

**ORDINANCE NO. 2022-51**

**AN ORDINANCE TO REPEAL AND REPLACE**

**CHAPTER 8.06 – TREES AND SHRUBS**

WHEREAS, the City has adopted rules and regulations concerning trees and shrubs as set forth in Chapter 8.06;

WHEREAS, the City Forester, Tree Advisory Committee and a Purdue University urban forestry class reviewed the current rules and regulations set forth in Chapter 8.06 and recommended certain updates to improve the overall tree canopy within the City;

WHEREAS, revisions include, but are not limited to: adding new sections to address intent, purpose and authority; acknowledging the importance of tree species diversity; modernizing and clarifying nuisance abatement procedures; and improving and streamlining the ordinance generally.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, as follows:

1. Chapter 8.06 – Trees and Shrubs is hereby repealed in its entirety and new Chapter 8.06, attached hereto and incorporated herein, is adopted.
2. This Ordinance shall take effect upon passage and approval by the Mayor.

ADOPTED AND PASSED BY THE COMMON COUNCIL of the City of Lafayette, Indiana this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
, President

ATTEST:

\_\_\_\_\_  
CINDY MURRAY, City Clerk

Presented by me to the Mayor of the City of Lafayette, Indiana, on this \_\_\_\_ day  
of \_\_\_\_\_, 2023.

\_\_\_\_\_  
CINDY MURRAY, City Clerk

This Ordinance approved and signed by me on this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
TONY ROSWARSKI, Mayor

ATTEST:

\_\_\_\_\_  
CINDY MURRAY, City Clerk

Sponsored by: Councilmember Bob Downing

Councilmember Lauren Ahlersmeyer

## Chapter 8.06 – Trees and Shrubs

### Article 1 -General Information

#### 8.06.100 Intent and Purpose

It is the purpose of this chapter to regulate the maintenance and selection of trees on public property, street trees and off-street parking trees to encourage proper selection and planting, risk mitigation and to assure compatibility with urban infrastructure such as utilities, sidewalks, and streets.

It is the intent of this chapter to establish the responsibilities for tree maintenance and assure these policies and regulations lead to a stable tree canopy cover within the City.

The goals of this chapter are to conserve and preserve already established as well as newly-planted trees, and to increase the health and vigor of our trees and improve the sustainability of the overall urban forest.

Tree species diversity is a critical component of a healthy urban forest, and this chapter shall be interpreted in a way to promote and encourage such diversity.

All sections of this chapter, where appropriate, must adhere to American National Standards (ANSI A300 – Tree, Shrub and other Woody Plant Maintenance – Standard Practices and the ANSI Z133.1 – Pruning, Trimming, Repairing, Maintaining and Removing Trees and Cutting Brush – Safety Requirements).

#### 8.06.110 Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Canopy” is a reference to the collective branches and foliage of a group of trees’ crowns. It is an aggregate or collective tree crown within the urban forest.

“Caliper” a trunk diameter measurement taken 12 inches above the root flare.

"City Forester " means an individual employed by the City specializing in the fields of arboriculture and urban forestry and having responsibility for the management of all or part of planted and naturally occurring greenspaces on public land within the City.

“Conserve” means the wise use and management of a natural resource to prevent it from disappearing or dying.

“Crown” means the above ground parts of an individual tree, consisting of branches, buds, fruit, and leaves; its length is measured from the lowest branch to the top of the tree.

“DBH” or DSH” indicates Diameter at Breast or Standard Height and is measured at 4.5 feet above ground level.

“Ground cover” means low-growing plants or nonliving materials used for covering large areas in the landscape, which will conserve soil moisture, maintain an even soil temperature, control weeds, and prevent soil erosion.

“Heading Cut” involves cutting limbs to a stub, bud, or lateral branch not large enough to assume the terminal role (apical dominance). Heading cuts are typically used as an inappropriate pruning technique called “topping”. However, it may be acceptable in certain situations such as storm damage on trees.

“New development” means any construction or renovation which necessitates the issuance of an improvement location permit and subsequent certificate of occupancy, excluding any new or existing single-family home.

“Preserve” means to protect or save a natural resource in the present for the purpose of using it in the future.

“Private property” means areas located within the City that are owned by individuals and/or entities and that are not owned by a political subdivision.

“Public property” means areas located within the City that are owned by the City or any other political subdivision, including but not limited to streets, rights-of-way, public ways, and parks.

“Public area(s) of private property” means areas located within “private property” that pose a hazard to the traveling public including but not limited to parking lots and business entrances, whether walking or driving.

“Shade tree” means a deciduous woody plant which is characteristically over thirty (30) feet in height when it reaches full growth and has a single trunk rooted in the ground which supports all of its branches, rather than several stems supporting the main leafy growth.

“Shrub” means a woody plant which is characteristically below twenty (20) feet in height at maturity and multi-stemmed supporting the main leafy growth.

“Tree Advisory Committee” means community residents who are appointed by the Mayor and who will advise and make recommendations to the Mayor, City Forester, and City Engineer.

“Tree list approved” means a list of acceptable trees that have been proven adaptable to and suitable for urban conditions in the city which shall be prepared and amended from time to time by the City Forester with the advice of the Tree Advisory Committee.

“Tree list prohibited” means a list of unacceptable trees that have proven undesirable characteristics which shall be prepared and amended from time to time by the City Forester with the advice of the Tree Advisory Committee.

“Tree topping” or to “top” means the severe cutting back or indiscriminate removal of a majority of a tree’s branches, limbs, or live green tissue so that stubs only remain in the crown. It is not a recommended pruning practice.

#### 8.06.120 – Authority

- A. The City shall have the authority, control, supervision, and direction over all trees subject to this chapter.
- B. The City shall have all the right and authority to order the removal of any tree or part thereof on private property which has been assessed and considered to be a public nuisance.
- C. The City shall have the authority to plant trees in public right-of-ways for reasons such as environmental, economic, and human health benefits of trees and to increase the vigor of the overall urban forest.
- D. The City shall review all applications for permits for any planting, removal, and/or trimming of trees subject to this chapter and shall have the right to approve or deny permits with listed reasonable conditions.

### **Article 2 – Trees in Public Right-of-Way**

#### 8.06.200 – Tree Work Permit Required

- A. A permit shall be obtained before any person may remove, cut or plant any tree or shrub on public property or public area(s) of private property within the City.
- B. A condition to the issuance of any permit to remove any tree or shrub may be the planting of trees from the approved tree list in the place of those removed.
- C. Any person engaged in the business of removing, cutting or planting trees or shrubs on public property or public area(s) of private property shall be subject to the following:
  - 1. Applicant must file evidence of possession of liability insurance in the minimum amount of \$1,000,000 for bodily injury or death and \$100,000 property damage and worker’s compensation insurance at statutory limits. The City shall be named as additional insured.
  - 2. Applicant must agree to carry out all work in accordance with the American National Standards (ANSI A300 – Tree, Shrub and other Woody Plant Maintenance – Standard Practices and the ANSI Z133.1 – Pruning, Trimming, Repairing, Maintaining and Removing Trees and Cutting Brush – Safety Requirements).
  - 3. Applicant may apply for a permit on a per project basis or for an annual permit.
- D. The permit fee shall be Twenty-Five Dollars (\$25.00) for a per project permit. The permit fee for an annual permit shall be One Hundred Dollars (\$100.00).

E. Nothing in this section shall be construed to apply to work necessitated by storms or other emergencies or removal under the direction of the City of any root, tree, shrub, or part thereof whenever the same shall be found necessary in the event of emergencies or the construction of any sidewalk, sewer, pavement, or other public improvement.

F. A permit shall not be required for maintenance required under Section 8.06.240.

#### 8.06.210 – Planting of Street Trees – Generally

A. **Species Prohibited.** Trees listed in the prohibited tree list shall not be planted on public property. The planting of any low-hanging, low-branching, or bush-type tree which might impair line of sight for vehicles and pedestrians is also prohibited.

B. **Planting Space and Tree Root Health.** It is unlawful for any person to place or maintain in any public right-of-way any stone, cement or other impervious material or substance in such a manner as to obstruct the free access of air and water to the roots of any tree, plant, or shrub in any public right-of-way unless otherwise provided for in a permit. Planting areas shall be no less than four (4) feet in any dimension unless otherwise approved by the City Forester.

#### 8.06.220 – Planting of Street Trees – Existing Development

The City wishes to encourage sustainable planting along its public streets. The City is authorized, but not required, to provide trees for planting, with the notification of the adjacent property owner, along the streets of the City.

#### 8.06.230 Planting of Street Trees – New Development

A. All new developments adjacent to a minor arterial, collector street, local street or shared access road shall be required to submit a tree planting plan for approval.

B. Trees to be planted shall be deciduous, not evergreen. Trees shall be required at the standard of one tree per forty (40) feet of frontage for trees listed on the approved shade tree list and one tree per thirty-five (35) feet of frontage for trees on the alternate small tree list. The required number shall be rounded to the nearest whole number. Tree species shall be selected from the approved tree list with consideration given if overhead lines are present.

C. Tree locations shall be determined as follows:

1. If a location is shown on the subdivision plat, that location shall be used unless impractical.

2. If a consistent design of street trees is already started on the street that design shall be followed unless impractical.

3. Otherwise, the trees shall be planted midway between the sidewalk and the curb.

D. All street trees shall be planted at least thirty (30) feet back from any intersection with a local or collector street and fifty (50) feet back from any intersection with major or minor arterial.

E. Street trees shall have a minimum spacing of twenty-five (25) feet and consistent with the spacing of street trees on any adjoining property abutting the same street.

F. Trees required by this section shall have a minimum caliper of one and one-half (1½) inches immediately after planting.

G. Trees shall have a planting area width of at least five (5) feet and eight (8) feet in length with adequate soil volumes to reduce infrastructure conflicts.

H. The planting locations, number of trees and other development standards may be modified or waived upon the approval of the City Forester under the following circumstances:

1. If the planting of the street trees would impair vision at the entrance or exit to any parking lot;

2. If the planting of street trees would functionally duplicate trees planted under the section for off-street parking lots;

3. If the location of shallow utilities would prohibit the digging of street tree planting holes.

I. The City Forester may approve minor modifications, or an innovative landscaping plan, as long as it is consistent with the intent of this chapter.

#### 8.06.240 – Maintenance of Trees.

The owner, tenant, and their agent, if any, of the property located adjacent to public right-of-way on which trees are planted shall be jointly and severally responsible for the maintenance of said trees. Trees shall be maintained in good condition so as to present a healthy, neat and orderly appearance, maintaining the tree's natural shape and crown. The City Forester may provide advice on the maintenance and coordinate maintenance efforts.

#### 8.06.250 – Prohibited Actions

A. Tree Topping. It is unlawful for any person to top any tree located on public grounds or public right-of-way. Topping of trees severely damaged by storms or other causes or certain trees near or under utility wires or other obstructions where other pruning practices are impractical may be approved by the City Forester.

B. Attachments to Tree. No person shall fasten or attach any wire, rope, sign, handbill or other thing to any tree, bush, shrub, or plant growing in any public right-of-way except guy wires used to stabilize newly planted trees which guy wires must be removed one year after planting.

### **Article 3 – Off-Street Parking Areas**

#### 8.06.300 Off-Street Parking Areas

A. The intent of this section is to set minimum requirements for perimeter and interior planting of off-street parking areas in order to offset the negative effects produced by large expanses of paving.

- B. Off-street parking areas which are part of a new development and contain either ten or more parking spaces or a parking area of five thousand (5,000) or more square feet shall be landscaped in accordance with this article. If a development has been zoned a Planned Unit Development the landscape requirements of the Planned Unit Development rezoning process may satisfy, but shall not substitute for, the requirements of this chapter.
- C. The number of shade trees to be planted on the perimeter shall be one for every thirty (30) feet of lineal footage on the perimeter of the parking area. Perimeter planting areas shall be no less than four (4) feet in any dimension. Trees may be grouped according to the recommendations of the City Forester. An appropriate ground cover shall be provided for all planting areas to improve overall tree health.
- D. An interior planting area equivalent to one hundred fifty (150) square feet shall be provided for every ten (10) parking spaces not located on the perimeter of the parking area and shall be no less than four feet in any dimension. The total required area may be allocated to individual planting islands, or to planting strips parallel to traffic lanes. One shade tree shall be provided for every one hundred fifty (150) square feet of interior planting area. Trees may be grouped according to the recommendations of the City Forester. An appropriate ground cover shall be provided for all planting areas to improve overall tree health. Parking garages shall be exempt from interior planting requirements.
- E. A continuous six-inch high curb shall separate planting areas from the parking area and other adjacent vehicles access areas.
- F. Trees in the required planting area shall be protected by solidly anchored concrete wheel stops. Wheel stops shall be placed three (3) feet from the continuous curb described above, in each parking space that abuts a tree's location in the planting area.
- G. Trees shall have a minimum caliper of one and one-half (1½) inches immediately after planting.
- H. For any addition, remodeling, or renovation which necessitates the issuance of an Improvement Location Permit on a new or existing development that contains either ten (10) or more parking spaces or an area of five thousand (5,000) or more square feet, the property shall be required to match the ratio of square feet renovated to the square feet of landscape required by this article. (So that if ten percent of the square feet of the building is renovated then ten percent of the landscaping required for the site will be completed.)
- I. The preservation of each existing, healthy shade tree that has a DBH of 6 inches or greater will be considered the equivalent of planting two shade trees in meeting the requirements of this article, as long as preservation methods meet and follow the specifications of the City Forester. Tree species listed on the Prohibited Tree List shall not be eligible under this section.
- J. The City Forester may approve minor modifications, or an innovative landscape plan, as long as it is consistent with the intent of this article.



#### 8.06.310 Maintenance Requirements

The owner, tenant, and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping required by this article, which shall be maintained in good condition so as to present a healthy, neat, and orderly appearance and shall be kept free from refuse and debris. The tree's natural shape and crown must be maintained. Topping is not an approved practice and is prohibited.

#### 8.06.320 Enforcement

The City shall have the authority to deny the issuance of an occupancy permit until such time as the owner has completed the landscaping required by this article or established an escrow account sufficient to cover the costs of complying with the requirements of this chapter.

### **Article 4 –Trees Constituting a Public Nuisance**

#### 8.06.400 Minimum Height of Limbs

A. No person shall maintain any tree or shrub in, along or bordering any street, alley or sidewalk in the city with a limb or branch less than eight (8) feet above the surface of the street, alley or sidewalk. Between a point six (6) feet from the curb line of any street or alley and a point ten (10) feet from the same curb line, no person shall maintain any tree or shrub with a limb or branch less than fifteen (15) feet above the surface of the street or alley, and between a point ten (10) feet from one curb line of a street or alley and a point ten (10) feet from the other curb line of the street or alley, no tree or shrub shall be maintained with a limb or branch less than eighteen (18) feet above the surface of the street or alley.

B. No tree or shrub shall be maintained in, along or bordering on any street, alley or sidewalk in which a boulevard or ornamental lighting system is established with a limb or branch less than fifteen (15) feet above the surface of the street, alley or sidewalk, if the limb or branch interferes with the diffusion of light from the boulevard or ornamental lighting system.

C. Trees with a DBH of less than six inches, or that have not grown large enough to allow for pruning to achieve the required clearance without doing harm to the tree, shall be exempt from the provisions of this section. Minimum DBH may vary based on species and crown type.

D. Trees or shrubs in violation of this section are declared to be a public nuisance and are subject to the abatement procedures set forth in Section 8.06.410.

#### 8.06.410 Removal of trees, branches and dead trees constituting a public nuisance

A. The existence of any tree, branch, dead tree, or stump on any parcel of land within the City which threatens or endangers the public health, safety, or welfare or which could foreseeably cause the spread of disease or infestation to surrounding plant life, is hereby prohibited, and declared to be a public nuisance.

B. The City Forester shall give notice to the owner upon whose parcel of land such nuisance is located advising the owner of the same. Said notice shall be sent to the Owner at the address

listed on the property tax records via regular first-class mail with a copy of the notice posted in a conspicuous place on the premises upon which the nuisance is located.

C. Such notice shall command the owner to remove such tree, branch, dead tree, or stump no later than thirty (30) days after the mailing or posting of the aforementioned notice. In addition to assessment of penalties set forth in Section 8.06.990, if the nuisance is not abated by the owner, the City may enter onto the property, without further notice, and abate the nuisance.

D. The City shall invoice the owner for costs to bring the property into compliance which invoice shall be due and payable within thirty (30) days. In the event the costs remain unpaid after thirty (30) days, the City may certify the costs as a lien against the property in accordance with Indiana Code § 36-1-6-2.

#### 8.06.420 Shrubs, trees, or bushes planted in the Right-of-Way.

Any and all shrubs, trees or bushes planted or raised in the public right-of-way in violation of this chapter are declared a public nuisance and subject to abatement.

### **Article 5 – Landscape Recognition**

#### 8.06.510 Inventory of Outstanding Trees

A. The City Forester may keep an inventory of outstanding trees in the City, whether for age, species, beauty or other remarkable feature or combination thereof. These trees may be permanently marked and honored, with the consent of the owner, for the enlightenment of the citizenry. Consultation with the City Forester on proper tree care shall accompany this designation. This list shall be available for public inspection in the office of the City Forester.

#### 8.06.520 Tree Advisory Committee

A Tree Advisory Committee shall be appointed by the Mayor to make recommendations to the Mayor and the City Forester, in decisions of an arborist or professional or community nature. They will assist the City Forester with the development and update of the Inventory of Outstanding Trees.

#### 8.06.530 Meritorious Landscape Awards.

A. Outstanding projects of beautification of the city, maintained for a period of years for the benefit or enjoyment of the public, may be permanently honored and marked.

B. The Tree Advisory Committee shall assist in making recommendations for this designation.

C. The honors will be made at the pleasure of the Mayor.

### **Article 6-8 – Reserved for Future Use**

## **Article 9 – Penalties**

### 8.06.990 Penalties.

Whoever violates any provision of this chapter for which no penalty is otherwise provided, shall be fined not more than one thousand dollars (\$1,000.00). A separate offense shall be deemed committed on each day that a violation occurs or continues.