

ORDINANCE NO. 1 , 2002

**AN ORDINANCE ESTABLISHING A COMPREHENSIVE TREE
MAINTENANCE PROGRAM FOR THE CITY**

WHEREAS, Council for the City of Montgomery desires to develop a program for the purpose of replacing, maintaining, and/or protecting public trees within the City of Montgomery; and

WHEREAS, since 1997 the City of Montgomery has been awarded Tree City USA status from the National Arbor Day foundation and wants to continue to enhance its programs for the care of public trees, and

WHEREAS, the City, with the aid of citizen volunteers, has conducted and catalogued a survey of street trees to identify their species, size, location and condition in order to begin a systematic program for maintaining and protecting public trees; and

WHEREAS, such trees are an asset of vital importance to the City of Montgomery for maintaining its high quality residential characteristics and business district and for preserving the beauty of public parks and municipal properties through appropriate land-and streetscaping; and

WHEREAS, it is necessary for the beautification and environmental quality of the City to establish a means of planting, maintaining and preserving trees in the public ways and on all City properties; and

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. PURPOSE.

The purpose of this Ordinance is to promote and protect the beauty and environmental quality of the community and to promote public health and safety by providing for the regulation of the planting, maintenance, preservation and removal of trees, within the City of Montgomery.

SECTION 2. APPLICABILITY.

This ordinance provides authority over all trees located on public property, which includes the street, public rights-of-way, medians, parks, municipal properties and such other public places, whether developed or undeveloped, dedicated to the City of Montgomery.

SECTION 3. DEFINITIONS.

For all purposes of this Ordinance, certain terms and words are hereby defined as follows:

a. Urban Forest. All trees, shrubs and vegetation on public property within the municipality, including the public right-of-way, easements dedicated to the City of Montgomery, street medians, public parks, landscaped municipal properties, nature preserves and undeveloped lands owned by the City of Montgomery.

b. Tree. Any self-supporting woody plant usually having one main trunk which produces a more or less distinct and elevated head with many branches and a potential caliper or Diameter at Breast Height of two inches or more.

c. *Caliper*. For the purposes of this Ordinance, the caliper of a tree shall be determined at four and one-half (4 1/2) feet from the ground, commonly known as Diameter at Breast Height (DBH).

d. *Street Trees*. Trees that abut a street or public place for which the planting site and trunk are located within the public right-of-way.

e. *Vegetation*. Shrubs, bushes and other woody plants that usually remain low and produce shoots or stems from base and are not usually tree-like or single stemmed.

f. *Plants*. Plants other than trees or vegetation.

g. *Park*. Public parks having individual names and all undeveloped areas with trees, plants and/or vegetation owned by the City.

h. *Public Trees*. All trees located within publicly owned parks or on municipal properties and those trees located within all public right-of-ways in the City of Montgomery, including street trees.

i. *Private Trees*. Trees located on private property.

j. *Street*. A public road or public alley located within the City.

k. *Public Right-of-Way*. A public easement that extends from the street into a portion of the property on either side of that street or roadway.

l. *Tree Lawn*. That portion of the property lying between the edge of the public right-of-way and the edge of the paved street.

m. *Municipality*. The City of Montgomery.

n. *Public Place.* A public place shall mean any park, street, median, developed or undeveloped municipally owned property, or public right-of-way dedicated to the municipality.

o. *Private Property.* All real estate within the City of Montgomery except real estate that is owned, leased, controlled or occupied by the City of Montgomery.

p. *Property owner.* Any one or more of the following:

(1) The owner or owners in fee simple of a parcel of real estate, or a life tenant of such realty, if any; or

(2) The record owner or owners as reflected by current records in the Hamilton County Auditor's Office; or

(3) The purchaser or purchasers of such real estate under any contract for the conditional sale thereof.

q. *City Manager.* The appointed or acting City Manager, or his designee.

r. *Public Works Director.* The Director of the City Department of Public Works, or its successor department.

s. *Arborist.* A person with expertise and certification and training in the care of trees.

t. *Utility.* Any water, sewer, gas, drainage or culvert pipe, electric power, telecommunication signal, communication or cable television conduit, fiber, wire, cable system or operator thereof.

u. *Utility Provider.* Any natural or corporate person, business association or other business entity, including, but not limited to, a partnership, sole proprietorship, a political subdivision, a public or private agency of any kind, which owns or operates a system supplying and/or carrying a utility.

v. *Contractor.* Any person or entity hired by a private citizen, business, not within the employ of the City, which is hired for the purpose of providing a specific service.

SECTION 4. CONTROL OF TREES IN THE MUNICIPALITY.

The City Manager is responsible for enforcing this Ordinance and the regulations within the Tree Manual authorized herein. The City Manager is hereby given jurisdiction, authority, supervision and control over all trees, plants and vegetation which now or which hereafter may exist in any public place in the municipality. The City Manager also is given jurisdiction, authority and control concerning the issuing of permits hereinafter provided for. In the exercise of any or all of the powers granted herein, the City Manager shall have the authority to delegate all or such part of his power and duties with respect to supervision and control of trees, or the issuance of permits authorized herein, to such subordinates and assistants in the employ of the municipality as he may deem appropriate from time to time.

SECTION 5. TREE MANUAL OF STANDARDS & SPECIFICATIONS

With the adoption of this Ordinance, the Beautification and Tree Commission shall develop a Tree Manual for the City to include specifications and standards for the care, preservation, planting, spacing and removal of public trees. The specifications and standards may include, but may not be not limited to:

a) Guidance on choosing trees, including recommended and undesirable species of trees for the public right-of-way, parks and/or other municipal properties. While adherence to the species guidelines is encouraged, no species will be specifically prohibited in the public right-of-way, except if its size is inappropriate for the location in question.

b) A list of the sizes and classes of trees that can be accommodated in the right-of-way and under overhead utility lines.

c) Specifications for size, spacing, distances and clearances of trees in the right-of-way.

d) Pruning standards.

Guidelines for tree species will be based on variables such as attractiveness, size, adaptability to local climate and soil type, tolerance of drought, pests or adverse urban conditions and/or other factors which affect suitability for the proposed location. The selection of trees for planting, pruning or removal in City parks will be at the recommendation of the City arborist or person with said responsibility as designated by the Public Works Director

Once developed, the Manual shall be filed with the City Administration. These recommendations shall from time to time be updated to reflect current best practices and as amended shall be filed with the City Administration. The City Tree Manual shall constitute the official comprehensive City Tree Plan for the City. Implementation of the City Tree Plan shall be the responsibility of the City Manager. Requests by any public agency, utility provider, developer or private property owner to vary from the City Tree Plan due to practical difficulty shall be presented to the City Manager for his review and final approval.

SECTION 6. PLANTING OF STREET OR PUBLIC TREES BY PRIVATE PROPERTY OWNERS.

A. Abutting private property owners may plant trees or shrubs in the public right-of-way consistent with the Tree Manual. Trees in the right-of-way shall be maintained and pruned in accordance with the requirements set forth in the Tree Manual. Property owners who choose to plant street trees shall obtain a permit from the City Manager or his designee. This system will assist the City in maintaining the City's Tree Inventory and provide an opportunity for the applicant to obtain standards and specifications for choosing, planting and maintaining street trees. Such permits shall be issued at no cost to the applicant. The City shall review permit applications within 15 business days of the postmarked date or record of receipt, whichever is earlier; if an application is not acted upon within the specified time, the applicant may deem the permit to have been denied

B. The City Manager shall have authority to intervene and deny approval to any person, firm or contractor who proposes to plant any tree or vegetation in or upon a public place if said tree or vegetation is of a size determined to be undesirable for the proposed location, or if the location is deemed unsuitable.

SECTION 7. TREE MAINTENANCE/REMOVAL

A. Public Tree Care. The City shall have the right to plant, prune, treat, maintain or remove trees, plants, vegetation or portions thereof within the public right-of-way of all streets, alleys, avenues, lanes and in other public places as may be necessary to eliminate or reduce an unacceptable risk to public safety; preserve or enhance the health of the trees, plants or vegetation; or to maintain the beauty/environmental quality of public grounds.

B. Private Property Tree Care. The standards and procedures for the care, maintenance and removal of trees upon private property are set forth in Chapter 93 of this Code governing Property Maintenance.

SECTION 8. UTILITY PROVIDERS.

Utility providers which desire to prune or clear trees within the right-of-way or on other public properties shall provide written evidence to the City Manager of its adherence to established guidelines for line clearance work recommended by the National Arborists Association. Such companies shall also notify the City Manager before commencing line clearance work within the municipality.

SECTION 9. REMOVAL OF STUMPS.

Any person who removes a public tree or street tree shall remove the remaining stump below the surface of the ground so that the top of the stump shall be a minimum of six (6) inches below the surface of the ground. The hole shall be filled in and seeded within twenty-four (24) hours of removing the stump.

SECTION 10. TREE PROTECTION.

A. Permits for Tree Removal. With the exception of representatives of the municipality, any person, business, contractor, utility or property owner desiring to remove a tree from the tree lawn, parks, street medians or other public place for the purpose of construction, or for any other purpose, must first obtain a permit from the municipality, for which no fee shall be charged.

The City Manager has the authority to grant permits for the removal of trees from public places. Such permits may be denied if the removal of tree(s) from a public place is not necessary for the protection of public health and safety; or can be reasonably avoided; or, in the case of realty development or construction, unless the permit request is accompanied by a plan to protect public trees in the general vicinity of construction and add new trees and/or landscaping if part of the tree lawn is to be removed. The City shall review permit applications within 15 business days of postmarked date or record of receipt, whichever is earlier; if a permit application is not acted upon within the specified time, the applicant may deem the permit to have been denied.

B. Removal of Public Trees by the City. Whenever it is necessary for the City to remove a tree or shrub from a tree lawn or other public place, in connection with the

paving of sidewalk, paving or widening of a street, or for any other reason, the City shall make reasonable endeavors to remove and replant such trees or replace them. No tree over twelve (12) inches in caliper or tree which is thirty (30) years of age or older, shall be removed without prior review by the City Manager. Replacement trees shall meet the standards of species, size, condition and placement set forth in this Ordinance and in the City Tree Manual. Where practicable, any removed tree with a diameter at breast height (DBH) of four (4) inches or more shall be replaced, preferably with a tree of comparable caliper and equal or better condition.

C. Removal or Defacement of Public Trees. No person shall damage, cut, carve, transplant or remove any tree or shrub on public property or in the public right-of-way; attach any rope, wire, nails, advertising posters, or other contrivance to any tree or shrub on public property or in the public right-of-way; or set fire or permit fire to burn in any manner that injures any portion of any tree or shrub on public property or in the public right-of-way.

Any public tree(s) that are damaged, but not badly enough to justify removal, as determined by the City Manager, shall be considered to be devalued. The person or entity causing such damage shall compensate the City for such damage. The monetary amount shall be determined by the City Manager or his designee, based on the assessment of a licensed arborist of the monetary investment required to save the tree(s); or, if there is a likelihood the tree(s) will not survive the damage inflicted, then the cost of replacement of tree(s) of like species and caliper; or, if a different species is more suitable based on current best practices, or the tree(s) is/are too large to be replaced in kind, then

the cost of replacement with tree(s) of minimum caliper 1 –2” of the same species or more suitable species, as judged by a licensed arborist.

D. Tree Topping. Street trees or public trees shall not be topped except in such circumstances when the trees are severely damaged by storms or other natural causes, or when such trees are under utility wires or other obstructions where other pruning practices are impractical. Tree topping shall be considered as the severe cutting back of limbs to stubs larger than three inches in diameter within the trees’ crown to such a degree so as to remove the normal canopy and/or disfigure the tree. As a matter of policy, the City Manager should make all utility providers aware of the standards for tree topping of public and street trees within the City of Montgomery, and take all reasonable steps to insure that the pruning of public trees by utility companies is consistent with these standards.

SECTION 11. REALTY DEVELOPMENTS AND CONSTRUCTION.

A. No person shall by any type of construction reduce the number of trees in the tree lawn without first obtaining a permit (for which no fee shall be charged) from the City Manager or his designee. Efforts should be made to protect public trees from damage and a plan to install street trees and/or add landscaping should accompany the permit request.

B. No person in charge of, or responsible for, the erection, alteration or removal of any building or structure in the municipality shall permit any tree upon any public place in the vicinity of such operation to stand without a good and sufficient guard or protection as to prevent injury, damage, or defacement to such tree arising out of, in

connection with, or by reason of such operation. The sufficiency of such guard or protection shall be determined by the City Manager at the time of such erection, alteration or removal.

C. No person shall excavate ditches, tunnels, trenches or install a driveway or sidewalk within a radius of ten (10) feet of any public tree or shrub without first obtaining written approval from the City Manager.

D. No person shall place or maintain in the ground in any public place any stone, concrete, brick, or other impervious material or substance in such a manner as may obstruct the free access of air and water to the roots of any tree upon any public place in the municipality without first obtaining written permission of the City Manager.

E. The City shall review any permit application required under this section within fifteen (15) business days of the postmarked date or record of receipt, whichever is earlier; if an application is not acted upon within the specified time, the applicant may deem the permit to have been denied.

SECTION 12. PENALTY.

Whoever violates any section of this Ordinance shall be guilty of a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) for the first such offense. For subsequent offenses within one year after the first offense, such person shall be guilty of a misdemeanor punishable by a fine of not more than Seven Hundred Fifty Dollars (\$750.00). Each day a condition or any action in violation of this Ordinance is continued or permitted may be charged as a separate offense. At the time of sentencing and after sentencing, the Court may permit restitution in lieu of any or all of the fine imposed.

SECTION 13. SEVERABILITY.

Should any provision of this Ordinance or part thereof be held, under any circumstances, in any jurisdiction, to be invalid or unenforceable, such validity or unenforceability shall not affect the validity or enforceability of any other provision of this Ordinance or other part of such provision.

SECTION 14. This Ordinance shall be in full force and effect from and after its passage.

PASSED: _____

ATTEST: _____
Clerk of Council

Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon, Law Director