

AN ORDINANCE REPEALING ARTICLE 917 OF THE MORGANTOWN CITY CODE AND ENACTING A NEW ARTICLE 917, AS THE SAME APPLIES TO THE ESTABLISHMENT OF A MUNICIPAL TREE BOARD AND REGULATIONS REGARDING TREES.

The City of Morgantown hereby ordains that Article 917 of its City Code is repealed in its entirety and replaced with a new Article 917 that reads as follows:

ARTICLE 917
Community Forestry

917.01 PURPOSE

This Article establishes policies, regulations, and standards necessary to ensure that the City will continue to realize the benefits provided by its community forest. The provisions of this Article are enacted to:

- A. Create a desirable environment that protects the public health, comfort, safety and welfare of Morgantown residents, businesses and industries;
- B. Establish and maintain the maximum sustainable amount of tree cover on public and private lands in the City;
- C. Establish minimum site management requirements for trees protected by this Article;
- D. Establish and maintain appropriate diversity in tree species and age classes to provide a stable and sustainable community forest;
- E. Moderate effects of the sun, wind and temperature changes;
- F. Promote energy efficiency and conservation;
- G. Decrease storm water runoff;
- H. Filter pollutants from the air and release oxygen;
- I. Buffer noise and visual pollution;
- J. Stabilize soil and prevent erosion;
- K. Improve and maintain City gateways, streets, parking areas, parks and neighborhoods;
- L. Support traffic calming;

- M. Increase property values and protect investment;
- N. Preserve exceptional trees;
- O. Screen incompatible land uses;
- P. Provide habitat for wildlife;
- Q. Encourage public education about trees and landscaping and their value.

917.02 DEFINITIONS

For the purposes of this Article, the following terms, phrases, words and their derivations shall have the meaning herein given:

- (a) "Adopted tree care standards" are those standards of tree maintenance, trimming clearances, and methods of protection during construction, as established in the American National Standards Institute (ANSI) Standard A300, National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Part 1 - Standards Pruning Practices, as may be amended. The above standards are adopted with the understanding that any requirements therein referring to ANSI Z133.1 safety standards are deleted. The City Manager is authorized to issue waivers from the above A300 requirements to individuals on a case-by-case basis should a request for a waiver be made to him/her and he/she believes the granting of such a waiver to be justified.
- (b) "Canopy" means the shade a tree will provide at maturity.
- (c) "City" means City of Morgantown, West Virginia.
- (d) "City Forester" means the City Manager or his/her designee, who shall be responsible for the implementation and enforcement of all requirements contained within this Article.
- (e) "Commercial Tree Expert" means a person who has received Certified Arborist status from the International Society of Arboriculture.
- (f) "Commercial Tree Pruner/Service" means a person who performs work on trees for profit.
- (g) "Community Forest" means trees and vegetation located within an urban area. Community forestry is the management of these urban resources for the improvement of the economic, environmental, and social well being of the community.

- (h) "Critical Root Zone" means an area surrounding a tree trunk that is delineated one foot outside of the drip line of the tree.
- (i) "Crown Reduction" means pruning to reduce height or size of a tree by cutting limbs back to a point of origin or back to laterals capable of sustaining the remaining limb. "Topping" is not a proper technique to reduce a crown.
- (j) "Diameter Breast Height (DBH)" means the diameter of a tree at a point four and one-half feet above the ground. DBH shall be measured from the uphill side of a tree.
- (k) "Dripline" means an imaginary vertical line that extends downward from the outer most tips of the tree branches to the ground.
- (l) "Environmentally Sensitive Areas" means wetlands, riparian corridors, landslide prone areas, steep slopes, and fish and wildlife areas that have been so designated by the controlling governmental department or agency.
- (m) "Exceptional Tree" means a tree located on public or private land designated as exceptional due to historic association, rare tree species or extraordinary value because of its age, size or type.
- (n) "Hazardous Tree" means a tree or tree parts with a high probability of falling or causing injury or property loss to persons or property on public space in the vicinity of the tree, or a tree harboring insects or disease that has been determined to be a threat to the surrounding environment.
- (o) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind
- (p) "Private Land" means land not owned by the City or other governmental entity.
- (q) "Public Place" means any municipal public street, municipal public highway, municipal public park, or any realty owned or held by the City within the boundaries of the City.
- (r) "Shall" is always mandatory and not merely discretionary.
- (s) "Specifications for Street Tree Planting" means a document maintained on species suitability, spacing and standard planting protocols.
- (t) "Street Trees" means trees located and spaced along municipal streets which have been adopted by and are being maintained by the City.
- (u) "Topping" means the severe removal of a tree canopy back to large stubs.

- (v) "Tree" means any tree in a public place or on private property as indicated by the provisions of this Article.
- (w) "Tree Registry" means a list of exceptional trees registered within the City.

917.03 MUNICIPAL TREE BOARD

A Municipal Tree Board shall be appointed by City Council and shall consist of at least seven, but no more than ten members. Of the members, at least one shall have specialized knowledge and expertise regarding tree management and care. Tree Board members shall serve three-year terms without compensation.

The duties of the Municipal Tree Board shall be as follows:

- (a) Advise and consult with the City Manager, or other staff designated by the City Manager, on any matter pertaining to this Article;
- (b) Study the problems and determine the needs of the City in connection with its management of trees and shrubs and make specific recommendations to the City Manager;
- (c) Work in collaboration with the City Urban Landscape Commission, the Board of Park and Recreation Commissioners, the Public Works Department, the Parking Authority, the Planning Commission, and other agencies and departments as needed;
- (d) Review City plans and policies, when requested to do so by the City Manager, that contain matters relating to urban forestry, community values, and arboriculture;
- (e) Recommend legislation regarding the community forest;
- (f) Provide for the City Manager reports as requested and an analysis of annual budgets pertaining to the community forest;
- (g) Develop a program for identifying and maintaining exceptional trees in the City and make recommendations to the City Manager and City Council for adopting such a program;
- (h) Provide information regarding the selection, planting and maintenance of trees on public property;
- (i) Facilitate the planning and implementation of public education addressing proper tree care and community forestry;
- (j) Coordinate the City Arbor Day programs, grants, and other similar programs.

917.04 ARTICLE ADMINISTRATION

The City Manager, or his/her designee, shall be responsible for the implementation and enforcement of all requirements of this Article, and shall be the City Forester for purposes of this Article. The City Manager, or his/her designee, shall have control and supervision of all trees which now or which may hereafter exist upon any public place in this City when such trees are in such condition as to affect the public health, safety and welfare. The City Manager, or his/her designee, is authorized to consult with the Municipal Tree Board for advice and assistance on matters pertaining to this Article.

917.05 LIABILITY AND INDEMNIFICATION

Nothing within this article is to be interpreted to read that the City or any of its officers, agents or employees has accepted responsibility for assuring that the public will be safe from injury from any tree within the City. The City recognizes that acts of God may intervene and that it is the ultimate responsibility of the individual property owner to assure that trees on his or her realty are maintained in a safe manner that does not endanger a neighbor or the general public. The City may be responsible for the condition of trees on its publicly owned realty; however, it does not accept responsibility or liability for damage caused by any tree located on private property, state roads, or state rights of way.

917.06 JURISDICTION

The City Manager, or his/her designee, shall have the right and duty to prune, preserve or remove any tree or other plant existing upon any public place when such tree, or part thereof, is so infected with any injury, fungus, insect or other plant pathogens or when such tree, or part thereof, constitutes an interference with travel. The City Manager, or his/her designee, shall be authorized to take such measures with regard to such trees or plants as he or she deems necessary to preserve the function and preserve or enhance the beauty of such public place.

The City Manager, or his/her designee, shall have the authority and it shall be his/her duty to order the pruning, preservation or removal of trees upon private property when such trees meet the definition of a "Hazardous Tree" as defined within this Article, are an obstruction as set forth in Section 917.18 of this Article, or have a root system that is damaging infrastructure, such as sidewalks or streets within a public place.

917.07 APPEALS

Any action of the City staff pertaining to the directives of this Article may be appealed to the City Manager. The appeal shall clearly specify the reasons for which a hearing is being requested. The City Manager's action shall be final unless appealed to the City Council. To be effective, an appeal to the City Council must be in writing, state reasons for the appeal, and must be filed with the City Clerk within 10 days after notice of the

decision by the City Manager is mailed to the applicant. The decision of the City Council shall be final.

917.08 COMMON MORGANTOWN TREES: SPECIES AND VARIETIES

The City Manager, or his/her designee, in consultation with the Municipal Tree Board shall develop and maintain a list of undesirable trees. This list shall provide guidance for planting within municipal public property and rights of way. All trees planted within public rights-of-way must be a species that will not adversely affect the surrounding infrastructure such as sidewalks, curbs, street or underground utilities, including but not limited to heaving of the infrastructure by the root system.

917.09 PLANTING OF TREES ON PUBLIC PLACE OR PUBLIC RIGHT-OF-WAY

Planting and maintenance of trees on a public place or within municipal public right of ways shall be performed under the supervision of the City Manager, or his/her designee, who shall be in consultation with the City department having jurisdiction over the property in question. Any tree hereafter planted on, or in a location that, as it matures will affect the safe use of such land, shall be selected, sited, planted, and maintained in accordance with the tree care specifications established by this Article.

917.10 TREE REMOVAL ON PUBLIC PLACE OR PUBLIC RIGHT OF WAY

Any person removing a tree from a public place or municipal public right of way shall do so in accordance with the standards adopted in this Article. Any person or agency private or public, needing to remove a tree six inches or more in DBH from such land shall first be required to obtain permission from the City Manager or his/her designee. Permits for removal of trees of any size located in environmentally sensitive areas must be issued in writing by the City Manager, or his/her designee, with the full knowledge of the Municipal Tree Board. Such permits may be granted for one tree or for groups of trees, and shall be issued pursuant to guidelines established by the City Manager in consultation with the Municipal Tree Board. An exception to the foregoing requirement of obtaining permission shall be those instances in which City Administration has identified and needs to remove a hazardous tree from a public place.

Any person or agency removing trees which are neither hazardous trees nor trees creating a hazardous condition, by permit, which are six inches or more in DBH shall provide for the planting of new trees in approximately equal numbers of appropriate species in appropriate locations mutually agreed upon by the City Manager, or his/her designee, and the person obtaining the permit. Failure to obtain a permit when one would be required for removal of trees shall not relieve responsibility for the planting of replacement trees.

For any tree that is deemed to be a hazardous tree that is located on realty other than a public place or municipal public right of way, the City Manager, or his/her designee, shall give notice to the property owner and follow procedures stated in Section 917.06

and 917.07.

917.11 TREES NOT ON A PUBLIC PLACE

Trees located on land other than a public place or municipal public right of way are the property and responsibility of the owner of such land. Yet such trees have public usefulness, and value in energy conservation; in moderating extremes in temperature and humidity; in moderating storm water runoff; in reducing noise, glare and air pollution; in reducing soil erosion; in traffic calming; and in improving the City's aesthetic character. To encourage the conservation of this resource, the City Manager with the assistance of the Municipal Tree Board, is empowered to take the following measures:

- (a) Provide information and technical referral service to landowners, developers, builders, and other interested parties, including persons and private and public agencies, in protecting trees during planting and construction;
- (b) Provide leadership for Arbor Day observances and other public education efforts as stated in Section 917.03.

The City wishes to encourage and promote the planting of street trees to provide shade within the City; however public right of way space is limited and not always adequate for growing shade trees. Space on private land adjoining the right of way is often adequate for such planting of shade trees by the City, and the use of such space would ensure that many streets and neighborhoods that would otherwise be excluded from a municipal tree planting program would be included. The planting of shade trees by the City on private property adjoining the right-of-way would produce significant public benefits by providing a healthy and attractive tree canopy along City Streets, and also serve to encourage property owners to plant suitable shade trees in a similar manner on their property.

For these reasons the City Manager, or his/her designee, is hereby authorized to contract with such property owners utilizing a "Greenspace Planting Agreement" to encourage the planting of desirable tree types in locations that will benefit all citizens of the City. This Agreement shall delineate the conditions to which both the City and the property owner agree, the continuing authority of this Article, the responsibility of the property owner for the trees except as modified by the Agreement, the duration of the Agreement, a sketch of the planting site, showing all existing utilities (both above and below ground) and the statement of full authority on the part of the property owner with respect to the above planting location.

917.12 EXCEPTIONAL TREES AND THE CITY TREE REGISTER

The City Manager, or his/her designee, shall maintain a City Tree Register of exceptional trees located on public and private property. Recognition of exceptional trees shall be given by certificate awarded to the property owner and by listing the tree

on the municipal web site. A private property owner must request in writing that his/her tree be listed on the City Tree Register as an exceptional tree and must agree in writing, prior to such designation that he/she will have included in his/her deed for the realty a restrictive covenant binding all successor owners of the realty to the requirements of this Article as it pertains to the exceptional tree in question.

Exceptional trees listed on the City Tree Register and which are on a public place within a public right of way (street or alley), or on private property may only be removed following notification of the City Manager or his/her designee and the Municipal Tree Board, unless it is deemed a hazardous tree or is creating a hazardous condition. Removal of exceptional trees shall be generally prohibited in environmentally sensitive areas unless the trees are determined by the City Manager or his/her designee to be in an irreversibly hazardous condition.

The City Manager, or his/her designee, in communication with the Tree Board shall maintain Specifications for Street Tree Planting.

917.13 TREE PROTECTION AND MITIGATION

Injury to trees is prohibited in that no person shall, without the consent of the owner in the case of a tree , or without a written permit from the City Manager or his/her designee, in the case of a public tree , do, or cause to be done by others, any of the following acts:

- (a) Secure, fasten or run any rope, wire, sign or other device or material to, around or through a tree;
- (b) Break, injure, mutilate, deface, kill or destroy or permit any fire to burn where it will injure any tree;
- (c) Permit any toxic chemical, gas, smoke, brine, oil or other injurious substance to seep, drain or be emptied upon or about any tree or shrub;
- (d) Set fire or permit fire to burn when such fire or the heat of such will injure any portion of any tree;
- (e) Excavate any ditch, tunnel or trench, or lay any drive within a distance ratio of one foot per inch of girth at DBH, to the extent practical, from the center of any tree.
- (f) Erect, alter, repair or raze any building or structure without placing suitable guards around all nearby trees as recommended in ANSI Tree Protection During Construction Standards;
- (g) Remove any guard, stake or other device or material intended for the protection of any public tree or close or obstruct any open space

about the base of a public tree or shrub designed to permit access to air, or water or fertilizer.

In order to maintain the overall community forest, reasonable efforts shall be made to replace trees that are removed and to protect desirable trees that are endangered.

A tree six inches or more in DBH removed from public places by decision of the City Manager, or his/her designee, the Public Works Department or the Board of Parks and Recreation Commissioners shall be replaced somewhere in the community forest on a one-for-one basis within one year. The plan for location and species of any replacement shall be reviewed by the City Manager, or his/her designee, and the Tree Board.

Trees of desirable species and good health shall be protected as much as possible from damage during construction, sidewalk repair, utilities work above and below ground, and other similar activities

Training may be offered to City departments to assist City personnel in utilizing protective arboricultural techniques.

917.14 PRUNING STANDARDS

All tree pruning on public property shall conform to the ANSI A300 standards for tree care operations. The City Manager, or his/her designee, on a case-by-case basis, is authorized to issue waivers to specific requirements within ANSI A300, should a request for such waiver be made and the City Manager, or his/her designee, deems such waiver justified.

917.15 UTILITY CLEARANCE

Tree limbs that grow within public rights of way, in which trees are routinely pruned or otherwise cut during utility maintenance operations by utility companies or companies paid by utility companies to do such work, shall be maintained by the utility company in compliance with applicable franchise agreements approved by the City. Should a franchise agreement expire, the regulations of this article shall apply to any such utility, the same as if the work were being performed by a City department. The same shall apply to all public utilities doing work within a public right of way. Each tree trimming policy of a utility company must be reviewed by the City Manager, or his/her designee, prior to any trimming by the utility company.

- (A) The tree trimming policy mentioned above shall include a plan for providing the City or other landowner, tenants of abutting realty whose trees will be cut or trimmed by order of the utility, with reasonable notice which shall include:
 - (a) a description of the area(s) in which the right of way clearing or

- maintenance is performed;
 - (b) an approximate schedule of work;
 - (c) a description of the type(s) of work to be performed, including, but not limited to tree trimming, tree removal, brush cutting, herbicide application, growth regulation, slash disposition.
 - (d) a general description of clearances required or rights of way widths to be maintained; and
 - (e) the name and telephone number of a contact person at the utility.
- (B) In the case of right of way clearing or maintenance planned or scheduled in the normal course of operation, the utility company shall make personal contact with the City or other landowner, and owners or tenants of abutting realty whose trees will be cut or trimmed by order of the utility. In the case of abutting realty which lacks a habitable structure or contains a vacant structure, personal contact shall be replaced by a Class I legal advertisement in a newspaper of general circulation in the City of Morgantown.
- (C) In the case of right of way clearing or maintenance resulting from a sudden emergency, the utility shall issue a news release to the Morgantown media. After the sudden emergency is over and the necessary clearing is complete, the utility shall publish a notice regarding the affected properties in a Class I legal advertisement in a newspaper of general circulation in the City of Morgantown.
- (D) For purposes of this Section, "personal contact" means, that at least seven (7) business days prior to the scheduled clearing or maintenance, an attempt will be made by the utility to contact the persons by telephone or in person. Should the attempt be unsuccessful, a door hanger or similar type of written notice will be left at the residence which contains the information required by this Section. A second personal contact attempt will be made prior to the start of work. Should contact be made with a tenant, the utility shall either actually contact the owner before beginning work or publish a legal advertisement as set forth in Section (B) and (C) above.
- (E) Upon receiving notice of such work to be performed by the utility, the City of Morgantown will notify existing neighborhood associations within the affected area, of the same.
- (F) All tree removal on public land or within public rights of way shall follow City tree removal standards set forth in Section 917.10 of this Article.
- (G) All tree pruning and maintenance shall be subject to the requirements set forth in

Sections 917.14 of this Article.

- (H) Utility maintenance that requires digging or trenching near trees shall provide protection of the Critical Root Zone. Open trenching in the root zone of a tree is to be avoided when practical except when the trenching falls outside the Critical Root Zone.
- (I) All trees located where there is insufficient space to bypass the Critical Root Zone must be augured if practical. Auguring activity shall not occur on more than one side of the tree and shall follow distance and depth requirements outlined in the ANSI tree care specifications manual.
- (J) If auguring is not practical or the Critical Root Zone is damaged, the Utility shall remove the existing tree and replace the tree. The location and type of tree to be determined by the City Manager, or his/her designated representative.

917.16 TOPPING

No person, commercial firm or City department shall, as a normal practice, top any street tree, park tree, or other tree located on public property. Crown reduction by a qualified arborist may be substituted where appropriate. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the City Manager.

917.17 HAZARDOUS TREES

Any hazardous tree, as defined by this Article, insofar as it affects the public health, comfort, safety and welfare is hereby declared a public nuisance dangerous to life and limb.

917.18 OBSTRUCTION

It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which there may be trees to prune trees in a manner that they will not obstruct or shade street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of street signs, or obstruct view of street or alley intersection or obstruct the view of the operator of any motor vehicle with regard to other vehicles, traffic sign or signals, or pedestrians along the street. The minimum clearance for any overhanging portion thereof shall be 8 feet over sidewalks and 13 feet over all streets.

Any hedge, tree shrub, other growth, situated at the intersection of two or more streets, alleys, or driveways in the City is hereby declared to be a public nuisance to the extent that such hedge, tree, shrub, other growth or fencing obstructs the view of the operator of any motor vehicle with regard to other vehicles, traffic signs or signals, or pedestrians approaching or crossing such intersection.

No hedge, tree shrub, other growth, located adjacent to a road surface shall obstruct the clear and complete vision of the operator of any motor vehicle in regard to other vehicles, traffic signs and signals, or pedestrians within the public right of way.

917.19 DISEASE OR INSECT INFECTED TREE:

In those cases in which a tree is determined to be so severely insect or disease infected that it is a threat to the Community Forest, the City Manager, or his/her designee, shall have the authority to seek judicial relief, if necessary, to eliminate the threat.

917.20 WRITTEN ORDER TO PRUNE, PRESERVE, REMOVE TREE OR WOODY PLANT

When the City Manager, or his/her designee, shall find it necessary to order the pruning, preservation or removal of trees or plants upon private property as authorized in Section 917.06, he/she shall serve a written order to correct the dangerous condition upon the owner, operator, occupant, or other person responsible for its existence. This order shall be served in one of the following ways:

- (a) By making personal delivery;
- (b) Sent by certified or first class mail addressed to the last known address; or
- (c) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the property to which the notice applies.

The order required herein shall set forth a time limit of no less than 30 days for compliance, dependent upon the hazard and danger created by the violation. In cases of extreme danger to person or public property, the City Manager, or his/her designee, shall have the authority to require compliance immediately upon service of this order.

917.21 ORDER TO CORRECT A HAZARDOUS CONDITION

A person to whom an order hereunder is directed shall have the right, within twenty-four hours of service of such order, to appeal to the City Manager, who shall review such order within seven days and file his/her decision thereon. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom it is directed.

A person to whom such order is directed must comply with such order within 10 days after an appeal shall have been determined. When a person to whom an order is directed fails to comply within the specified time period, the City Manager, or his/her

designee, may take such steps as he/she finds necessary to remedy the condition, including judicial relief from the Circuit Court of Monongalia County.

Any person failing to obey an order given by the City Manager, or his/her designee, pursuant to this Article shall be subject to the penalties set forth in Section 917.23 of this Article.

917.22 TREE CARE OPERATORS

All persons, firms, or corporations engaged in commercial tree care operations are required to comply with all applicable federal, state, and City of Morgantown rules and regulations that govern such operations.

917.23 PENALTY

Any person who neglects or refuses to comply with, or assists in the violation of, any of the provisions of this Article, or order, permit or notice issued pursuant thereto, shall be fined not more than \$500 for each such violation. Each day any such violation continues shall constitute a separate offense, and in those cases where the violation involves the removal or damage of a tree, each such removal or damaged tree shall also constitute a separate offense.

917.24 DAMAGE AND COST OF REPLACEMENT

Any person who causes a tree to be removed or damaged within a municipal public right-of-way or upon realty owned by the municipality or realty owned by a board, commission, or authority of the municipality, in violation of this Article, or any order, permit, or notice issued pursuant thereto, shall repair or replace any such tree at the violator's sole cost and expense. The cost of replacement shall be determined by the City Manager.

917.25 ENFORCEMENT

The City Manager or his/her designee is hereby charged with the responsibility for the enforcement of this Article and he/she may serve notice to any person in violation thereof or institute legal proceedings as may be required.

917.26 SEVERABILITY

Should any part or provision of this Article be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Article as a whole or any part thereof other than the part held to be invalid.

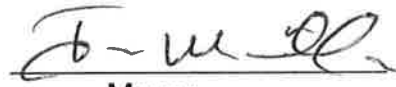
This ordinance shall be effective upon date of adoption.

FIRST READING: November 1, 2011

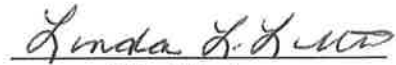
ADOPTED: November 15, 2011

FILED: November 16, 2011

RECORDED: November 16, 2011



Mayor



City Clerk