

**ORDINANCE NO. 2004 - 01**  
**TO AMEND CHAPTER 90 OF THE CODE OF ORDINANCES, CITY OF ALBION**

**Findings and Purpose:**

The Mayor and City Council of the City of Albion find that:

The existing Tree ordinance of the City (sections 90-1 through 90-37) is no longer the most efficacious way to regulate trees and other vegetation in the city. The tree board of appeals has not functioned in some years and it has become impossible to find volunteers to serve on that board with the expertise required by the old ordinance. The amended Tree ordinance addresses these problems by using the existing Building Board of Appeals to hear appeals from the Director's or his designee's decisions involving the enforcement of this ordinance. The amendment also shortens the time for appeal to 10 days which is deemed to be a reasonable amount of time in which to perfect an appeal to the court system.

It is the intention of the City Council that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Albion, Michigan, and the sections of this ordinance may be renumbered to accomplish such intention

**THE CITY OF ALBION ORDAINS:**

**Section 1 - Title. An Ordinance to Amend CHAPTER 90 of the Code of Ordinances, City of Albion.**

**Section 2 - Amendment.**

That CHAPTER 90, VEGETATION, ARTICLE I. IN GENERAL and Article II. TREES, being sections 90-1 through 90-37 of the Code of Ordinances, City of Albion, Michigan, are repealed in their entirety.

That CHAPTER 90, VEGETATION, ARTICLE I. IN GENERAL and ARTICLE II. TREES, being sections 90-1 through 90-37 of the Code of Ordinances, City of Albion, Michigan, is hereby replaced and amended to read as follows:

**ARTICLE I. IN GENERAL.**

**Sec. 90-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Board* means the Building Board of Appeals.

*Director* means the Director of Public Services and is the designated official of the city assigned to carry out the enforcement of this chapter or his representative

*Park* includes all public parks having individual names within the city and which are owned or leased by the city.

*Parkway* means that part of a street, covered by sidewalk or other paving, lying between the property line and the curb.

*Prohibited species* means any tree of the species of box elder (*Acer negundo*), fruiting mulberry (*Morus spp.*), Chinese elm (*Ulmus pumila*), silver maple (*Acer saccharinum*), tree of heaven (*Ailanthus altissima*), female ginkgo (*Ginkgo biloba*) or any other nuisance trees as determined by the Director.

*Public places* includes all other grounds or property owned by the city or under its control or supervision whether owned, leased or under contract of the city.

*Public utility* means any person, owning or operating any pole, line, pipe or conduit, located in any public street or over or along any public easement or right-of-way for the transmission of electricity, gas, telephone or telegraph.

*Tree* means any tree, shrub, bush and all other woody vegetation, including the branches, crown, limbs, stem, trunk and roots or any part thereof.

**Secs. 90-2--90-25. Reserved.**

## **ARTICLE II. TREES**

### **Sec. 90-26. Powers of the Director.**

The Director shall have full power and authority over all trees in or planted in the park, streets and public places of the city. The maintenance of such trees shall be subject to such policies as the Director may adopt. The Director shall have the right to revise the policies from time to time as may be required for the proper care of such trees. Implementation of the revised policies shall not occur until it is filed with the department of public works and available for public inspection.

### **Sec. 90-27. Violation; penalty.**

Any person who violates, disobeys, omits or neglects or refuses to comply with any of the sections of this article shall, upon conviction, be guilty of a civil infraction, punishable as set forth in section 1-26(f)(6) of this Code.

### **Sec. 90-28. Interference with the Director; appeals. (remains intact)**

(a) *Interference with the Director.* No person shall prevent, delay or interfere with the Director or any

of the Director's assistants in the execution or enforcement of this article. However, nothing in this subsection shall be construed as an attempt to prohibit a public hearing or any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the city.

(b) **Right to appeal to the Building Board of Appeals.** The building board of appeals shall hear petitions from a property owner in regards to decisions and/or enforcement actions taken by the director or other designated official under the terms of this article. In order to make an appeal, the property owner shall file, in the office of the board (city clerk's office) a written petition requesting such hearing, and containing a statement of the grounds therefore, and paying the required appeal fee within ten days from the date of personal service or the date of mailing of notice to remedy the unlawful conditions existing under this article or any other notice issued in connection with enforcement of section 90-30 or sections 90-34 to 90-37. Hearings held by the board of appeals under this article shall follow the same administrative and procedural process as other hearings held by the board of appeals (section 18-337 of the city Code).

(c) *Right to appeal to circuit court.* The owner shall have the right to appeal the decision of the Building Board of Appeals to the circuit court within 21 days of the board's written decision.

**Sec. 90-29. Public tree care.**

(a) The city shall have the right to plant, prune, maintain and remove trees planted in the streets or public places in a manner designated by the Director as may be necessary to ensure continuity of service or safety of crews when servicing city utilities or to preserve the beauty of such public places or to protect public health, safety and welfare.

(b) The Director may remove any tree or part thereof which is injurious to sewer, electric power lines, gas lines, water lines or other public improvements, if reasonable options are not available to save the tree. <sup>Public</sup>

(c) The Director may remove any tree or part thereof which is affected with any injurious fungus, virus, insect or other pest, which constitutes a potential threat to other trees.

(d) The Director shall have the right to preserve any tree in a public place as he deems necessary to serve the public interest.

**Sec. 90-30. Public tree removal.**

(a) Before removal of any tree growing in a public place and so located as to extend its branches over adjacent private property, the Director shall give written notice of his intent to the owners or occupants of the adjacent property not less than 10 days prior to acting, except in emergency cases where health, safety or property are endangered.

(b) Before removal of trees located in a park, other than scrub trees, the Director shall notify the

public of such proposed action by tying a placard in said tree indicating the intent to remove the tree not less than 10 days before removal.

(c) If a citizen/property owner desires to have a new tree planted where the City has removed a tree, the City will handle the planting of a new tree provided by said citizen/property owner. The species of tree to be planted shall meet with City approval.

**Sec. 90-31. Protection of trees in streets and public grounds.**

No person shall, without first obtaining written permission from the Director, endanger trees in streets, parks or public places by:

- (1) Fastening any sign, card, poster, wire, rope or other material to, around or through any tree except in emergencies such as storms or accidents. Signs must be removed after abatement of emergencies by person who placed the signs.
- (2) Injuring, defacing, disfiguring, cutting, disturbing, removing, trimming, killing or destroying any portion of any tree.
- (3) Permitting any fire to burn where such fire or its heat, smoke or fumes will injure any portion of any tree.
- (4) Permitting any toxic chemical to seep, to drain or to be emptied on or about any tree.
- (5) Depositing, storing, placing or maintaining on any street or other public place any brick, sand, stone, concrete or other material which may impede free passage of water, air and fertilizer to the roots of any tree.
- (6) Failing to erect a suitable protective barrier around trees apt to be injured during any construction.
- (7) Knowingly permitting any electrical wires to be attached to any tree.
- (8) Digging a trench under or within 10 feet of any tree for the laying of pavement, pipe or conduit.
- (9) Driving, parking, hauling or storing any automobile, truck, trailer, boat, motorcycle, snowmobile, motor home or other motorized or wheeled vehicle within 10 feet of a tree in any street, park or public places except while within the clearly delineated travel or parking zones of any street or parking lot. This shall not be construed as to preclude parking on any gravel, concrete, bituminous or unimproved driveway or entryway or operating a motor vehicle on any such surfaced street within 10 feet of such tree.
- (10) Moving or spraying any tree.
- (11) Constructing or reconstructing a drive or parking area within 10 feet of any tree in a public

place.

**Sec. 90-32. Public improvements.**

(a) Section 90-31 shall not be construed to apply whenever the removal of such trees or any parts thereof shall be necessary for the construction of the sidewalks, streets, alleys, sewers or other public improvement which are authorized by any public governmental agency, if reasonable options are not available to preserve the tree.

(b) Whenever any person desires to remove a tree, in whole or part, because of the placing of a public improvement, the person responsible for construction of the public improvement shall obtain prior written permission of the Director.

**Sec. 90-33. Tree planting.**

(a) No tree or shrub shall be planted in any street, public place or park until the Director shall have first approved the kind, size and variety of tree and designated the location therefor. No prohibited species shall be set out or any other tree unless it shall be free from infectious disease.

(b) The Director shall have the authority to plant trees in any street, park or public place which the Director deems adequate for this purpose.

(c) The Director shall determine the appropriate species of tree to be planted, considering parkway width, location of underground utilities, height of overhead utilities, spacing of existing trees and traffic visibility requirements.

**Sec. 90-34. Loss of public trees; value.**

(a) Whenever the Director shall determine that a tree in any street, park or public ground has been removed or impaired, damaged, broken, severed or destroyed in a manner which will cause immediate or future removal of the tree which is deemed premature and untimely, the Director shall assess against the responsible person the value of the tree as determined by a competent forestry professional using the Michigan Forestry and Parks Association Shade Tree Evaluation Guide.

(b) The damages received by the city shall not be less than the cost of the removal of the damaged tree and replacment with a comparable tree as determined by the Director.

(c) It shall be the duty of the public safety department having knowledge of such damage or persons causing the damage to immediately report the damage to the Director for investigation.

(d) It shall be the duty of the Director thereafter to notify the city manager who may initiate appropriate recovery procedures.

**Sec. 90-35. Privately owned trees overhanging public grounds.**

(a) Any tree not growing in a street, park or public grounds but so located as to extend its branches over a street, sidewalk or other public grounds which is or becomes a menace or danger to the public safety or a traffic hazard shall be trimmed or removed by the owner of the property on which the tree stands, so as to remove the obstruction from the street, sidewalk or public grounds and so as to eliminate the traffic hazard and the menace and danger to the public, pursuant to written notice by the Director.

(b) When such notice is given, the owner will be given a reasonable amount of time, but not less than 10 days, to take corrective action. If the work is not satisfactorily completed within that time, the Director may make the necessary trimming or removals. The owner or other person to whom the notice was directed shall be notified by mail of the removal or abatement, and the cost incurred for such work, together with a statement that the cost of the work, must be paid within 30 days or cost incurred will be charged against such premises in accordance with chapter 70, article II.

**Sec. 99-36. Public nuisance.**

(a) The Director, after reasonable notice to the occupant, shall have authority to enter any private lands within the city to make field inspections of trees, including the removal of specimens for laboratory analysis, to determine the presence of infectious diseases, insect infestations or conditions that constitute a hazard to life and property or which constitute a potential threat to other trees within the city.

(b) Any tree or part thereof growing on private property that in the opinion of the Director endangers the life, health, safety or property of the public or is determined to harbor infectious diseases or insects that constitute a potential threat to other trees shall be declared a public nuisance.

(c) Whenever any public nuisance exists, contrary to this article, the Director shall give notice to the owner or his agent and the occupant of the property describing the tree, its location and nature of the nuisance and ordering the owner, agent and occupant to take such measure as may be reasonably necessary to correct or abate such nuisance and specifying the measures required to be taken.

(d) It shall be unlawful for any person to permit, cause or suffer the existence of a public nuisance from and after 10 days following the date of the notice provided for in this section.

(e) When the notice given is not complied with, the Director is authorized and empowered to order the removal or abatement of the public nuisance and shall have authority to call the necessary assistance therefor.

(f) Upon completion of the abatement or removal of the public nuisance, the Director shall certify the cost of removal of the public nuisance. The owner or other person to whom the notice was directed shall be notified by mail of the removal or abatement and the cost incurred for such work, together with a statement that the cost of the work must be paid within 30 days or cost incurred will be charged against such premises in accordance with chapter 70, article II.

Sec. 90-37. Electric wiring.

(a) It shall be unlawful for any person having notice or knowledge that any wire, cable or other electrical material owned or controlled by any such person is attached to any tree standing in any street, park or public grounds to permit such wire, cable or electrical material to remain so attached for more than five days.

(b) The Director shall have power to order removed any wire, conduit or other existing thing that burns or chafes any part of any tree, whether trunk, root or branch, in any street, park or public place.

(c) Nothing within this article shall be construed as conflicting with, impeding or preventing any public utility from installing and maintaining its equipment and providing service within the city.

Secs. 90-38--90-65. Reserved.

Section 3 - Separability. If any section, sub-section, sentence, phrase or portion of this Amendment to the City of Albion Code of Ordinances is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4 - Ordinance Repealed. All sections or parts of sections of this Code, Ordinances and parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5.- Effective Date. This ordinance shall take effect after publication in a newspaper of general circulation in the City of Albion and on September 1, 2004.

First reading:


Second reading and adoption:

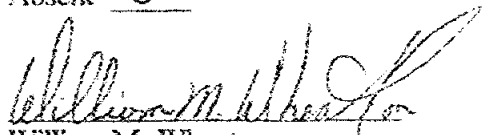
July 19, 2004

August 2, 2004

Ayes 7  
Nays 0  
Absent 0

Ayes 7  
Nays 0  
Absent 0

  
Kerry Holzhick  
Clerk

  
William M. Wheaton  
Mayor

CITY OF ALBION  
CITY BOARDS, COMMISSIONS & SPECIAL COMMITTEES  
Updated July 2006

**BUILDING BOARD OF APPEALS**

- Purpose:** To consider appeals from the decisions of the officials charged with the enforcement of property maintenance codes and tree appeals.
- Establishment:** Albion Code Section 18-337(c) defines the qualifications for board membership, which are more based on varieties of skill and experience than upon residency.
- Membership:** Five voting members to be appointed by the Mayor, confirmed by the City Council, and who are knowledgeable on building and housing matters.
- Residency:** At the discretion of appointing authority.
- Term:** Five years.
- Meetings:** On call, as needed.
- Compensation:** None.

<u>PCT</u>	<u>Name</u>	<u>Address &amp; Telephone</u>	<u>Appointed</u>	<u>Expires</u>
5	James Haskins	1108 Maple Street 629-4581	04/21/2003	01/01/2011
6	Mark Garrison	403 S. Superior St, 629-5576	01/21/2003	01/01/2008
3	Arthur Anderson	904 Irwin Avenue, 629-6314	02/07/2005	01/01/2010
5	John Rumler	206 Ford Road. 629-9964	10/21/2002	01/01/2007
5	Barbara Benavidez	1008 Hall Street, 629-8485	01/22/2002	01/01/2007
	Vacancy (Alternate)			01/01/2011