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## PART ELEVEN — HEALTH AND SANITATION CODE

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### ARTICLE 1104 Tree Conservation

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#### CROSS REFERENCES

Authority to regulate trees—see WV Code 8-12-5(29)

#### 1104.01 Title.

This ordinance is entitled and may be cited as the *Harpers Ferry Tree Conservation Ordinance*.

#### 1104.02 Purpose.

It is the purpose of this ordinance to recognize that tree conservation is crucial to the environment and to the character of Harpers Ferry; to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees within the Corporation; and to establish authority, policies, regulations, and standards necessary to ensure that the Corporation will continue to realize the benefits provided by its urban forest. The provisions of this article are enacted to:

- (a) Establish a responsible authority for the management of the Corporation's urban forest;
- (b) Establish and maintain the optimal amount of tree cover on public property in the Corporation;
- (c) Maintain the Corporation's trees in a healthy and non-hazardous condition through good arboricultural practices; and
- (d) Establish and maintain diversity in appropriate tree species and age classes to provide a stable and sustainable urban forest.

#### 1104.03 Definitions.

As used in this ordinance, the following definitions apply:

*ANSI A300*: American National Standards Institute, Inc., "Standard Practices for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance."

*Arborist*: A person with special skills, training, or certification to apply knowledge on urban trees or on an urban forest, especially one who is a tree professional certified by the International Society of Arboriculture (ISA), the Tree Care Industry Association, the Society of

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#### HISTORY:

Ord. 2023-02 (passed 03-13-2023) amended Article 1104 to remove the Planning Commission's authority over the Tree Committee and change the name of the latter body to the Tree Commission.

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American Foresters, or another similar professional organization.

*Business:* For the purposes of this ordinance, “business” is defined as the exchange of labor, material, or services for profitable monetary gain.

*Canopy:* The area constituting the leaves and branches of the tree; the upper portion of a tree, from the lowest branch on the trunk to the top of the tree.

*Commission:* The Harpers Ferry Tree Commission.

*Community Tree Plan:* A written document that guides the work of the Tree Commission and envisions a long-range plan for the preservation and improvement of the Corporation's urban forest. The Community Tree Plan may include such data as deemed necessary by the Tree Commission to carry out its legal mandate.

*Contractor:* Any individual, corporation, or firm who agrees to supply labor or material to the Corporation of Harpers Ferry.

*Corporation:* The Corporation of Harpers Ferry, Jefferson County, West Virginia.

*Critical root zone:* A more or less circular area above and extending 24 inches below the surface of the ground around the trunk of a tree with a radius equivalent to the distance to the drip line, or 1.25 feet for every 1 inch DBH, whichever is greater. The critical root zone increases in size as the tree grows larger.

*DBH:* Diameter at Breast Height, a common forestry term indicating the diameter of a tree trunk at approximately 4.5 feet above the average ground level at the base of the tree. If a tree forks 4.5 feet above the ground level, the collective diameter of all the trunks at 4.5 feet above the ground level constitutes this measurement.

*Department:* Any of the departmental divisions of the Corporation of Harpers Ferry.

*Drip line:* An imaginary vertical line running along the ground directly beneath the outermost portion of the canopy of the tree(s).

*Historic Landmarks Commission:* The Harpers Ferry Historic Landmarks Commission.

*Injury:* Any harm or damage that affects the health of the tree(s). This term does not include pruning for the purpose of regeneration or shaping.

*Invasive species:* A plant species whose introduction causes, or is likely to cause, economic or environmental harm, or harm to human health.

*Landmark tree:* Any tree which has been individually designated by the Tree Commission to have a special significance because one or more of the following apply: rare species, old age, unusual size, distinct location, association with an historical event or person, scenic enhancement, legal boundary marker, public demand for such classification, or one or more unique characteristic(s) determined by the Tree Commission to qualify it for such classification.

*Mayor:* The mayor of the Corporation of Harpers Ferry. In all cases pursuant to this ordinance, the mayor is considered an agent of the Tree Commission.

*Native tree:* A tree species indigenous to the Mid-Atlantic region of the United States.

*Nuisance tree:* Any tree or any part thereof with an infectious disease or insect problem; dead or dying trees; invasive species; trees at risk for failure; a tree or its limb(s) that obstruct or interfere with utility lines, street lights, traffic signs, or the free passage of pedestrians or vehicles; or a tree that poses a threat to the health, safety, or general welfare of a person(s) or property.

*Official inventory tag:* A metal or plastic tag affixed to the trunk displaying the official inventory number of a tree. The tag may be placed by the Tree Commission, its agent, or an individual or company contracted to do so by the Tree Commission.

*Person:* Any person, firm, partnership, association, corporation, company, or organization of any kind.

*Planning Commission:* The Harpers Ferry Planning Commission.

*Property owner:* The person(s) owning designated property as shown by the Jefferson County Assessor's Plat of the Corporation of Harpers Ferry.

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*Pruning:* The removal of woody plant parts.

*Public property:* Any real property in the Corporation that is owned by the Corporation, or by a county or state governmental body. This term includes buildings, parking lots, parks, streets, sidewalks, rights-of-way, easements, and other similar property.

*Public tree:* Any tree growing on public property, including streets, rights-of-way, and parks.

*Removal:* The act of taking from the premises any tree or part thereof, or any action that gives cause for removal.

*Street trees:* Trees on public property growing within the right-of-way of all streets or other ways within the corporate limits.

*Topping:* The cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role.

*Tree:* Any perennial woody plant, including its root system, having at least one well-defined trunk or stem, which has reached or can reach a height of at least 15 feet and a DBH of at least 3 inches at physiological maturity.

*Urban forest:* The trees, lower vegetation, open green spaces, and associated wildlife within the Corporation or adjacent to it.

*Utility / utility company:* Any public or private utility company owning and / or maintaining utility lines for the transmission of electricity, water, sewage, telephone, television, and the like.

### **1104.04 Tree Commission.**

- (a) Establishment. There is hereby created and established, in the Corporation of Harpers Ferry, the Harpers Ferry Tree Commission, which consists of five voting members, citizens and residents of this Corporation, each appointed by a majority vote of the Town Council. One of these voting members must also be a member of the Planning Commission. When considering applicants for the Tree Commission, the Town Council will give special consideration to those with skills and an expressed interest in urban forestry, landscaping, or arboriculture. The Corporation's Maintenance Supervisor, one representative of the West Virginia Division of Forestry, and one representative of Potomac Edison (or its successor) serve as ex-officio, non-voting members of the Commission. Other persons may serve as ex-officio, non-voting members as deemed necessary by the voting members.
- (b) Duties and responsibilities. It is the responsibility of the Tree Commission to study, investigate, counsel, and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees along streets and in other public areas. Such plan may also include the designation of an official tree for the Corporation. This plan must be presented annually to the Town Council, and upon their acceptance and approval constitutes the official Community Tree Plan for the Corporation of Harpers Ferry. Such Community Tree Plan must be consistent with the Planning Commission's Comprehensive Plan. The Tree Commission, when requested by the Town Council, will consider, investigate, make findings, report, and recommend upon any special matter of question coming within the scope of its work.
- (c) Tree City USA. It is the duty of the Tree Commission to complete all required mandates to achieve and maintain Tree City USA status and inform the Town Council of all requirements and achievements in such.
- (d) Term of office. The term of office of the five persons to be appointed by the Town Council is two years. In the event that a vacancy occurs during the term of any member, the Town Council will appoint his or her successor for the unexpired portion of the term. There is no limitation to the number of terms any member may serve.

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- (e) Removal of members. Members of the Tree Commission may be removed in accordance with the provisions of Ordinance Article 130.
- (f) Election of officers. At its first regular meeting in each calendar year, the Tree Commission must elect from its voting members a chairperson, vice-chairperson, and secretary-treasurer. The vice-chairperson has the authority and power to act as the chairperson of the Commission during the absence or inability of the chairperson.
- (g) Operation. The Tree Commission may make its own rules and regulations, and must keep a written record of its proceedings. A majority of the voting members of the Tree Commission constitutes a quorum for the transaction of business. The Commission must hold a regular meeting at least quarterly. The Mayor or the chairperson of the Tree Commission may call special meetings at any time.
- (h) Compensation. Members of the Tree Commission serve without compensation, except that previously approved expenses incurred by Commission members in connection with their duties may be reimbursed upon presentation of evidence thereof.
- (i) Offices and expenses. The Town Council must provide the Tree Commission with suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts, and must provide for the operating expenses of the Commission by appropriating a sum sufficient to defray such expenses. The Town Council has plenary power and authority to appropriate funds for expenditure by the Commission to accomplish the purposes of this article.
- (j) Donations and grants. The Tree Commission has the authority to accept all public and private contributions, donations, or other funds, and to apply for federal, state, local, or private grants or funding, for the planting, care, and protection of trees throughout the Corporation. All such monies must be used only for the purpose of planting, maintenance, promotion, or other purposes relating to the Corporation's urban forest.
- (k) Review by Town Council. The Town Council has the right to review the conduct, acts, and decisions of the Tree Commission.

### 1104.05 Licensing and insurance requirements.

- (a) Licensing. Any contractor, firm, or corporation engaging in the business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating trees over 15 feet in height or over five inches DBH within or for the Corporation must agree to adhere to ANSI A300 standards before procuring a Corporation business license. The Tree Commission may impose specific tests, licensing requirements, certification, or other methods of determining the professional status of those individuals working on public trees within the Corporation. No license may be required of any utility or public service company, or employee of the Corporation doing such work in the pursuit of their authorized public service endeavors; or of any volunteer authorized by the Tree Commission.
- (b) Insurance. Before any such license may be issued, each applicant must first file with the Town Clerk evidence of possession of general or public liability insurance in the minimum amounts of \$300,000 (single limit) for bodily injury or death, and \$100,000 property damage indemnifying the Corporation or any person injured or damaged resulting from the pursuit of such endeavor as herein described. Such policy must by its terms require notification to the Corporation upon cancellation thereof.

### 1104.06 Landscaping and construction.

- (a) New construction. When the development of any commercial property occurs, landscaping plans are required and must be submitted to the Tree Commission by the owner of such property or structure, or by the owner's authorized agent. The

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Commission will review the landscaping plans and may recommend trees to be preserved or to be planted in or on any of the streets, parking lots, parks, and other public places abutting lands henceforth developed. When recommended, these trees must meet the standards described in the Commission's "Tree Specifications and Standards Manual." After reviewing the landscaping plans, the Commission will forward a list of its recommendations to the Planning Commission for its approval as part of the building permit application.

- (b) Construction tree guard. All public trees and their critical root zones must be protected during construction. All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work must be guarded with a good substantial fence, frame, or box. All building materials, dirt, or other debris must be kept outside this construction tree guard.
- (c) Abuse of public trees. No person, corporation, or other entity may attach any rope, wire, nails, advertisements, posters, or other contrivance to any public trees; allow any gaseous liquid or hazardous substance which is harmful to such trees to come into contact with them; remove or tamper with an official inventory tag; or intentionally damage, cut, carve, transplant, or remove any public tree without the express permission of the Tree Commission.

### **1104.07 Public tree planting, maintenance and removal.**

- (a) Tree Specifications and Standards Manual. The Tree Commission must develop and maintain a "Tree Specifications and Standards Manual." This manual must be reviewed and updated by the Commission at least biennially, and must include the following information at a minimum:
  - (1) A list of desirable trees for planting along streets and elsewhere within the Corporation. For this list of desirable trees, preference must be given to native trees. Desirable trees shall be divided by size classification;
  - (2) A list of trees considered undesirable for planting. This list must include, among others, trees considered to be invasive;
  - (3) Recommended sizes for trees to be planted on public property;
  - (4) Spacing requirements for street trees;
  - (5) Distance trees must be planted from curbs, sidewalks, street corners, and fire hydrants; and
  - (6) Distance and size requirements for public trees in relation to utilities.
- (b) Maintenance. No contractor, person, firm, or corporation, except the Tree Commission or its agent, may perform any of the planting, removal, trimming, pruning, spraying, or maintenance of any nature on public trees without first obtaining permission in writing from the Commission.
- (c) Topping. It is unlawful as a normal practice for any person, firm, Corporation department, or utility company to top any tree on public property. 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 section at the determination of the Tree Commission. All exceptions must be approved by the Commission.
- (d) Climbing spurs. It is unlawful to use climbing spurs when working on live trees on public property.
- (e) Removal. As a normal practice, no contractor, person, firm, or corporation may remove, cut, improperly prune, transplant, or otherwise disturb any tree on any public property without first filing a written request and procuring written permission from the Tree Commission. The person receiving said permission must abide by the standards

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set forth in this section. The Commission may remove, or cause or order to be removed, any tree or part thereof which may be considered a nuisance tree. The Corporation must provide written notification to adjacent property owners at least 14 days in advance of such removal as described herein, except that in emergency or imminent situations such notification is not required.

- (f) Emergency situations. If personal injury or property damage is imminent due to the hazardous or dangerous condition of a tree located on public property, the tree may be removed, pruned, or trimmed or other necessary action taken without prior permission from the Tree Commission so long as the action taken in response to the emergency situation is reasonable under the circumstances and does not exceed the type of action necessary to address the emergency situation. The person performing the work must promptly notify the Mayor, or in the Mayor's absence, the Harpers Ferry Police Department, of the emergency situation and the work performed. Once the emergency situation has been resolved and an imminent hazard or danger no longer exists, a written request must be submitted and written permission procured from the Commission, as described in section 1104.07 (e), for any further work to be performed to address the situation.
- (g) Stumps. All stumps of public trees must be removed below the surface of the ground so that the top of the stump does not project above the surface of the ground, unless exception is granted by the Tree Commission.
- (h) Utility and Corporation compliance. As a normal practice and to the extent practical, all utility companies and all departments of the Corporation must conform to the ANSI A300 standards for tree pruning and trimming. All pruning, trimming, or other work performed on any tree within the Corporation by any utility company or department of the Corporation is subject to review by the Tree Commission. All governmentally-regulated utility companies must comply with applicable regulations for pruning or removal of trees on or adjacent to public lands. These utility companies are not required to obtain a permit for routine operations affecting trees, as long as such work is done in strict accordance with said regulations.

### **1104.08 Private trees and tree protection.**

- (a) Nuisance trees; dead, dying, or diseased trees. Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease or insect infestations, the Tree Commission or its agent must at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice must require such property owner to eradicate, remove, or otherwise control such condition within a reasonable time to be specified in such notice.
- (b) Private trees overhanging public property. Trees or limbs originating on private property with limbs that overhang any sidewalk or other public space that are dead or create a hazard to the public, because of disease, insect damage, growth of *Hedera* species (commonly known as ivy), or storm damage, or interfere with pedestrian or vehicular traffic may be removed, pruned, or trimmed. Such removal, pruning, or trimming is the responsibility of the property owner of the land on which the tree originates. The Tree Commission or its agent must notify such property owner in writing of an order requiring removal, pruning, or trimming of such tree or limb within a reasonable amount of time to be specified in such notice.
- (c) Trimming of private trees by Corporation. The Corporation may, at its own discretion, trim or prune trees or limbs that overhang any sidewalk, street, or other public place, or which interferes with pedestrian or vehicular traffic or with public safety, but only to

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such point that it no longer overhangs the public property, or no longer interferes with pedestrian or vehicular traffic or with public safety. As a normal practice, the Corporation must provide written notification to the owner of the property on which the tree originates at least 14 days in advance of such trimming or pruning as described herein, but in emergency or imminent situations such notification may not be required.

- (d) The Tree Commission maintains a list of all trees that qualify to be named Landmark Trees on both public and private lands. The Commission must locate and map such trees within the Corporation, with identification by genus, species, and common name. The list of trees so designated must be updated annually and must be provided to the Historic Landmarks Commission and to the Planning Commission. Guidelines and criteria for designating a specimen as a Landmark Tree are as follows:
- (1) Any person may, and is encouraged to, submit a written proposal to designate a tree as a Landmark Tree. Property owners of trees under consideration must be notified that a proposal has been submitted and have the opportunity to be fully involved in the designation process. Proposals must be reviewed by the Tree Commission. Upon recommendation of the Tree Commission and approval of the Town Council, a tree may be designated as a Landmark Tree if it meets any of the following criteria:
    - A. The tree is an outstanding specimen of a desirable species;
    - B. The tree is one of the largest or oldest trees in Harpers Ferry;
    - C. The tree is of historical interest;
    - D. The tree is of distinctive form; or
    - E. The tree is an unusual species or otherwise unique.
  - (2) The Chair of the Tree Commission must notify, in writing, the person who submitted the proposal and the tree's owner (if different from the applicant) of the Town Council's decision. When considering designating, removing designation, or removing Landmark Trees of historical value, the Historic Landmarks Commission must be given the opportunity to comment on the proposal prior to the Tree Commission's decision.

### **1104.09 Penalties, claims and appeals.**

- (a) Violations. Any person who violates any provision of this article, or who fails to comply with any notice issued pursuant to the provisions of this article, is subject to punishment by law. The Tree Commission or its agent will determine whether a violation is punishable as a civil offense or as a criminal offense, taking into account the willfulness of the violation, the scale of damage that is caused, and the values of individual trees affected.
- (b) Civil offenses. When a violation of the provisions of this article is deemed civil, violators are subject to a fine not to exceed \$500.00 for each separate offense. Each day during which any violation of any provision of this article occurs or continues is a separate offense. If, as the result of the violation of any provision of this article, the injury, mutilation, or death of a tree located on public property is caused, the cost of repair or replacement of such tree must be borne by the party in violation. The replacement value of trees must be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens," as published by the International Society of Arboriculture. Civil penalties may be assessed by the Tree Commission at a regular or special meeting. If civil penalties are not paid within 60 days of the date of assessment, the matter becomes a criminal offense and is subject to further penalties as provided by this ordinance and by state law.

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- (c) Criminal offenses. When a gross violation of the provisions of this article is deemed criminal, violators are guilty of a misdemeanor. Upon conviction thereof, violators may be punished by a sum of not more than \$500.00 for each separate offense, or imprisoned for not more than 30 days, or by both fine and imprisonment. Each day during which any violation of any provision of this article occurs or continues is a separate offense for the assessment of fines. If, as the result of the violation of any provision of this article, the injury, mutilation, or death of a tree located on public property is caused, the cost of repair or replacement of such tree must be borne by the party in violation. The replacement value of trees must be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens," as published by the International Society of Arboriculture. For all criminal violations for which a defendant is found guilty, there will also be assessed costs of courts as provided by state law.
- (d) Assignment of claim. Failure to comply with an order as required herein is cause for the Corporation, or its agents or contractors, to enter upon the property on which such nuisance is located to perform the necessary removal or abatement, the cost of which must be assessed to the property owner. In addition, the owner of the property upon which the nuisance was located may be subject to prosecution.
- (e) Appeals. Any person may, within 30 days, appeal any ruling or order of the Tree Commission or its agent to the Town Council, who may hear the matter and make the final decision. The appellant, the Commission or its agent, and person whose interests are affected must be given an opportunity to be heard before the Council. The procedures may not require compliance with strict rules or evidence but mandate that only relevant information be received. The Town Council must render its decision within 30 days. All hearings are open to the public.

### **1104.10 Interference with Tree Commission.**

It is unlawful for any person to prevent, delay, or interfere with the Tree Commission, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any public trees or trees on private grounds, as authorized in this ordinance.

### **1104.11 Enforcement.**

The Tree Commission or its agent is responsible for the enforcement of this ordinance.

### **1104.12 Severability.**

If a court of competent jurisdiction declares any provision, or any part of a provision, of this ordinance to be invalid or to be of no force and effect, it is the intention of the Town Council in enacting this ordinance that each and every other provision of this ordinance authorized by law be applied and enforced in accordance with its terms, to the extent possible, according to law.