

ORDINANCE 2016-004

AN ORDINANCE AMENDING CHAPTER 633 OF THE CITY CODE RELATIVE TO TREES AND PUBLIC PROPERTY.

BE IT ENACTED by the City Council of the City of Canandaigua that:

Sec. 1 Chapter 633 of the Municipal Code, is hereby amended in its entirety and replaced with the following "Urban Forestry Ordinance" (additions in *italics*, deletions striken);

Chapter 633: TREES AND PUBLIC PROPERTY

§633-1 SCOPE.

This chapter shall set forth regulations and procedures to protect public trees and other property from damage, obstruction and/or destruction.

1. *This ordinance shall be known as the City of Canandaigua Urban Forestry Ordinance.*

2. *Purpose and intent.*

This Chapter regulates the planting, maintenance, protection and removal of trees and shrubs in the City of Canandaigua urban forest only, which includes all public trees in the city treelawns; city rights of way; city parks; city parking lots; city-owned cemeteries. It also provides for a Tree Advisory Board.

The primary purpose of this Chapter is to provide guidelines and regulations to:

- A. *Maintain the public trees in a healthy condition by using best management practices.*
- B. *Promote efficient and cost-effective management of the urban forest, in accordance with the Urban Forest Master Tree Plan.*
- C. *Select, situate, and maintain public trees appropriately to maximize benefits and minimize hazard, nuisance, hardscape damage, and maintenance costs.*
- D. *Centralize public tree management under a person with the necessary expertise.*

3. *Jurisdiction.*

The City of Canandaigua shall have control of all public trees, shrubs, and other plantings now or hereafter in any city treelawn; city rights of way; city parks; city parking lots; city-owned cemeteries; or other public place within the City limits, and shall have the power to plant, care for, maintain, remove, and replace such trees, shrubs and other plantings.

In addition, in accordance with the City Council or City Planning Commission approval of site plans, the City also has jurisdiction to ensure the specific provisions of the approved site plans pertaining to landscaping on private property are upheld.

4. *Policies Regarding Trees.*

It shall be the policy of the City to maximize the planting of public trees in all areas within the Jurisdiction of this ordinance. It is desired that at least 85% of all planting sites as designated by the City Arborist are actively utilized.

It shall be the policy of the City to adhere to the recommendations, guidelines, and best practices identified in the Urban Forest Master Tree Plan with regard to the Urban Forest.

5. *Disclaimer of Liability.*

*Nothing contained in this section shall be deemed to impose any liability upon the city, its officers or employees, nor to relieve the owner of any private property from the duty **to** keep any tree, shrub or plant upon any street tree area on his property or under his control in such*

condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, pleasure ground, boulevard, alley or public place within the city.

6. Interference with Planting, Maintenance, and Removal.

No person, firm or corporation shall interfere with the Director of Public Works, or persons acting under his authority, while engaged in planting, mulching, pruning, maintaining, or removing any public tree, shrub or plant within the City.

7. Establish a Tree Advisory Board.

- A. There shall be a Mayoral Committee called the Tree Advisory Board (TAB) in the City consisting of 5 members. Members shall be appointed by the Mayor.*
- B. The volunteer members shall serve without compensation.*
- C. The Mayor may remove any appointed member of the TAB from the Board, with or without cause. Vacancies shall be filled by appointment by the Mayor.*
- D. The Tree Advisory Board shall hold regular meetings at least once every other month, and may hold additional meetings as it deems necessary. A majority of the TAB shall constitute a quorum for the purpose of transacting the business of the TAB. The TAB shall annually elect a Secretary. The Secretary shall keep a record of all proceedings, resolutions, findings, determinations and transactions of the TAB, which records shall be a public record, and a copy of which record shall be filed with the City Clerk.*

8. City Arborist.

The City may employ or retain a Certified Arborist (the "City Arborist") to manage the urban forest and execute the Urban Forest Master Plan. This position may be a full-time, part-time, contract, or shared position with other communities. In the event such position is not filled, all references in this Chapter to City Arborist shall refer to the Director of Public Works.

9. Designate Administrative Responsibilities.

- A. The City Arborist, under the direction of the Director of Public Works shall, plant, maintain and otherwise care for, or if necessary, remove trees in any public place in the city. The responsibilities of the City Arborist shall include but not be limited to the following:
 - 1. Maintain the City's standing and membership in Tree City USA.*
 - 2. With the consultation of the Tree Advisory Board:
 - a. Prepare an annual program for tree planting and tree care in public places of the City;*
 - b. Recommend to the City Manager changes or additions to the Urban Forest Master Plan;*
 - c. Develop, renew, and update the arboricultural standards;*
 - d. Develop maintenance standards as they relate to public trees;*
 - e. Make determinations of public tree removals;*
 - f. Review all landscaping plans, street reconstruction projects, and other similar activities as they affect the public trees, and all site plans submitted to the Planning Commission for approval, which are referred to the City Arborist;*
 - g. Define criteria for designating specific "Landmark Trees" or other arboricultural areas of exceptional historical or aesthetic significance; develop best practices for protecting and maintaining these designated assets, if appropriate; and advocate for and manage resources to effectively manage them.***

3. *Inspect the planting, maintenance and removal of all public trees.*
4. *Conduct and maintain an accurate Tree Inventory which catalogs the number, type, condition, and location of all trees within the jurisdiction of this ordinance.*

B. The Tree Advisory Board will:

1. *Work closely with the City Arborist as described in paragraph 2, above*
2. *Review plans and policies which are referred to it by City Boards, on matters relating to the public trees, urban forestry, arboriculture, and horticulture.*
3. *Recommend legislation regarding the urban forest.*
4. *Provide information and education to the community regarding the selection, planting and maintenance of public and private trees.*

10. Specify Cooperation between Departments and Agencies.

The City Arborist, as an employee of the Public Works Department, shall review any public or private plans or applications for street reconstructions; new curb, gutter, sidewalks or driveway installations; or other improvements which might require the removal of or cause injury to any public tree, or interfere with the fulfillment of the Urban Forest Master Plan. The City Arborist, with the support of the Director of Public Works, may require modifications of such applications in order to protect the public trees.

11. Emergency work.

- A. *This chapter shall not govern any emergency activity immediately necessary to protect life, safety or property or to maintain access to any property. Any such activity shall incorporate reasonable efforts to protect trees and shrubs on city property from unnecessary damage.*
- B. *Any person or city agency engaged in any action covered by Subsection A shall make a reasonable effort to notify the City Arborist prior to commencing that action and shall, in any event, provide written notice of the emergency and the work done to the City Arborist within three calendar days of commencing that work.*

§633-2 DEFINITIONS.

The following terms shall carry the meanings indicated:

CITY ARBORIST

A Certified Arborist who manages the urban forest; recommends arboricultural standards to be set by the City (found at Attachment 1 to this Chapter); and executes the Urban Forest Master Plan. This position may be a full-time, part-time, contract, or shared position with other communities. ^{1|12|}

DIRECTOR OF PUBLIC WORKS

The Director of the Public Works Department of the City or his/her duly authorized agent.

PARKS

Includes all public parks having individual names.

PARKS AND RECREATION DEPARTMENT BUREAU

A Bureau of the Department of Public Works responsible for exercising the City's jurisdiction under this Chapter. ~~The department of the City under whose jurisdiction public trees fall.~~

PARKS MAINTENANCE SUPERVISOR

~~The Parks and Recreation employee designated to recommend arboricultural standards to be set by the City.~~

PERSON

Any individual, organization, or association of persons and the singular number shall include the plural.

PROPERTY LINE

~~The outer edge of a street or highway.~~

PUBLIC PLACES

Includes all grounds owned or maintained by the City.

PUBLIC TREES

Includes all shade and ornamental trees now or hereafter growing on any street, park or public place.

STREET or HIGHWAY

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 purposes of vehicular and pedestrian traffic.

TREELAWN

That part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

TREES AND SHRUBS

Any woody plants which have self-supporting, aboveground parts which are viable year round.

URBAN FOREST

All public trees in the city treelawns; city rights of way; city parks; city parking lots; and city-owned cemeteries.

§633-3 PERMITS REQUIRED.

No person shall plant, spray, fertilize, treat, prune, remove, cut above ground, or otherwise disturb any public tree or shrub on any street, park or public place without first filing an application and procuring a permit from the Director of the Public Works. *Persons, City agencies, or private or public utilities conducting regular maintenance work on trees or shrubs may be granted general permits to cover their work on a yearly basis.* The person receiving the permit shall abide by the Arboricultural Specifications and Standards of Practice as determined by the City.

- A. An application for tree planting shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting; and such other information that the Director of the Public Works shall find reasonably necessary for a fair determination of whether a permit should be issued.
- B. Whenever any tree shall be planted or set out in conflict with the provisions of this section, it shall be lawful for the ~~City Parks and Recreation Department~~ *Director of Public Works* to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.
- C. An application shall be required for any maintenance performed and shall state the number and kinds of trees to be sprayed, fertilized, pruned, or otherwise treated; the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as the ~~Parks and Recreation~~ *Director of Public Works* shall find reasonably necessary for a fair determination of whether a permit should be issued.
- D. No person or property owner shall remove or prune a tree from the treelawn for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the Director of the Public Works, and replacing the removed tree or trees in accordance with the adopted Arboricultural Specifications. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the Director of the Public Works. The person or property owner shall bear the cost of removal and replacement of all trees removed.
- E. Any person who has removed a public tree without obtaining the appropriate permit shall replace that tree with a tree of equivalent dollar value in the vicinity of the removed tree. The value of the tree will be determined in accordance with the "Guide for Establishing Values of Trees and Other Plants," published by the International Society of Arboriculture. If no suitable location exists in the vicinity of the tree removed or if the replacement tree is of lesser value, the person causing the tree to be removed shall make a compensatory payment to the City equal to the difference in value between the tree removed and any replacement tree. Such compensatory payment shall be paid into a fund established by the City Treasurer for that purpose and used solely for the purpose of enhancing the urban forest.

§633-4 DAMAGING OF PUBLIC TREES AND OTHER PROPERTY PROHIBITED.

- A. No person shall mutilate, injure, cut, carve, transplant, prune or destroy any public tree or shrub, allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree. When such damage results in the destruction and/or removal of a tree, the person responsible for that damage shall replace that tree

with a tree of equivalent dollar value in the vicinity if the removed tree or make a compensatory payment as set forth in **§633-3E**.

- B. No person shall mutilate, injure, deface or destroy any fence, fence post, gate or railing; any walk, crosswalk, street lamp, lamp post, either electric or gas; or any wire, box or other appurtenance of the fire alarm system; or any hydrant, water, gate or other appurtenances of the water works system; or any fixture erected, made, planted, set out or being in, under or upon any street, park or public place in the City.
- C. *Excessive mulching of public trees beyond 2" – 4" of mulch per tree, no closer than 1" to the trunk ("mulch volcanos") is prohibited.*

§633-5 PROTECTION OF TREES.

It shall be the duty and responsibility of all property owners to maintain the grounds of the city treelawns on the owner's property, regardless of whether such property is developed. This maintenance shall include watering as needed and keeping such treelawns free from any obstructions contrary to public safety.

- A. *Property owners shall be responsible for watering newly planted public trees in such treelawns in accordance with procedures provided at the time of planting. Such watering shall be continued until the public tree becomes acclimated to the new environment, but need not exceed one year.*
- B. No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of 10 feet from any public tree without first obtaining a written permit from the City Manager or the Director of Public Works.
- C. All trees on any street or other public place near any excavation or construction of any building, structure, or street work, shall be guarded with a ~~good-substantial~~ fence, frame, or box not less than four feet high and eight feet square, and all building material, dirt, or other debris shall be kept outside the barrier.
- D. No person shall deposit, place, store, or maintain upon any public place of the City, any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, and fertilizer to the roots of any tree growing therein, except by written permit of the City Manager or Director of the Public Works.
- E. In a case where damage from construction, excavation and/or material deposits result in the destruction and/or removal of a tree, the person responsible for that damage shall replace that tree with a tree of equivalent dollar value in the vicinity of the removed tree or make a compensatory payment as set forth in § 633-3E.

§633-6 SPECIFIC TREES PROHIBITED.

No tree of the following species and varieties listed as undesirable in the *Arboricultural Specifications and Standards of Practice (Attachment 1 to this Chapter)* shall be planted in any public street.

§633-7 OBSTRUCTION.

It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees or shrubs to prune such trees or shrubs in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be seven feet over sidewalks,

and 12 feet over all streets except truck thoroughfares which shall have clearance of 16 feet. Should any person or persons owning real property bordering on any street fail to prune trees or shrubs as herein above provided, the Director of the Public Works shall order such person or persons, within three days after receipt of written notice, to so prune such trees or shrubs.

- A. The order required herein shall be served by mailing a copy of the order to the last known address of the property owner, by certified mail.
- B. When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the municipality to prune such trees or shrubs and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

§633-8 PENALTIES FOR OFFENSES AND ENFORCEMENT.

Any person who shall violate any of the provisions of this chapter shall, upon conviction, be punishable by a fine not exceeding \$250 or imprisonment in the County Jail of Ontario County for not more than 15 days, or both such fine and imprisonment. Each day on which any such violation continues shall constitute a separate offense.

The Code Enforcement Officer is hereby charged with the responsibility for the enforcement of this ordinance and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the City Attorney is hereby authorized to institute appropriate proceedings to that end.

§633- 9 PERFORMANCE EVALUATION.

The Director of Public Works or his/her designee shall collect and maintain all records and data necessary to objectively evaluate whether progress is being made toward the stated goals of this ordinance. An annual summary and analysis of the evaluation, and recommendations for action shall be prepared and presented to the City Manager. The City Council may review the report and recommendations and take actions deemed necessary to accomplish the goals of this ordinance.

§633-10 SEVERABILITY.

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

Sec. 2 This ordinance shall be effective thirty (30) days following its enactment.

ADOPTED this _____ day of _____, 2016

ATTEST:

Nancy C. Abdallah
City Clerk/Treasurer