

Ordinance 12 -10

AN ORDINANCE REPLACING CHAPTER 97 OF THE CITY OF MUNCIE CODE OF ORDINANCES ENTITLED "TREE ORDINANCE"

WHEREAS, Chapter 97 of the City of Muncie Code of Ordinances outlines regulations regarding the maintenance and planting of trees within the City of Muncie; and

WHEREAS, the provisions of Chapter 97 have not been updated for a significant period of time; and

WHEREAS, the Urban Forestry Committee and the City of Muncie Urban Forester desire to update the provisions of the tree ordinance in an effort to create additional revenue sources and allow for more efficient enforcement of the regulations related to tree and other vegetation planting and maintenance; and

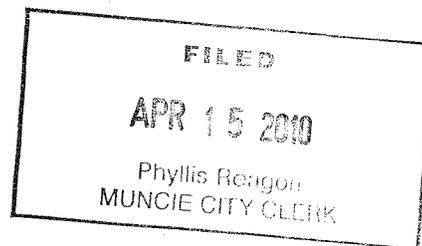
WHEREAS, the Urban Forestry Committee has collaborated with the City of Muncie Urban Forester to create an ordinance to replace the existing Chapter 97 of the City of Muncie Code of Ordinances; and

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MUNCIE, DELAWARE COUNTY, INDIANA, THAT:

Section 1: Chapter 97 of the City of Muncie Code of Ordinances shall be replaced by the following:

Chapter 97: TREE ORDINANCE

- 97.01 Purpose and Intent
- 97.02 Muncie Urban Forestry Committee
- 97.03 Applicability
- 97.04 Definitions
- 97.05 Arborist License
- 97.06 Development and Redevelopment
- 97.07 City and Street Trees
- 97.08 Maintenance Requirements
- 97.09 Tree and Stump Removal
- 97.10 Public Nuisance
- 97.11 Tree Protection
- 97.12 Trees in Historic Districts
- 97.13 Administrative Provisions



Sec. 97.01. Purpose and Intent

The purpose of this ordinance is to promote and protect the public health, safety, and general welfare of the City of Muncie by providing for the regulation of planting, maintenance, and removal of trees, shrubs, and other vegetation within the City of Muncie.

Sec. 97.02. Muncie Urban Forestry Committee

(A) There is hereby re-established the Muncie Urban Forestry Committee as an official part of the city government, which shall consist of nine (9) members. Preference shall be given to professionals working in the green industry. All appointed members shall serve without compensation.

1. Three (3) members shall be appointed by Community Enhancement Projects, Inc.
2. One (1) members shall be appointed by Muncie-Delaware County Clean and Beautiful.
3. Three (3) members at large shall be appointed by the Mayor.
4. Two (2) members shall be appointed by the Mayor to represent the City of Muncie Department of Public Works and the Muncie Parks and Recreation Department.

(B) Each member will serve for a three (3) year term or until such member no longer represents the entity from which they were appointed or the appointing officer or group elects to replace such person. No more than four (4) members' terms will normally expire at the end of any one calendar year. Committee vacancies shall be filled prior to the expiring Committee member's term. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term. Any member may be reappointed for another three (3) year term. Member status shall be maintained by attending at least seven (7) meetings per calendar year and missing no more than three (3) consecutive meetings.

(C) The duty of the Urban Forestry Committee is to support and uphold the tree ordinance and established standards. The Urban Forestry Committee shall, primarily through the Urban Forester, maintain a current tree inventory, tree planting standards, recommended street tree list, approved street tree list and tree removal standards. It shall also maintain a five-year plan for an urban forestry program, seek funding, cooperate and assist city departments in connection with urban forestry programs, develop an educational program concerning proper tree care, maintenance and benefits, and serve other functions beneficial to tree appreciation in the city.

Sec. 97.03. Applicability

This ordinance provides regulations governing all trees, shrubs and other vegetation located within the public right-of-way, and on city property; and all trees, shrubs and other vegetation located on private property that constitute a public nuisance as described herein.

Sec. 97.04. Definitions

- (A) "City" means the City of Muncie.
- (B) "City tree" means a tree on property owned by the City of Muncie.
- (C) "City Property" means property owned by the City of Muncie, or any of its related departments or commissions.
- (D) "Emergency" means a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.
- (E) "Foliage" means plant leaves, collectively.
- (F) "Large tree" means a tree that reaches a mature height greater than 50 feet
- (G) "License" means an Arborist License issued under Section 97.05 of this Chapter.
- (H) "Medium tree" means a tree that reaches a mature height greater than 20 feet and no more than 50 feet.
- (I) "Person" means any individual, group, company, firm, corporation, partnership, association, society or any other combination of human beings whether legal or natural, including utility companies.

(J) “Pollarding” is a pruning system in which the tree is headed back (tree stem or minor branches removed) every year. The tree is allowed to regrow after the initial cutting, but once begun; pollarding requires regular maintenance by pruning. This will eventually result in a somewhat expanded (or swollen) top to the tree trunk with multiple new side and top shoots growing from it.

(K) “Planting pit” is a tree-planting site that is surrounded on all side by paved surfaces. A typical planting pit is an opening in the sidewalk of an otherwise paved boulevard or plaza. It may be raised, sunken, or at the same level as the surrounding pavement.

(L) “Planting Strip” is a strip of land between two curbs or between a curb and a sidewalk on which trees, grass or other vegetation is planted.

(M) “Private tree” means a tree growing on private property that is not owned by the City and that is not located within or abutting the public right-of-way within the City.

(N) “Proper Pruning” means safely removing branches in accordance with accepted ANSI standards (American National Standards Institute) that could cause injury or property damage, interfere with lines of sight, grow into utility lines, are diseased or insect infested, crossing or rubbing, enhance the natural form and character of the tree, or encourage fruit production.

(O) “Public nuisance” solely for purposes of this chapter means any tree, shrub or other vegetation which harbors insects or disease; any tree, shrub or other vegetation which is dead; any tree, shrub or other vegetation which is obstructing a street, intersection, utility line, traffic lights and /or signs; a tree, shrub, or other vegetation blocking the free passage of pedestrians and/or vehicles; a tree, shrub, or other vegetation that poses a threat to public health and safety.

(P) “Public Street and/or Right-of-Way” means the entire area between the boundary lines of every right-of-way open to the use of the public, as a matter of right, for the purpose of vehicular and pedestrian traffic within the corporate limits of the City.

(Q) “Root flare” means the transition zone between the main stem and the root system; the swelling of tree roots where they join the tree trunk at the soil surface. This root flare is also called the trunk flare, root crown, or root collar and should be visible on trees planted in landscapes.

(R) “Safety” means the protection of residents and the City from personal injury and/or property damage caused or threatened by the improper planting, maintenance, or removal of trees within the City of Muncie.

(S) “Shrub” means a woody plant which is characteristically below twenty feet in height and is multi-stemmed supporting mainly leafy growth.

(T) “Small tree” means a tree that reaches a mature height of no more than 20 feet.

(U) “Street tree” means a tree that is located within any public right-of-way.

(V) “Topping” means the removal of the central leader and/or severe cutting back to stubs of limbs larger than three inches in diameter within the trees crown so as to remove the normal canopy and disfigure the tree.

(W) “Urban Forester” means a person trained, educated, or skilled in forestry, horticulture, arboriculture, or landscape architecture, who is employed by and reports to the Muncie Parks and Recreation Department.

(X) "Urban Forestry Committee" and/or "Committee" means the Muncie Urban Forestry Committee, (See 97.02)

(Y) "Website" means the Muncie Urban Forestry website, www.muncieurbanforestry.com; which can be accessed by visiting the City of Muncie website, www.cityofmuncie.com.

Sec. 97.05. Arborist License

(A) It shall be a violation of this chapter for any person working for hire to plant, prune or remove trees within the city without first procuring an annual arborist's license from the Urban Forester.

(B) Prior to a license being issued, an applicant shall demonstrate that he or she has adequate knowledge and experience of arboriculture. To demonstrate adequate knowledge the person must demonstrate that they have done one of the following:

- 1) Hold a current arborist certification through the International Society of Arboriculture (ISA)
- 2) Show proof (receipt, invoice, or certificate) of attending a tree care workshop or similar professional development opportunity through ISA, Indiana Arborist Association, Indiana Department of Natural Resources, or another professional entity within the last two years of applying for the certificate.
- 3) Attend an education session offered by the Urban Forester, or his or her designee. This session shall be free of charge and offered as needed.

(C) Before a license shall be issued, each applicant shall first file with the Muncie Parks and Recreation Department evidence of possession of commercial general liability insurance, sent directly by the insurer, covering bodily injury and property damage in the amount equal to one million dollars per occurrence. Additionally, evidence of Worker's Compensation Insurance shall be provided. Cancellation or other termination of any insurance policy issued for or in compliance with the provision hereof shall automatically terminate any certificate, unless replaced with another policy complying with the provisions hereof. Each applicant shall also sign an agreement indemnifying the City of Muncie from any claims that may arise from work performed by the applicant.

(D) The license fee shall be \$100.00 per year and shall be renewed annually at a renewal rate of \$75.00. After February 15 of the renewal year, the fee will be increased to \$150.00. The license fee shall be paid in advance and shall be deposited in the Urban Forestry non-reverting operating fund (Revenue Account # 212-00321053).

Authority: I.C. § 36-8-2-10

Sec. 97.06. Development and Redevelopment of Property

In accordance with the City of Muncie Comprehensive Zoning Ordinance, Subdivision Control Ordinance, and other ordinances that regulate development, the Urban Forester or his or her designee shall review and enforce the landscape portion of any site plan and may require the usage of trees found on the recommended street tree list or the deletion of plant material in such site plan.

Sec. 97.07. City and Street Trees

(A) It shall be a violation of this chapter for any person to plant, prune or remove a city or street tree without first obtaining permission from the Urban Forester, or his or her designee.

(B) **Planting Requirements:** The orderly planting of trees in the city is encouraged. Any tree planted on city property or within the public right-of-way shall be planted in accordance with the tree planting standards adopted by the Urban Forestry Committee. A copy of said standards shall be available on the website and for copy and inspection at the Muncie Parks and Recreation Department. The list of recommended and prohibited trees is on the website and is available for inspection at the Muncie Parks and Recreation Department.

(C) **Spacing:** The spacing of city or street trees shall be in accordance with the three species size classes listed in this ordinance (small, medium, and large), and no trees may be planted closer together than the following: small trees, fifteen (15) feet; medium trees, twenty-five (25) feet; and large trees, thirty-five (35) feet; except in special plantings designed or approved by the Urban Forester or his or her designee. The Urban Forester, or his or her designee, reserves the right to revise spacing requirements on a case by case basis based upon the local conditions, species and/or cultivars used and expected height and spread at maturity. All plantings prior to the adoption of this ordinance are exempt.

(D) **Planting Strips and Planting Pits:** Where there is a planting strip or pit of at least four (4) feet wide a small tree may be planted. Medium trees shall not be planted in a planting strip or pit of less than six (6) feet wide. Large trees shall not be planted in a planting strip or pit of less than eight (8) feet wide. On streets with planting strips that are three (3) feet or less, consideration should be given to planting trees on private property. Exceptions may be made by the Urban Forester, or his or her designee. All plantings prior to the passing of this ordinance are exempt.

(E) **Distance from street corners or fire hydrants:** No city or street tree may be planted closer than fifty (50) feet to any street corner, measured from the point of the nearest intersecting curbs or curb lines. No street tree may be planted closer than fifteen (15) feet to any fire hydrant. Exceptions may be made with the approval of the Urban Forester or his or her designee.

(F) **Utilities:** No street tree shall be planted nearer than ten (10) feet from any overhead utility wire unless planting a small tree. No street trees shall be planted within five (5) lateral feet of any underground utility line. Utility companies shall carry out tree maintenance work in accordance with accepted ANSI standards (American National Standards Institute) including, but not limited to, ANSI A300, and/or any other applications regulations or standards. The pruning method for utility trees shall be directional pruning. Indiana Underground (phone 811) shall be called two (2) working days before any digging occurs.

Sec. 97.08. Maintenance Requirements

(A) **Sidewalk and Street Clearance:** There shall be a clear space free of branches at least ten (10) feet above the surface of any public sidewalk and fourteen and a half (14.5) feet above any public street. When maintaining a tree to achieve a height above the street of 14.5 feet, the sidewalk side of the tree shall be pruned to the same height so as to maintain a balanced crown. All trees, plants, shrubs, and other vegetation adjacent to a street intersection shall not be allowed to grow higher than 40 inches tall. All trees, shrubs and other vegetation growing or planted adjacent to the public right-of-way must have foliage trimmed by the owner in a manner which does not interfere with adequate vision by drivers and pedestrians (See Streets and Sidewalks Chapter 96).

(B) Topping: It shall be unlawful for any person or city department to top any city tree or street tree.

Sec. 97.09. Tree and Stump Removal

(A) Tree Removal: The removal of any city tree or street tree shall be conducted in accordance with the tree manual adopted by the Muncie Urban Forestry Committee. This manual shall be available for inspection at the Muncie Parks and Recreation Department.

(B) Stump Removal: All tree stumps on city property or within the city right-of-way shall be removed below ground surface level to a minimum depth of six (6) inches.

Sec. 97.10. Public Nuisance

(A) It shall be a violation of this chapter to permit the existence of a tree, shrub or other vegetation which constitutes a public nuisance as defined in this chapter. The owner of the property on which there exists any tree, shrub, or other vegetation which constitutes a public nuisance shall be notified in writing and granted between 10 and 30 days, depending on the nature of the nuisance, to prune or otherwise remove the public nuisance. In the event an emergency exists, the Urban Forester, or his or her designee, shall take immediate action to abate the nuisance. Persons are prohibited from interfering with the Urban Forester or his or her designee when in performance of their duties. In the event corrective action is not taken within the time prescribed, the city shall take action to abate the nuisance and, in addition to other remedies provided in Section 97.13, charge the cost to the property owner. Failure to tender payment for costs incurred by the city in abating a nuisance under this chapter may become a lien upon the property.

Authority: I.C. § 36-1-6-2

Sec. 97.11. Tree Protection.

(A) It shall be a violation of this chapter to damage, cut, carve, injure, attach any sign, wire, or injurious material; cause or permit any charged electrical wire to come in contact with; or remove or destroy any city or street tree without approval from the Urban Forester or his or her designee. No person may place or maintain on the ground in any public way, any stone, cement or other impervious material or substance so as to obstruct the free access of air and water to the roots of any tree on city property unless approved by the Urban Forester or his or her designee. Exceptions include such necessary wires to stabilize trees upon approval of the Urban Forester or his or her designee. Any person found to have willfully or negligently mutilated, disfigured, or destroyed a city or street tree shall be charged the value of the tree as determined by the City's insurance carrier.

(B) In connection with the erection, alteration, or repair of any building, structure, or other construction activity, the owner thereof or his or her designee shall take all necessary precautions to prevent injury to any city tree or street tree. In the event of construction on or near city property or near any city or street tree, the Urban Forester, or his or her designee, shall be contacted prior to any work to assess all plans that may impact city or street trees. Any directives from the Urban Forester or his or her agent to protect and limit the construction impact on trees shall be implemented.

Sec. 97.12. Trees in Historic Districts

Before any work on any tree in locally designated historic districts or on properties designated as local historic landmarks the property owner, contractor, private citizen or city employee shall comply with the provisions of the historic preservation ordinance (See Preservation Ordinance Sec. 34.100-102). If required by the ordinance

approval of work in these areas shall require a certificate of appropriateness from the Muncie Historic Preservation and Rehabilitation Commission. In an emergency situation the certificate process is waived but the property owner, contractor, private citizen or city employee shall notify the Historic Preservation Officer as far in advance as soon as possible.

Sec. 97.13 Administrative Provisions

(A) First services provided in the enforcement of this Chapter, the following administrative fees shall apply and be deposited in the Urban Forestry non-reverting fund (Revenue Account #212-00-321053):

- (1) Twenty dollars (\$20.00) for each inspection that reveals a violation of this Chapter;
- (2) Actual costs incurred for publication of any notice;
- (3) Actual costs incurred in recording or releasing any lien with the Delaware County Recorder
- (4) Actual postage charges for any violation notice mailed to the owner(s);
- (5) Fifty dollars (\$50.00) per man hour, or fraction thereof, for services provided and equipment utilized in the abatement of a violation.
- (6) The actual costs incurred to hire a contractor, if necessary, to abate a violation.

(B) The Urban Forester or his or her designee shall have the power to enforce the rules and regulations set forth in this chapter. The provisions of this chapter may be enforced by the filing of an action for ordinance violation in the Muncie City Court, or any other court of competent jurisdiction.

(C) In addition to any other remedy provide, any person found to have violated any provision in this chapter shall be fined no more than \$2,500 per violation. Each day that a violation exists shall be considered a separate violation.

(D) Any decision of the Urban Forester, or his or her designee, may be appealed to the Urban Forestry Committee. The Committee shall establish a subcommittee to review appeals and make recommendations to the Committee. Any appeal of a decision of the Urban Forestry Committee shall be brought in a court of competent jurisdiction.

Section 2: Effective Date. The provisions of the ordinance shall be in full force and effect from and after its passage by City Council, its approval by the Mayor and its publication in accordance with relevant law.

	Yeas	Nays	Abstained	Absent
Sam Marshall	_____	_____	_____	_____
Mark Conatser	_____	_____	_____	_____
Mary Jo Barton	_____	_____	_____	_____
Brad Polk	_____	_____	_____	_____
Jerry Dishman	_____	_____	_____	_____
Monte Murphy	_____	_____	_____	_____
Linda Gregory	_____	_____	_____	_____
Mike King	_____	_____	_____	_____
Alison Quirk	_____	_____	_____	_____

Passed by the Common Council of the City of Muncie, Indiana, this _____ day of _____ 2010.

 President
 City Council, City of Muncie

Presented by me to the Mayor for her approval, this _____ day of _____ 2010.

 Phyllis Reagon,
 City Clerk, City of Muncie

The above resolution is approved (vetoed) by me this _____ day of _____ 2010.

 Sharon McShurley
 Mayor, City of Muncie

ATTEST:

 Phyllis Reagon, City Clerk

This Resolution is proposed by *Deborah A. Gregory*
 Council Member

This Resolution is approved in form by *Janet C. [Signature]*
 Legal Counsel