

City of Belding – Tree Ordinance 2008

ARTICLE II. TREES*

***Editor's note:** Ord. No. 464, §§ 1, 2, adopted Jan. 21, 2003, repealed article II, sections 90-26--90-37, in its entirety and replaced it with a new article II, sections 90-26--90-39. Former article II pertained to similar material and derived from the Code of 1976, §§ 4.91--4.102.

Sec. 90-26. Purpose.

(a) This chapter is adopted for the purpose of establishing rules and regulations relating to the planting, care, maintenance and removal of trees, shrubs and any other plantings in public areas, rights-of-way and easements. In addition, it is the intent of this article to, through the preservation, protection, maintenance and management of the community's existing forest resource, and the planting of trees to:

- (1) Aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce storm water runoff and the costs associated therewith and replenish ground water supplies;
 - (2) Aid in the removal of carbon dioxide and generation of oxygen in the atmosphere;
 - (3) Provide a buffer and screen against noise pollution;
 - (4) Provide protection against severe weather;
 - (5) Aid in the control of drainage and restoration of denuded soil subsequent to construction or grading;
 - (6) Provide a haven for birds which in turn assist in the control of insects;
 - (7) Protect and increase property values;
 - (8) Conserve and enhance the city's physical and aesthetic environment;
- (b) The city council makes the following general findings regarding the relationship between health, safety and the general welfare and protection and maintenance of street and private trees as addressed in this chapter.

- (1) They are a valuable long-term community asset, and intend to increase property values in their vicinity.
- (2) They recycle air and water, convert carbon dioxide into oxygen, provide shade and windbreak protection, can moderate temperatures for an entire neighborhood or community, and thereby protect us from climatic extremes.
- (3) They screen and absorb dust and pollutants, and buffer traffic and other noise.
- (4) They impart greater satisfaction and quality to community life by contributing to the pleasantness and serenity of neighborhoods, and filling and enhancing our physical environment with life and beauty.
- (5) Their presence in our lives does much to reduce the stress of modern living.
- (6) They diffuse the effects of rain in weathering houses, eroding topsoil, and causing flooding, and provide enrichment of the soil for more plant growth.

- (7) They provide habitat for birds and other animals so that we may live in a natural balance of nature.
- (8) They give the community a feeling of presence and dignity, help express the caliber and pride of its residents, and make it more attractive to existing and prospective residents and visitors.
- (9) They enhance the architectural character of a neighborhood, accent or soften the effect of structures, promote visual formality and aesthetic interest, and screen undesirable views.
- (10) Inappropriate trees planted in particular locations, as well as failure to properly and systematically maintain street trees and certain private trees, can create dangerous conditions, result in discordant plant types, and promote the spread of disease among various species.
- (11) Having a formal, city street tree management plan will insure that the community will realize the benefits from trees through proper management of the city's urban forest, with due regard for the desirability of identifying preferred species in designated locations and minimizing damage to curbs, gutters, sidewalks and other public or private facilities.
- (12) Because it can take decades to grow a mature tree, but only moments to destroy it, due deliberation is called for in considering any action which may adversely affect a street tree, particularly with regard to historic or specimen trees whether on public or private property.
- (13) Provisions for urban landscaping and street tree policies will be included among the standards and review procedures of the community design element in the general plan, and are intended to enhance the city's positive image, use open space and landscaping to strengthen community identity, provide visual relief in heavily developed areas and ensure aesthetic appearance in parkways, use selective landscaping to establish neighborhood theme and character, and promote functional landscaping as part of energy-efficient community design standards using low maintenance, drought-resistant and wind-resistant species, while protecting views of the mountains and enhancing their role as a point of reference.
- (14) The community design goals master plan calls for street tree policies which provide an environment to encourage pedestrian traffic through the community, reinforce human scale, minimize the visual dominance of paved surfaces, develop and expand citywide street landscaping and tree guidelines for the use of both the public and private sectors, and encourage use of landscape maintenance districts.
- (15) In order to effectively nurture and sustain the city's urban forest, it is appropriate and necessary that the resident living closest to an adjacent parkway provide for the maintenance of any street trees planted therein, for such resident receives greater direct benefit from them than other community residents, and is uniquely in a position to provide such maintenance.
- (16) For all of the reasons set forth, there is a direct and reasonable relationship between development on any parcel of property within the city and the need for and provision of street trees on adjoining parkways, including the charging of fees to assure such provision prior to the issuance of building permits. Such development creates conditions on the site which would, if not mitigated, have a negative effect on the character of the

neighborhood and the minimum aesthetic values necessary for the health, safety and general welfare of the community.
(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-27. Definitions.

For the purpose of this article the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include singular, and words in the singular include the plural.

As used within this article, the following terms shall have the meanings set forth in this section:

All words in these standards have their customary dictionary definition except as specifically defined herein.

As used in this chapter, the following terms or phrases have the indicated meanings, unless the context clearly indicates otherwise:

The word "shall" is mandatory and not merely directory.

Caliper. The diameter in inches of the tree trunk 12 inches above the base of the tree.

City. The City of Belding, Michigan.

City forester. The community development director, municipal arborist, city forester horticulturist, landscape architect, director, department of public works, or other qualified designated official of the city assigned to carry out the enforcement of this chapter.

City property. All real property which is owned or leased by the city or which is maintained by it, or any part of any public right-of-way

City agency. Any department, board, commission, committee or other entity within the government of the city.

DBH ("diameter at breast height"). The diameter of tree trunks at a height of four feet six inches from the finished grade at the base of the tree.

Dripline. The vertical line extending from the outermost edge of the tree canopy to the ground.

Hazardous tree. A tree that is unsafe due to a structural defect and constitutes a threat of injury to persons or damage to property.

Highway or street. 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 or pedestrian traffic.

Park. Shall include all public parks having individual names.

Person. Any corporation, firm, partnership, association, trust, estate, one or more individuals and any unit of government or agency or subdivision thereof, except for a city agency.

Public trees. Shall include all shade and ornamental trees now or hereafter growing on any street, park, or any other public place.

Property line. The outer edge of the right-of-way of a highway or street.

Property owner. Shall mean the person owning such property as shown by the records of the recorder of deeds of the city.

Prune. To alter, trim or cut a tree in accordance with generally accepted conservation-pruning techniques.

Right-of-way. That property located within and adjoining the public streets, roads, highways and public easements within the city, which rights-of-way are owned by the city.

Street trees. 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 city.

Topping. Also known as stubbing, dehorning, or lopping refers to cutting back of the leader stem or limbs into stubs larger than three inches in diameter within the tree's crown so as to remove the normal canopy and disfigure the tree.

Trees and shrubs. Any woody plants that have self-supporting, aboveground parts, which are viable year round.

Removal. The actual removal or causing the effective removal through damaging, or other direct or indirect actions resulting in the death of trees.

Substance, dangerous. A restricted use pesticide that requires a municipal, county, state, and/or federal license and/or permit to purchase and/or administer.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-28. Designate Arbor Day.

Arbor Day will be celebrated on the Last Friday in April each year.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-29. City forester.

(a) *Establishment.* There is established the position of city forester for the city. The city forester is an employee of the city, assigned by the city manager.

(b) *Authority.* The city forester shall have the authority and jurisdiction of regulating and planting, maintenance and removal of trees on publicly owned property to ensure safety or preserve or enhance the aesthetics of these public sites. The city forester shall have the authority to supervise, inspect, or both, all work done under a permit issued in accordance with terms of this chapter. The city forester shall have the authority to formulate and publish a master tree plan. The city forester has the general authority to do all of the following:

- (1) Direct, manage, supervise and control the planting, removal, maintenance and protection of all trees and shrubs on public areas;
- (2) Guard all trees and shrubs within the city to prevent the spread of disease or pests;
- (3) Eliminate dangerous tree and shrub conditions within the city that may affect the life, health or safety of persons or property.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-30. Protection from Dutch elm disease.

The cost of removing elm trees infected with the Dutch elm disease on private property shall be born by the property owner.

That any and all trees within the city infected with Dutch elm disease or phloem necrosis shall be removed from their sites and destroyed.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-31. Prohibit topping.

The practice of tree topping is prohibited on all public trees and street trees and is strongly discouraged as a tree care practice for private trees. Proper pruning with branch removal at branch or trunks junctures is the best practice of limb removal.
(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-32. Prohibited species.

The city forester shall prepare a list of trees undesirable for planting in the public areas of the city. These shall not be recommended for general use planting and their use, if any, shall be restricted to special locations where, because of certain characteristics of adaptability or landscape effect, they can be used to advantage.
(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-33. New home construction.

In the R-1/single family residential and the R-2/single family residential zoning district one approved street tree shall be planted in the public right-of-way at one tree per lot or every 66 feet, which ever is less within six months of the issuance of a certificate of occupancy.

For all other districts street tree planting and landscaping will be reviewed by and approved by the planning commission during the site plan review process.
(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-34. Trees on public property.

(a) *Permit.* No person except the city or person hired by the city shall plant, spray, fertilize, apply a dangerous substance, prune, remove, cut above or below ground or otherwise disturb any tree on city property without first filing an application and obtaining a permit from the city forester.

(b) *Insurance.* The city forester shall have the authority to require any permit holder to show adequate insurance coverage to cover potential damages that occur during the execution of the work. In the case of the property owner doing the work, proof of homeowner personal liability insurance may be required. If the property owner has hired another person or contractor to do the work, the contractor shall provide the city with a certificate of insurance. The certificates shall show the following minimum required limits of coverage of commercial general liability Insurance with limits of not less than \$500,000.00 per occurrence and worker's compensation insurance coverage at statutory limits on any and all employees.

(c) *Public utilities.* A public utility may be issued a permit to treat, trim or remove any tree or shrub on any street or other public place. The work shall be limited to the actual necessities of the service of the company in the area specified on the permit. This work shall be done in accordance with the arboricultural specifications and standards of practice as established for the city. The city forester may assign an inspector to supervise the provisions of the permit. The cost of the service shall be charged to the public utility. In the event severe weather has caused a tree to damage utility lines, the utility company, the city, or their agents may trim or remove trees necessary to repair the damaged utility lines without first obtaining a permit. A permit should be obtained before any additional trimming not required for repair of the utility line is done.

(d) *Maintenance.* The maintenance of all street trees or shrubs shall be the responsibility of the city forester. Street trees must be trimmed and maintained to allow free passage of pedestrians and vehicular travel and so they will not obstruct or shade street lights, traffic lights, signs or any traffic control devices or the view of any street intersection. Whenever the city forester is notified or becomes aware of a dead or broken branch or limb in any street tree or a dead street tree which is in imminent danger of falling and thereby injuring any individual or causing property damage, the offending branch, limb or tree shall be considered a hazard and may be removed.

(e) *Removal.* If in the opinion of the city forester removal of a street tree becomes necessary, the adjacent property owner shall be notified. In the event the adjacent property owner requests the removal of a street tree or shrub and the city forester does not consider the removal necessary, the property owner may appeal the city forester's decision to the board of zoning appeals.

(f) *Traffic control.* In the event the planting, maintenance or removal of any tree requires equipment or material to be located on or fall onto the street right-of-way, the permit holder shall provide for traffic control. All traffic control shall conform to the requirements and specifications of the current edition the Manual of Uniform Traffic Control Devices (MUTCD). In all cases the disruption of smooth traffic flow shall be kept to a minimum. Additional warning devices or precautionary measures may be necessary to control pedestrian traffic.

(g) *Protection.* No person shall intentionally damage, cut, carve, attach any rope, wire, nails, advertising posters or other contrivance to any street tree; allow any gaseous, liquid, chemical or solid substance harmful to such trees to come in contact with them, or set fire or permit fire to burn when such fire or the heat will injure any portion of any tree.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-35. Trees on private property.

(a) *Maintenance.* The property owner is responsible for the maintenance and care of any tree located on private property. Certain regulations apply to trees whose branches, limbs, roots or other parts extend into or over the street right-of-way. The property owner is responsible for ensuring private trees are trimmed to sufficient height to allow free passage of pedestrians and vehicular travel and so they will not obstruct or shade street lights, traffic lights, signs or any traffic control devices or the view of any street intersection. If it becomes necessary to trim trees or shrubs on private property to comply with this chapter, the city forester shall declare the tree or shrub a nuisance. Whenever the city forester is notified or becomes aware of a dead tree or broken or dead branch or limb in any private tree which is in imminent danger of falling and thereby injuring any individual or causing property damage to adjacent property, the city forester may declare the tree, branch or limb a hazard and order the property owner to remove the hazard in an expedient manner. If the property owner fails to remove the hazard, the city forester may cause the hazard to be removed. For purposes of removing the hazard, city crews or city agents shall be allowed on private property. Attempts should be made to notify the property owner before entering onto private property.

(1) *Sidewalk obstructions.* Sidewalks must be kept free and clear of obstructions by trees and shrubs on private property. Notice shall be given to the property owner in which

14 days will be given to remove the obstruction. If the obstruction is not removed within fourteen days, city crews or city agents may remove the obstruction and the property owner billed for the work.

(2) *Traffic control.* In the event the planting, maintenance or removal of any private tree requires equipment or material to be located on or fall onto the street right-of-way, the homeowner or the homeowner's agent shall provide for traffic control. All traffic control shall conform to the requirements and specifications of the current edition of the Manual of Uniform Traffic Control Devices (MUTCD). In all cases the disruption of smooth traffic flow shall be kept to a minimum. Additional warning devices or precautionary measures may be necessary to control pedestrian traffic.

(c) *Dead or diseased tree removal on private property.*

(1) The city shall have the right to cause the removal of any dead or diseased trees on private property within the city when such trees harbor injurious fungus, insects, diseases, or other pests which constitutes a potential threat and damage to other trees within the city.

(2) The city forester, or his or her designee, will notify in writing the owners of such trees. Said owners at their own expense shall remove the offending tree(s) within 60 days after the date of notice.

(3) In the event of failure of owners to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal against the owners.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-36. Waiver for emergencies.

In case of emergencies involving, but not limited to, tornadoes, windstorms, floods, freezes of other natural disasters, the requirements of this article may be waived by the mayor or, in the absence of the mayor, the city manager.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-37. Enforcement.

(a) *Interference.* No person shall hinder, prevent, delay or otherwise interfere with the city forester or any assistants in the execution or enforcement of this chapter.

(b) *Violation.* If, as a result of a violation of any provision of this chapter, the injury, mutilation or death of a tree, shrub or other plant located on city-owned property is caused, the cost of repair or replacement of the tree, shrub, or other plant shall be borne by the party in violation.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-38. Appeals.

Any adjustment of the standards required by this chapter or an appeal of a decision of the city forester shall be taken to the board of appeals. Upon receipt of such request, the board of zoning appeals on forms provided by the city forester, shall have the authority and duty to consider and act upon the request. This application shall clearly and in detail state what adjustments or requirements are being requested, reasons such adjustments are warranted, and shall be accompanied with such supplementary data as is deemed necessary to substantiate the adjustment. The board of zoning appeals may approve, modify, or deny the requested adjustment, based upon protection of public interest,

preservation of the intent of this chapter and possible unreasonable and unnecessary hardships involved in the case.
(Ord. No. 464, §§ 1, 2, 1-21-03)

Sec. 90-39. Saving provision.

This article does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this article.

(Ord. No. 464, §§ 1, 2, 1-21-03)

Secs. 90-40--90-45. Reserved.

ARTICLE III. TREE PRESERVATION

Sec. 90-46. Purpose.

The purpose of this article is to:

- (1) Provide for the protection, preservation and proper maintenance and use of trees and woodlands located on specified public lands and along the Flat River in the city;
- (2) Protect trees within the city for their contribution to local property values and the overall livability of the community; and
- (3) Address the public concern for these natural resources in the interest of the health, safety and general welfare of the residents of the city.

(Ord. No. 437, § I, 9-17-96)

Sec. 90-47. Regulations.

Except as provided in section 90-48, the following regulations shall apply to any tree six inches or greater in diameter as measured 4 1/2 feet above the ground or any conifer tree 20 feet or more in height:

- (1) No regulated tree shall be removed from any city-owned property, including road rights-of-way, parks, cemeteries and other land owned by the city.
- (2) A minimum of 40 percent of all regulated trees on any city-owned property located within the Flat River floodplain, as defined by the Federal Emergency Management Agency, shall be preserved.

(Ord. No. 437, § II, 9-17-96)

Sec. 90-48. Exemptions.

The following activities and circumstances are exempt from the provisions of this article:

- (1) *Agriculture, commercial nursery or tree farm.* Tree removal or transplanting occurring on land used for agriculture or for the operation of a commercial nursery or tree farm.
- (2) *Emergencies.* Actions made necessary by an emergency, such as tornado, wind storm, flood, freeze, dangerous and infectious insect infestation or disease, or other disaster, in order to prevent injury or damage to persons or property or restore order.
- (3) *Governmental agencies.* Tree trimming, removal or transplanting performed by, or on behalf of, the city or other governmental agencies.
- (3) *Public utilities.* Repair or maintenance work performed by public utilities necessitating the trimming or cutting of trees.
- (5) *Dead trees.* Removal or trimming of dead trees.

(6) *Nominal activity.* Where activity involves the removal or transplanting of three or fewer regulated trees within any six consecutive months.

(7) *Public safety.* Where it is determined that any tree presents a potential threat to public health, safety or welfare due to its proximity to a roadway, obstruction to visibility or similar circumstance.

(Ord. No. 437, § III, 9-17-96)

Sec. 90-49. Appeal.

Any person unable to comply with the minimum requirements of this article may request a variance from these provisions from the city council.

(Ord. No. 437, § III, 9-17-96)

Secs. 90-50--90-60. Reserved.