

ORDINANCE NO. BG2011 – 4

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 26 (PUBLIC TREES) OF THE CODE OF ORDINANCES TO MAKE CHANGES RECOMMENDED BY THE LANDSCAPE DIVISION OF THE PARKS AND RECREATION DEPARTMENT

WHEREAS, the Landscape Division of the Parks and Recreation Department has recommended various amendments to Chapter 26 (Public Trees) of the Code of Ordinances; and,

WHEREAS, these amendments are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 26 (Public Trees) is hereby amended as follows:

...

26-5 PUBLIC TREE PLANTING.

26-5.01 Specifications.

Any person may plant a tree, shrub or other vegetation within the public right-of-way immediately adjacent to his property provided the following conditions are met:

- a. The tree to be planted is not an undesirable tree species, as provided herein.
- b. The median spacing between trees is forty-five feet (45') for a large tree, thirty-five feet (35') for a medium tree and twenty-five feet (25') for a small tree.
- c. The tree location is to be at least twenty feet (20') from the curb of an intersection of a street and outside the sight triangle as defined in the Zoning Ordinance. In addition, the tree or other planted vegetation shall not cause a significant sight visibility problem to motorists or pedestrians.
- d. The tree location is to be at least ten feet (10') from fire hydrants or utility poles.
- e. A small tree shall be used when planting within twenty (20') lateral feet of overhead utility wires. A small or medium tree is to be used when planting within twenty (20') to thirty (30')

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lateral feet of overhead utility wires.

~~f. The minimum distance between the tree and the edge of the street (curb line) is six feet (6') for all public trees unless an exception is granted by the Department of Public Works or the agency having authority.~~

~~g. No tree shall be planted in the street public right-of-way between the street curb and the sidewalk, commonly called the "utility strip," unless ~~an exception is granted by the Department of Public Works or the agency having authority~~ the area is no less than four (4') feet in any direction and a total of at least fifty (50) square feet in area.~~

~~g. If any tree is planted in a utility strip, it must be a medium sized tree only.~~

~~h. Since the size of the public right-of-way varies, it is the responsibility of the property owner or the person or organization planting the tree, shrub or other vegetation to determine the location of the right-of-way. The property owner or the person or organization planting the tree, shrub or other vegetation can get assistance in locating the right-of-way by contacting the City. The property owner or the person or organization planting the tree, shrub or other vegetation shall be responsible for any damages to underground utilities and should call You Dig at 811 prior to any work being performed. The property owner or the person or organization planting the tree agrees to maintain the tree after it is planted.~~

~~i. Planting of tree and vegetation shall not be in ditches or obstruct the flow of stormwater.~~

~~j. The City assumes no liability for trees or other vegetation planted in any rights-of-way.~~

#### 26-5.02 Undesirable Tree Species.

The trees on the following list have characteristics that make them unacceptable for use in public areas and are not allowed:

Black Locust  
Black Walnut

Robinia pseudoacacia  
Juglans nigra

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Box elder or Ash leaved maple	<u>Acer negundo</u>
Common Horsechestnut	<u>Aesculus hippocastanum</u>
Catalpa	<u>Catalpa speciosa</u>
Chinese Chestnut	<u>Castanea mollissima</u>
<del>Cockspur</del> Hawthorn	<u>Crataegus erugalli</u> sp.
Cottonwood	<u>Populus deltoides</u>
Crabapple	<u>Malus</u> sp. susceptible to disease
Hickory	<u>Carya</u> sp.
Honeylocust	<u>Gleditsia triacanthos</u> (with thorns)
Ginkgo or Maidenhair tree	<u>Ginkgo biloba</u> (female)
Mimosa	<u>Albizia julibrissin</u>
Mulberry	<u>Morus</u> sp.
Osage Orange	<u>Maclura pomifera</u>
Siberian Elm	<u>Ulmus pumila</u>
Silver (Water) Maple	<u>Acer saccharinum</u>
Tree of Heaven	<u>Ailanthus altissima</u>
White birch	<u>Betula</u> sp.
Willow	<u>Salix</u> sp.

Undesirable traits for public plantings include (1) disease or insect problems; (2) dirty, dropping branches; (3) objectionable fruit or bark; (4) weak-wooded (apt to lose large branches in wind or with age); (5) short lived; (6) unpredictable or irregular habits; (7) root problems (shallow and destructive roots); and (8) unsafe, dangerously thorny or poisonous trees.

#### 26-5.03 Suggested Tree Species.

Trees with characteristics that make them acceptable and that are recommended for use as public trees include but are not limited to the following:

#### SMALL TREES (under 26 feet)

Amur Maple	<u>Acer ginnala</u>
Trident Maple	<u>Acer buergeranum</u>
Japanese Maple	<u>Acer palmatum</u>
American Hornbeam	<u>Carpinus caroliniana</u>
Flowering Dogwood	<u>Cornus florida</u>
Kousa Dogwood	<u>Cornus kousa</u>
Corneliancherry Dogwood	<u>Cornus mas</u> (tree form)
Lavalle Hawthorn	<u>Crataegus x lavallei</u>
Washington Hawthorn	<u>Crataegus phaenopyrum</u>
Serviceberry	<u>Amelanchier</u> sp.
Redbud	<u>Cercis Canadensis</u>
Sweetbay Magnolia	<u>Magnolia virginiana</u>
Flowering Cherry	<u>Prunus</u> sp.

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Flowering Crabapple

Malus (disease resistant types only)

MEDIUM TREES (26 to 50 feet)

Lacebark Chinese Elm  
Hedge Maple  
European Hornbeam  
Columnar European Hornbeam  
Winter King Hawthorn  
Thornless Honeylocust  
Goldenraintree  
Yellowwood  
Flowering Crabapple  
American Hophornbeam  
Amur Corktree  
Japanese Tree Lilac  
Littleleaf Linden  
  
Carolina Silverbell  
Hardy Rubber Tree  
Blackgum  
Katusratree

Ulmus parvifolia  
Acer campestre  
Carpinus betulus  
Carpinus betulus 'Fastigiata'  
Crataegus viridis 'Winter King'  
Gleditsia triacanthos var. Inermis  
Koelreuteria paniculata  
Cladrastis lutea  
Malus (disease resistant types only)  
Ostrya virginiana  
Phellodendron amurense  
Syringa reticulata  
Tilia cordata 'Greenspire',  
'Chancellor', 'June Bride'  
Halesia carolina  
Eucomia ulmoides  
Nyssa sylvatica  
Cercidphyllum japonicum

LARGE TREES (over 50 feet)

(Suitable only for large areas with unrestricted root space as well as overhead space.)

Red Maple  
Ginkgo  
American Sweetgum Seedless only  
London Planetree  
Scarlet Oak  
Red Oak  
Willow Oak  
Pyramidal English Oak  
Japanese Zelkova  
White Ash  
Green Ash

Japanese Pagoda Tree  
American Elm

Overcup Oak  
Sugar Maple

Acer rubrum  
Ginkgo biloba (male only)  
Liquidambar styraciflua 'Rotundiloba'  
Platanus x acerifolia  
Quercus coccinea  
Quercus rubra  
Quercus phellos  
Quercus robur 'Fastigiata'  
Zelkova serrata  
Fraxinus americana (seedless var.)  
Fraxinus pennsylvanica  
(seedless var.)  
Sophora japonica 'Regent'  
Ulmus Americana "Princeton, Valley Forge"  
Quercus lyrata  
Acer saccharum

26-6 TREE TOPPING.

It shall be unlawful as a normal practice for any person, firm or city department to top any

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public tree. "Topping" is defined as ~~the severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Subchapter at the determination of the City department responsible for maintenance in the location in question, Department of Public Works and/or Parks Arborist. Alternative methods for pruning or removal will be considered where applicable. If replacement of large disfigured trees with small trees is possible, the practice is highly encouraged~~ in the ANSI A300 (Part 1)-2001 Pruning standard as: "4.46 topping: The reduction of a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit. Topping is not an acceptable practice (5.57)." Other names for topping include "heading," "tipping," "hat-racking," "shaping," and "rounding over." Topping is harmful to the health of a tree and can lead to decay, rapid re-growth and hazardous limbs. "Crown Reduction" is an acceptable practice to reduce the size of a tree's canopy when done in accordance with ANSI A300 standards. "Restoration" pruning may be used to repair the canopy of a tree that has been damaged by storms, previous improper pruning or other means. It is recommended that an arborist certified by the ISA perform any major pruning. When a tree's size, location or other factor prevents correct pruning practices, removal and/or replacement with a more suitable species is encouraged. More information can be found at the City's Tree Board website at <http://www.bgky.org/tree/topping.php>.

26-7 VEGETATION TREE MAINTENANCE.

a. It shall be unlawful for the owner or occupant of any building or lot to permit any tree vegetation, including public trees, to grow in a manner which interferes with normal sidewalk traffic located on such lot or on public right-of-way adjoining such lot or street traffic, or to grow so as to pose a threat to safety or public rights-of-way due to obstruction of view, obstruction of passage or any other manner. Any and all pruning of a public tree shall comply with ANSI A300 (Part 1)-2001

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Pruning standard. A summary of correct pruning can be found on the City's Tree Board website at <http://www.bgky.org/tree/pruning.php>. Trees that grow over a public right-of-way shall be maintained so that the lowest limb is at a height of no less than fifteen (15) feet above the right-of-way.

b. The owner of the property adjacent to the sidewalk or other rights-of-way upon which vegetation, including public trees are planted or in which vegetation, including trees, are allowed to grow in a manner which interferes with normal sidewalk traffic located on such lot or on public right-of-way adjoining such lot or street traffic, or are allowed to grow so as to pose a threat to safety on public rights-of-way due to obstruction of view, obstruction of passage or any other manner shall be responsible for all care and maintenance of the vegetation, including public said-trees which is required in order to insure that the provisions of the preceding paragraph are carried out.

c. Nothing in the foregoing paragraphs shall prohibit the City or its authorized agent(s) from making such alterations in or removal of vegetation within rights-of-way, including public trees, or making alterations in vegetation, including trees, that are allowed to grow in a manner which interferes with normal sidewalk traffic or on public rights-of-way or are allowed to grow so as to pose a threat to safety on public rights-of-way due to obstruction of view, obstruction of passage or any other manner as necessary to protect its reasonable interests. Unless the alteration or removal is deemed an emergency, the person responsible for the vegetation, including trees, shall be given an opportunity to bring the vegetation or tree into compliance. If the responsible person fails or refuses to bring the vegetation, including trees, into compliance, the City shall have the authority to bring the vegetation, including trees, into compliance and may cite the responsible person as set out below and may recover its costs incurred in bringing the vegetation, including trees, into compliance. Vegetation, including trees, altered or removed as a result of an emergency determination may also result in a citation being issued with the City authorized to recover its costs.

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No person shall remove, cut above the ground or disturb any public tree without approval of the City of Bowling Green except to perform routine maintenance as described above. The person shall then abide by the standards set forth below in this Chapter. Requests for approval to perform a tree removal or other major tree work on a public tree shall be obtained by contacting the City.

- a. The entire tree, including the stump is removed.
- b. The area is refilled to ground level with soil, so as to prevent the creation of a hole.
- c. The area is re-seeded or planted in other appropriate manner.
- d. There is no damage done to any property belonging to the City or third party.
- e. The entire removal may be done without danger or inconvenience to the public.

It shall specifically be the responsibility of the owner of the property adjacent to the rights-of-way upon which the public tree is planted ~~landowner~~ to comply with the foregoing. Citations shall be issued to the owner of the property adjacent to the rights-of-way upon which the public tree is planted ~~landowner~~ for any violation or damages resulting from improper tree removal or tree care practices.

#### 26-9 TREE CARE AND REMOVAL COMPANIES.

The City does not endorse or certify the expertise of tree care and removal companies. These companies must possess and maintain current contractor and occupational licenses. It is recommended that a Kentucky or International Society of Arboriculture (ISA) certified arborist be on company staff. More information can be found at [http://www.treesaregood.com/treecare/hire\\_arborist.aspx](http://www.treesaregood.com/treecare/hire_arborist.aspx).

#### 26-10 ABATEMENT.

##### 26-10.01 Issuance of Notice of Violation or Citation.

a. Enforcement proceedings for this Chapter shall be initiated by the issuance of a notice of violation or a citation by a code official.

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b. If a code official believes based on his personal observation or investigation that a person has violated any provisions of this Chapter ~~a City ordinance~~, he is authorized to issue a citation to the violator. In lieu of a citation, the code official may give the violator a notice of violation that a violation has occurred and allow the violator a specified period of time to remedy the violation without fine. The time allowed by the code official shall depend on the nature of the violation and the time necessary to remedy the violation. If the violator fails or refuses to remedy the violation within the time specified, the code official is authorized to issue a citation. Informal settlement of matters under this Chapter is encouraged.

c. The notice of violation or citation shall be delivered to the violator at his last known address as it appears from the current tax assessment roll or as otherwise determined by the code official. Such notice of violation or citation shall be deemed to be properly served if given by certified mail, return receipt requested, by personal delivery or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Service by certified mail shall be presumed to have been served on the third day following mailing. A copy shall also be posted in a conspicuous place in or about the structure or premises affected by such notice of violation or citation.

d. Notices of violation or citations involving streets, sidewalks and public ways shall be sent to the property owner or other person having control or management of the premises or property adjacent to or fronting the street, sidewalk or public way.

e. The citation issued by the code official shall contain the following information:

1. A description of the real estate sufficient for identification;
2. The name and address of the person to whom the citation is issued;
3. The date and time the violation was observed and the date and time of issuance

of the citation;



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4. The facts constituting the violation;
  5. The section of the ordinance or other code violated;
  6. The name of the code official;
  7. The procedure for the person to follow in order to pay the civil fine or to contest the citation;
  8. The civil fine that may be imposed per day for the violation if the person does not contest the citation;
  9. The maximum civil fine that may be imposed per day for the violation if the person elects to contest the citation; and,
  10. A statement that if the person fails to pay the civil fine set forth in the citation or to contest the citation within the time allowed, the person shall be deemed as having waived the right to a hearing before the Code Enforcement Board, and the determination that a violation was committed shall be final.
- f. Nothing in this Subchapter shall prohibit the City from correcting the violation through self help or taking immediate action to remedy a violation of its ordinances when there is reason to believe that the violation presents a serious threat to the public health, safety and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible. The City may file liens on the property to recover the City's costs of labor and material, civil fines and other expenses.
- g. After issuing a citation, the code official shall deliver a copy of the citation to the person designated by the Board. Upon receipt of a citation, the violator shall respond to the citation within seven (7) days by either paying the civil fine, or requesting in writing a hearing before the Code Enforcement Board pursuant to the provisions of Chapter Two of this Code of Ordinances to contest the citation. If the violator responds by paying the civil fine, the violator shall still be required to

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remedy the violation. If the violator fails to remedy the violation or to request a hearing within the designated time, the code official is authorized to issue another citation and to remedy the violation.

h. After determining that compliance has been achieved in the allowed correction time, the code official shall report that statistic to the Code Enforcement Board.

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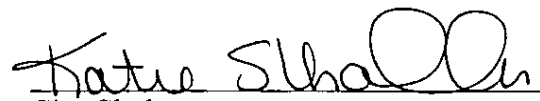
2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on January 18, 2011, and given final reading on February 1, 2011, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: February 1, 2011

APPROVED:   
Mayor Pro Tem, Chairman of Board of Commissioners

ATTEST:   
City Clerk

SPONSORED BY: Katie Schaller, Acting City Manager, 01/03/2011, 12:00 p.m.