

ORDINANCE 2005- 04

NASHVILLE TREE ORDINANCE

WHEREAS, this ordinance establishes policies, regulations, and standards necessary to ensure the Town of Nashville will realize the benefits provided by its community forest.

WHEREAS, the health of the community forest in the business area of the town is directly linked to the economic welfare of the community in that, if it were lost, the tourist industry upon which so many of Nashville's citizens depend for their livelihood, would be substantially damaged.

WHEREAS, the Town of Nashville has plans to plant, replace, and maintain trees on public property, public right-of-ways.

WHEREAS, trees, as defined, regulated and protected herein, are declared to be a natural public resource and the Town of Nashville encourages planting, replacement, and protection of trees, as herein set out, in the interest of the health, safety, and welfare of the present and future citizens of the Town of Nashville. To attain that end, it shall be unlawful to cut down, damage, poison, or in any other manner destroy or cause to be destroyed any public tree or woodland as covered by the terms of this ordinance except in accordance with the procedures set out herein.

I. AUTHORITY AND POWER

Town's Right to Plant, Maintain, and Remove Trees on Public Property

It is the public policy of the Town of Nashville to maintain existing trees and to provide for and encourage the planting of new trees within Nashville to the greatest extent possible.

The Town Council, upon the advice of an Indiana Department of Natural Resources Forester or the Town Tree Board, shall have the authority and jurisdiction of regulating, but does not have the obligation, to plant, maintain, or remove trees, plants, and shrubs on streets and other publicly owned and right-of-way to insure safety or preserve the aesthetics of such public sites. Also, the Town Administration may remove or cause or order to be removed, any tree or part thereof which is an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infected with any injurious fungus, insect, or other pest.

Private citizens desiring to plant trees (to be deemed to include shrubs and bushes) in the public right-of-way abutting their property shall comply with the terms and conditions of this ordinance and such trees shall, once planted, be strictly subject to management by the Town to include pruning and removal as necessary to protect the public health.

II. TOWN'S RIGHT TO PLANT, MAINTAIN, AND REMOVE TREES ON PRIVATE PROPERTY

Right to Enter Private Property

The Town Administration, upon the advice of the Town Tree Board or an Indiana Department of Natural Resources Forester, has authority to enter onto private property for the purpose of inspecting a public tree when the tree cannot be adequately inspected from public property, or for the purpose of inspecting a private tree believed to be a nuisance.

Duty to Inspect for and Control Insect and Disease Problems

The Town Administration may inspect any trees, shrubs, vines, hedges, plants, logs, or branches existing or growing upon any property within the Town of Nashville. The Town Administration shall conduct surveys to determine if any destructive or communicable disease or other pestilence exists which may be detrimental to or endanger the good health and well being of trees or other plant life in the Town of Nashville.

The Town may, upon the advice of the Town Tree Board or an Indiana Department of Natural Resources Forester remove diseased or damaged trees from private property.

Order Required for a Notice to Take Action

Upon discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, hedges, or shrubbery, or threatens to spread disease or insect infestations, the Town Administration shall at once cause written notice to be served upon the owner of the property or his or her agent upon which such diseased or infested trees, hedges, or shrubs are situated.

Such notice shall state the actions that the property owner shall undertake to abate the nuisance; and the notices shall require such property owner(s) to eradicate, remove, or otherwise control such conditions within 30 days to be specified in such notice.

The Town Administration shall have the authority and it shall be its duty to order the trimming, preservation, or removal of trees or plants upon private property when he or she may find such action necessary to public safety or to prevent the spread of disease or insects to public trees and places.

Failure to Comply with a Notice to Take Action

If the owner fails to comply with such notice, the Town Administration shall cause such trees or shrubs to be pruned, treated, or removed as necessary to remove the obstruction or threat of communicable disease or insect infestation, and assess the property owner for the cost of services in the same manner in which the cost of a nuisance abatement under Ordinance No. 1978-2 and 1991-4 may be assessed.

Cutting, Killing or Removing Trees from Private Property

Prior to the cutting, killing or removal of any tree in excess of eight (8) inches bole diameter measured one (1) foot from the soil line and located on private property in a B1, B2 or B3 zone, the property owner must first obtain a permit from the Town Administration. Upon receiving an application for a tree cutting, killing or removal permit, the Town Administration shall forward said application to the tree board. The

Tree Board shall grant or deny the application for permit at its next regularly scheduled meeting.

Landscaping

Subdivision and Development plans shall be designed to preserve natural vegetation areas as much as possible. Streets, parcels, structures, and parking areas shall be made out to minimize the destruction of wooded areas or outstanding tree specimens. Developers of land are encouraged to designate wooded areas as park reserves.

The Development Review Commission shall consider a landscape plan as part of its review of any subdivision plat, development plan, or site plan application.

The Design Review Commission shall submit all subdivision development landscape plans within their jurisdiction for review and approval by the Town Tree Board established by Ordinance 1988-13.

Protection from Mutilation and Damage

No person shall be allowed to post any bills, advertisements, cards, or notices of any kind upon any trees, placed or growing for ornamental use, in any street or square within the limits of the Town of Nashville, without the permission of the town administration, if such tree is within the limits of a public place.

Each public utility company shall exercise reasonable diligence in the maintenance of its plant construction so as to avoid the damage of trees.

It shall be unlawful for any person, firm, or public utility to place salt, brine, petroleum products, herbicides, or any other substances in such amounts as to be toxic or injurious to the health, growth, or vitality of any tree or shrub in any public area or public right-of-way.

Heavy equipment and other implements, machines, and tools shall be used or operated in such a manner as to not damage or destroy any tree, shrub, or plant in any public area or public right-of-way.

Unless specifically authorized by the Town Administration, no person shall intentionally damage, cut, carve, transplant, or remove any tree on public property or on any public place of right-of-way.

It shall be unlawful for any person, firm, or corporation to cut or break any branch of any tree or shrub or injure in any way the bark of said tree or shrub growing on public property.

No person shall remove, or substantially alter the habit of any tree located within a public right-of-way, or in a park, without first obtaining a permit from the Town Administration.

Enforcement

The Town Administration shall have the power to promulgate and enforce rules, regulations, and specifications concerning the trimming, spraying, removal, planting, pruning, and protection of trees, shrubs, vines, hedges, and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the Town.

No person shall unreasonably hinder, prevent, delay, or interfere with the Town Administration while engaged in the execution and/or enforcement of this ordinance.

Violations

Any person who shall injure, damage, or destroy any tree, shrub, vine, hedge, or other plant situated upon public property or right-of-way of any street, alley, sidewalk, or other public place within the Town shall promptly notify the Town Administration of such occurrence and shall, within such reasonable time as specified by the Town Administration, repair or replace the damaged vegetation to the satisfaction of the Town Administration. Any replacement planting shall be no less than fifty percent of the stump diameter of the replaced tree.

It is prohibited for any person to violate the provisions of this ordinance, including failure to comply with any notice or decision of the Town Administration following appeal.

The Town must be compensated for damage to or the loss of any tree as determined in accordance with this ordinance. If, as a result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on Town-owned property, public property, or right-of-way is caused, the cost of repair and replacement, or the appraised dollar value of such tree, shrub, or other plant shall be borne by the party in violation.

In addition to the remedies set out above, the violator shall be subject to a fine not to exceed \$500.00 per violation.

Separate Violations

Each tree affected by noncompliance with this article shall constitute a separate violation.

Each day during which any violations of the provisions of this ordinance shall occur or continue will constitute a separate violation.

The owner of any property where any violation exists and any builder, contractor, or agent who may have assisted in the commission of any such violation, shall be guilty of a separate violation.

Assessment of Claim

In the event that a violation is not abated by the date specified in the notice, the Town Administration is authorized to cause the abatement of said violation. The reasonable cost of such abatement shall be filed and a lien against the property on which the violation was located.

Severability Clause

If any provision of this ordinance or application thereof to any person or circumstance is held invalid by any court, other provisions or applications of the ordinance which can be given effect without the invalid provision or application shall not be affected, and to this end of the provisions of this ordinance are declared to be severable.

Appeals

Any person or party aggrieved by an act or decision of the Town Administration, the Development Review Commission or the Tree Board shall have a right to appeal that matter to the town council and shall be entitled to a judicial review of any decision on said appeal by the town council in accordance with I.C. 4-22-1.

Repeal Clause

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

III. EFFECTIVE DATE

NOW THEREFORE LET IT BE ORDAINED ON THIS 16th DAY OF March, 2006, BY THE AUTHORITY OF THE NASHVILLE TOWN COUNCIL that this ordinance is hereby declared to be of immediate necessity for the preservation of public peace, health, and safety and shall be in full force and effective from and after its passage by the Town Council and its publication as provided by law

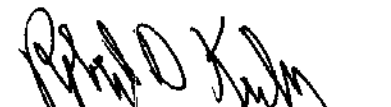
Written By Town Administration

Revised By Nashville Tree Board


Reviewed By Town Attorney



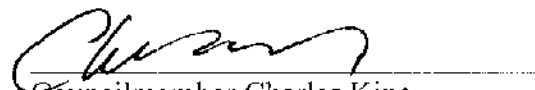
President Roger Kelso



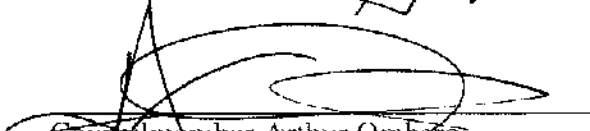
Vice-President Robert Kirkin



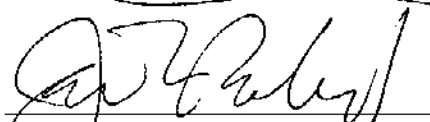
Councilmember R. Dale Cassidy



Councilmember Charles King




Councilmember Arthur Omberg



Town Attorney James T. Roberts

WITNESS:



Clerk-Treasurer Brenda Young