PASSED 9-0

ORDINANCE 92-48
TO AMEND CHAPTER 12.24 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "TREES AND SHRUBS"

WHEREAS, the designation "Tree City" is one in which the government and citizens of Bloomington take pride and wish to see expressed in the actions and attitudes taken towards trees in the public right-of-ways; and

WHEREAS, the number, type, size and condition of trees in the public right-of-ways are important to all the citizens of our community in that they affect the air quality, noise buffering, temperature moderation, wildlife habitat and aesthetic enjoyed by our community; and

WHEREAS, both the City and the owners of property under the public right-of-ways have responsibilities toward vegetation growing in these areas; and

WHEREAS, the City's recently adopted Growth Policies Plan set as a goal the significant increase in the community's tree crown coverage, one component of which could be achieved through expansion of tree crown coverage in the public right-of-ways; and

WHEREAS, in areas and activities under the jurisdiction of the City Landscaper and Board of Public Works, the City should set an example by adopting policies and priorities that enhance the number, condition, and contributions of trees in the urban environment; and

WHEREAS, the limited time and resources available to the City Landscaper could be augmented by the creation of a volunteer commission to advise and assist in efforts to further develop policies and practices and to increase public education and support for urban forestry.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

SECTION I. Chapter 12.24 shall be repealed and re-enacted to read as follows:

TREES

Sections:

12.24.000 Purpose of the chapter
12.24.010 Definitions.
12.24.020 Application of chapter.
12.24.030 Jurisdiction and authority of Board generally.
12.24.040 Permit required for tree related activities in tree plots
12.24.050 Responsibility for trees and other vegetation within the public right-of-way.
12.24.060 Tree plot area maintenance--Generally.
12.24.070 Tree plot area--Grading.
12.24.080 Trimming of trees and other vegetation that grow over the street or obstruct the view of traffic control devices or traffic on the street.
12.24.090 Notice service--Procedure.
12.24.100 Placing injurious substances near trees prohibited--Guarding of trees in case of excavation.
12.24.110 Anchoring objects to trees prohibited.
12.24.120 Obstructing or interfering with employees of Board prohibited.
12.24.130 Electrical wires not to contact trees in public.
12.24.140 Tree inventory
12.24.150 Maintenance of urban forest
12.24.160 Replacement of urban tree stock

12.24.170 Notice of tree removal
12.24.180 Appeal of tree removal
12.24.190 Application to all the City
12.24.200 Trees and sidewalk improvements
12.24.210 Trees and snow removal
12.24.220 Violations
12.24.230 Tree commission
12.24.240 Composition of tree commission

12.24.000 Purpose of the Chapter. The purpose of this chapter is to encourage the planting, care, preservation and increase of trees in the public right-of-way, recognizing the contribution trees make to the air quality, temperature moderation, wildlife habitats, and aesthetic enjoyed by the citizens of Bloomington. The policies and procedures contained herein are intended to establish the responsibilities of the City and its citizens towards trees in the public right-of-way, to state a preference for tall shade producing trees along city streets, to increase public awareness of and involvement in urban forestry as practiced in the City of Bloomington, and to establish urban forestry practices which enhance the gathering and dissemination of information about trees, expand tree crown coverage within the City, and encourage the use of preventive maintenance techniques and infrastructure accommodation instead of tree removal.

12.24.010 Definitions. Whenever in this chapter the following words are used, they shall have the meanings respectively ascribed to them in this section:

(1) "Board" means the Board of Public Works of the City;

(2) "Dripline" means the width of the tree crown as measured by the lateral extent of the foliage;

(3) "Maintaining" includes the trimming, care, pruning, and preservation of trees;

(4) "Roadway" means that part of the highway improved, designed, or ordinarily used for vehicular travel;

(5) "Public street" means the entire area between the boundary lines of every dedicated public right-of-way platted for the purpose of vehicular travel. The term includes all platted alleys;

(6) "Tree plot area" means the land lying between the boundary of the public street and the roadway within the corporate limits of the City, except such portion thereof as may be covered by sidewalk or used as a walkway;

(7) "Tree" means a woody, perennial plant with one main stem or trunk which develops many branches;

(8) "Utilities" includes both public and private utility companies.

12.24.020 Application of chapter. The provisions of this chapter, except as otherwise provided, shall apply to the maintaining, planting and removal of trees within the public streets of the City, provided however, that the necessity for a permit to perform work on a tree may not be imposed upon any other political subdivision. "Public Streets" as defined in Chapter 12.23.010 include the entire area within the boundary lines of every dedicated public right-of-way platted for the purpose of vehicular travel.

12.24.030 Jurisdiction and authority of Board generally. The Board shall have the exclusive jurisdiction and authority to:

(1) Order, control and regulate the sodding, seeding and maintenance of lawns and maintaining, planting and removal of trees within the limits of the public streets and other public places, except areas controlled by the Parks and Utilities departments of the City;

(2) Order, control and regulate the removal of dead

and diseased trees, or portions thereof, which constitute a menace to public safety and health wherever located within the City;

(3) Adopt and enforce rules, regulations and specifications relative to (1);

(4) Regulate and prescribe the terms and conditions upon which permits for the maintaining and removal of trees shall be issued.

12.24.040 Permit required for tree related activities in tree plots. Other than in emergency situations requiring immediate action, no person shall trim more than one-fifth (1/5) of or remove a tree located within the boundaries of the public streets of the City without first obtaining written permission of the City Landscaper. Nor shall any person employ or instruct another person or firm to carry out such activities without a permit. Permits are not required for work done by any of the departments of the City, utilities, and their agents or contractors, but before proceeding with such work, they shall come into agreement with the City Landscaper.

Permits are available, without a charge or fee, to those persons who own the property on which the public street is located or their agents. In addition, a notice served pursuant to Chapter 6.06.050 and decisions by the Board of Zoning Appeals, Plan Commission and Common Council shall act as a permit. The permit shall be effective for thirty (30) days after completion of the public notice period or the resolution of any appeal, and the work shall be completed in the time allowed on the permit and in a manner described therein. Any permit shall be void if its terms are violated.

The granting or denial of these permits by the City Landscaper shall be made in accordance with the policies and principles of urban forestry management set forth in this chapter or as otherwise adopted by the Board.

Permits shall not be required for planting trees in the public right-of-way, but in order that the city tree inventory can be maintained and that appropriate trees be planted and proper methods be used, citizens wishing to plant trees in the public right-of-way should inform the City Landscaper.

12.24.050 Responsibility for trees and other vegetation within the public right-of-way. The owner of property on which a public street is located is ultimately responsible for the planting and removal of trees and other vegetation in that public right-of-way and for the maintenance of such vegetation in a condition that does not pose a hazard to the public health and safety or inhibit passage along the public right-of-way. At any time such an owner may be called upon by the Board of Public Works or the City Landscaper to carry out these responsibilities in accordance with the policies, practices and procedures set forth in this chapter.

The City of Bloomington through the Board of Public Works and the City Landscaper may also engage in the planting, maintenance, protection, and where necessary, removal of trees and other vegetation in the public right-of-way in order to secure the public health and safety, maintain essential public services, improve and expand the City's tree stock, and improve public aesthetics. These activities shall be guided by the principles and practices of urban forestry as set forth in this chapter and as adopted by the Board.

12.24.060 Tree plot area maintenance--Generally. The Board shall have all the right, power and authority granted to municipalities under state law to require the owners of parcels of land under any public street of the

City to maintain and improve the tree plot area. Further, the Board may, through other means or incentives, encourage voluntary efforts to improve landscaping on the public streets.

12.24.070 Tree plot area--Grading. The surface of tree plot areas shall be as nearly level as practicable and the grade thereof shall be the top lines of the sidewalk and curb.

12.24.080 Trimming of trees and other vegetation that grow over the street or obstruct the view of traffic control devices or traffic on the street. Any tree or other vegetation which grows over the street or obstructs the view of traffic control devices or traffic on the street within the City, wherever located, shall be trimmed either by the Board or by the owners of such abutting lots upon the order of the Board. Such trimming shall be done within the period specified in the notice given by the Board to such owners, as provided in Section 12.24.090; provided, that such period shall not be less than ten days.

Such vegetation shall be trimmed so that there shall be clear space of ten feet above the surface of the curb and in such a manner as not to obstruct the view of any street light, traffic sign, signal device or street intersection.

12.24.090 Notice of service -- Procedure. All notices herein provided for, except notices provided for in Section 12.24.060, for hearings on resolutions, shall be served upon any real estate owner who is a resident of the City by leaving a correct copy thereof at such owner's last known place of residence. If such owner is not a resident of the City, then notice may be served by sending a correct copy thereof by the United States certified mail, addressed to such owner at his last known mailing address with a return receipt requested. If the residence or address of such owner is unknown or cannot be ascertained, then such notice may be served by publishing such notice once each week for two consecutive weeks in a daily newspaper of general circulation in the City. The period specified in such notice shall be deemed to commence on the day following the date notice was sent or first published.

12.24.100 Placing injurious substances near trees prohibited -- Guarding of trees in case of excavation. No person shall place or keep any stone, cement or other substance around any tree within the limits of any public street of the City which in any manner impedes the free entrance of water or air to the roots of such tree or stunts the free growth of such tree. In the event of any excavation or construction, the owner or contractor shall place, or cause to be placed, around all trees within the limits of any public street of the City, such guards as will effectively prevent injury to such trees. Wherever possible, all building material and debris and all building activity shall be kept beyond the drip line of such trees and at no time shall such material or debris be permitted within three (3) feet of such trees.

12.24.110 Anchoring or attaching objects to trees prohibited. It is unlawful to fasten or attach anything to any tree located in the public street or on city property which is likely to injure the tree. This includes fastening any wire, rope, chain or cable, or attaching any nail, staple or tack to a tree for the purpose of anchoring any other structure or object in, on or adjacent to a tree.

12.24.120 Obstructing or interfering with employees of Board prohibited. No person shall in any manner obstruct or interfere with the agents or employees of the Board while engaged in carrying out the provisions of this chapter or the orders issued by the Board.

12.24.130 Electrical wires not to contact trees in public areas. Every person owning, installing or maintaining any wires charged with electrical current shall, whenever practicable, securely fasten such wires so that the same shall not come in contact with any tree in any tree and lawn area or upon, along or within the limits of any public highway, park or other public grounds within the City.

12.24.140 Tree inventory. The City through the City Landscaper shall compile and maintain an inventory of all trees and tree spaces within the public streets. This inventory should record the location, species, condition, size, and planting and maintenance history of these trees.

12.24.150 Maintenance of an urban forest. When working on trees within the public streets and on municipal property, the City Landscaper and others acting under the authority of the Board of Public Works, shall give priority to maintenance rather than replacement of flawed trees. Emphasis shall be placed on remedial practices such as pruning, wound treatment and fertilization.

Interference with signs, lights, lines of sight, sidewalks, structures, and utilities shall first be addressed through selective pruning of branches and roots.

Only when the City Landscaper has determined that a tree creates a dangerous, unsafe or hazardous condition or poses a threat of infestation to other trees and that these conditions cannot adequately be corrected through remedial measures, shall a tree within the public street or on municipal property be removed.

12.24.160 Replacement of the urban tree stock. It is the policy of the City to maintain and expand the tree cover of the City as a whole and of individual streets and neighborhoods in particular. Overall, the City shall plant at least twenty percent (20%) more trees than it removes, in order to maintain a planting to removal ratio of at least one point two (1.2) to one (1). Mixed aged stands should be encouraged so that the City maintains and, over time, expands the tree cover. Once a tree has been removed, it shall be replaced, wherever possible, at or near its original location as soon as the planting season permits. Further, an on-going program of replacing previously removed trees and of planting in new areas shall be conducted. To facilitate prompt tree replacement, stumps should be removed promptly and thoroughly once a tree has been removed.

In order to encourage large tree canopies and maximum overall foliage, priority in planting trees shall be given to tall shade-producing species which include those trees that normally can be expected to acquire a minimum height of fifty (50) feet. Consideration shall also be given to the abilities of certain species to adapt to the stresses of an urban environment and to conform to the physical constraints of specific locations. Wherever possible, native species are to be preferred.

12.24.170 Notice of tree removal. While no notice of any kind shall be required where the City Landscaper determines that a tree should be removed because its current condition or location constitutes a hazard, in all other cases the City Landscaper or Board of Public Works shall give notice to the general public of proposed tree removal through a clear visual identification of targeted trees at least two weeks in advance of the proposed removal. Except where the property owner has requested a permit, the City shall also give written notice of intention to remove a tree in the public right-of-way to the underlying property owner at least two weeks in advance of the proposed removal. This notice shall give reasons for the proposed removal,

alternatives to removal and reasons why these will not be pursued, date of removal, and the procedures to obtain further information or to file an appeal.

Where notice is not required, the City Landscaper shall prepare and make available to the public a timely report of all removals, which shall include the reasons for removal, alternatives to removal and the reasons why these were not pursued, and other information as deemed appropriate by the Board. These reports shall be reviewed by the Tree Commission with the goal of furthering the general purposes of this chapter.

In the absence of an emergency, utilities and their agents and contractors, should notify the City of their intent to remove trees within the public streets or on municipal property.

12.24.180 Appeal of tree removal. In cases where notice of intent to remove a tree is required, any city resident or owner of property within the City may appeal the decision to allow or disallow the removal of a tree to the Board of Public Works. In addition, any applicant for a permit may appeal a denial of the permit to the Board. If that person or those persons dispute the decision of the Board, they may appeal that decision to the City Council for final determination. Appeals shall be initiated in sufficient time for the Board of Public Works and, if necessary, the City Council to decide these matters in the normal course of their business within thirty (30) days of the notice of tree removal or denial of permit. Decisions by both bodies shall take into consideration the principles and policies set forth in this chapter or otherwise adopted by the Board.

12.24.190 Application to all city activities. The principles of urban forestry set forth in this chapter and policies established by the Board, should guide the activities of all city departments including Streets, Utilities, Sanitation and Parks. Additional and more specific application of the principles and practices of this chapter to city Utilities and Parks may be established by agreement between the boards of those departments and the Board of Public Works. Those agreements shall be undertaken according to statutes (I.C. 36-10-4-9) or ordinances (BMC 2.24.020) which require those boards to adopt policies that are consistent with or not in conflict with general city policy. Essential activities by any city department shall be done so as to minimize damage to trees in the public streets and on municipal property. The provisions of Chapter 12.24.220, entitled "Violations", however, shall not apply to city departments or utilities.

12.24.200 Trees and sidewalk improvements. Damage to sidewalks is in itself not sufficient reason to remove a tree if present damage can be adequately corrected and future damage can be averted by selective pruning of roots, installation of tree guards, or by sidewalk repair, replacement or realignment. Nor is convenience and efficiency during street or sidewalk repair sufficient reason in itself for tree removal. Wherever possible the installation, repair and replacement of sidewalks shall accommodate trees and shall be done in a manner that prevents damage to their roots.

12.24.210 Trees and snow removal. In selecting methods and materials used in snow removal, the City shall take into consideration the effects of salt and other chemicals on the health of trees on both public and private property.

12.24.220 Violations.

(1) The City Landscaper and agents shall have authority to do all acts necessary to enforce this

ordinance, including the issuing of citations.

(2) Any person who violates the provisions of this chapter is subject to a fine of fifty dollars ($50.00) per occurrence.

(3) Each day that a violation continues shall constitute a separate violation.

(4) In addition to any fine imposed, any person whose 2violation of the provisions of this chapter results in damage to trees may be liable for the cost of those damages up to three thousand dollars ($3,000) for each tree.

12.24.230 Tree commission. A city Tree Commission shall be created with the following duties:

(1) Advising the City Landscaper on practices of urban forestry;

(2) Assisting the City Landscaper in formulating policies and practices of urban forestry, and formulating procedures for administering the provisions of this chapter;

(3) Promoting public education on the proper selection, planting, and care of trees by assisting in composing a manual and by other means;

(4) Assist the City Landscaper in efforts to fund and promote the acquisition and distribution of additional trees on public property and right-of-ways;

(5) Provide information and advice to the Board on cases before it regarding trees or in adopting additional policies and practices relating to trees.

12.24.240 Composition of tree commission. The City Tree Commission shall consist of seven (7) members serving for three (3) year terms. Two (2) shall be appointed by the Mayor, two (2) by the Common Council, one (1) by the Board of Public Works, one (1) by the Board of Park Commissioners, and one (1) by the Environmental Commission. In order to stagger terms of members, at the initial formulation, one (1) Common Council and one (1) Mayoral appointee shall fill a one (1) year term, the Board of Park Commissioners appointee and the Environmental Commission appointee shall fill two (2) year terms, and the remaining appointees shall fill full three (3) year terms.

SECTION II. Severability. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

SECTION III. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval by the Mayor and promulgation according to law.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 18th day of November, 1992.

Pam Service

PAM SERVICE, President
Bloomington Common Council

ATTEST:

Patricia Williams

PATRICIA WILLIAMS, City Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana upon this 19 day of November, 1992.

Patricia Williams
PATRICIA WILLIAMS, City Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 19 day of November, 1992.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington, Indiana

SYNOPSIS

This ordinance rewrites Chapter 12.24 of the BMC regarding street trees. Where there is no hazard or emergency, it requires a permit before a property owner may remove or trim more than one-fifth of a tree within the public right-of-way (streets and alleys). It also establishes a notice and appeal procedure for removal of non-hazardous trees and subjects property owners who violate the provisions of this chapter to payment of a fine and damages. It codifies certain practices of urban forestry that should serve as a guideline for tree related activities. These include: maintaining an inventory of street trees; augmenting the tree crown cover with preference for native, tall shade trees; removing trees only as a last resort; and, taking measures to protect trees from injury. And, lastly, this ordinance also establishes an advisory Tree Commission to assist the City Landscaper in formulating policies and educating the public about trees.