ORDINANCE 08-06

TO AMEND TITLE 12 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "STREETS, SIDEWALKS AND STORM SEWERS"

Re: Repealing Chapter 24 Entitled "TREES", and Replacing it with Chapter 24 Entitled "TREES AND FLORA"

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 toward trees in the public rights of way; and

WHEREAS, a diverse and sustainable urban forest has numerous environmental benefits including: cleaning the air; cooling buildings in summer and reducing heating costs in winter; reducing storm water load; preventing soil erosion; providing wildlife habitat; and increasing the pleasures of living in the City; and

WHEREAS, pursuant to Indiana Code 36-10-4, *et. seq.*, the statute entitled "Parks Department in Certain Cities" was adopted by the Common Council in its entirety; and

WHEREAS, under the above-mentioned authority, the Board of Park Commissioners has exclusive control over the planting, trimming, and maintenance of trees on public property and in the public rights of way of the City; and

WHEREAS, the selection, planting, maintenance, and removal of trees, flora, and lawns along and on public ways substantially affect matters such as pedestrian safety, vehicular safety, location and maintenance of utility services, and quality of life for residents of the City; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community;

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

SECTION I: Title 12 Chapter 24 entitled "TREES" shall be repealed and the reference to it shall be deleted from the table of contents for that title.

SECTION II: A replacement ordinance, entitled Chapter 12.24, "TREES AND FLORA" is hereby adopted. Reference to the Chapter shall appear in the table of contents for Title 12 entitled "Streets, Sidewalks, and Storm Sewers" and the provisions of Chapter 12.24 shall read as follows:

TREES AND FLORA

Sections:

12.24.000 Purpose and Intent
12.24.010 Definitions
12.24.020 City Authority
12.24.030 Tree Lawn Area Maintenance
12.24.040 Public Safety and Required Clearances
12.24.050 Notice of Tree Removal by City
12.24.060 Removal of Stumps
12.24.070 Tree Work Permits
12.24.080 Prohibited Actions
12.24.090 Tree Topping Banned
12.24.100 Public Nuisance
12.24.110 Notice of Violation

12.24.120 Violations and Penalties
12.24.130 Appeal

12.24.000 Purpose and Intent

It is the purpose of this chapter to regulate the work on and planting and maintenance of boundary trees and trees on public property and in the public rights of way ("trees subject to these provisions") and flora on public property and in the public rights of way, to encourage proper selection and planting, and to assure compatibility with other urban infrastructure such as utilities, sidewalks, and streets.

It is the intent of this Chapter to establish the responsibilities of the City and its residents toward flora and trees subject to these provisions and to assure those regulations and policies maintain and increase the tree canopy within the City.

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. When not inconsistent with the context, words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular number. The term "shall" is always mandatory and not merely directory. Terms not defined in this section shall have the meanings customarily assigned to them.

"**Approved Street Tree Species List**" means a list of proven trees deemed adaptable to the street conditions of the City of Bloomington. The list is located in the City of Bloomington Tree Work Manual.

"**Board**" means the Board of Park Commissioners of the City of Bloomington, Indiana.

"**Boundary Tree**" means a tree that meets one (1) or more of the following criteria:

a. The stem of the tree straddles the actual property line between the City public property and the adjoining property;
b. The City and the adjoining property owner have previously agreed that the tree will identify the property boundary;
c. The City and the adjoining property owner have previously agreed to share the cost of maintaining the tree.

A boundary tree is the common property of both landowners.

"City" means the City of Bloomington, Indiana, including but not limited to the Board of Park Commissioners, the Urban Forester, or the Board's designated agent.

"City of Bloomington Tree Work Manual" means the official arboricultural specifications manual of tree work as adopted by the City which specifies the policies and recommended practices of urban forestry and which includes recommendations of size, spacing, and species of trees in urban forestry.

"Commission" means the Tree Commission as established in Bloomington Municipal Code section 2.20.150.

"**Critical Root Zone**" means a circular region measured outward from the tree trunk representing the essential area of the roots that must be maintained or protected for the tree's survival. Critical root zone is one (1) foot in radial distance for every inch of tree diameter at breast height ("DBH"), with a minimum distance of eight (8) feet. For specimen trees, the formula changes to 1.5 feet for every inch of tree DBH.

"**Crown,**", also referred to as "**canopy,**" means the above ground parts of a tree consisting of the branches, stems, buds, fruit, and leaves.

"Department" means the Department of Parks and Recreation of the City of Bloomington, Indiana.

"**Flora**" means all plants, including shrubbery, but expressly excluding weeds and turf grass.

"**Maintenance**" means the trimming, care, pruning, protection, treating, and preservation of trees and flora.

"Notice of Violation" means a written notice of ordinance violation, as described in section 12.24.

"**Owner**" means the person in whom is vested the ownership, dominion or title of property.

"**Park Trees**" means trees on City owned platted park areas.

"**Person**" means an individual, partnership, limited-liability company, corporation, firm, any other association or its agents or organization of any kind.

"**Public Street**" means the entire area between the boundary lines of every dedicated right of way platted for and open to the use of the public, as a matter of right, for the purpose of vehicular and pedestrian traffic within the corporate limits of the City.

"Right of Way" means a strip of land reserved for, occupied, or intended to be occupied by transportation facilities, public utilities, or other special public uses. Right of way may be held in the form of easement or fee.

"**Shrub**" means a woody plant which is characteristically below twenty (20) feet in height and is multi-stemmed supporting mainly leafy growth.

"**Specimen Tree**" means any tree or grouping of trees that has been determined by the Urban Forester to be of high value because of its species, size, age, form, or historical significance.

"**Street Tree**" means a tree on real estate abutting a public street or right of way that is owned or controlled by the City.

"**Topping**" means the severe cutting back to stubs of limbs larger than three (3) inches in diameter within the tree's crown so as to remove the normal canopy and disfigure the tree.

"**Tree**" means a perennial woody plant, ordinarily with one (1) main stem or trunk, which develops many branches, and which ordinarily grows to a height of twenty (20) feet or more.

"**Tree Work**" means the planting, pruning, removal, treating, spraying, and any other tree maintenance or horticultural work intended for the enhancement or preservation of trees, and the removal and prevention of any and all damages to any trees caused by tree pests, blights, and diseases. Tree work shall also include excavation near trees and the planting of shrubs within the public tree lawn.

"Tree Lawn," also referred to as **"tree plot area,"** means the land lying between the boundary of the public street and private property except such portion covered by sidewalk or used as a walkway.

"**Utilities**" means both public and private utility companies.

12.24.020 City Authority

(1) The City shall have the authority, control, supervision and direction over all flora and trees subject to these provisions.

(2) The City shall have all the right and authority to order the removal of any tree or part thereof on private property which is deemed to be in an unsafe condition or which by the reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, telecommunication lines, or other public improvements, or is affected with any injurious fungus, insect or other pest which constitutes a potential threat to other trees within the City, or which constitutes a threat to public health or safety.

(3) The City shall prepare and publish guidelines and specifications for tree planting, care, maintenance, and removal in a document entitled the City of Bloomington Tree Work Manual for reference and use by property owners, developers, consultants and the general public in furtherance of the requirements and intent of this Chapter. The Manual shall be developed and maintained with the assistance of the Commission.

(4) The City shall review all applications for permits for any planting, removal and/or trimming or cutting of trees subject to these provisions and shall have the authority to grant or deny permits and to attach reasonable conditions to the granting of a permit.

12.24.025 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 by planting trees in accordance with practices observed by certified Urban Foresters. Overall, the city's annual goal shall be to plant at least twenty percent more trees than it removes, in order to maintain a planting to removal ratio of at least one point two to one. 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 ongoing program of replacing previously removed trees and of planting in new areas shall be conducted.

12.24.030 Tree Lawn Area Maintenance

(1) The City shall have all the right and authority granted to municipalities under law to require the owners of parcels of land adjacent to a public street to maintain and improve the street tree lawn area. Such maintenance and improvement shall include but is not limited to leaf raking, turf grass mowing, brush collection, and landscape bed maintenance.

(2) The surface of tree lawn areas shall be as level as practicable, and the grade thereof shall be the top lines of the sidewalk and curb. No person shall pave, gravel, remove or otherwise convert existing grassed tree lawn areas.

12.24.040 Public Safety and Required Clearances

(1) Flora planted on public property or in the public rights of way and trees subject to these provisions shall be sited as not to impede traffic visibility line of sight, at distances from street intersections as regulated by the City of Bloomington Unified Development Ordinance and recommended in the City of Bloomington Tree Work Manual.

(2) Every owner shall remove or have removed all dead, diseased, or dangerous trees or flora, or broken or decayed limbs which overhang or may fall upon public property and which constitute a hazard to public safety. In addition, every owner shall properly prune or have properly pruned the branches of such tree(s) or flora so that the branches shall not obstruct any traffic control signs or devices, the view of any street intersection, or light from any street lamp. There shall be a clearance standard space of fifteen (15) feet above any highway or street surface and eight (8) feet above any sidewalk surface to the bottom of the tree canopy.

12.24.050 Tree Removal

(1) Except in emergency situations described in section 12.24.070 (3)(b), any tree subject to these provisions that is scheduled for removal by the City shall have an informational placard placed on the tree a minimum of ten (10) working days before tree removal. The placard shall specify the reason for tree removal, projected removal date, and contact information.

(2) If removal of a tree subject to these provisions is necessary for construction purposes, the property owners shall pay for complete tree removal at their own costs and a replacement tree or trees of equal value planted on site or at a location owned or controlled by the City, and determined by the City.

12.24.060 Removal of Stumps

In the process of tree removal, stumps of trees subject to these provisions shall be ground to six (6) inches or more below ground level and the cavity filled with soil and leveled. Stump removal shall include the chipping of all limbs and removal of the stump.

12.24.070 Tree Work Permits

(1) All tree work, performed on trees subject to these provisions, shall follow the standards as set forth in this chapter and in the City of Bloomington Tree Work Manual.

(2) Except for the City and its agents, no person shall, unless otherwise noted herein, take the following actions without having first secured a Tree Work Permit:

(a) plant, cut, remove, or treat with pesticide any tree subject to these provisions, except as otherwise noted herein; or

(b) excavate any ditches, tunnels, or trenches, lay any drive, install underground utilities, or store any substance within a ten (10) foot radius of any tree subject to these provisions. When excavating, constructing or performing street work within a ten (10) foot radius of any tree subject to these provisions, the tree shall be guarded with a fence, frame, or box, not less than four (4) feet high and eight (8) feet by eight (8) feet square and all building material, dirt, or other debris shall be kept outside the barrier. Where heavy equipment will pass repeatedly over the tree's critical root zone a temporary layer of at least three (3) inches depth of shredded bark or wood chips shall be placed and maintained on the ground.

(3) No permit shall be required in the following situations:

(a) the trimming, by a property owner, of limbs less than three (3) inches in diameter of any tree subject to these provisions in the tree plot adjoining the owner's property, which does not exceed thirty percent (30%) of the tree's canopy,

(b) during emergency situations, the City or public utilities may trim or remove any trees which endanger the public, inhibit the passage on City streets, or interfere with utilities and public infrastructure. Topping and the severe cutting back of limbs may be allowed under emergency conditions. The City may act without prior notification to the property owner,

(c) any tree work performed by a City department or its agents, or

(d) during road, curb, or sidewalk construction or utility installation or repair it may be necessary for the City to remove a non-hazard tree or trees. Trees in such situations shall be evaluated by the Urban Forester as to preservation potential.

(4) Tree Work Permits are available without a charge from the Department. All permit applications shall be reviewed by the Department. The granting or denial of these permits shall be made in accordance with the policies and principles of urban forest management set forth in this chapter or as otherwise adopted by the Board.

(5) Any tree work related to matters pending before the Board of Zoning Appeals, the Plan Commission, or the Common Council shall be accompanied by a completed Tree Work Permit. If the Board of Zoning Appeals, the Plan Commission, or the Common Council approves matters which will impact trees subject to these provisions, the Tree Work Permit is deemed automatically granted and shall be forwarded to the Department. Decisions by the Board of Zoning Appeals, the Plan Commission, or the Common Council that impact trees subject to these provisions shall be made in accord with the policies and principles of urban forest management set forth in this chapter or as otherwise adopted by the Board.

(6) When filing an application for a Tree Work Permit, the person responsible for performing tree removal, pruning, stump removal, or trenching near trees shall also file a single or continuous bond payable to the City in a sum, as the Department may designate. Bonds shall be filed with the Department and shall be conditioned to save the City harmless from any loss, cost, or damage by reason of such proposed work, and that the same shall be done in all respects in conformity to the requirements of this code and all other ordinances of the City regulating same. The applicant must be able to demonstrate to the City's satisfaction that it is of sound financial condition and is adequately bonded and insured. Unless otherwise mandated by the Board, posting a bond for tree planting activity is not required during the Tree Permit application process.

12.24.080 Prohibited Actions

(1) No person shall in any manner obstruct or interfere with the agents or employees of the City while carrying out the provisions of this chapter or the orders issued by the Board.

(2) No person shall do any of the following to trees subject to these provisions:

(a) damage, cut, carve, or deface;

(b) attach any wires, nails, chains, cables, advertising posters, or any other contrivance;

(c) allow contact with any harmful gaseous, solid, or liquid substance; or

(d) set fire or allow to burn.

12.24.090 Tree Topping Banned

It shall be unlawful for any person to top any tree subject to these provisions. Topping is defined in section 12.24.010. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning methods are impractical, may be exempted from this practice by a written determination by the Department.

12.24.100 Public Nuisance

All trees or flora within the City which are determined by the City to constitute a public hazard or threat to health, safety, life, or property may be declared to be a public nuisance. The Board may order removal of such nuisances or other violations of this Chapter.

12.24.110 Notice of Violation

(1) If the Board or its designee determines that there is a violation of this Chapter or a public nuisance, the Board or its designee shall issue a Notice of Violation (NOV) to the responsible party. For purposes of issuing a NOV, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: property owner(s); and persons who have caused the violation.

(2) The NOV shall be served upon the responsible party by mailing a copy to that person's last known mailing address.

The notice shall include:

(a) the address by legal description or street address of the location or premises of the trees or flora;

(b) the kind of tree or flora in violation of this ordinance;

(c) the sections of this ordinance for which the responsible party is in violation;

(d) any actions that the responsible party may undertake to abate such violation and the time period specified to abate such violation;

(e) the fact that a penalty may be assessed pursuant to Bloomington Municipal Code section 12.24.120; and

(f) the date after which the City may abate the nuisance or violation.

(3) The City shall, upon order of the Board, take steps to remedy the violation. If the responsible party fails to remedy the violation cited in the NOV during the correction period, the City legal department may bring suit in a court of competent jurisdiction to collect the accumulated fines, and any other costs associated with the remedy of the violation as are allowed by law, and any other remedies available, including but not limited to injunctive relief.

(4) If a property owner fails to abate the violation cited in the NOV and the City remedies the violation, the controller shall make a certified statement of the actual cost incurred by the City for the action. The statement shall be served on the landowner by certified mail. The landowner shall pay the amount in the statement to the City Legal Department within ten (10) working days of receiving it. If the property owner should fail to pay within the ten (10) day period, a certified copy of the statement of costs shall be filed in the offices of the County Auditor. The Auditor shall place the amount claimed on the tax duplicate against the property affected by the work. The amount shall be collected as taxes are and disbursed to the general fund of the City.

12.24.120 Violation and Penalties

(1) Any person violating any of the provisions of this chapter may be issued an official warning.

(2) Any person violating any of the provisions of this chapter shall, upon a written Notice of Violation (NOV), be subject to a penalty up to the statutory limit as described in Indiana Code 36-1-3-8, as amended.

12.24.130 Appeal

Any person aggrieved by the Department's denial of a Tree Work Permit, the issuance of a Notice of Violation, or the City's notice of tree removal, shall have the right of appeal to the Board. No appeal is allowed for emergency tree removal, described in Bloomington Municipal Code section 12.24.070(3)(b). Appeals shall be made within ten (10) working days after the action complained of, or for notice of tree removal, within seven (7) working days of the posting of notice of tree removal. An appeal is made by filing a written statement with the Board setting forth fully the grounds for the appeal. The Board shall convene at a public meeting to review their initial decision in light of the appeal, and shall issue written findings. The decision and order of the Board on such appeal shall be final and conclusive.

All appeals from written findings of the Board shall be made to a court of competent jurisdiction within ten (10) working days of the issuance of the findings.

SECTION III. 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 ordinance are declared to be severable.

SECTION IV. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor, and publication in accordance with State law.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 7th day of MAY, 2008.

Susan Sandberg
SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 8th day of MAY, 2008.

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 11TH day of MAY, 2008.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance shifts the authority and administration for the care of public trees from the Board of Public Works to the Board of Park Commissioners. This ordinance also clarifies the City's decision-making authority regarding public trees and the tree lawn. The expanded definition section assists the reader in understanding the terms used throughout the ordinance. Procedures for implementing the permitting process and for appealing a decision made by the Board of Park Commissioners are provided. This ordinance references, but does not incorporate, the City of Bloomington Tree Work Manual, which contains approved tree lists and guidelines and specifications to be used to carry out the intent of this ordinance.

Note on May 4, 2008, the Council adopted Ord 08-06 as amended by Am 1a and Am 2. Am 1a made technical corrections, changed the time-frames from calendar to working days wherever they appear in the ordinance, and established a procedure for appealing the removal of trees by the City. Am 2 revived the goal found in the existing ordinance of replacing twenty percent more trees than the City removes on an annual basis.

Signed copies to:

legal (10)
webmistress
Controller
Parks Dept
Tree Commission
urban Forester
Parks Board
Public Works
utilities
planning Dept.

CA | CA (3)
clerk
file
BMC (2)