

CHAPTER 99: TREES

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GENERAL PROVISIONS

§ 99.01 DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates

or requires a different meaning.

ALTER. To change the appearance or function of a tree.

APPROVAL. Written permission from the Tree Board that allows an individual or organization to

go forward with some action that affects a tree.

CALIPER. The length, in inches of a straight line, measured through the trunk of a tree 12 inches

above the ground.

CLEARING. The removal of substantially all trees from a lot.

COMMUNITY FOREST. The collection of trees, shrubs, other vegetation, and associated natural

features that make up the town tree canopy and its growing zone.

COMMUNITY FORESTRY. The ecology of native and non-indigenous plantings, creating a forest

in the human living environment, and emphasizing the practice of wise professional planned management

of all tree resources within an urban area, including trees in public streets, in public areas, and on

private property, to provide for multiple-use benefits for the general well-being of the entire community.

DAMAGE. To injure any part of a tree in a way that adversely affects its health, strength, appearance, function, or longevity.

DEVELOPER. The owner of the land or person who is the applicant for alteration of the land.

DRIPLINE. An imaginary vertical line that extends from the outermost branches of a tree's canopy

to the ground.

HAZARD or NUISANCE. Trees, shrubs, and all other woody vegetation on public and private property that pose a threat to public safety by their condition or location.

LANDSCAPE PLAN. The design and specifications for the placement of any live plant materials,

such as trees, shrubs, ground cover, and grasses, including the retention of existing vegetation; and

human-made structures, such as walls, fences, and berms; for the purposes of enhancing property value

and aesthetics; protecting the community's environment; and minimizing the negative impact on the

visual order of the community.

LANDSCAPING. The use of natural plant materials, including, but not limited to, ground covers,

shrubs, and trees (deciduous and evergreen). **LANDSCAPING** also involves the placement, preservation,

and maintenance of such plant materials, and includes such elements as fences, walls, lighting, and earth

mounding.

MUNICIPALITY. A city, town, village, borough, or other district incorporated for local self-government.

PARKS. All public parks having individual names.

PARKWAY. The part of the property not covered by sidewalk or other paving, lying between the

property line and the curb line of any street. In the absence of a curb, the curb line of a street shall be

deemed to be the edge of that portion of the public right-of-way maintained and open to the use of the

public for public travel.

PERSON. Every person, firm, association, partnership, corporation, and individual.

PEST. Any injurious plant, animal, disease, insect, or other organism that harms trees, other woody

vegetation, or humans.

PLANTING. To set trees, shrubs, or other plants in the ground to grow.

PROPERTY OWNER. The person owning such property, as shown by the County Auditor's plat of the town.

PRUNING. The judicious removal of plant parts to increase usefulness, beauty, or vigor.

PUBLIC AREA. All other grounds owned by the town.

PUBLIC TREE. Any street tree, park tree, or other woody plant on town property.

RECOMMENDED TREE. A tree of two and one-half inches or greater in diameter, as measured

six inches above grade, which will grow to a minimum height of 50 feet at maturity.

SHADE TREE. Any tree located within the right-of-way of the public streets and highways of the town.

SHRUB. A woody plant of relatively low height, distinguished from a tree by having several stems rather than a single trunk.

STREET or HIGHWAY. The entire width of every public way or 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 pedestrian traffic.

STREET TREE. Trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the town.

TOPPING. The severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

TOWN TREE POLICY. A manual prepared by the Town Tree Board pursuant to this chapter,

containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and

other plants upon town-owned property.

TREE DIAMETER. The diameter of a tree measured at a point four and one-half feet above the ground.

TREE OWNER. Owner of the property on which the tree grows.

TREE SERVICE. An individual or organization engaged in the business of pruning, spraying, injecting chemicals, or removing trees, shrubs, or stumps for compensation.

TREE TRUNK. The stem portion of a tree, from the ground to the first branch thereof.

TREES, SHRUBS, AND OTHER PLANTS. All vegetation, woody or otherwise, except lawn grass and flowers less than 24 inches tall.

URBAN FORESTRY PROGRAM. All of the town resources, time, and efforts directed toward the development and maintenance of a safe, healthy, aesthetically pleasing, and fully stocked population.

(Prior Code, § 99.01) (Ord. 10-19-04, passed 10-19-2004) § 99.02 PURPOSE.

§ 99.02 PURPOSE.

(A) Preamble. The town has plans to plant, replace, and maintain trees on public-owned property;

this chapter establishes policies, regulations, and standards necessary to ensure the town will realize the

benefits provided by its community forest.

(B) Health and welfare of the community.

(1) The provisions of this chapter are enacted to accomplish the following: promote and protect

the public health, safety, and general welfare by providing for the development of a community forestry

plan to address the planting, maintenance, and removal of public trees and shrubs within the town, in

order to promote, maintain, and improve the town's urban forest resource.

(2) Whereas, the Town Council has determined that the protection of trees on public property

within the town is not only desirable but essential to the present and future health, safety, and welfare

of all citizens; and

(3) It is the intent of this chapter to promote the community health and welfare by protecting

trees and woodlands for the unique benefits they provide.

(C) Be it ordained. Whereas, it appears that a formal program of management of trees on publicly

owned lands is appropriate to advance these worthwhile purposes, now therefore, be it ordained by the

Town Council.

(D) Short title.

(1) This chapter shall be known and shall be cited as the "Tree Ordinance of the Town of Edgewood, Indiana."

(2) The short title of this chapter shall be the "Tree Ordinance," and this chapter shall hereafter

be so cited if referred to for purposes of amendment or otherwise.

(E) Intent.

(1) This chapter provides full power and authority over all trees, plants, and shrubs located within street rights-of-way, parks, and public places of the town; and to trees, plants, and shrubs located

on private property that constitute a hazard or threat, as described herein.

(5) TREES, as defined, regulated and protected herein, are declared to be a natural public

resource, and the town encourages planting, replacement, and protection of trees, as herein set out, in

the interest of the health, safety, and welfare of present and future citizens of the town.

(6) To attain that end, it shall be unlawful to cut down, damage, poison, or in any other manner

destroy or cause to be destroyed any tree or woodland, as covered by the terms of this chapter, except

in accordance with the provisions herein mentioned.

(7) This chapter provides for the care of trees and shrubs on public rights-of-way, and aids in

the proper growth of a landscape program to enhance the beauty of the town.

(Prior Code, § 99.02) (Ord. 10-19-04, passed 10-19-2004§

99.03 TOWN'S AUTHORITY AND DUTIES.

(A) The Town's right to plant, maintain, and remove trees on public property. The Town shall have the power to plant, preserve, spray, trim, or remove any tree, shrub, or plant on any parkway, alley, or public ground belonging to the town.

(B) The town's right to plant, maintain, and remove trees on private property. The town shall have

the right to cause the removal of any dead, diseased, or structurally damaged trees on private property,

when such trees constitute a potential hazard to life and property within the right-of-way or on public property.

§ 99.17 TOPPING PROHIBITED.

(A) It shall be unlawful, as a normal practice, for any person, firm, or town department to top any

street tree, park tree, or other tree on public property.

(B) Trees severely damaged by storms or other causes, or certain trees under utility wires or other

obstructions, where other pruning practices are impractical, shall be exempted from this chapter, at the

determination of the **Town Council**.

(Prior Code, § 99.17) (Ord. 10-19-04, passed 10-19-2004) Penalty, see § 10.99

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§ 99.18 NOTICE PROCEDURES.

(A) Order required for a notice to take action.

(1) Upon determination that a public nuisance exists, the **Town Marshal**, or **their** designated representative, shall serve written notice upon the owner or occupant of the premises where the tree is

located to abate the nuisance.

(2) Should any person or persons owning real property bordering on any street fail to prune trees as herein above provided, the **Town Marshall, or their designated representative**, shall order such person or persons, within ten days after

receipt of written notice, to so prune such trees.

(B) Service of a notice to take action. Such notice shall require the elimination of the nuisance no

less than 30 days after the notice is delivered or sent to the person to whom was sent the tax bill for the

general taxes for the last preceding year.

(C) Contents of a notice to take action.

(1) The notice shall describe the kind of tree, shrub, or other plant or plant part that has been

declared to be a public nuisance; its location on the property; and the reason for declaring it a nuisance.

(2) The notice shall state the actions that the property owner shall undertake to abate the nuisance; and

(3) The notice shall require such property owner to eradicate, remove, or otherwise control such condition within a reasonable time to be specified in such notice.

(D) Failure to comply with a notice to take action. When a person to whom an order is directed

shall fail to comply within the specified time, it shall be lawful for the town to remove such trees, and

to assess the property owner for the cost of services.

(Prior Code, § 99.18) (Ord. 10-19-04, passed 10-19-2004)

§ 99.19 NUISANCE OR HAZARD.

(A) The **Town Marshall, or their designated representative**, shall remove, or order to be removed, any tree or part thereof that is in an

unsafe condition or that, by reason of its nature, is injurious to sewers, electric power lines, gas lines,

water lines, or other public improvements, or is affected with any injurious fungus or insect infestation.

(B) The following are declared public nuisances under this chapter:

(1) Trees obstructing traffic. Any tree or shrub that obstructs the free passage of pedestrian or

vehicular traffic, or that obstructs a street light or traffic control device.

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(2) Dead or dying trees.

(a) Any dead or dying tree, shrub, or other plant, whether located on town-owned property or on private property.

(b) The owner shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs that constitute a menace to public safety.

(3) Hazardous trees.

(a) A HAZARDOUS TREE is any otherwise healthy tree, shrub, or other plant, whether located on town-owned property or on private property, that, by reason of its location or condition,

constitutes an imminent danger to the health, safety, or welfare of the general public.

(b) Trees shall not interfere with overhead utility lines or create irresolvable public safety hazards.

(4) Diseased or pest-infested trees. Any tree or part thereof that is afflicted with any dangerous

and infectious insect infestation or plant disease shall be cured or destroyed.

(Prior Code, § 99.19) (Ord. 10-19-04, passed 10-19-2004)

§ 99.20 ADJACENT LANDOWNER RESPONSIBILITY.

(A) Every owner of any tree overhanging any street or right-of-way within the town shall prune its

branches so that they shall not severely obstruct the light from any street lamp or obstruct the view of

any street intersection, so that there shall be a clear space of 13 feet above the street surface or eight feet

above the sidewalk surface.

(B) The owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs

that constitute a menace.

(Prior Code, § 99.20) (Ord. 10-19-04, passed 10-19-2004) Penalty, see § 10.99

§ 99.21 MUTILATION OF TREES PROHIBITED.

(A) Abuse or mutilation of public trees.

(1) No person shall deposit, place, store, or maintain upon any public place of the municipality,

any stone, brick, sand, concrete, or other materials that may impede the free passage of water, air, or

fertilizer to the roots of any tree growing therein, except by written permission of the **Town Council**.

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(2) Snow will not be plowed, blown, shoveled from roof tops, or piled in a manner that damages trees.

(3) No trees on land owned or maintained by the town shall be pruned in a manner that impairs their health.

(4) In addition, no person shall cut down, lop, take, or otherwise destroy any ornamental or shade tree, shrub, flowers, bulb, or fruit standing or growing on any public ground or any street,

sidewalk, park sidewalk, promenade, or park, parkway, or boulevard in the town.

(B) Mutilation of trees and plants. No person shall:

(1) Damage, cut, carve, transplant, or remove any tree or plant;

(2) Injure the bark of any tree or plant; or

(3) Pick the flowers or seeds of any tree or plant.

(Prior Code, § 99.21) (Ord. 10-19-04, passed 10-19-2004) Penalty, see § 10.99

§ 99.22 TREE PROTECTION REQUIREMENTS.

(A) Protection from disease and pestilence.

(1) Upon the discovery of any destructive or communicable disease or other pestilence that

endangers the growth or health of trees, or threatens to spread disease or insect infestations, the Town **Marshall, or their designated representative** shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated.

(2) The notice shall require such property owner to eradicate, remove, or otherwise control such condition within a reasonable time to be specified in the notice.

(B) Protection from posting and wire.

(1) It shall be unlawful for any person, firm, or public utility to attach any sign, advertisement,

or notice to any street tree or park tree.

(2) It shall be unlawful to attach a potentially harmful device or structure (i.e., tree houses) to

or on public trees, unless otherwise authorized by the **Town Council**.

(3) Other than to support a young or broken tree, it shall be unlawful to attach or place any rope or wire on any tree growing in a public place.

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(4) It shall be unlawful to attach or place any sign, poster, advertisement, or notice on any tree

growing in a public place.

(C) Protection from fire.

(1) No person shall allow fire or heat to come in contact with any tree on land owned or maintained by the town.

(2) Nor shall any person set a fire, or permit any fire to burn, when such fire or the heat thereof will injure any portion of any tree.

(D) Protection from utilities.

(1) Each public utility company shall exercise reasonable diligence in the maintenance of its

plant construction so as to avoid damage to trees.

(2) Utility companies shall not cause or permit any wire charged with electricity to come in contact with any tree or plant.

(E) Protection from toxins. No oil or any injurious chemical or substance shall be placed on the

ground around such trees or shrubs.

(F) Protection from vehicles and equipment. No person shall, without the written permission of the **Town Council** or its designated agent, place any booth, stand, or other structure, or station any wagon, car,

or other vehicle in any public park.

(G) Protection from animals. No person shall fasten an animal to a tree or shrub located on town

property, or cause an animal to stand so that it can damage such tree or shrub.

(Prior Code, § 99.22) (Ord. 10-19-04, passed 10-19-2004) Penalty, see § 10.99

§ 99.23 PRIVATE TREES, SHRUBS, AND VEGETATION.

(A) The town shall have the right to order the removal of any dead or diseased trees on private

property within the town when such trees constitute a hazard to life or property, or harbor insects or

disease that constitute a potential threat to other trees within the town.

(B) Trees, shrubs, and vegetation on private property that may affect safety and welfare (through,

for example, infectious disease, insect problems, dead or dying limbs, or the obstruction of street lights,

traffic signs, or visibility) may require coordination among the owner, the Town Council, and the **Town Marshall, or their designated representative** in order to inspect and eliminate the hazard. The town shall also have the right to order the

removal or the trimming of any such trees, shrubs, or vegetation.

(C) All dead trees on private property shall be removed by the owner of such property. The town

shall also have the right to order the removal of such dead trees.

(D) To protect the roadways throughout the town, to promote the safety of traffic and pedestrians,

and to allow access to fire hydrants, all trees planted by any owner on his or her property shall be

planted at least four feet away from any roadway, traffic sign, or fire hydrant, and all vegetation or

shrubs shall be planted at least four feet from any roadway, traffic sign, or fire hydrant. To the extent

any such trees, shrubs, or vegetation are already located on the owner's property, they shall be trimmed

back to meet the four feet requirement. The town shall also have the right to order the removal or

trimming of such trees, shrubs, or vegetation.

(E) In the event of the failure of the owner to comply with any order issued under this section, the

town shall have the authority to remove such trees, shrubs, or vegetation, or cut back such trees, shrubs,

or vegetation, and add the cost of this work to the owner's property taxes.

(F) If the tree trunk emerges from the ground on the line for the roadway and private property, the

cost of removal shall be shared proportionately by the town and the private property owner.

(G) The issue of whether trees, shrubs, or vegetation fail to comply with this section, and the issue

of whether enforcement is necessary and/or appropriate, is fact sensitive. Therefore, the town reserves

the right to enforce this section as it deems appropriate.

(H) The foregoing language of this section which allows the town to order removal or trimming,

and then, upon failure to comply with such order, to add the cost the town incurs to the property owner's

taxes, is not intended to prevent the town, as a separate and distinct remedy, from assessing a fine

against the offender under § 10.99.

(Prior Code, § 99.23) (Ord. 10-19-04, passed 10-19-2004; Ord. 2-10-20, passed 7-20-2020)
Penalty,

see § 10.99

§ 99.24 SPECIAL CIRCUMSTANCES.

(A) Tree becomes public property. Any tree planted pursuant to this section shall become the

property of the town.

(B) Improper planting. Whenever any tree shall be planted or set out in conflict with the provisions

of this chapter, it shall be lawful for the **Town** to remove or cause the removal of the same, and

the exact cost thereof shall be assessed to the owner, as provided by law in the case of assessments.

(C) Removal, replanting, and replacement. No person shall remove a town tree without first obtaining permission from the **Town Council**.

(Prior Code, § 99.24) (Ord. 10-19-04, passed 10-19-2004) Penalty, see § 10.99

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ENFORCEMENT

§ 99.35 ENFORCING AGENT.

The **Town Marshall, or their designated representative**, shall enforce such rules, regulations, permit, and penalty procedures as are deemed necessary to enforce the intent of this chapter.

(Prior Code, § 99.35) (Ord. 10-19-04, passed 10-19-2004)

§ 99.37 APPEALS.

(A) Appellate authority of the Town Council.

(1) The Town Council shall have the right to review the conduct, acts, and decisions of the **Town Marshall**.

(2) Any person may appeal any ruling or order of the **Town Marshall** to the Town Council, which shall hear the matter and make a final decision.

(B) Request for appeal. The request for appeal shall:

(1) Be in writing;

(2) Be filed with the Town Hall; and

(3) Contain any and all facts that are offered in support of the appeal.

(C) Appeal of tree removal.

(1) The person may appeal **Town Marshalls, or their designated representative's**, decision to remove or not remove the tree to the **Town Council**.

(2) If the tree is to be removed, the cost of removal will be charged to the property owner.

(Prior Code, § 99.37) (Ord. 10-19-04, passed 10-19-2004)

§ 99.38 RIGHT TO ENTER PRIVATE PROPERTY.

The **Town Marshall or its designated representative**, has the authority to enter onto private property whereon there

is located a tree, shrub, plant, or plant part that is suspected to be a public nuisance, and to order its removal if necessary.

(Prior Code, § 99.38) (Ord. 10-19-04, passed 10-19-2004)

§ 99.39 EMERGENCIES.

In the event of windstorm, fire, flood, or other widespread natural calamity, the Town Council

President may declare a state of emergency and allow operations necessary to remove threats to public

safety.

(Prior Code, § 99.39) (Ord. 10-19-04, passed 10-19-2004