

Amended Tree Ordinance

City of Summersville, Nicholas County, West Virginia

PURPOSE

AN ORDINANCE REGULATING THE PLANTING, MAINTENANCE AND REMOVAL OF TREES IN PUBLIC STREETS, PARKS, AND OTHER MUNICIPALLY OWNED PROPERTY; ESTABLISHING AN URBAN TREE COMMITTEE AND PRESCRIBING REGULATIONS RELATING TO THE PLANTING, MAINTENANCE AND REMOVAL OF TREES IN PUBLIC PLACES; PROVIDING FOR THE PRUNING AND REMOVAL OF TREES ON PRIVATE PROPERTY WHICH ENDANGER PUBLIC SAFETY; ESTABLISHING A URBAN FORESTRY APPEALS COMMITTEE; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF IT PROVISIONS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SUMMERSVILLE, NICHOLAS COUNTY, WEST VIRGINIA, AS FOLLOWS:

SECTION 1. SHORT TITLE

This ordinance shall be known and may be cited as the TREE ORDINANCE OF THE CITY OF SUMMERSVILLE, NICHOLAS COUNTY, WEST VIRGINIA

SECTION 2. DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include singular and words in the singular include the plural.

1. **Municipality** is the City of Summersville, Nicholas County, West Virginia
2. **Summersville Forestry Council** is the body which advises the city on matters affecting the Urban Forest.
3. **Tree Steward** means person within the committee who provides technical expertise and advice to the Urban Tree Board.
4. **Person** is any person, form, partnership, association, corporation, company or organization of any kind.
5. **Street or Highway** means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right for the purpose of vehicular and pedestrian traffic, and extending from the property line to property line.
6. **Park** shall include all public parks, the ownership and control of which as vested in the City of Summersville, Nicholas County, West Virginia.
7. **Public Places** shall include all grounds owned by the City of Summersville, Nicholas County.
8. **Tree or Street Tree** includes any tree or other plant in a public place as indicated by subsequent provisions of this Ordinance.
9. **Public Trees** are all shade and ornamental trees now or hereafter growing on any street or any public right-of-way or grounds owned or controlled by the City of Summersville.

10. **Property Owner** shall mean the person (s) owning designated property as shown by the County Assessors Plat of the City of Summersville, as the case may be.
11. **Remove** shall mean the cutting down or damaging, whether by deliberate or negligent act or omission, or any act which causes the tree to die within three years.
12. **Urban Forest** shall mean all trees located on city-owned or controlled property.
13. **Urban Tree Specifications and Standards of Practice** shall mean regulations promulgated by the Summersville Forestry Council and adopted by the City of Summersville Council and regulating or dealing with the Urban Forest.
14. **Official Comprehensive Tree Plan** shall mean a written plan, developed and/or updated annually by the Summersville Forestry Council and approved by the City Council for the care, preservation, pruning, planting, replanting, removal, disposition of trees and shrubs in parks, along streets and in other public areas.

SECTION 3. STATEMENT OF OBJECTIVES

The objective of the ordinance is to manage removal and replacement of trees within the City. To monitor species, provide for the aesthetic quality of the City, and to provide for citizen protection by controlling tree growth, size and condition within the City Limits.

SECTION 4. AUTHORITY AND POWER

1. City's Right to Plant, Maintain and Remove Trees on Public Property

The City shall have the right plant, prune, maintain and remove trees, plants and shrubs within the public right-of-way of all streets, alleys, avenues, lanes, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

2. Composition of Summersville Forestry Council

The Summersville Forestry Council shall be comprised of five voting persons appointed by the Mayor with approval of the City Council as follows:

- 1 tree steward
- 1 member of the Summersville City Council
- 3 residents of the City of Summersville

3. Summersville Forestry Council Term Of Office

The term of five voting persons to be appointed by the mayor shall be three years, except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

4. Administrative Support for Summersville Forestry Council

The Mayor shall have the responsibility of providing administrative guidance in carrying out the activities of the Summersville Forestry Council.

5. Summersville Forestry Council Compensation

Members of the Summersville Forestry Council shall serve without compensation.

6. Summersville Forestry Council Meetings

The Summersville Forestry Council shall be responsible for meeting periodically at such times and planting, care and maintenance of all trees on publicly owned lands.

7. Summersville Forestry Council Quorum

A majority of members shall constitute a quorum and any actions of the Summersville Forestry Council may be taken by a majority of the members present at the meeting.

8. Summersville Forestry Council Required to Keep a Record of Meetings

The Summersville Forestry Council shall choose its own officers and keep a journal of its proceedings.

9. Conflict of Interest on Summersville Forestry Council

A member who has a conflict of interest shall disqualify himself or herself and withdraw from participation in the matter. The member shall not sit with the Summersville Forestry Council during the consideration and discussion of that matter.

10. Removal from the Summersville Forestry Council

Faithful attendance at all Summersville Forestry Council meetings and conscientious performance of the duties required of the Summersville Forestry Council members shall be considered a prerequisite of continuing membership on the Summersville Forestry Council. The Mayor, with approval of the City Council can remove a member from the Summersville Forestry Council with just cause.

SECTION 5. RESPONSIBILITIES

It shall be the responsibility of the Summersville Forestry Council to study, investigate council and develop and/or update annually, and implement a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such a plan will be presented annually to the Summersville City Council and upon their acceptance and approval, shall constitute the official comprehensive tree plan for the City of Summersville, West Virginia.

SECTION 6. DUTIES OF THE SUMMERSVILLE FORESTRY COUNCIL

The Summersville Forestry Council shall assist in the implementation and enforcement of the provisions of this Ordinance, and for recommending new and modified rules and regulations governing the planting, maintenance, removal, fertilization, spraying, pruning, and bracing of the public trees, emergency procedures, stump removal, and the use of insecticides, fungicides, and herbicides and sale/disposal of wood products on the streets or other public sites, and shall oversee the planting, maintenance and removal of trees growing now or hereafter planted in any public area of the City of Summersville.

The Summersville Forestry Council shall:

- (a) Supervise or inspect all work done under a permit issued in accordance with the terms of this ordinance.
- (b) Coordinate the formulation of a comprehensive tree plan in cooperation with Mayor and the Summersville City Council.
- (c) Develop an Urban Tree Specifications and Standards of Practice manual by which all work shall conform. This document shall be updated and amended as needed.
- (d) Investigate available grants, loans or contributions from other governmental agencies, public or private corporations or individuals.

SECTION 7. PERMIT, LICENSE, AND INSURANCE REQUIREMENTS

1. Request for Inspection/Permit

No person, firm or corporation shall advertise, solicit, or contract as a tree expert to improve the condition of forest, shade or ornamental trees by feeding, fertilizing, trimming, bracing, or other methods of improving or protecting public-owned trees without first obtaining a permit from the Summersville City Office. Other activities covered by this section include but are not limited to planting, spraying, pruning, removing, cutting above ground, cutting below ground or otherwise disturbing a public tree

- (a) A Request for Inspection/Permit form can be obtained at the City Office in Summersville Municipal Building. The Summersville Forestry Council shall review the qualifications of the applicant and determine whether a permit will be issued.
- (b) Applicants will be notified by the City within 60 days of submitting a Request for Inspection/Permit form. Said permit shall be a prerequisite to the performance of any work connected with the planting, removing, spraying, pruning and root pruning or any other acts necessary to obtain such work.
- (c) Valid requests will be issued a permit detailing the specific tree work allowed, individuals/firms involved, completion time frame, debris removal, and any traffic/safety related requirements. He shall perform the work described above in a professional manner and, in addition, comply with the specifications (written and drawn) furnished by the Summersville Forestry Council. He shall further comply with the regulations governing work to be done as directed upon the permit to over such work.
- (d) A party who fails to obtain such a permit violates this section of the Ordinance and may be subject to a fine of not more than \$100 per day. The imposition of this penalty shall not affect the liability of the person to fine and imprisonment as provided in Section 12 of this ordinance.
- (e) The city may suspend permit requirements as necessitate by storm damage or emergency situations.
- (f) Any public utility company shall notify the Summersville Forestry Council of any routine line maintenance within 30 days of beginning any work

2. License and Insurance

No person or firm shall engage in the business or occupation of pruning, treating, or removing trees on municipal-owned or controlled land without first producing evidence of certification/license, worker compensation coverage, and a certificate of insurance showing coverage for general liability at the Summersville City Office.

He shall obtain and maintain in full force and effect, covering the performance of the work covered by the permit issued under these regulations, comprehensive property damage and public liability insurance. Said policy of insurance is to have a general liability policy with a minimum of \$300,000 for injury to any person or persons and property damages. A certificate of said insurance policy with a 30-day cancellation notification shall be placed on file with the Summersville City Office. Additionally they must provide worker's compensation insurance for all employees.

SECTION 8. TREE PLANTING, MAINTENANCE, AND REMOVAL

It is the policy of the City of Summersville to maintain existing trees and to provide for and encourage the planting of new trees within Summersville to the greatest extent possible.

1. Desirable Trees

The Summersville Forestry Council shall have on file in the City Office copies of the WV Division of Forestry brochure entitled "Trees for Cities and Communities" listing trees desirable trees by size class for planting in public places. Copies of the brochure maintained at the

Summersville Municipal Building and shall be made available to the public.

2. Undesirable Trees

The Summersville Forestry Council will provide a list of trees undesirable for planting in public places in the city to insure public safety and welfare. Trees, such as tree of heaven, silver maple, poplar, box elder, catalpa, or willow whose roots cause damage to any public sidewalk, street, utility or other infrastructure in the city, is hereby declared to be an undesirable species of tree for street planting.

3. Prohibit Topping

The practice of tree topping is prohibited on all public trees unless specifically allowed by a permit issued by the City. Topping is also strongly discouraged as a tree care practice for private trees. The practice of tree topping is prohibited on all public trees unless specifically allowed by a permit. Acceptable pruning methods will be described in the Urban Tree Specifications and Standards Manual developed by the Summersville Forestry Council.

4. Dead or Dying Tree

Any dead or dying tree on public or private property that poses a safety or health risk to the public or to other trees shall be removed as soon as possible. The city shall make a risk determination of dead or dying trees on public and private property and cause their removal as appropriate.

5. Hazardous Trees

Any tree, shrub, or hedge, or part thereof, growing upon public property or private property and shows evidence or severe decay or defect, overhangs or interferes with the use of any public walk, street or highway, park or public place within the city, which in the opinion of the majority of the Summersville Forestry Council, endangers the life, health, safety or property of the public, shall be declared a public nuisance. The City will cause all trees declared a public nuisance to be removed or pruned as necessary to correct the situation and eliminate the hazard in a manner and time commensurate with the severity of the risk posed by the trees.

SECTION 9. ABUSE OR MUTILATION OF PUBLIC TREES

No person shall or shall cause any public tree to be damaged, cut, carve, transplant, improperly prune or remove public trees; attach any rope wire, nails, advertising poster, or other contrivances to any tree, allow any gaseous liquid or solid substance which is harmful to such trees, to come into contact with them; or set fire or permit any fire to burn when such fire or heat thereof will injure any portion of said trees, or any other damage as determined by the Summersville Forestry Council. Violators shall be responsible for replacement and restoration costs resulting from any damage and improper pruning of public trees. Violators may also be fined \$500 for each tree damaged.

SECTION 10. INTERFERENCE WITH THE SUMMERSVILLE FORESTRY COUNCIL

It shall be unlawful for any person to prevent, delay or interfere with the Summersville Forestry Council, or any of its agents, while engaging in and about planting, cultivating, mulching, pruning spraying or removing of any street trees, park trees, or trees on private grounds as authorized in this ordinance.

SECTION 11. REVIEW BY THE CITY COUNCIL

The Summersville City Council shall have the right to review the conduct, acts and decisions of the Summersville Forestry Council. Any person may appeal from any ruling or order of the Summersville Forestry Council to the Summersville City Council who may hear the matter and make the final decision.

SECTION 12. VIOLATIONS AND PENALTIES

Any person, firm, or corporation violating or failing to comply with any of the provisions of the Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of up to five hundred dollars (\$500.00) per violation.

SECTION 13. SEVERABILITY

If any provisions of the Ordinance shall be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not invalidate any other provisions of this Ordinance. The City of Summersville hereby declares that they would have adopted each and every portion of this Ordinance separately regardless of the possible invalidity of any part thereof.

Approved this ____ day of _____ 2012 by the Summersville City Council.

Robert Shaffer, Mayor

Fred Reed, Recorder