

CITY OF BOYNE CITY
COUNTY OF CHARLEVOIX

BOYNE CITY URBAN FORESTRY ORDINANCE

An ordinance to provide 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, regulations are included regarding trees on private property that are diseased or are considered a hazardous tree.

THE CITY OF BOYNE CITY HEREBY ORDAINS:

Section 1. PURPOSE.

The City of Boyne City recognizes the importance of trees to the character and beauty of our area as well as the role that trees have in advancing the public health, safety and welfare. 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, regulations are included regarding trees on private property that are diseased or are considered a hazardous tree. Furthermore, it is the intent of this ordinance to, through the preservation, protection, maintenance and management of the community's existing forest resource, and the planting of trees to enhance the quality of life in Boyne City.

The city commission 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.

- (a) They are a valuable long-term community asset, and intend to increase property values in their vicinity.
- (b) 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.
- (c) They screen and absorb dust and pollutants, and buffer traffic and other noise.
- (d) 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.
- (e) Their presence in our lives does much to reduce the stress of modern living.
- (f) They diffuse the effects of rain in weathering houses, eroding topsoil, and causing flooding, and provide enrichment of the soil for more plant growth.
- (g) They provide habitat for birds and other animals so that we may live in a natural balance of nature.
- (h) 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.

(i) 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.

(j) 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.

(k) 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 community 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.

(l) 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.

(m) Provisions for urban landscaping and street tree policies will be included among the standards and review procedures of the community design element in the master 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.

(n) In order to effectively nurture and sustain the city's community 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.

(o) 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.

Section 2. DEFINITIONS.

For the purpose of this Ordinance 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 ordinance, 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 twelve (12) inches above the base of the tree.

CITY - the City of Boyne City Michigan.

CITY FORESTRY MANAGER - the planning director, municipal arborist, City Forestry Manager horticulturist, landscape architect, 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 of Boyne City.

DBH ("diameter at breast height") -- The diameter of tree trunks at a height of four (4) feet six (6) 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.

PARKWAY - that area in-between the curb (or the edge of the street) and the sidewalk (or if there is no sidewalk, the property line nearest the street(s).)

PERSON - any corporation, firm, partnership, association, trust, estate, one (1) 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 - shall mean 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 of Boyne 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.

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.

Section 3. DESIGNATE ARBOR DAY.

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

Section 4. CITY FORESTRY MANAGER

(a) Establishment.

There is established the position of City Forestry Manager for the City. The City Forestry Manager is an employee of the City, assigned by the City Manager.

(b) Authority.

The City Forestry Manager 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 Forestry Manager shall have the authority to supervise, inspect, or both, all work done in accordance with terms of this chapter. The City Forestry Manager shall have the authority to formulate and publish a master tree plan. The City Forestry Manager 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.
- (4) Issue municipal civil citations, notices, and complaints pursuant to city municipal civil infraction ordinance.

Section 5. 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.

Section 6. PROHIBITED SPECIES.

The City Forestry Manager 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.

Section 7. NEW CONSTRUCTION.

Trees shall be a part of the landscaping for all new residential development and new commercial developments. All tree plans shall be evaluated by the City Forestry Manager as part of the development review. Approved street trees shall be planted in the public right-of-way at one tree per every 40 feet. The City Forestry Manager can adjust the placement of the trees due to mitigating factors.

Section 8. PROVIDING BARRIERS DURING CONSTRUCTION.

Adequate barriers will be placed around trees growing in the public right-of-way to protect the trunk and limbs from damage due to construction work. When trees are damaged severely, as determined by the City Forestry Manager, due to excavation or construction, the abutting property owner shall be responsible for planting a new tree pursuant to City specifications.

Section 9. DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY.

(a) 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.

(b) The City Forestry Manager, 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 sixty (60) days after the date of notice.

(c) 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.

Section 10. TREES ON PUBLIC PROPERTY.

(a) Approval.

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 getting approval from the City Forestry Manager.

(b) Insurance.

The City Forestry Manager shall have the authority to require any contractor for tree work 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 per occurrence and Worker's Compensation insurance coverage at statutory limits on any and all employees.

(c) Public Utilities.

A public utility may treat, trim or remove any tree or shrub on any street or other public place only with approval from the City Forestry Manager. Any Public Trees removed by a public utility shall be replaced by the utility in the location designated by the City Forestry Manager. The work shall be limited to the actual necessities of the service of the company. This work shall be done in accordance with the Arboricultural Specifications and Standards of Practice as established for the City. 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.

(d) Maintenance.

The maintenance of all street trees or shrubs shall be under the supervision of the City Forestry Manager. 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 Forestry Manager 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) 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 contractor shall provide for traffic control. 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.

(f) 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.^o

(g) Signs.

It is unlawful for any person to attach or affix any sign, advertisement or notice on a street tree or tree in a public park or on other public property.

Section 11. 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 or reasonable to trim trees or shrubs on private property to comply with this chapter, the City Forestry Manager shall declare the tree or shrub a nuisance. Whenever the City Forestry Manager 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 Forestry Manager may declare the tree, branch or limb a hazard and order the property owner to remove the hazard in an expedient manner or city crews or agents may remove the hazard and assess the cost to the property owner.

(b) Obstruction.

It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees to prune such trees in a manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be 10 feet over sidewalks and 14 feet over all streets. Notice shall be given to the property owner in which seven (7) days will be given to remove the obstruction. If the obstruction is not removed within seven (7) days, City crews or City agents may remove the obstruction and the property owner assessed for the work.

(c) 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. 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.

Section 12. WAIVER FOR EMERGENCIES.

In case of emergencies involving, but not limited to, tornadoes, windstorms, floods, freezes or other natural disasters, the requirements of this ordinance may be waived by the City Manager or designee.

Section 13. APPEALS.

Any adjustment of the standards required by this chapter or an appeal of a decision of the City Forestry Manager shall be taken to the City Commission. 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 City Commission 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. The decision of the City Council shall be final.

Section 14. ENFORCEMENT.

(a) Interference.

No person shall hinder, prevent, delay or otherwise interfere with the City Forestry Manager 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.

Any person who violates any provision of this Ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine pursuant to the City of Boyne City Municipal Civil Infraction Ordinance, as amended, plus costs and other sanctions, for each violation (as authorized by Section 24 of Act 184 of the Public Acts of Michigan of 1943, as amended, the City of Boyne City Municipal Civil Infractions Ordinance, and other applicable laws).

Repeat offences under this Ordinance shall be subject to increased fines, as provided by the City of Boyne City Municipal Civil Infraction Ordinance, as amended.

Each day on which any violation of this ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this Ordinance shall not exempt the offender from meeting the requirements of this Ordinance.

The City's Forestry Manager, and the City's Authorized City Officials (as defined by the Municipal Civil Infraction Ordinance, as amended) are hereby designated as the Authorized City Officials to issue municipal civil infraction citations for violations of this ordinance.

A violation of this Ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the City may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this Ordinance.

Section 15. REPEAL CLAUSE.

The provisions of any ordinance or resolutions or parts or ordinances or resolutions in conflict herewith are repealed, save and except such ordinances or resolutions or parts of ordinances or resolutions that provide stricter standards than those provided herein.

Section 16. SAVING PROVISION.

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

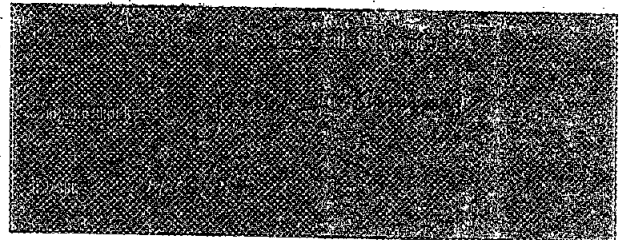
Section 17. SEVERABILITY AND CONFLICT.


If any section, paragraph, clause, or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this ordinance.

Section 18. EFFECTIVE DATE.


This ordinance shall become effective fifteen (15) days from enactment.

First Reading: July 13, 2004
Second Reading: November 23, 2004
Enacted: November 23, 2004
Effective: December 8, 2004





Eleanor Stackus
Mayor
City of Boyne City



Rebecca C. Haynes
City Clerk
City of Boyne City

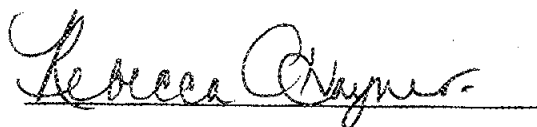
I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the city Commission of the City of Boyne City, County of Charlevoix, Michigan at a regular meeting held on the 23rd day of November, 2004, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that the following members were present at said meeting: Commissioners Dan Adkison, Jerry Douglas, Ron Grunch, Eleanor Stackus and Chuck Vondra; and that no members were absent.

I further certify that Member Adkison moved adoption of said ordinance, and that said motion was supported by Member Grunch.

I further certify that the following members voted for adoption of said ordinance: Commissioners Dan Adkison, Jerry Douglas, Ron Grunch, Eleanor Stackus and Chuck Vondra; and that the following members voted against adoption of said ordinance: none.

I further certify that said ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the Mayor and the City Clerk.



Rebecca C. Haynes
City Clerk

RECORD OF ORDINANCES

City of Boyne City, County of Charlevoix, State of Michigan

Ordinance No. A-85:

Enacted by the Boyne City Commission.

Record of Votes:

Aye: Stackus, Vondra, Adkison, Douglas, Grunch

Nay: None

Abstain: None

Absent: None

Public hearing: 23 November 2004 by the Boyne City City Commission.


First reading: 13 July 2004.

Synopsis of proposed ordinance published 28 July 2004 at least one week before enactment.


Second reading and enactment: 23 November 2004.

Published: 02 December 2004 within 10 days after enactment.

Effective date of Ordinance No. A-85: 08 December 2004, not less than 15 days from enactment or before publication.



Mayor
City of Boyne City



City Clerk
City of Boyne City