

**ORDINANCE NO. \_\_\_\_\_ -- 01**

**An Ordinance to govern the planting, maintenance, and removal of trees, shrubs and plants within areas of rights-of-way within the City, and providing penalties for the violation thereof.**

BE IT ENACTED BY the City Council of the City of Bettendorf, Iowa as follows:

**Section One:** Sections 29-1 through Sections 29-13 of the Municipal Code are hereby deleted and the following substituted thereof:

**ARTICLE ONE. PLANTINGS ON PUBLIC GROUND**

**Section 29-1. Purpose of Tree Regulations.**

The purpose of this article is to provide for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants on public ground and public rights-of-way, and thereby to promote the public health, safety and general welfare.

**Section 29-2. Power to Enforce.**

The City Code Enforcement Officer or his designee shall have the power to enforce this article. Such powers shall include:

- a) The power to plant, prune, maintain, and remove trees, plants, and shrubs on any public property or right-of-way.
- b) The power to require any person to prune, maintain or remove trees, plants, or shrubs from any property when those plantings interfere with the ability of the public or City departments to use public property or right-of-way.
- c) The power to require abutting property owners to maintain trees, plants, or shrubs between the property line and the driving surface of rights-of-way.
- d) The power to order the pruning or removal of any tree, plant, or shrub on private property which interferes with the operation of any City utility or any utility franchised by the City to enable it to use the public easement or right-of-way.
- e) The power to order the pruning or removal of any tree, plant, or shrub on private property which is affected by injurious, disease or insect.

- f) The power to order the removal of any dead tree, plant, or shrub, wherever located. However, abutting property owners shall not be required to pay for the removal of dead trees, plants, or shrubs located in the boulevard.

**Section 29-3. Definitions.**

a) **Boulevard**

That part of public right-of-way not covered by paving or hard surface, lying between the property line and that portion of the street normally used for vehicular traffic.

b) **Crown**

The mass of vegetative growth from the tree trunk.

c) **Drip Zone**

The entire area on the ground within the outer perimeter of the crown of the tree projected vertically to the ground.

d) **Planting Medians**

The area of right-of-way not covered by paving or other hard surface and lying between the paved lanes for vehicle traffic.

e) **Shrub**

A woody plant not classified as a tree.

f) **Tree**

Plants which have the capacity to grow to a mature size of at least four inches diameter (measured 4.5 feet above ground level) and twenty feet in height. Trees shall also include those plants classified as trees in the 1976 or later version of Hortus Third: A Concise Dictionary of Plants Cultivated in the United States and Canada.

g) **Tree Topping**

A severe cutting back of limbs to stubs rather than to lateral branches within the tree so as to remove the normal canopy.

**Section 29-4. Permit Required.**

- a) No person shall plant or disturb any tree on public property, including boulevards, without first procuring a permit. The application for permit shall include a drawing showing the location of all utilities and their

proximity to the planting, as well as the location of the proposed planting, and the species of tree to be planted.

- b) Permits shall be requested from the Parks & Recreation Department, and shall require approval of the Parks & Recreation Director or their designee prior to issuance. Permits will be reviewed by any other appropriate departments prior to approval.
- c) No permit shall be granted if:
  - (1) The location of the planting is inappropriate under this ordinance.
  - (2) The tree is not of a kind approved in the Bettendorf Landscape Handbook.
  - (3) The planting may interfere with the operation of a City or franchised utility.

**Section 29-5. Bettendorf Landscape Handbook.**

The Council shall approve, by resolution, a Bettendorf Landscape Handbook, which shall list trees, which may hereafter be planted within the City. The handbook shall be reviewed and amended from time to time. The latest approved version shall be the appropriate reference volume for this article.

**Section 29-6. Planting of Permitted Trees.**

- a) Any tree, which is otherwise permitted, may not be planted:
  - (1) In a boulevard which is less than seven (7) feet wide.
  - (2) Within four (4) feet of the curb line.
  - (3) Within 35 feet from the curb of the intersection of two streets.
  - (4) Within 20 feet of a driveway or alley.
- b) Tree spacing should be as follows:
  - (1) Small tree as defined in the Bettendorf Landscape Handbook: 25 feet
  - (2) Medium tree as defined in the Bettendorf Landscape Handbook: 30 feet
  - (3) Large tree as defined in the Bettendorf Landscape Handbook: 50 feet

The permitting authority may grant distance reductions upon a showing that the public health and safety is enhanced.

- c) During planting, backfill soil shall be substantially free of rocks and other construction debris.

### **Section 29-7. Tree Maintenance; Persons Responsible.**

- a) Tree topping shall not be allowed on any tree on public property.
- b) The abutting property owner shall be responsible for maintenance of trees and shrubbery between the back of the curb and the property line. Such care shall include but not be limited to pruning to:
  - (1) Allow free passage of pedestrian and vehicle traffic.
  - (2) Attain a branch clearance of eight (8) feet over sidewalks.
  - (3) Attain a ground clearance of fifteen (15) feet over streets and alleys.
  - (4) Eliminate interference with the light from a street light or traffic light; or visibility of any traffic control device.
- c) If the abutting owner fails to perform the maintenance work as detailed in sub(b) above, the Code Enforcement Officer or his designee shall contract to have the work done and shall assess the cost of the maintenance against the property in the manner provided by law.
- d) The Code Enforcement Officer shall order the property owner to remove any dead, decayed, or broken limb or branch from privately owned property when such tree or any portion of it constitutes a hazard to the public's use of streets, parks, or other right-of-way, or harbors insects or disease which constitutes a potential threat to other trees within the City. Enforcement of this section shall be through municipal infraction.

### **Section 29-8. Tree Protection.**

- a) All construction will be done in such a way as to minimize damage to any tree's root system or above ground parts.
- b) No person shall intentionally damage, cut, carve, attach any rope, wire, electric wires, or cables, insulators, nails, advertising posters, or other contrivance to any tree; allow any gaseous liquid, chemical, or solid substance that is harmful to such trees to come in contact with them; or set fire or permit fire to burn when such fire or heat will injure any portion of any tree.
- c) No person shall remove, injure, or misuse any guard or device placed to protect any tree, plant, or shrub growing in any street or public right-of-way.
- d) During construction activity, protective plastic barrier fencing or snow fence shall be erected to protect trees and their drip zones in the construction area. The fencing will be installed five (5) feet outside the perimeter of the tree drip zone prior to construction and not removed until after final cleanup of the construction site.

- e) At no time shall any construction or personal vehicles park or operate within five (5) feet of the drip zone of any tree without measures in place to protect the tree. Protective measures may include fencing, mulching to a minimum depth of one (1) foot of mulch, planking or cribbing.
- f) The surface of any unpaved area within five (5) feet of the drip zone of any tree shall not be used for the storage of any materials.
- g) At no time shall chemicals, rinsates, or petroleum products be disposed of on the construction site.
- h) Ditches or trenches shall not be excavated or laid within five (5) feet of the drip zone of any tree.
- i) To preserve viable root systems and maintain structural stability of a tree, all underground utility placement or replacement shall be done by boring or tunneling beneath the root systems of the tree.
- j) The boulevard will not, to the extent possible, be cut into or disturbed in any way within five (5) feet of any tree's drip zone. This includes creating setbacks for the new curb and gutter, accommodating slip form pavers, reducing the height of the boulevard, or, when an alternative exists, trenching or digging for utilities.
- k) Curb and gutter replacement adjacent to street trees can be made with slip form pavers only if the paver can be accommodated without additional alterations to the existing boulevard. Where sufficient room does not exist, the area will be poured using hand set steel forms. Expansion joints or masonite may be necessary for forming around trees where conventional forms will not fit.
- l) If a root must be cut or a damaged root pruned, a clean cut behind the damaged portion should be used.
- m) Where sidewalk replacement is necessary, care should be taken to avoid any injury to the tree's root system. Surface roots may be cut making clean pruning cuts to a minimum depth below the finished grade of the new walk. The root system should be cut no farther than five inches away from the edge of the proposed new walk to accommodate its forms.
- n) At no time shall the boulevard grade be changed by removing soil or through the addition of soil within five (5) feet of any tree's drip zone.
- o) Exceptions to any of the aforementioned terms in Section 29-8 may be granted only upon sufficient justification and the approval of the appropriate City department director or their designee.

**Section 29-9. Appeals.**

Any order issued pursuant the authorities granted by this Chapter may be appealed to the City Council within ten (10) days of receipt by providing a written request to appeal to the City Clerk. At the next regularly scheduled Council Meeting, the Council shall consider the matter and vote to affirm, modify, or revise the order. The Council's decision shall be final.

**Section Two: Full Force and Effect.**

This ordinance shall be in full force and effect from the date of passage and publication as required by law.

**Section Three: Repealer**

This ordinance shall be construed to repeal any prior ordinance inconsistent with these provisions.

**Section Four: Severability of Provisions**

If any section, subsection, sentence, clause, phrase or portion of this ordinance be 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 portion.

**Section Five: Municipal Infraction**

Any person, persons, firm, partnerships, or corporation, whether acting alone or in concert with any other, who violates this ordinance shall be guilty of a municipal infraction and shall be penalized as set forth in Section 1-9 of the Municipal Code of the City of Bettendorf, Iowa.

Passed, Approved, and Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2002

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk