

Montreat General Ordinance
Chapter K- Environment, Article V: Trees
(Revised 12/10/2015)

Article V: Trees

Section 1: General Provisions

1. Purpose and Intent

The Town of Montreat, realizing that trees have a profound effect on the quality of life in the community, deems it necessary and desirable in the interest of public health, safety and welfare to enact an ordinance for the preservation, planting, replacement and removal of trees on municipally owned property, areas designated as Greenspace and public rights-of-way within the Town. The purposes of this Article are to regulate the planting of new trees and shrubbery; to vigorously encourage the protection of existing trees and shrubbery, including their root systems; to regulate the preservation, replacement and removal of trees and to establish procedures for fulfilling these purposes.

2. Applicability

The terms and provisions of this Article shall apply to all Town Property, all public rights of way within the Town, those areas designated as Greenspace in the Offer of Dedication dated May 12, 1983 from the Mountain Retreat Association to the Town of Montreat as well as to private property in the manner specifically described herein.

Section 2: Tree Board

1. Tree Board Composition

The Montreat Tree Board shall consist of three members appointed by Town Council. In addition, the Environmental Commissioner of the Montreat Board of Commissioners and the Chair of the Montreat Landcare Committee shall serve as ex-officio voting members of the Tree Board. Additionally, the Public Works Director shall serve as an ex-officio non-voting member. All appointed members shall serve a term of three years. The Board shall select annually from among its members a chair, vice-chair and secretary. Vacancies resulting from resignation, death or removal of a member shall be filled by Town Council for the unexpired term upon request by the Chairperson.

The Public Works Director will serve as the Town staff member specifically charged with the responsibility of carrying out the planning, implementation and coordination with other agencies and advisory boards of all projects undertaken by the Tree Board.

The Tree Board shall formulate and adopt rules of procedure under which it will operate.

2. Duties and Responsibilities

Subject to such limitation as may be imposed by laws or regulations, the Montreat Tree Board shall serve as an advisory board to the Town Council for the following purposes in order to further the public welfare:

- a) Study, investigate, counsel and develop and review a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in Greenspace, within public rights-of-way and on Town Property. Such plan will be presented to the Board of Commissioners and upon its acceptance and approval shall constitute the official comprehensive Town Tree Plan for the Town.
- b) When requested by the Town Council, consider, investigate, make findings, report upon, and recommend any special matter or question coming within the scope of its work.
- c) Facilitate the planting, growth and protection of trees and shrubs within the Town.
- d) Foster the communication among citizens of the Town that would provide the needed protection of trees and shrubs and to coordinate active measures to support their health and growth with the Town.
- e) Conduct a tree survey of existing trees along rights-of-way and on Town Property.
- f) Investigate available grants, loans or contributions from other governmental agencies, public or private entities, or individuals, and to recommend the expenditure of any proceeds toward the accomplishment of its purpose.
- g) Conduct continuing education, research, planning and feasibility studies required to support the purposes stated in this Article.
- h) Work with Town staff to promote and enforce this Article regarding the regulation of planting, protection, preservation and removal of trees and shrubs.

3. Review by Board of Commissioners

The Board of Commissioners shall have the right to review the conduct, acts and decisions of the Montreat Tree Board. Any person may appeal from any ruling or order of the Montreat Tree Board to the Board of Commissioners, who may hear the matter and make a final decision. The Tree Board shall submit to the Town Council an annual report of its activities and recommendations and shall file with the Town Clerk copies of its minutes and proceedings of its regular and special meetings.

4. Interference with Tree Board

It shall be unlawful for any person to prevent, delay or interfere with the Montreat Tree Board, or any of its agents, while engaging in the performance of its duties and responsibilities. It shall be unlawful for any Person to prevent, delay or interfere with the Public Works Director or Town employees or agents while engaging in and about the assessment, planting, cultivation,

mulching, pruning, spraying or removing of any Street Trees, Greenspace Trees or trees on Town Property, as authorized in this Article.

Section 3: Administration

1. For the purposes of carrying out the provisions of this Article, the Public Works Director shall have responsibility and control over all trees and shrubbery planted or growing in or upon Town Property, including public rights-of-way.
2. The Public Works Director, or agent thereof, shall be responsible for formulating, in conjunction with the Montreat Tree Board, a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in Greenspace, within rights-of-way and on Town Property. The Town Tree Plan shall govern the species of trees to be planted and consideration shall be given to the existing and future utility and environmental factors in recommending a specific species for each area. Such plan will be presented to the Board of Commissioners and upon its acceptance and approval shall constitute the official comprehensive Town Tree Plan for the Town.
3. The Public Works Director and Zoning Administrator, or agent thereof, in conjunction with the Montreat Tree Board, shall have prepared a document entitled, Montreat Tree and Shrub Standards Specification and Detail Manual, which shall contain the guidelines and specifications for tree and shrub planting, care, maintenance, removal and landscape design which shall be adopted by Board of Commissioners and used by developers, landscape architects, designers and the general public in furtherance of the requirements and intent of this Article. The Guidelines shall be reviewed by the Montreat Tree Board at a minimum, every two years, and any revisions to the Guidelines shall be adopted by the Board of Commissioners.

Section 4: Permitting

1. Permits shall be obtained from the Public Works Director for all activity involving the planting, removal and replacement of trees and shrubs on Town Property, public rights-of-way and Greenspace areas except as noted herein.
2. The Public Works Director shall review all requests for permits for the planting, removal and replacement of trees and shrubbery on Town Property, including rights-of-way and Greenspace. If the planting, removal or replacement complies with the Guidelines, the Public Works Director shall issue a permit and may attach reasonable conditions or remedies to the permit. If the plans do not comply with the Guidelines, the permit shall be denied.

3. Before any permit shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$300,000 for bodily injury and \$100,000 property damage indemnifying the Town or any person injured or damaged resulting from the pursuit of such endeavors as described in this Article.
4. The Town may withhold or withdraw Town issued permits, certificates and other authorizations until such requirements of the permit are met.
5. During the period of an emergency such as a windstorm, ice storms, tornado, or other Acts of God, the requirements of this Section may be waived by the Town Administrator, Public Works Director or the Board of Commissioners.

Section 5: Public Tree Care

1. The Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, roads, ways, and Town property, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
2. No person shall remove, destroy, cut, prune or otherwise treat any Street Tree, Greenspace Tree or other tree or shrubbery having its trunk upon any Town Property or right-of-way or contract with another Person to perform such acts without first obtaining a written permit from the Public Works Director except as herein set forth.
3. No person shall plant or contract with another to plant any tree or shrubbery on any Town Property, except as herein noted, without a permit from the Public Works Director.
4. Public and private utilities shall submit written specifications for pruning, trenching or grading around trees and shrubbery on Town Property to the Public Works Director for approval. A utility company shall not be required to obtain a permit for routine maintenance operations affecting trees and shrubbery having their trunks upon Town Property so long as such work is done in strict accordance with the Guidelines and specifications as approved by the Public Works Director. A utility company is required to obtain a permit to remove any tree or shrubbery on Town Property. Approved written specifications shall be valid for two years, after which new specifications or a request for an additional two-year extension of the previously approved specifications must be made by the utility company.
5. The Montreat Tree Board may remove or cause or order to be removed, any Street Tree, Greenspace Tree or other tree or shrub growing on Town Property or part of said tree or shrub, which is in an unsafe condition or which by reason of its nature is injurious to utility lines, water and sewer lines, gas lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This Section does not

prohibit the planting of Street Trees by adjacent property owners providing that the selection and location of such trees is in accordance with the Guidelines for planting developed by the Montreat Tree Board and the property owner has obtained a permit. The Montreat Tree Board, in conjunction with the Public Works Director, has the right to approve any plantings that take place on Town Property, including public rights-of-way.

Section 6: Injuring Trees and Shrubbery

1. No person shall place or maintain upon the ground upon any Town Property any compacted stone, cement or other impervious matter or substance in such a manner as may obstruct the free access of air and water to the root of any tree or shrubbery. This provision shall not apply to paving, repairing or altering of Town streets, sidewalks, greenways or other Town Property performed by the Town.
2. No Person shall perform or contract with another to perform construction work (including the operation or storage of equipment or materials) within the drip line of any tree or shrubbery having its trunk on any Town Property without first obtaining a permit from the Public Works Director.
3. No Person shall attach any object, including, but not limited to, rope, wire, chain or sign, to any tree or shrubbery in or upon any Town Property or to the guard or stake intended for the protection of such tree or shrubbery except for the purpose of protecting it or the public.

Section 7: Planting Plan

1. For planned developments subject to the provisions of the Montreat Subdivision Ordinance, the property owner or developer desiring to plant trees and shrubbery in or upon Town Property, including rights-of-way, shall, in addition to applying for a permit, submit a planting plan or written statement to the Public Works Director. Planting plans upon Town Property shall accurately show the following:
 - a) The proposed street width, together with its pavement, curb, and/or gutter, parking strip and sidewalk areas, to a definite indicated scale.
 - b) The location of underground and overhead utilities, all poles and posts, to a definite indicated scale.
 - c) The proposed location of each and every proposed tree and shrub, together with the location of each existing tree, shrub, plant or vine within the proposed street right-of-way in scaled relation to the other features to the plan.
 - d) The variety, height and caliper, where applicable, of each and every tree and shrub proposed to be planted and of those already existing within the proposed street lines, either indicated on the plan or referenced with a

number to a key list.

- e) The distance in feet between the trees and shrubs in any one row.
 - f) The nature of the soil in the planting space to a depth of three feet and all existing and proposed surface and subsurface drainage system.
2. In the case of persons not involved in planned development and who desire to perform small scale landscape plantings on Town Property, written statements in lieu of a planting plan shall contain the same information required on the planting plan. In such a case, a simple letter of intent outlining the location, method and materials, may be submitted.

Section 8: Mitigation of Unsafe Trees on Private Property

1. The Public Works Director, in conjunction with the Environmental Commissioner of the Montreat Board of Commissioners, may cause or order to be removed any shrub, tree or part thereof on private property which is unsafe, injurious to the public welfare or which, by reason of its nature, is injurious to public improvements or is infested with an injurious fungus, insect or other pest. Hemlock trees infected with Hemlock Woolly Adelgid are exempt from this Section.
2. The Public Works Director may enter upon private property in the Town to treat or cause or order to be otherwise treated, any shrub or tree infected or infested by any parasite, insect or pest when it shall be necessary to do so to prevent the breeding or scattering of any parasite or animal or plant pest and to prevent danger therefrom to persons or property or to trees growing on Town Property or Greenspace.
3. Whenever, in the opinion of the Public Works Director and the Environmental Commissioner, the removal of a tree or shrub on private property shall be necessary, under the provisions of this Article, the Public Works Director and Environmental Commissioner shall have the power to remove such tree or shrub or cause or order the same to be done upon notice and an opportunity to be heard by the property owner.
4. Prior to exercising the authority conferred by this Article, the Public Works Director and Environmental Commissioner shall give the property owner notice and an opportunity to correct the condition by requesting that corrective action be taken. The request shall be in writing to the owner of the property in question and shall be acted upon within 30 days, or a lesser period of time if an imminent threat to life or property exists, from the date of the request. If, after 30 days or such lesser period of time, the owner has not corrected the condition or undertaken action that would lead to a timely correction of the condition, the Public Works Director may enter upon the property, perform the work necessary to correct the condition and bill the owner for the actual costs incurred. In situations involving an imminent threat to the public health, safety or welfare, or to Town Property, the Town may act without prior notification to the property owner but

notice shall be given within a reasonable period thereafter.

Section 9: Trees and Shrubbery Abutting Town Property

1. Trees, shrubbery, flowers, bushes or vines standing in or upon any property abutting Town Property and having branches, limbs, trunks, or other parts projecting onto Town Property shall be maintained by the owner of the property on which such trees, shrubbery, flowers, bushes or vines are growing so as not to interfere with the free and safe passage along the Town right-of-way by pedestrians and vehicular traffic.
2. If the owner of such property does not keep this growth from trees and other plants from projecting onto Town Property, the Public Works Director may order its removal. The order shall be in writing to the owner and shall be acted upon within 30 days from the time of the order. If, after 30 days, the owner has not responded or acted to remove the projecting growth from such trees or plants, then the Public Works Director may enter upon the private property to perform the work necessary to correct the condition and bill the owner for the actual costs incurred. In situations deemed by the Public Works Director to constitute an imminent threat to the public health, safety or welfare, or to Town Property, the Public Works Director may act without prior notification to the property owner.

Section 10: Tree Topping

It shall be unlawful as a normal practice, except as described below, for any Person to top any Street Tree, Greenspace Tree, or other tree on Town Property. Topping is defined as the severe cutting back of limbs and trunks to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees that interfere with or are an imminent threat to utility wires or other obstructions where other pruning practices are impractical may be exempted from this Section at the determination of the Montreat Tree Board.

Section 11: Removal of Stumps

All stumps of Street and Greenspace Trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

Section 12: Inspection, Enforcement, Appeal and Penalty

1. Inspection
 - a) The Public Works Director and the Zoning Administrator may periodically inspect

areas subject to the provisions of this Article.

- b) If through inspection it is determined that a Person has failed to comply or is no longer in compliance with the provisions of this Article, a notice to comply shall be served upon that Person by registered mail, return receipt requested or by hand delivery from the Public Works Director. The notice shall state the violation and describe those measures necessary to comply with this Article.
- c) The Public Works Director may conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Article and may enter at reasonable times upon private property as defined herein, for the purpose of inspecting trees and shrubbery subject to the provisions of this Article. No person shall refuse entry or access to any authorized representative or agent of the Town who requests entry for the purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with such representative while in the process of carrying out official duties.

2. Notice and Appeal

- a) Any person who violates any provision of this Article shall be notified by the Public Works Director of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation, the measures required to comply with this Article, if compliance is at all practicable, and a reasonable time period within which compliance must be completed.
- b) If any aggrieved person disagrees with a decision of the Public Works Director, such person may request a hearing within ten working days of receipt of the notice of violation. The request must be in writing and directed to the Montreat Tree Board secretary. The secretary shall immediately assemble an appeals board, made up of at least three members, from among the full membership of the Montreat Tree Board. The chairperson of the Montreat Tree Board shall always serve on the appeals board as the chairperson and shall not vote except to cast the deciding vote in case of a tie. The members to sit on the appeals board shall be selected on a rotating basis. The owners shall have the right to be represented by counsel, and to examine and cross examine witnesses at said hearing. The Town Attorney shall serve as the appeals board's legal advisor during said hearing. The appeals board shall render its written decision within 30 days after the hearing.
- c) The appeals board may modify, amend or revise the appealed decision. The decision of the appeals board shall be served upon the appealing party by registered or certified mail, return receipt requested, or by hand delivery.
- d) If any aggrieved party is dissatisfied with the decision of the appeals board, an appeal may be taken to the Buncombe County Superior Court. Notice of the appeal must be filed within ten working days of receipt of the appeals board's decision. The parties may stipulate that the appeal to the Buncombe County Superior Court shall be a review of the record only. In the absence of a mutual stipulation, the review shall be de novo.
- e) Any aggrieved party may request an injunction to preserve the status quo during the

pendency of any appeal in accordance with applicable North Carolina law.

3. Civil Penalty

Any person violating any provision of this Article shall be subject to the civil penalties found in Chapter L of the Town of Montreat Code of General Ordinances.

4. Injunctive Relief

Whenever there exists reasonable cause to believe that any Person is violating this Article or the Guidelines or any other standards adopted pursuant to this Article or any term, condition or provision of an approved permit, the Town may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action in the name of the Town for a mandatory or prohibitory injunction and an order of abatement demanding the violator to correct the unlawful condition upon or cease the unlawful use of the property.

Definitions to be Added or Amended in Chapter A – General Administration;
Article 1 – Definitions of Words and Phrases

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

- a) Caliper – Diameter measurement of the trunk taken six inches above ground level for trees up to and including four-inch-caliper size. Measurements shall be taken twelve inches above the ground for larger trees.
- b) Diseased Tree – A tree affected by a process in which fungi, bacteria, mycoplasmas, and viruses are able to invade and infect trees causing poor growth and weak appearance, disruption of plant processes, distortion of certain tree parts and strain or death of the tree.
- c) Diameter Breast Height (DBH) – The diameter of a tree four and one-half feet above the average ground level.
- d) Drip Line – a vertical line running through the outermost portions of the tree crown extending to the ground.
- e) Greenspace Trees – Trees and shrubs found in those areas designated as Greenspace in the Offer of Dedication dated May 12, 1983 from the Mountain Retreat Association to the Town of Montreat.
- f) Guidelines – Montreat Tree and Shrub Standards Specifications and Detail Manual, published by the Public Works Department.

- g) Impervious Cover – Building and structure footprints, areas of pavement, compacted gravel or other compacted areas which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.
- h) Maintenance – Property cultural practices including pruning, fertilization, pest management, and root system protection. The standards of maintenance are those published by the National Arborists Association.
- i) Paved Area – Any ground surface covered with concrete, asphalt, stone, compacted gravel, brick or other paving material.
- j) Person – A public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative or other legal entity.
- k) Private Property – Property that is not owned by a federal, state or local government.
- l) Public Works Director – The head of the Town of Montreat Public Works Department or his or her designee.
- m) Replacement – Replacement of dead, dying, diseased, or removed trees with trees of equal or comparable size, species, vigor and health.
- n) Removal – The cutting down of any tree or shrub and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a tree or shrub.
- o) Root Protection Zone- Generally, 18 to 24 inches deep and a radius distance from the trunk of the tree equal to one foot for each one inch of trunk diameter or the outermost drip line of the tree, whichever is greater.
- p) Street Trees – Trees and shrubs on land lying within right-of-way on either side of all streets, roads, or ways within the Town.
- q) Topping – Any pruning practice that results in the severe cutting back of limbs and trunks to stubs larger than three inches in diameter within the trees crown to such a degree so as to remove the normal canopy and disfigure the tree.
- r) Town – The Town of Montreat, North Carolina
- s) Town Property – All real property which is owned or leased by the Town or which is maintained by it or any part of any Town right-of-way or for which the Town has a license, easement, or right to use, possess or occupy property.

- t) Unsafe Tree – For a tree to be unsafe, one of the following criteria must apply;
 - (1) A combination of a structural defect and a target.
 - (a) A structural defect which predisposes the tree to failure; i.e., dead tree, trunk decay, dead branches, V-crotches; and
 - (b) A target such as a structure, road, walkway, campsite or other area where improvements to property exists or people reside.
 - (2) A tree that is otherwise structurally sound, but which interferes with the routine activities of people. Interferences include obstructions, sight distance problems for motorists, buckling of sidewalks or greenways, attracting lightning, or interference with utilities.