

CHAPTER 915

Comprehensive Tree and Planting Plan

915.01 Title and statement of purpose.

915.02 Definitions.

915.03 Administration of plan.

915.04 Standards for planting and maintenance in the public way.

915.05 Responsibility for maintenance of plantings in or overhanging the public way.

915.06 Prohibitions.

915.07 Approved and prohibited plantings in or adjacent to the public way.

915.08 Guidelines for removal of trees in public right of way (curb lawns).

915.081 Appeals.

915.09 Destruction of shrubs, trees, or crops.

915.99 Penalty.

CROSS REFERENCES

Injury to trees - see GEN. OFF. 541.06

Hamilton Tree Advisory Board - see ADM. Ch. 154

915.01 TITLE AND STATEMENT OF PURPOSE.

(a) This chapter shall constitute the Comprehensive Tree and Planting Plan for the City of Hamilton, Ohio. Its purpose is to establish policies and regulations that will promote and protect the urban forest and plantings of Hamilton. The statement of purpose for this chapter shall be as follows:

(b) Ohio is a forest by nature. May we, the people of the City of Hamilton, unite in a collective mission to manage and protect our local urban forest. In doing so let us proceed with the knowledge that a forest is an interaction of living elements that are part of a greater ecological process. When we alter this process or its parts without knowledge and compassion we threaten the health and survivability of the immediate and larger landscape and the communities that live within them.

(Ord. 2013-6-52. Passed 6-26-13.)

915.02 DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meaning given herein:

- (a) "Arborist" means a professional person whose certified area of expertise is forestry, horticulture and the selection and maintenance of trees, and other plantings.
- (b) "Basal clearance" means the distance from the center of a tree to the drip line of the tree at maturity. This distance will not change with time for any given tree, but it will vary from species to species.
- (c) "Canopy" means the cumulative horizontal crown at the widest point of a tree.
- (d) "Evergreen" means trees that remain green and do not lose their leaves.
- (e) "Critical Root Zone (hereinafter 'CRZ')" means the area surrounding a tree or planting wherein are the major roots of the tree or planting. In many, but not all species, this coincides with the extension of the tree canopy or basal clearance.
- (f) "Curb lawn" means the area in the public way between the sidewalk and curb or edge of roadway or between the abutting property lines where there is no sidewalk.
- (g) "Deciduous trees" means trees that lose their leaves in winter.
- (h) "Ground operated equipment" means any utility-related owned and operated devices or access points installed at or near ground level including but not limited to pad-mounted transformers, switch boxes, manhole covers, pull boxes, gas and/or water valves, and fire hydrants.
- (i) "Habitat" means a living environment that supports the survival needs of life, including shelter, water and food. Trees and plantings are a key component of the habitat of most species.
- (j) "Native trees" means trees that are indigenous and original to a particular geographical area.
- (k) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- (l) "Plantings" means trees, shrubs, and any other vegetative materials that may exceed three (3) feet in height.
- (m) "Political subdivision" means a municipal corporation, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the State.
- (n) "Private land" means areas located within the City of Hamilton that are owned by a private person and/or entity and that are not owned by any political subdivision.
- (o) "Public land" means property or areas located within the City of Hamilton that are owned by the City of Hamilton or any other political subdivision, including but not limited to streets, rights-of-way, public ways and parks.
- (p) "Public nuisance" means any tree or other planting with an infectious disease or insect problem or dead or dying trees or plantings; or a tree or limb(s) or plantings that obstruct the sight triangle of street lights or traffic signs or the free passage of pedestrians or vehicles; or any tree or other planting that obstructs or interferes with public utilities; or a tree or planting that poses a threat to the public health, comfort, safety, and welfare, as determined by the City Manager's designee.
- (q) "Public way" means any public street, road, highway, public easement, sidewalk, alley, curb lawn, or public waterway, and includes the entire width of any 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/or pedestrian traffic.
- (r) "Shade trees" means woody plants having a single, well-defined stem, a more or less definite crown, a height of not less than thirty (30) feet and a trunk diameter at maturity of not less than six (6) inches, planted primarily for the purpose of providing shade.
- (s) "Shrubs" means woody plants generally with no single well-defined stem used as accent, border or foundation plants.
- (t) "Street trees" means trees planted in the public way.
- (u) "Tree" means woody plants having a single, well-defined stem, as indicated by subsequent provisions of this chapter.
- (v) "Topped or Dehorned trees" means trees with most or all of the crown removed.
- (w) "Tree inventory" means a summary of data collected to document the trees in the community using accepted statistical techniques. For purposes of this chapter, a tree inventory shall include the tree count and tree species, size and condition.

- (x) "Tree size" means:
 - (1) Utility zone plantings. Any tree reaching a mature height of less than twenty-five (25) feet.
 - (2) Small tree. Any tree reaching a mature height of less than thirty (30) feet.
 - (3) Medium tree. Any tree reaching a mature height of thirty (30) to forty-five (45) feet.
 - (4) Large tree. Any tree reaching a mature height of over forty-five (45) feet.
- (y) "Urban forest" means the sum of all trees, shrubs, and plantings found in and around dense human settlement, including all trees, shrubs, and plantings found in parks, cemeteries, public lands, private lands, and public ways.
- (z) "Utility zone" means the area under, over, and/or adjacent to owned utilities including but not limited to, utility poles, manhole covers, lighting fixtures, transformers, and switch enclosures.

(Ord. 2013-6-52. Passed 6-26-13.)

915.03 ADMINISTRATION OF PLAN.

(a) In the case of trees standing on City grounds or easements, no person shall cut, trim, mutilate, injure or destroy any tree without first having obtained permission to do so from the City Manager, his designee, or from the Director of Public Works. However, nothing in this section shall be construed to prohibit the trimming or cutting by the City of trees or parts thereof on or extending over any street or other ground belonging to the City when such trimming or cutting is necessary to prevent interference with any City-owned utility, or to remove any dangerous condition, or for any other City purpose.

(b) The City Manager shall designate an individual to be responsible for the administration of the comprehensive Tree and Planting Plan. This individual may or may not be an arborist but shall have knowledge of the care and maintenance of urban forests.

(c) In addition to the authority granted the City Manager, his designee, and the Transportation and Traffic Engineer in this chapter, the designee is hereby authorized to enforce Sections 915.04 through and including Section 915.06 of this chapter.

(Ord. 2013-6-52. Passed 6-26-13; Ord. 2019-4-31. Passed 4-24-19.)

915.04 STANDARDS FOR PLANTING AND MAINTENANCE IN THE PUBLIC WAY.

(a) All plantings shall be subject to the final approval of the City Manager's designee.

(b) All plantings shall be in a live, healthy condition.

(c) Specified varieties of any species shall be specimen-type trees or shrubs and shall be graded according to the applicable American National Standards Institute (ANSI) for Nursery Stock or better and shall be first class representatives of their normal species and varieties.

(d) The approved list is maintained in the City of Hamilton's Landscape Guide for Developers, Businesses, and Home Owners and prohibited species and cultivars for planting in or adjacent to the public way are listed in Section 915.07 hereof. In order to maintain consistency with horticultural practices, the list set forth in Section 915.07 may be reviewed by the Tree Advisory Board and may be revised by the Board without further legislative approval. Any such revision of the list of plantings by the Tree Advisory Board shall be effective only upon the written approval of the City Manager's designee.

(e) Distances and Clearances.

(1) Plantings within the public ways that impact traffic safety shall be coordinated with and approved by the City Transportation and Traffic Engineer. The following criteria shall be used as guidelines with regard to plantings that impact traffic safety:

A. A minimum of thirty-five (35) feet from the nearest street corner measured from the point of the nearest intersecting curbs or curblines.

B. A minimum of fifteen (15) feet from driveways.

C. A minimum of twenty (20) feet from alleyways.

(2) Plantings within the Utility Zone shall be installed using the following criteria:

A. Only species listed for use in Utility Zones shall be planted under utility lines or within ten (10) lateral feet of said lines.

B. A minimum of a fifteen (15) foot clearance from ground operated equipment.

C. A minimum of a fifteen (15) foot clearance shall be maintained from streetlight fixtures to any plantings or portion thereof, which obstructs the path of light.

D. A minimum of a fifteen (15) foot distance from fire hydrants.

(3) Trees within the public ways shall be maintained so that:

A. Branch clearance above sidewalks shall be eight (8) feet or greater.

B. Branch clearance above streets shall be fifteen (15) feet or greater.

(4) The Utilities are under no obligation to safeguard plantings made in the utility zone. However, compliance with these guidelines should minimize the effects of utility operations on subsequent additions to the urban forest.

(f) Except for plantings planted and maintained by the City or other approved public authority, only the plantings listed in Section 915.07, or any other plantings that may be hereafter approved or prohibited and approved in writing by the City Manager's designee, may be planted in the public ways.

(g) All stumps and remnants of street trees must be removed twelve (12) inches below the ground surface so that the top of the stump/remnant shall not project above the surface of the ground.

(h) Sidewalk street repairs that will potentially endanger street trees shall require prior consultation with the City Manager's designee as to the best way to protect the tree roots where possible in the opinion of the City Manager's designee.

(i) The City Manager's designee shall approve the tree plan for any city curb lawns.

(1) Tree spacing. The spacing of public trees will be in accordance with the three (3) species size classes referred to in the arborist's list of street trees and no trees may be planted closer together than the following (except in special plantings designed or approved by the arborist).

Small trees 30 feet

Medium trees 40 feet

Large trees 50 feet

(2) Distance from curb and sidewalk. The distance public trees may be planted from curbs or curblines and sidewalks will be in accordance with the three (3) species size classes in the arborist's list of street trees and no trees may be planted closer to the curb or sidewalk than the following (except in special plantings designed or approved by the arborist).

Small trees	Two feet (minimum of a four-foot wide treelawn)
Medium trees	Three feet (minimum of a six-foot wide treelawn)
Large trees	Four feet (minimum of an eight-foot wide treelawn)

(Ord. 2013-6-52. Passed 6-26-13; Ord. 2019-4-31. Passed 4-24-19.)

915.05 RESPONSIBILITY FOR MAINTENANCE OF PLANTINGS IN OR OVERHANGING THE PUBLIC WAY.

(a) Plantings shall be established and maintained in and adjacent to the public ways along streets in accordance with the provisions of this chapter. Plantings not so established and/or maintained are hereby declared to be public nuisances, except that existing plantings that are maintained in accordance with ordinances existing on the effective date of adoption of this chapter shall not be considered public nuisances.

(b) It shall be the duty of all property owners and occupants to trim or remove plantings in the public ways abutting their property that are not maintained in accordance with the requirements of this chapter.

(c) The City Manager's designee or any designated member of his staff shall have the authority to enter upon private land at any and all reasonable times to examine any tree, shrub or other planting located upon or over such private land and to carry out the provisions of this chapter.

(d) The City Manager's designee under Section 915.03 shall cause written notice to the property owner(s) and occupant(s) to trim or remove any planting within, or adjacent to, the curb lawn area of the abutting public ways that do not conform with the provisions of this chapter. Such notice shall be sent by certified mail, return receipt requested, to the tax mailing address of the property owner(s) of record with the Butler County, Ohio, Auditor and to the occupant(s) at the address of the property. If certified mail is returned unclaimed, notice will be sent by regular mail.

(e) If the planting is not trimmed or removed within the time period stated in the written notice, not less than ten (10) days from date of receipt of the notice, the City Manager's designee may cause such trimming or removal to be undertaken and the reasonable costs thereof shall be the responsibility of the abutting property owner(s) and occupant(s). Reasonable costs shall include, but not be limited to the time of personnel involved, cost of fuel, cost of machinery, and the size, nature or character of the lot or parcel of land, as well as any and all other expenses for the performance of such labor and services provided, including an administrative fee of two hundred dollars (\$200.00). If the use of a contractor is required, the City will be reimbursed the cost paid to the contractor plus administrative fees.

(f) Repeat Violators. For the second or continued violations of the same general character, on property whereby the owner(s) or occupant(s) received notice under subsection (d) hereof, occurring not sooner than fourteen (14) days and not later than two (2) years after the previous violation, the written notice contained in subsection (d) hereof may be omitted and a violation notice, specifying that the violation shall be corrected within seventy-two (72) hours of receipt of said violation notice, shall be personally served upon the owner(s) or occupant(s) as specified in subsection (d) hereof, or posted on the premises if the owner(s) or occupant(s) cannot with reasonable diligence be located. If the violation is not corrected by the specified compliance date by the owner, occupant or other person or entity under subsection (d) hereof, the City shall cause such trimming or removal to be undertaken at the expense of the owner of that land, and may employ the necessary reasonable costs as outlined in subsection (e).

(g) In the event that the property owner(s) and occupant(s) fail to remit such costs to the City within thirty (30) days after written notice of the amount of such costs, the City Manager's designee or the Finance Director may certify such costs to the Butler County Auditor to be entered upon the tax duplicate for the abutting property as a lien and collected as other taxes and returned to the applicable City fund.

(1) In the event that the City certifies the expenses incurred to the Auditor of Butler County to place them on the tax duplicate for collection as a Special Assessment, an additional charge of Fifty Dollars (\$50.00) shall be assessed for the purpose of defraying the cost of certification.

(h) In the event that a planting within the public way presents imminent danger to public safety, it may be trimmed or removed by the City without written notice to the property owner. The property owner shall be responsible for the costs thereof as provided in subsection (e) hereof. (Ord. 2022-4-31. Passed 4-27-22.)

915.06 PROHIBITIONS.

(a) No person, firm or corporation shall do any of the following:

- (1) Fail to perform any requirement contained in this chapter or commit any act prohibited in this chapter.
- (2) Fail to trim or remove any planting within or abutting the public way to the property after receiving written notice in accordance with Section 915.05(d).
- (3) Fail to pay the costs of trimming or removing any planting within the abutting curb lawn area of public way of the property.
- (4) Excavate or significantly disturb the earth within a radius of ten feet of any tree within the public way or on public land without first obtaining written permission from the City Manager's designee under this chapter.
- (5) Top (de-horn), remove or girdle any healthy tree in the public way or other public land without prior written approval from the City Manager or his designee. Trees severely damaged by storms and needing to be trimmed or removed in the interest of public safety are exempted from this section. Trees damaged by insects, diseases or certain trees under utility wires or other obstructions may be removed with the approval of the City Manager or his designee. Contractors involved in utility line pruning are exempted from this section; however, line pruning must be done in accordance with the guidelines set forth in the publication standard.
- (6) Recklessly cause direct or indirect damage to a tree or other planting in the public way or on public land through any of the following means: cutting, carving, transplanting, removing, attaching rope, wire or nails or advertising posters; pouring harmful liquids or harmful chemicals on the tree or other planting or in or near CRZ; setting fire to or near a tree or other planting; impeding water, air or fertilizer to a tree or other planting.

(b) This section does not apply to political subdivisions or their agents, employees or subcontractors. (Ord. 2013-6-52. Passed 6-26-13.)

915.07 APPROVED AND PROHIBITED PLANTINGS IN OR ADJACENT TO THE PUBLIC WAY.

(a) The following are the plant forms approved for planting in and adjacent to the public way:

- (1) Lawn grass, not to exceed 8".
- (2) Ornamental grasses or flowers not to exceed 18".

(b) The species and varieties of deciduous shade trees approved are listed in the City of Hamilton's Landscape Guide for Developers, Businesses, and Home Owners. The prohibited list for planting in and adjacent to the public way are listed below in Section 915.07(c) and (d).

(c) Trees Prohibited in Public Way Areas (Prohibited Street Trees)

(These are weak, messy, destructive, disease or insect prone, and/or are invasive pests).

Botanical Name	Common Name
Acer Saccharinum	Silver Maple
Acer negundo	Boxelder

Aesculus species	Horse Chestnut and Buckeye
Ailanthus altissima	Tree of Heaven
Albizia julibrissin	Mimosa Tree
Betula species	Birch species except for River Birch (Betula nigra)
Catalpa species	All Catalpa
Elaeagnus angustifolia	Russian Olive
Elaeagnus umbellata	Autumn Olive
Fraxinus Species	Native Ash
Fruit Trees	Cultivars bred for fruit production
Ginkgo biloba	Female
Juglans nigra	Black Walnut
Lonicera maackii	Bush Honeysuckle
Morus species	All Mulberry
Paulownia tomentosa	Princess Tree
Phellodendron amurense	Amur Cork Tree
Platanus occidentalis	Sycamore
Populus species	All Poplar/Cottonwood
Pryus calleryana	All flowering pear cultivars
Rhamnus cathartica	European Buckthorn
Robinia pseudoacacia	Black Locust
Salix species	All Willow
Sorbus aucuparia	European Mountain Ash
Ulmus species	Susceptible to Dutch Elm Disease
Ulmus pumilia	Siberian Elm

(d) Prohibited manipulations of plantings in or adjacent to the public way include:

- (1) Espaliers or topiary: Forms achieved through trimming or pruning that are distorted or contrary to the natural shape of the species.
- (2) Shrubs: Shrubs that typically grow taller than three feet, yet not tall enough to be under trimmed to a height of six feet.
- (3) Topped or dehorned trees: Trees with most of or the entire crown removed.

(e) The plantings listed in paragraph (a) through (d) above may be modified or revised from time to time upon the approval of the Tree Advisory Board and the written approval of the City Manager's designee.
(Ord. 2013-6-52. Passed 6-26-13; Ord. 2019-4-31. Passed 4-24-19.)

915.08 GUIDELINES FOR REMOVAL OF TREES IN PUBLIC RIGHT OF WAY (CURB LAWS).

(a) A form, "Request for Removal of Live Tree(s) Located in the Public Way," must be completed with the necessary details for the City Manager's designee to do an inspection and render a decision. A form may be obtained from the City Health Department.

(b) A tree that is dead or dying (50% or more) must be removed upon review and approval by the City Manager's designee.

(c) Any tree that has outgrown its planted area and is causing damage to the bordering sidewalk or curb may be removed upon the review and approval of the City Manager's designee, who shall determine the reasonableness of replacing the sidewalk versus removing the tree. Replacement of either is responsibility of the property owner.

(d) A tree that is affecting a sanitary sewer line from a building shall be considered for removal only after all other methods of sewer line maintenance have been attempted (i.e. root pruning, boring the line). Documented proof of such action has to be presented to the City Manager's designee before a request for removal will be considered.

(e) A tree may be considered for removal if it is affecting other trees in such a way that the growth needs to be thinned or if the branches are affecting utility lines, is growing too close to a utility pole, or is growing too close to another immovable obstruction (e.g., a flagpole).

(f) A tree that is a nuisance due to its natural state shall not serve as the basis for removal, subject to the appeals procedure set forth in Section 915.081.

(Ord. 2013-6-52. Passed 6-26-13.)

915.081 APPEALS.

(a) Any person aggrieved (the "appellant") may appeal the denial of the request referenced in Section 915.08 to the Deputy City Manager/Managing Director of Operations by filing a written notice of appeal with the Deputy City Manager/Managing Director of Operations no later than ten days after the date of such denial. The notice of appeal shall include the complete name, address and telephone number of the appellant, the date and description of the denial, and a statement of the grounds for appeal, which shall include the detailed reasons for reconsidering the request and overturning the denial. Upon receipt of the notice of appeal, the Deputy City Manager shall schedule a hearing to take place no later than thirty days after receipt of the notice of appeal. The Deputy City Manager shall notify the appellant, in writing, of the hearing date. The Deputy City Manager shall hear evidence and argument regarding the appeal and shall thereafter render a decision and so notify the appellant. As part of the hearing process, and in addition to any other witness and evidence, the Deputy City Manager may consult with one or more members of the City of Hamilton Tree Advisory Board. The appellant shall have the opportunity to question any member of the Tree Advisory Board who is present at the hearing for

consultation.

(b) The Deputy Manager shall render a written decision within thirty days of the hearing. The decision of the Deputy City Manager shall be final.

(Ord. 2013-6-52. Passed 6-26-13.)

915.09 DESTRUCTION OF SHRUBS, TREES, OR CROPS.

(a) No person, without privilege to do so, shall recklessly cut down, destroy, girdle or otherwise injure a vine, bush, shrub, sapling, tree, or crop standing or growing on the land of another or upon public land.

(b) In addition to any penalty provided, whoever violates this section is liable in treble damages for the injury caused.

(Ord. 2013-6-52. Passed 6-26-13.)

915.99 PENALTY.

Whoever violates any provision of this chapter is guilty of an unclassified misdemeanor and shall be fined not more than two hundred and fifty dollars (\$250.00). A separate offense shall be deemed committed each day during or on which an offense occurs or continues.

(Ord. 2013-6-52. Passed 6-26-13.)

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)