where suit is brought for the recovery of this tax, the individual liable therefore shall, in addition, be responsible and liable for the costs of collection, including attorney's fees.

- C. The Collector or his duly authorized representative or agent is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the collector or his duly authorized representative or agent the means, facilities and opportunity for such examinations.

**§ 136-18. Violations and penalties.**

- A. Any person who makes any false or untrue statement on any return, exemption certificate or document required by this article, or who refuses inspection of his books, records or accounts in his custody and control setting forth the number of employees subject to this tax who are in his employment, or whoever fails or refuses to file any return commits a violation of this article. If the Borough Council or the Collector determines that a person has committed or permitted the commission of a violation of this article, the Borough may institute summary criminal proceedings and/or may seek equitable relief.
- B. In the event summary criminal proceedings are instituted, the fine for the first offense shall be no less than \$100 and not more than \$600. The fine for a second offense shall be no less than \$300 and not more than \$600. The fine for a third or greater offense shall be not less than \$500 and not more than \$600.
- C. Each day or portion thereof in which a violation exists shall be considered a separate violation. Each section of this article which is violated shall be considered a separate violation.
- D. The amount of any fine imposed by a District Judge or a court shall be in addition to any other fine which may be imposed under any other provisions of the Code of Ordinances of the Borough or under any statute. In default of payment of any fine, such person shall be liable to imprisonment for not more than 30 days.
- E. The action to enforce this article may be instituted against any person in charge of the business or any employer who shall have failed or refused to file a return required by this article.

**§ 136-19. Interpretation; validity.**

- A. Nothing contained in this article shall be construed to empower the Borough to levy and collect the tax hereby imposed on any occupation not within the taxing power of the Borough under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.
- B. If the tax hereby imposed shall be held in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, such decision shall not affect or impair the right to impose or collect said tax, or the validity of the tax so imposed, on the other persons or individuals as herein provided.

**§ 136-20. (Reserved)**

§ 136-21. (Reserved)

§ 136-22. (Reserved)

ARTICLE III  
(Reserved) <sup>5</sup>

§ 136-23. (Reserved)

§ 136-24. (Reserved)

§ 136-25. (Reserved)

§ 136-26. (Reserved)

§ 136-27. (Reserved)

ARTICLE IV  
Realty Transfer Tax  
[Adopted 3-3-1997 by Ord. No. 370]

§ 136-28. Title.

This Article shall be known and may be cited as the "Montoursville Realty Transfer Tax Ordinance."

§ 136-29. Definitions.

The following words, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context indicates a different meaning:

ASSOCIATION — A partnership, limit partnership or any other form of unincorporated enterprise, owned or conducted by two or more persons.

BOROUGH OF MONTOURSVILLE — The area within the corporate limits of the Borough of Montoursville, Lycoming County, Pennsylvania.

COLLECTOR — The person authorized and empowered from time to time, by the Council of the Borough of Montoursville to administer and enforce this article.

5. Editor's Note: Former Art. III, Per Capita Tax, adopted 2-21-1966 by Ord. No. 199, as amended, was repealed 1-16-2006 by Ord. No. 411.

**CORPORATION** — A corporation or joint-stock association organized under the laws of this commonwealth, the United States or any other state, territory or foreign country or dependency, including but not limited to banking institutions.

**DOCUMENT** — Any deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate within the Borough of Montoursville or any interest therein, but does not include any documents which evidences any transfer or conveyance specifically exempt under the Pennsylvania Real Transfer Tax Act, Act of March 4, 1971, P.L. 6,<sup>6</sup> and the Act of May 3, 1991, P.L. 36, as amended,<sup>7</sup> or as are specifically excepted or excluded under the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, as amended.<sup>8</sup>

**PERSON** — Every natural person, association or corporation. Whenever used in any clause prescribing or imposing a fine or imprisonment, or both, the term person, as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

**VALUE** — In the case of any document granting, bargaining, selling or otherwise conveying any land, tenement or hereditament, or interest therein, the amount of the actual consideration therefor, including liens or other encumbrances thereon, and ground rents, or a commensurate part of the liens or other encumbrances thereon, and ground rents, where such liens or other encumbrances and ground rents also encumber or are charged against other lands, tenements or hereditaments, provided that where such documents set forth a small or nominal consideration, the value thereof shall be determined from the price set forth in, or actual consideration for, the contract of sale, or, in the case of a gift or any other document without consideration, from the actual monetary worth of the property granted, bargained, sold or otherwise conveyed, which in either event shall not be less than the amount of the highest assessment for such lands, tenements or hereditaments for local law purposes.

### **§ 136-30. Imposition of tax.**

For each year, beginning on or after March 1, 1971, a tax is hereby imposed on each transfer of real property situated within the Borough of Montoursville or any interest therein, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on such transfers take place. On and after the effective date of this article, every person who accepts delivery of any document or on whose behalf delivery of any document is accepted shall be subject to pay a tax of 1/2 of 1% of the value of the property represented by such document, which tax shall be payable at the time of the acceptance of delivery of the document. Where any document is delivered to the commonwealth, to a political subdivision or to any authority created by the commonwealth or a political subdivision, the person by whom the document was made, executed, issued or delivered shall be subject to pay the tax, unless the transfer is between such governmental agencies, in which case no tax shall be paid. Where any lands, tenements or hereditaments are situate partly within and partly without the boundaries of the Borough of Montoursville, the

6. Editor's Note: See 72 P.S. § 8101-C

7. Editor's Note: See 72 P.S. § 7330.

8. Editor's Note: See 53 P.S. § 6901 et seq.

tax shall be paid on the value of the portion of the lands, tenements or hereditaments situate within the Borough of Montoursville.

**§ 136-31. Exempt and excluded transactions.**

Those transactions which are specifically exempt under the Pennsylvania Realty Transfer Tax Act, Act of March 4, 1971, P.L. 6, and the Act of May 5, 1991, P.L. 36, as amended,<sup>9</sup> or as are specifically excepted or excluded under the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, as amended.<sup>10</sup>

**§ 136-32. Properties partially within the Borough of Montoursville.**

Where land lying partly within the boundaries of the Borough of Montoursville and partly without the boundaries is transferred, the tax herein imposed shall be calculated upon such portion of the value as shall be represented by the portion of such land lying within the boundaries of the Borough of Montoursville. Such apportionment of value shall be evidenced by an affidavit or certificate of value hereinafter provided for, but shall in no event be less than the highest assessed valuation for local tax purposes placed upon the same in the assessment of property within the Borough of Montoursville.

**§ 136-33. Time tax due; liability for payment.**

The tax imposed hereby shall be due and payable at the time of the transaction; thereafter the transferee named in the document shall remain liable for any unpaid realty transfer taxes imposed by virtue of this article.

**§ 136-34. Statement of value.**

Where the document does not set forth the true, full and complete value thereof, the value shall be as set forth in the affidavit accompanying the document prepared for the purposes of calculating the realty transfer tax payable to the Commonwealth of Pennsylvania, in accordance with the Act of December 27, 1951, P.L. 1742, or amendments or reenactments thereof.

- A. In all cases, except deeds without consideration and gifts where the full consideration for the document is not set forth in the deed, a certified copy of the affidavit prepared for the purpose of determining the real estate transfer tax payable to the Commonwealth of Pennsylvania shall be filed in the office of the Borough Treasurer at the time the tax is paid.
- B. In all cases where a document represents a transfer without consideration, including but not limited to gifts, documents in connection with merger or consolidation of corporations and documents conveying real estate from stockholders to corporations, deeds conveying realty in connection with the conversion of partnerships into

9. Editor's Note: See 72 P.S. § 8101-C et seq.

10. Editor's Note: See 53 P.S. § 6901 et seq.

corporations or connection with the documents distributing realty in connection with the dissolution or liquidation of corporations, a certified copy of the affidavit prepared for the purpose of determining the real estate transfer tax payable to the Commonwealth of Pennsylvania and setting forth the actual monetary worth of the realty conveyed shall be filed in the office of the Treasurer at the time the tax is paid.

- C. Whenever the taxability of any transfer of real property or the amount of the tax depends upon the relationship of the parties to the transaction or upon any other facts not recited in the document, the Borough Treasurer may require that such facts be established by affidavit.

**§ 136-35. Documentary stamp.**

Payment of the tax imposed by this article shall be evidenced by the affixing of a documentary stamp to every document by the person making, executing, delivering or presenting for recording such document. The Realty Transfer Tax Collector or his agent, using, imprinting or affixing such stamp, shall indelibly write thereon the initials of his name and the date of payment.

**§ 136-36. Rules and regulations.**

The Secretary of the Borough of Montoursville shall be the collector of the tax imposed by this article, and he or his agent is hereby charged with the administration and enforcement of this article, and he is hereby authorized and empowered to prescribe, adopt and enforce rules and regulations concerning the payment and receipt of such taxes and any other matter pertaining to the administration and enforcement of the provisions of this article.

**§ 136-37. Duty of Recorder of Deeds.**

The Recorder of Deeds of Lycoming County, or any of his deputies, shall be the agent of the Realty Transfer Tax Collector for the collection of the tax at the time any document, as hereinbefore defined, is presented for recording in the office of the Recorder of Deeds of Lycoming County. The Recorder of Deeds shall receive a commission of 1% upon the amount of tax collected by him, which 1% shall be deducted before remitting monthly to the Realty Transfer Tax Collector the Recorder of Deed's statement and remittance of taxes collected under and by virtue of this article.

**§ 136-38. Interest and penalties.**

- A. If for any reason the tax is not paid when due, interest at the rate of 6% per annum on the amount of said tax and an additional penalty of 1/2 of 1% of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of the tax, the person liable thereafter shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed, including reasonable attorney's fees.

- B. This tax, together with interest, penalties and costs, where due and unpaid, shall become a lien upon the lands, tenements or hereditaments, or any interest therein, which are described in a document upon which this tax is due and shall be collected as other taxes are collected. The Borough Solicitor is further authorized to file a municipal claim or tax claim in the Court of Common Pleas of Lycoming County for the collection of any unpaid tax under this article.

**§ 136-39. Unlawful acts.**

It shall be unlawful for any person to:

- A. Make, execute, issue, deliver or accept or cause to be made, executed, issued, delivered or accepted any document without the full amount of the tax thereon being duly paid.
- B. Fraudulently cut, tear or remove from a document any documentary stamp or other evidence of payment.
- C. Fraudulently affix to any document upon which a tax is imposed by this article any documentary stamp or other evidence of payment which has been cut, torn or removed from any other document upon which a tax is imposed by this article or any documentary stamp of insufficient value or any forged or counterfeited stamp or any impression of any forged or counterfeited stamp, dye plate or other article.
- D. Willfully remove or alter the cancellation marks of any documentary stamp or receipt or restore any such documentary stamp with intent to use or cause the same to be used after it has already been used or knowingly, buy, sell, offer for sale or give away any such altered or restored stamp to any person for use or knowingly use the same.
- E. Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which a tax is imposed by this article, provided that the possession of such stamp shall be prima facie evidence of an intent to violate the provisions of this subsection.
- F. Knowingly or willfully prepare, keep, sell, offer for sale or have in his possession any forged or counterfeited documentary stamps.
- G. Fail, neglect or refuse to comply with or violate the rules and regulations adopted by the Borough Collector under provision of this article.

**§ 136-40. Violations and penalties. [Amended 3-3-1997 by Ord. No. 370]**

Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and shall, upon conviction thereof before any District Justice, be subject to the penalty as set forth in Chapter 1, General Provisions, Article II, General Penalty. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this article.

**§ 136-41. Legislative authority; continuation of provisions.**

This article is enacted under the authority of the Local Tax Enabling Act of December 31, 1965, P.L. 1257,<sup>11</sup> and shall continue in force on a calendar-year basis without annual reenactment unless the rate of the tax is substantially changed.

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11. Editor's Note: See 53 P.S. § 6901 et seq.

ARTICLE IV  
Realty Transfer Tax  
[Adopted at time of adoption of Code<sup>12</sup>]

**§ 136-28. Title.**

This Article shall be known and may be cited as the "Montoursville Realty Transfer Tax Ordinance."

**§ 136-29. Definitions.**

The following words, when used in this Article, shall have the meanings ascribed to them in this section, except in those instances where the context indicates a different meaning:

**ASSOCIATION** — A partnership, limit partnership or any other form of unincorporated enterprise, owned or conducted by two (2) or more persons.

**BOROUGH OF MONTOURSVILLE** — The area within the corporate limits of the Borough of Montoursville, Lycoming County, Pennsylvania.

**COLLECTOR** — The person authorized and empowered from time to time, by the Council of the Borough of Montoursville to administer and enforce this Article.

**CORPORATION** — A corporation or joint-stock association organized under the laws of this commonwealth, the United States or any other state, territory or foreign country or dependency, including but not limited to banking institutions.

**DOCUMENT** — Any deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate within the Borough of Montoursville or any interest therein, but does not include any documents which evidences any transfer or conveyance specifically exempt under the Pennsylvania Real Transfer Tax Act, Act of March 4, 1971, P.L. 6,<sup>13</sup> and the Act of May 3, 1991, P.L. 36, as amended,<sup>14</sup> or as are specifically excepted or excluded under the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, as amended.<sup>15</sup>

**PERSON** — Every natural person, association or corporation. Whenever used in any clause prescribing or imposing a fine or imprisonment, or both, the term person, as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

**VALUE** — In the case of any document granting, bargaining, selling or otherwise conveying any land, tenement or hereditament, or interest therein, the amount of the actual consideration therefor, including liens or other encumbrances thereon, and ground rents, or a commensurate part of the liens or other encumbrances thereon, and ground rents, where

<sup>12</sup> Editor's Note: See Ch. 1, General Provisions, Art. I.

<sup>13</sup> Editor's Note: See 72 P.S. § 8101-C

<sup>14</sup> Editor's Note: See 72 P.S. § 7330.

<sup>15</sup> Editor's Note: See 53 P.S. § 6901 et seq.

such liens or other encumbrances and ground rents also encumber or are charged against other lands, tenements or hereditaments, provided that where such documents set forth a small or nominal consideration, the value thereof shall be determined from the price set forth in, or actual consideration for, the contract of sale, or, in the case of a gift or any other document without consideration, from the actual monetary worth of the property granted, bargained, sold or otherwise conveyed, which in either event shall not be less than the amount of the highest assessment for such lands, tenements or hereditaments for local law purposes.

**§ 136-30. Imposition of tax.**

For each year, beginning on or after March 1, 1971, a tax is hereby imposed on each transfer of real property situated within the Borough of Montoursville or any interest therein, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on such transfers take place. On and after the effective date of this Article, every person who accepts delivery of any document or on whose behalf delivery of any document is accepted shall be subject to pay a tax of one-half of one percent ( $\frac{1}{2}$  of 1%) of the value of the property represented by such document, which tax shall be payable at the time of the acceptance of delivery of the document. Where any document is delivered to the commonwealth, to a political subdivision or to any authority created by the commonwealth or a political subdivision, the person by whom the document was made, executed, issued or delivered shall be subject to pay the tax, unless the transfer is between such governmental agencies, in which case no tax shall be paid. Where any lands, tenements or hereditaments are situate partly within and partly without the boundaries of the Borough of Montoursville, the tax shall be paid on the value of the portion of the lands, tenements or hereditaments situate within the Borough of Montoursville.

**§ 136-31. Exempt and excluded transactions.**

Those transactions which are specifically exempt under the Pennsylvania Realty Transfer Tax Act, Act of March 4, 1971, P.L. 6, and the Act of May 5, 1991, P.L. 36, as amended,<sup>16</sup> or as are specifically excepted or excluded under the Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, as amended.<sup>17</sup>

**§ 136-32. Properties partially within the Borough of Montoursville.**

Where land lying partly within the boundaries of the Borough of Montoursville and partly without the boundaries is transferred, the tax herein imposed shall be calculated upon such portion of the value as shall be represented by the portion of such land lying within the boundaries of the Borough of Montoursville. Such apportionment of value shall be evidenced by an affidavit or certificate of value hereinafter provided for, but shall in no event be less than

<sup>16</sup> Editor's Note: See 72 P.S. § 8101-C et seq.

<sup>17</sup> Editor's Note: See 53 P.S. § 6901 et seq.

the highest assessed valuation for local tax purposes placed upon the same in the assessment of property within the Borough of Montoursville.

**§ 136-33. Time tax due; liability for payment.**

The tax imposed hereby shall be due and payable at the time of the transaction; thereafter the transferee named in the document shall remain liable for any unpaid realty transfer taxes imposed by virtue of this Article.

**§ 136-34. Statement of value.**

Where the document does not set forth the true, full and complete value thereof, the value shall be as set forth in the affidavit accompanying the document prepared for the purposes of calculating the realty transfer tax payable to the Commonwealth of Pennsylvania, in accordance with the Act of December 27, 1951, P.L. 1742, or amendments or reenactments thereof.

- A. In all cases, except deeds without consideration and gifts where the full consideration for the document is not set forth in the deed, a certified copy of the affidavit prepared for the purpose of determining the real estate transfer tax payable to the Commonwealth of Pennsylvania shall be filed in the office of the Borough Treasurer at the time the tax is paid.
- B. In all cases where a document represents a transfer without consideration, including but not limited to gifts, documents in connection with merger or consolidation of corporations and documents conveying real estate from stockholders to corporations, deeds conveying realty in connection with the conversion of partnerships into corporations or connection with the documents distributing realty in connection with the dissolution or liquidation of corporations, a certified copy of the affidavit prepared for the purpose of determining the real estate transfer tax payable to the Commonwealth of Pennsylvania and setting forth the actual monetary worth of the realty conveyed shall be filed in the office of the Treasurer at the time the tax is paid.
- C. Whenever the taxability of any transfer of real property or the amount of the tax depends upon the relationship of the parties to the transaction or upon any other facts not recited in the document, the Borough Treasurer may require that such facts be established by affidavit.

**§ 136-35. Documentary stamp.**

Payment of the tax imposed by this Article shall be evidenced by the affixing of a documentary stamp to every document by the person making, executing, delivering or presenting for recording such document. The Realty Transfer Tax Collector or his agent, using, imprinting or affixing such stamp, shall indelibly write thereon the initials of his name and the date of payment.

**§ 136-36. Rules and regulations.**

The Secretary of the Borough of Montoursville shall be the collector of the tax imposed by this Article, and he or his agent is hereby charged with the administration and enforcement of this Article, and he is hereby authorized and empowered to prescribe, adopt and enforce rules and regulations concerning the payment and receipt of such taxes and any other matter pertaining to the administration and enforcement of the provisions of this Article.

**§ 136-37. Duty of Recorder of Deeds.**

The Recorder of Deeds of Lycoming County, or any of his deputies, shall be the agent of the Realty Transfer Tax Collector for the collection of the tax at the time any document, as hereinbefore defined, is presented for recording in the office of the Recorder of Deeds of Lycoming County. The Recorder of Deeds shall receive a commission of one percent (1%) upon the amount of tax collected by him, which one percent (1%) shall be deducted before remitting monthly to the Realty Transfer Tax Collector the Recorder of Deed's statement and remittance of taxes collected under and by virtue of this Article.

**§ 136-38. Interest and penalties.**

- A. If for any reason the tax is not paid when due, interest at the rate of six per centum (6%) per annum on the amount of said tax and an additional penalty of one-half of one percent ( $\frac{1}{2}$  of 1%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected. Where suit is brought for the recovery of the tax, the person liable thereafter shall, in addition, be liable for the costs of collection and the interest and penalties herein imposed, including reasonable attorney's fees.
- B. This tax, together with interest, penalties and costs, where due and unpaid, shall become a lien upon the lands, tenements or hereditaments, or any interest therein, which are described in a document upon which this tax is due and shall be collected as other taxes are collected. The Borough Solicitor is further authorized to file a municipal claim or tax claim in the Court of Common Pleas of Lycoming County for the collection of any unpaid tax under this Article.

**§ 136-39. Unlawful acts.**

It shall be unlawful for any person to:

- A. Make, execute, issue, deliver or accept or cause to be made, executed, issued, delivered or accepted any document without the full amount of the tax thereon being duly paid.
- B. Fraudulently cut, tear or remove from a document any documentary stamp or other evidence of payment.
- C. Fraudulently affix to any document upon which a tax is imposed by this Article any documentary stamp or other evidence of payment which has been cut, torn or removed from any other document upon which a tax is imposed by this Article or any documentary

stamp of insufficient value or any forged or counterfeited stamp or any impression of any forged or counterfeited stamp, dye plate or other article.

- D. Willfully remove or alter the cancellation marks of any documentary stamp or receipt or restore any such documentary stamp with intent to use or cause the same to be used after it has already been used or knowingly, buy, sell, offer for sale or give away any such altered or restored stamp to any person for use or knowingly use the same.
- E. Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which a tax is imposed by this Article, provided that the possession of such stamp shall be prima facie evidence of an intent to violate the provisions of this subsection.
- F. Knowingly or willfully prepare, keep, sell, offer for sale or have in his possession any forged or counterfeited documentary stamps.
- G. Fail, neglect or refuse to comply with or violate the rules and regulations adopted by the Borough Collector under provision of this Article.

**§ 136-40. Violations and penalties.<sup>18</sup>**

Any person who violates any of the provisions of this Article shall be guilty of a misdemeanor and shall, upon conviction thereof before any District Justice, be subject to the penalty as set forth in Chapter 1, General Provisions, Article II, General Penalty. The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this Article.

**§ 136-41. Legislative authority; continuation of provisions.**

This Article is enacted under the authority of the Local Tax Enabling Act of December 31, 1965, P.L. 1257,<sup>19</sup> and shall continue in force on a calendar-year basis without annual reenactment unless the rate of the tax is substantially changed.

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<sup>18</sup> Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

<sup>19</sup> Editor's Note: See 53 P.S. § 6901 et seq.



## Chapter 141

### TREES

§ 141-1. Placement of trees in proximity to streets, alleys and borough property.

§ 141-2. Care and maintenance of trees.

§ 141-3. Violations and penalties.

[HISTORY: Adopted by the Borough Council of the Borough of Montoursville 5-21-1984 as Ord. No. 289. Amendments noted where applicable.]

#### GENERAL REFERENCES

Property maintenance — See Ch. 114.

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#### § 141-1. Placement of trees in proximity to streets, alleys and borough property.

- A. All plantings of trees or other vegetative material within the Borough of Montoursville must comply with the Montoursville Borough Zoning Ordinance, 3.12(e) relating to projection of plantings onto adjacent property, and 3.17(a)(b) relating to obstructions of vision.
- B. Trees may be planted within the Borough of Montoursville in proximity to streets, alleys and other Borough property, provided that such planting is in accordance with the standards hereinafter set forth.
- (1) When the distance between the curb and the sidewalk is less than eighteen (18) inches, a tree shall not be planted.
  - (2) When the distance between the curb and the sidewalk is not less than eighteen (18) inches nor greater than twenty-four (24) inches, the following trees may be planted and shall be centered between the curb and sidewalk:
    - Callery Pear – *Pyrus calleryana*
    - Columnar Red Maple – *Acer rubrum columnar* Columnar Sargent Cherry – *Prunus sargentii columnar*
    - Greenspire Linden – *Tilia cordata* Greenspire
    - Pyramidal English Oak – *Quercus robur fastigata*
    - Upright American Hornbeam – *Carpinus caroliniana pyramidalis*
    - Upright European Hornbeam – *Carpinus betulus fastigata*
    - Upright Ginkgo – *Ginkgo biloba fastigata*, male trees only
  - (3) When the distance between the curb and the sidewalk is not less than twenty-four (24) inches nor greater than forty-eight (48) inches, the following trees may be planted and shall be centered between curb and sidewalk:

All trees listed previously in § 141-1B(2).

Allegheny Serviceberry – *Amelanchier laevis*

American Hophornbeam – *Ostrya virginiana*

American Hornbeam – *Carpinus caroliniana*

Baumann Horsechestnut – *A.C. Baumanii*

Chinese Elm – *Ulmus parviflora*

Downy Serviceberry – *Amelanchier canadensis*

European Hornbeam – *Carpinus betulus*

Ginko – *Ginko biloba*, male trees only

Golden Raintree – *Koelreuteria paniculata*

Japanese Crabapple – *Malus floribunda*

Kwanzan Flowering Cherry (Kwanzan) – *Prunus serrulata*

Littleleaf Linden – *Tilia cordata*

Ruby Horsechestnut – *Aesculus carnea brioti*

Siberian Crabapple – *Malus baccata*

Thornless Honeylocust – *Gleditsia tricanthos*

Willow Oak – *Quercus phellos*

Yellowwood – *Cladrastis lutea*

- (4) When the distance between the curb and the sidewalk is greater than forty-eight (48) inches, any species of tree may be planted and shall be centered between the curb and sidewalk.
- C. When there are no sidewalks or curbs in existence, trees may be planted, but only after consultation with the Borough Engineer or the Montoursville Borough Street Commissioner. Any costs incurred by the borough in connection with ascertaining the proper location for planting shall be borne by the property owner.
- D. If trees are planted within twenty-four (24) inches of the sidewalk on the house side of the sidewalk, then such trees shall be of the varieties set forth in § 141-1B(2) above.

**§ 141-2. Care and maintenance of trees.**

The owners or occupiers of real property within the Borough of Montoursville which property has trees planted in proximity to borough streets, alleys or other borough property, as above set forth, shall have the following responsibilities to:

- A. Ensure that all dead limbs are removed.

- B. Trim all trees in such a fashion that there is a clearance of fourteen (14) feet between the foliage on any tree and the roadway, alleyway or borough property, for trees overhanging a roadway, alleyway or other borough property.
- C. Trim all trees so that there is a clearance of nine (9) feet above sidewalks for trees overhanging a sidewalk.
- D. Remove all dead trees.
- E. Eliminate or trim any tree which, in the opinion of the Borough Street Commissioner, presents a safety hazard or obstruction to borough improvements.

**§ 141-3. Violations and penalties.**

- A. Any person violating any provision of this chapter may be cited and upon conviction shall be guilty of a summary offense and shall be subject to the penalty as set forth in Chapter 1, General Provisions, Art. II, General Penalty.<sup>1</sup>
- B. If the tenant, occupant or owner of said real property within the Borough of Montoursville violates any provision of this chapter, the borough may correct such violation with borough employees or contract with a third party to correct the violation and may collect all costs and expenses incurred in connection with correcting the violation from the tenant, occupant or owner of said real estate. The borough may collect all costs and expenses incurred in connection with correcting the violation by a civil action or by municipal lien. **[Amended 10-10-1994 by Ord. No. 355]**

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<sup>1</sup> Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.



**Chapter 146**  
**VEHICLES, ALL TERRAIN**

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| <p>§ 146-1. Title.</p> <p>§ 146-2. Purpose.</p> <p>§ 146-3. Definitions.</p> <p>§ 146-4. Operation permitted only in designated areas; license required; waiver and indemnity agreement.</p> | <p>§ 146-5. Issuance of license; renewal; fees.</p> <p>§ 146-6. Operation outside of designated areas prohibited; registration and license required.</p> <p>§ 146-7. Violations and penalties.</p> |
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[HISTORY: Adopted by the Borough Council of the Borough of Montoursville 11-15-1982 as Ord. No. 284. Amendments noted where applicable.]

**GENERAL REFERENCES**

Vehicles and traffic — See Ch. 150.

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**§ 146-1. Title.**

This chapter shall be known as the "Montoursville Minibike, Dirt Bike and All-Terrain Vehicle Ordinance."

**§ 146-2. Purpose.**

The purpose of this chapter is to regulate and control the use of minibikes within the Borough of Montoursville and thereby promote the health, safety and welfare of the children and other minibike operators of the Borough of Montoursville.

**§ 146-3. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**MINIBIKE** — A motorcycle, a motor-driven cycle or a motorized pedicycle, all as defined in the Pennsylvania Motor Vehicle Code,<sup>1</sup> whose definitions are incorporated herein by reference, or any other motorized vehicle designed to operate on three (3) or fewer wheels, as well as all vehicles commonly known as "minibikes," "dirt bikes" and "all-terrain vehicles (ATV'S)."

**PERSON** — A natural person, firm, copartnership, association or corporation.

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<sup>1</sup> Editor's Note: See 75 Pa.C.S.A. § 101 et seq.

**RECREATION AREA** — An area within the borough's recreation area which is designated specifically for operation of minibikes and belonging to the Borough of Montoursville. Operation of minibikes shall only be permitted within a designated area of the borough recreation lands as such area is from time to time designated by the Borough Council.

**§ 146-4. Operation permitted only in designated areas; license required; waiver and indemnity agreement.**

- A. No person shall operate or permit the operation of a minibike, dirt bike or all-terrain vehicle upon the streets, alleys or other property of the Borough of Montoursville, except within a designated area or areas of the borough recreation property, and without first having obtained a license permitting operation within the designated area of the borough recreation land and signing appropriate waiver and indemnity agreements.
- B. All persons under the age of eighteen (18) years who request a license shall be required to be accompanied by his or her parents or natural guardians. Parents or natural guardians shall be required to accept full responsibility for the minor and shall also be required to sign a waiver agreement as well as an indemnity agreement.
- C. The waiver agreement shall be in such form as may from time to time be provided by the Borough of Montoursville and shall waive any and all claims by or on behalf of the minor and/or the minor's parents or natural guardians or the licensee against the Borough of Montoursville for any injuries or damages arising out of the operation of minibikes upon borough property.
- D. The indemnity agreement shall be in a form which shall be as from time to time prescribed by the Borough of Montoursville and shall indemnify the Borough of Montoursville against any and all claims, demands, expenses, suits and causes of action by the licensee, his parents or natural guardians arising out of the operation of minibikes upon borough property.

**§ 146-5. Issuance of license; renewal; fees.**

- A. Upon registration and signing of the appropriate forms and payment of the license fee, applicants for a license shall be issued a license which shall be prominently displayed upon the minibike, dirt bike or all-terrain vehicle by placing the same on the side of the gas tank or as designated by the Borough of Montoursville.
- B. Licenses shall be renewed at least annually and shall identify the minibike to be operated by make, year and serial number.
- C. License fees shall be determined from time to time by resolution of the Council.

**§ 146-6. Operation outside of designated areas prohibited; registration and license required.**

- A. No person shall operate a minibike, dirt bike or all-terrain vehicle within the Borough of Montoursville in any area other than the area designated for such purpose within the borough recreation lands.
- B. No person shall operate or permit to be operated a minibike within a designated area of the borough recreation land without first registering with the borough offices of the Borough of Montoursville and securing a license in the manner hereinabove prescribed in this chapter.

**§ 146-7. Violations and penalties.<sup>2</sup>**

Any person violating the provisions of this chapter or any parent or natural guardian permitting the violation of any provisions of this chapter shall, upon conviction thereof, be subject to the penalty set forth in Chapter 1, General Provisions, Art. II, General Penalty.

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<sup>2</sup> Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.