

**TOWN OF BATH SPECIAL ORDINANCE
TREE BOARD
2023-11-21
AMENDING ORDINANCE 2005-09
URBAN TREE ORDINANCE OF THE TOWN OF BATH**

Whereas, the Town of Bath desires to create a Tree Board, the original Ordinance 2005-09 does not meet all necessary requirements and documentation to provide for public safety or to preserve and protect all plants, shrubs and trees in the Town of Bath; and,

Whereas, this article provides authority to the Tree Board over all trees, plants and shrubs planted within the right-of-way's, parks and public places of the Town of Bath. The Tree Board shall have the right to plant, prune, maintain and remove trees, plant and shrubs within the public right-of-way's and other publicly owned grounds as may be necessary to ensure public safety and to preserve and enhance the beauty of such publicly owned lands; and,

Accordingly, it is therefore ordered that the Town of Bath Council amend Ordinance 2005-9 as follows:

SECTION 1: DEFINITIONS:

- A. Municipality is the Town of Bath, Morgan County, West Virginia.
- B. The Tree Board is the body that advises the town on matters affecting street trees, park trees and trees in the three cemeteries in the Town of Bath.
- C. Street trees are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the town.
- D. Park trees are herein defined as trees, shrubs, bushes, and all other woody vegetation in public parks, and all areas owned by the Town, or to which the public has free access as a park.
- E. There are three cemeteries on Town property, including the Old Dutch Cemetery, the Old English and Greenway Cemetery.
- F. Heritage Trees are typically large individual trees with unique value and are considered irreplaceable. The major criteria for heritage tree designation are age, rarity, and size, as well as aesthetic, botanical, ecological and cost to replace. The Town Council, upon recommendation of the Tree Board, may designate specific trees on town property as heritage trees. Upon the adoption of such a list by the Town Council, a copy shall be kept on file in the office of the Town Clerk. The list of heritage trees may be modified from time to time. Once a tree on town property is designated as a heritage tree, it will remain so unless it becomes necessary to classify it as a risk tree that must be removed. Heritage trees on town

- H. Damage is any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part of the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.
- I. Nuisance is any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or poses a threat to public health, safety and welfare.
- J. Top or Topping is the non-standard practice of cutting back limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.
- K. Tree Steward means the person within the Tree Board who administers the provisions of this Ordinance under the supervision and direction of the Town Council. At a minimum, a candidate for Tree Steward has a good understanding of the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and of the "Best Management Practices (BMPs) published by the International Society of Arboriculture. (NB: The original ordinance requires an arborist, an unrealistic expectation. To require more than a good understanding of ANSI makes finding a tree steward difficult if not impossible.
- L. An Arborist is a certified specialist in the care and maintenance of trees. At times the Tree Board may recommend that an arborist be called in to determine the specifics of care and maintenance for one or more trees.
- M. Property Owner shall mean the person(s) owning a designated property as shown by the County Assessor's Plat of the Town of Bath, as the case may be.

SECTION 2: CREATION AND ESTABLISHMENT OF A TREE BOARD

There is hereby created and established a Tree Board for the Town of Bath, Morgan County, West Virginia.

SECTION 3: TERM OF OFFICE

The team of five (5) persons to be appointed by the Mayor and Council shall be as follows:

- A. Tree Steward (two year term)
- B. Member of the Town Council (two year term)
- C. Resident of the Town of Bath or second Town Council Member (two year term)
- D. Two (2) residents of Morgan County (two year term)

In the event that a vacancy shall occur during the term of the member, his/her successor shall be appointed for the unexpired portion of the term. The Tree Board may propose one or more names, and the Tree Board member who is a representative of the Town Council will share this recommendation with the Council.

SECTION 4: COMPENSATION

Members of the Tree Board shall serve without compensation.

SECTION 5: DUTIES AND RESPONSIBILITIES

- A. Coordinate and promote Arbor Day activities;

- B. Review and update a five-year plan to plant and maintain trees on town property
- C. Support public awareness and education programs relating to trees;
- D. Review town department concerns relating to tree care;
- E. Submit an annual report of its activities to the town council;
- F. Assist with the annual application to renew the Tree City USA designation;
- G. Recommend a list of tree species for planting on town property, and a list of species to be discouraged from planting on town property;
- H. Other duties that may be assigned by the Town Council

The Tree Board shall meet a minimum of four times each year. All meetings shall be open to the public. The Tree Board chair may schedule additional meetings as needed; a quorum is required to make decisions.

SECTION 6: OPERATIONS

The Tree Board shall choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members shall be a quorum for the transaction of business.

SECTION 7: COORDINATION AMONG TOWN DEPARTMENTS

On matters concerning trees on town property, all town departments will coordinate as necessary with the Tree Board and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements, and other public properties not under the direct jurisdiction of the Tree Board.

SECTION 8: TREE PLANTING AND CARE STANDARDS

- A. Standards: All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care "Best Management Practices (BMPs)" published by the International Society of Arboriculture.
- B. Requirements of franchise utility companies: The maintenance of public trees for utility clearance shall conform to A-300 standards.
- C. Spacing: Small trees shall be planted a minimum of 30 feet apart; medium trees shall be planted a minimum of 40 feet apart; large trees shall be planted a minimum of 50 feet apart, except in special plantings designed or approved by the Tree Board.
- D. Distances from curb and sidewalk: No trees may be planted closer to any curb or sidewalk than the following: small trees, 2 feet; medium trees, 3 feet; and large trees, 4 feet.
- E. Distance from Street Corners and Fireplugs: No street tree shall be planted closer than 35 feet of any street corner, measured from the nearest intersecting curbs or curb lines. No street tree shall be planted closer than 10 feet of any fireplug.
- F. Utilities: No street trees may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.
- G. Public Tree Care: The town shall have the right to plant, prune, maintain and remove trees, plants, and shrubs within the lines of all streets, alleys, avenues,

lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

- H. The Tree Board may remove or cause or order to be removed, any town tree or part thereof which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest.
- I. Pruning, Corner Clearance: WV law¹ requires private landowners to remove trees or to prune limbs or shrubs so that such branches shall not obstruct the light from any street lamp, or obstruct the view of any street intersection and so that there shall be a clear space of eight feet (8') above the surface of a street or sidewalk.
- J. The Tree Board will work with landowners to help them avoid potential liability. The Tree Board shall inform owners by certified mail of any tree overhanging any street or right-of-way within the town, and shall require the owner to prune the branches. The owner of the tree may give written permission to the Tree Board to prune said branches if possible. The owner may give the Tree Board permission to secure an estimate from a qualifying tree removal company to remove large limbs. The cost of having said limbs removed is the responsibility of the landowner; where possible the Tree Board may provide limited financial assistance.

SECTION 9: INTERFERENCE WITH TREE BOARD WORKERS

It shall be unlawful for any person to prevent, delay or interfere with the City Tree Board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any Street Trees, Park Trees, as authorized in this ordinance. It shall be unlawful to interfere when the Tree Board has a written partnership with a business or property owner to undertake these activities.

SECTION 10: PROHIBITION AGAINST HARMING PUBLIC TREES

It shall be unlawful for any person, firm, or corporation to damage, remove, or cause the damage or removal of a tree or shrub on town property without written permission from the Tree Board and the Town Council. Should a tree be illegally

¹ Under West Virginia Code, Chapter 17, Roads and Highways, "Obstructions within the meaning of this chapter, shall include trees which have been cut or have fallen either of adjacent land or within the bounds of a public road in such a matter as to interfere with travel thereon; limbs of trees which have fallen within a public road or branches of trees overhanging the same so as to interfere with travel...Such obstructions shall be considered within the bounds of any state or county-district road whenever any part thereof shall occupy any part of the right-of-way provided law or acquired for road purposes...."

Those persons who damage or destroy trees on town property shall be charged under section WV Code 61, Crimes Against Property.

removed, the town may replace the tree and charge the cost to the person who removed the tree.

It shall be unlawful for any person, firm, or corporation to attach any cable, wire, sign, or any other object to any street, park, or public tree.

It shall be unlawful for any person, firm, or corporation to "top" any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the Tree Steward. Should a tree be illegally topped, the town may replace the tree and charge the cost involved to the person who removed the tree.

Any person, firm or corporation, or city department performing construction near any public tree(s) shall consult with the Tree Board and shall employ appropriate measures to protect the tree(s) according to procedures contained in the Best Management Practices (BMPs) for Managing Trees During Construction, published by the International Society of Arboriculture.

SECTION 11: ENFORCEMENT

The Town of Bath shall have the power to enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon right-of-way of any street, alley, sidewalk or other public space in the Town.

SECTION 12: PENALTIES

Violations: Any person who violates any provision of this article or who fails to comply with any notice issued pursuant to provisions of the article, upon being found guilty of violation, shall be subject to a fine not to exceed one hundred dollars (\$100) for each separate offense. Each day during which any violation of any provision of this article shall occur or continue shall be a separate offense. If, as a result of the violation of any provision of this article, the injury, mutilation, death of a tree, shrub or other plant located on Town owned property is caused, the cost of repair or replacement of such tree, shrub or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with *The Town of Bath Tree Inventory and Management Plan, June 2023*.

Assignment of Claim: In the event a nuisance is not abated by the date specified in the notice, the Town is authorized to cause the abatement of such nuisance. The reasonable cost of such abatement shall be filed as a lien against the property upon which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.

Appeals: All hearings shall be open to the public. The appellant or Tree Board and any person whose interests are affected shall be given an opportunity to be heard before the Town of Bath Town Council. The procedures shall not require compliance with strict rules or evidence, but shall mandate that only relevant information be received. Council shall render its decision within thirty days.

SECTION 13: REVIEW BY THE TOWN COUNCIL

The Town Council shall have the right to review the conduct, acts and decisions of the Tree Board.

First Reading November 21, 2023

Second Reading December 5, 2023

Adopted December 5, 2023

Mayor Scott E. Mark

Date 12-5-2027

Recorder Susan J. Webster

Date 12-5-2023