

## AN ORDINANCE

NO. 3972

**AN ORDINANCE To Amend The Code Of The Township Of Lower Merion To Create A New Chapter 107, Entitled Official Map; To Establish And Adopt An Official Map To Consist Of A Compilation Of Maps Adopted By The Township Pursuant To The Provisions Of The Pennsylvania Municipalities Planning Code; To Establish And Adopt An Official Map Narrative; To Amend Chapter 34, Entitled Planning Agencies, To Provide A New Definition For Official Map And To Require The Planning Commission To Maintain The Official Map And to Regularly Review The Status Of New Development In The City Avenue District; To Amend Chapter 135, Entitled Subdivision And Land Development, To Provide A Definition For Official Map And To Require That The Information On The Official Map Be Set Forth On Subdivision And Land Development Plans; To Amend Chapter 155, Entitled Zoning To Provide A Definition For Official Map; And To Amend Chapter A167, Fees, To Provide A Fee For A Special Encroachment Permit.**

WHEREAS, the Township of Lower Merion is a first class Township of the Commonwealth of Pennsylvania; and

WHEREAS, pursuant to Article IV of the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968 as reenacted and amended, the Township is authorized to establish and adopt an "OFFICIAL MAP" for all or a portion of the Township which may show appropriate elements of the Lower Merion Township Comprehensive Plan, including but not limited to existing and proposed public streets, water courses and public grounds including widenings, narrowings, extensions, diminutions, openings or closing of same, existing and proposed public parks, playgrounds and open space reservations, pedestrian ways and easements, flood control facilities and easements, and support facilities, easements and other natural areas; and

WHEREAS, the 2006 Lower Merion Township Open Space & Environmental Protection Plan is an element of the municipality's Comprehensive Plan and includes the goals of improving or creating pedestrian and bike links between neighborhoods and Township amenities; creating or enlarging public spaces in commercial districts; and using Township land use regulations to preserve open space, protect natural resources and create recreational opportunities; and

WHEREAS, pursuant to Article IV of the Pennsylvania Municipalities Planning Code, the Township desires to reserve for future taking or acquisition for public use certain proposed public grounds including but not limited to: roadways and intersections; open space and public gathering spaces; and public, multi-purpose pathways; and

WHEREAS, all requirements of Article IV of the Pennsylvania Municipalities Planning Code, as amended, have been met with regard to the preparation and distribution of the report to planning agencies and adjacent municipalities.

NOW, THEREFORE, in consideration of the foregoing, the Board of Commissioners of the Township of Lower Merion hereby ordains:

**Section 1.** The Code of the Township of Lower Merion, shall be amended to create a new Chapter 107, entitled Official Map, to provide as follows:

**Chapter 107. Official Map**

**Article I. Legislative Intent; Words Defined**

This chapter is enacted and ordained under the grant of powers by the General Assembly of the Commonwealth of Pennsylvania, contained in the Pennsylvania Municipalities Planning Code, Act of 1968, PL. 805, No. 247, as reenacted and amended.

**§107-1. Purpose.**

- A. To protect the public health, safety, morals and welfare.
- B. To coordinate proposed streets and pathways with existing or proposed streets and pathways or other features of the Comprehensive Plan, master plans, Transportation Service Area Act 209 traffic studies and other recent analysis and studies.
- C. To encourage preservation of adequate natural features and open spaces for recreation, parks, light and air or other features of the Comprehensive Plan.
- D. To designate areas of interest for possible future rights-of-way, public grounds, and other appropriate elements of the Comprehensive Plan and, with regards to public lands and facilities, to allow the Township to reserve the land for future acquisition for public use.

**§107-2. Word usage; definitions.**

- A. Word usage. As used in this chapter, the present tense includes the future; the singular number includes the plural, and the plural includes the singular; the word "building" includes the word "structure" and shall be construed as if followed by the words "or part thereof"; the word "occupy" includes the words "designed or intended to be occupied"; the word "use" includes the words "arranged, designed or intended to be used"; and the word "shall" is always mandatory.
- B. Words and terms defined. Unless otherwise expressly stated, the following words and phrases shall be construed throughout this chapter to have the meanings indicated in this article:

BOARD – The Board of Commissioners of the Township of Lower Merion.

DIRECTOR OF BUILDING AND PLANNING – A Township of Lower Merion official, formerly known as the “Director of Building Regulations”, whose duties include the administration of this chapter.

OFFICIAL MAP - A map adopted pursuant to Article IV of the Act of July 31, 1968 (P.L. 805, Art. IV, Section 401).

PUBLIC GATHERING SPACE – Private outdoor space where the public is directly or indirectly invited to visit or permitted to congregate.

PUBLIC GROUND - Any land, right-of-way, easement or other interest in land owned, operated, or controlled by a government agency, including but not limited to buildings, streets and street rights-of-way, parks, playgrounds, and open space reservations, conservation easements, sidewalks and pedestrian ways and easements, railroad and transit rights-of-way and easements, airports, flood control facilities, stormwater management facilities, and drainage easements.

ZONING HEARING BOARD – The board appointed by the Township of Lower Merion Board of Commissioners pursuant to Chapter 155 hereof.

## **Article II. General Requirements**

### **§107-3. Applicability.**

A. This article shall apply to all properties designated on an Official Map.

### **§107-4. Establishment of Official Map.**

A. The following Official Map(s) are hereby adopted and incorporated by reference in this chapter and, taken together, shall be the Official Map of the Township of Lower Merion:

- (1) The Official Highway Map.
- (2) The City Avenue District Official Map.

### **§107-5. Provisions of Official Map.**

A. Map Elements. The Official Map, as enacted and as subsequently amended, may show appropriate elements or portions of elements of the Lower Merion Township Comprehensive Plan, the Lower Merion Township Open Space & Environmental Resource Protection Plan, and any other plan or study of the Township with regard to public lands and facilities, and may include, but need not be limited to:

- (1) Existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same;

- (2) Existing and proposed public parks, Public Gathering Spaces, and open space reservations;
  - (3) Conservation easements;
  - (4) Public, multi-purpose pathways and easements;
  - (5) Railroad and transit rights-of-way and easements;
  - (6) Flood control basins, floodways and floodplains, stormwater management areas and drainage easements; and
  - (7) Support facilities, easements and other properties held by public bodies undertaking the elements of Township plans and studies.
- B. Identification and acquisition. For the purposes of initially identifying land on the Official Map, property records, aerial photography, photogrammetric mapping or other methods sufficient for the identification, description and publication of areas for reservation on the Official Map will be sufficient. For the acquisition of lands and easements, boundary descriptions by metes and bounds shall be made and sealed by a licensed surveyor, registered in the Commonwealth of Pennsylvania.
- C. Additions or modifications. The Board may make additions or modifications to the Official Map or parts thereof by following the provisions included in this chapter.
- D. Street design requirements. Unless otherwise specified on the Official Map or within other controlling ordinance provisions, all proposed public street rights-of-way and widenings of existing public street rights-of-way shall meet the design requirements specified in Chapter 135, Subdivision and Land Development, for the highway functional classification as designated by the Official Highway Map or the Lower Merion Township Comprehensive Plan.

### **Article III. Effects of Controls**

#### **§107-6. Construction within mapped streets or public grounds.**

- A. The location of any roadways or public facilities shown on the Official Map shall be provided on all tentative sketch, preliminary and final Subdivision and Land Development Plans hereafter filed.
- B. For the purposes of preserving the integrity of the Official Map, no permit shall be issued for any proposed building within the lines of any street or public ground shown or laid out on the Official Map. No person shall recover any damages for the taking for public use of any building or improvements constructed within the lines of any street or public ground after the same shall have been included in the Official Map, and any such building or improvement shall be removed at the expense of the owner.

**§107-7. Special encroachment permit.**

When the property of which a reserved location forms a part cannot yield a reasonable return to the owner unless a permit shall be granted, the owner may apply to the Board for the grant of a special encroachment permit to so build. Before granting any special encroachment permit authorized in this section, the Board may submit the application for a special encroachment permit to the Lower Merion Township Planning Commission and allow the Planning Commission 30 days to review and comment on the special encroachment permit and shall give public notice and hold a public hearing at which all parties in interest shall have an opportunity to be heard.

**§107-8. Time limitations on reservations.**

The streets and public grounds shown on the Official Map shall be deemed perpetually reserved for future taking or acquisition for public use. However, the reservation for public grounds shall lapse and become void after the owner of such property has submitted a written notice to the Board announcing his intentions to build, subdivide or otherwise develop the land covered by the reservation, or has made formal application for a Township building permit to build a structure for private use, unless the Board shall have acquired the property or begun condemnation proceedings to acquire such property before the end of one (1) year from the date the property owner provided notice or made formal application to the Township.

**§107-9. Effect of Official Map on mapped streets and other public lands.**

The adoption of any street, street lines, or other public lands or easements as part of the Official Map shall not, in and of itself, constitute or be deemed to constitute the opening or establishment of any street nor the taking or acceptance of any land, nor shall it obligate the Township to improve or maintain any such street or land. The adoption of proposed public grounds as part of the Official Map shall not, in and of itself, constitute or be deemed to constitute a taking or an acceptance of any land by the Township.

- A. The roadways shown on the City Avenue District Map established under §107-4 A (2) shall comply with the provisions of §135-27 of the Township Subdivision and Land Development Code. New roadways shall meet the right-of-way and paving width requirements set forth in §135-27 C (1) for Minor Streets.

**§107-10. Release of damage claims or compensation.**

Lower Merion Township may designate any of its employees or officers to negotiate with the owner of the land whereon reservations are made, releases of claims for damages or compensation for such reservations are required, or agreements indemnifying the Township from such claims by others may be required. Any such releases or agreements when properly executed by the Township and the owner, and recorded, shall be binding upon any successor in title.

**Article IV. Amendments**

**§107-11. Amendment procedure.**

The Official Map may be amended in accord with the procedure established by § 402 and § 408 of the Pennsylvania Municipalities Planning Code, as the same shall be amended from time to time.

**§107-12. Effect of approved plans on Official Map.**

After adoption of the Official Map, or part thereof, all public streets, watercourses, easements and public grounds and the elements listed in § 107-5A, shown on final, recorded plats which have been approved by the Township, shall be deemed amendments to the Official Map. Notwithstanding any of the other terms of this chapter, no public hearing shall be required or public notice given if the amendment of the Official Map is the result of the addition of an approved plat.

**§ 107-13. Notice to adjacent municipalities.**

If an amendment to the Official Map shows any street or other public land intended to lead into any adjacent municipality, a certified copy of the Official Map amendment, shall be forwarded to such adjacent municipality in accord with § 408 of the Pennsylvania Municipalities Planning Code.

**Article V. Violations, Penalties and Appeals**

**§ 107-14. Causes of action.**

Where any building or structure is erected, reconstructed, convened or maintained, or any building, structure or land is used in violation of this chapter, the Director of Building & Planning may in the name of Lower Merion Township:

- A. Institute any appropriate action or proceedings to prevent such unlawful activity;
- B. Restrain or abate such violation;
- C. Prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

**§ 107-15. Notice of violations.**

Where it appears to the Township that a violation of any provisions of this chapter has occurred, the Director of Building & Planning shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.

- A. Recipients. The enforcement notice shall be sent to the owner of record on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.
- B. Contents. The enforcement notice shall state the following:

- (1) The name of the owner of record and any other person against whom Lower Merion Township intends to take action.
- (2) The location of the property in violation.
- (3) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the chapter.
- (4) The date before which the steps for compliance must be commenced and the date before which steps must be completed.
- (5) That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in the chapter.
- (6) That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

**§ 107-16. Discontinuance.**

Where the notice of violation is not complied with in the time period set forth in the notice, the Director of Building & Planning shall order the discontinuance of such unlawful use of land, structure, or building involved in said violation.

**§ 107-17. Enforcement remedies.**

Any person who shall violate the provisions of this chapter shall, upon conviction in a summary proceeding, be sentenced to pay a fine of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. If the defendant neither pays nor timely appeals the judgment, Lower Merion Township may enforce the judgment pursuant to applicable rules of civil procedure. Each day a violation continues constitutes a separate violation, unless the magisterial district judge determining that there has been a violation further determines that there was a good faith basis for the person violating the chapter to have believed there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney fees collected for the violation of this chapter shall be paid over to Lower Merion Township.

**§ 107-18. Appeals.**

Any appeal from a decision or action of the Board or of any officer of the Township in matters pertaining to this chapter shall be made to the Zoning Hearing Board in the same manner and within the same time limitations as is provided for zoning appeals in Article IX of the Pennsylvania Municipalities Planning Code, as amended.

**Section 2:** The Code of the Township of Lower Merion, Chapter 34, entitled Planning Agencies, Article I, Definitions, §34-1 Word usage; Terms Defined shall be amended by the addition in alphabetical order of the following words:

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OFFICIAL MAP - The maps designated in Chapter 107 hereof as the Official Map of the Township of Lower Merion.

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**Section 3:** The Code of the Township of Lower Merion, Chapter 34, entitled Planning Agencies, Article II, Planning Commission, §34-8 Powers and Duties, is hereby amended by the addition of new subsections I and J.

The Commission:

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- I. Shall, at the request of the Board, prepare and present recommendations for proposed amendments to the Official Map of the Township of Lower Merion for consideration by the Board and shall maintain the Official Map for the Board.
- J. Shall, at the request of the Board, review the status of new development in the City Avenue District and make recommendations for revisions and subsequent consideration and adoption by the Board of Commissioners.

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**Section 4.** The Code of the Township of Lower Merion, Chapter 135, entitled Subdivision & Land Development, Article I, Legislative Intent; Words Defined, §135-2 Word usage; definitions, subsection B, shall be amended by the addition in alphabetical order of the following words:

\*\*\*\*\*

OFFICIAL MAP - The maps designated in Chapter 107 hereof as the Official Map of the Township of Lower Merion.

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**Section 5:** The Code of the Township of Lower Merion, Chapter 135, entitled Subdivision & Land Development, Article IV, Plan Requirements, §135-16 Tentative Sketch, subsection B, is hereby amended by the addition of a new subsection (18).

Sketch Plans shall include the following information:

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(18) Where the property is designated on an Official Map, the plan shall contain the information shown on the enacted Official Map and set forth in §107-5A, Map Elements.

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**Section 6:** The Code of the Township of Lower Merion, Chapter 135, entitled Subdivision & Land Development, Article IV, Plan Requirements, §135-17 Preliminary subdivision plan, subsection B, is hereby amended by the addition of a new subsection (12) and renumbering of (12) to (13).

B. Existing features. The plan shall set forth:

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(12) Where the property is designated on an Official Map, the plan shall contain the information shown on the enacted Official Map and set forth in §107-5A, Map Elements.

(13) Any other information the Board of Commissioners, Planning Commission or planning staff may require to properly review the subdivision.

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**Section 7:** The Code of the Township of Lower Merion, Chapter 135, entitled Subdivision & Land Development, Article IV, Plan Requirements, §135-19 Preliminary land development plan, subsection B, is hereby amended by the addition of a new subsection (10).

B. Existing features and proposed construction. The plan shall comply with and contain the following:

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(10) Where the property is designated on an Official Map, the plan shall contain the information shown on the enacted Official Map and set forth in §107-5A, Map Elements.

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**Section 8:** The Code of the Township of Lower Merion, Chapter 135, entitled Subdivision & Land Development, Article IV, Plan Requirements, §135-22 Final subdivision, land development and lot line change plans, subsection B, is hereby amended by the addition of a new subsection (10).

B. Information to be shown. The plan, which may constitute a portion of an approved preliminary plan, shall show:

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- (10) Where the property is designated on an Official Map, the plan shall contain the information shown on the enacted Official Map and set forth in §107-5A, Map Elements.

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**Section 9.** The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article II, Definitions, 155-4, Terms defined, subsection B, shall be amended by the addition in alphabetical order of the following words:

- B. Words and terms defined. Unless otherwise expressly stated, the following words and phrases shall be construed throughout this chapter to have the meanings indicated in this article:

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OFFICIAL MAP - The maps designated in Chapter 107 hereof as the Official Map of the Township of Lower Merion.

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**Section 10.** The Code of the Township of Lower Merion, Chapter A167, Fees, §A167-1, Schedule of Fees, shall be amended to provide in numerical order the following:

Chapter 107, Official Map

Special Encroachment Permit	\$ 560
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**Section 11.** Nothing in this ordinance or in Chapters 34, 135, or 155 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to effect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapters 34, 135, or 155 prior to the adoption of this amendment.

**Section 12.** The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses or parts of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

**Section 13.** This Ordinance shall take effect and be in force from and after its approval as required by law.

Enacted by the Board of Commissioners of the Township of Lower Merion this 25<sup>th</sup> day of April, 2012.

BOARD OF COMMISSIONERS OF THE  
TOWNSHIP OF LOWER MERION

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Elizabeth S. Rogan, President

ATTEST:

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Eileen R. Trainer, Secretary  
Chapter 107 – Official Map