

Trees and Shrubs

**An ordinance of the Town Council of the Town of Hudson, Indiana,
Establishing Policies, Regulations, and Standards for the
Planting, Maintenance, Protection and Removal of Trees and
Shrubs on Public Streets, Parks and Other Town Owned Property.**

Comes now the Town Council of the Town of Hudson, and amends the Hudson Town Code by Ordinance for the purpose of establishing policy, regulations, and standards necessary to ensure that the Town of Hudson will continue to realize the benefits provided by its trees and plants.

Whereas, there exists no ordinance to regulate the planting, maintenance, protection and removal of trees and shrubs on public streets, parks and other town-owned property, and

Whereas, there is no provision for the issuing of permits for the planting, maintenance, protection and removal of trees and shrubs in town-owned areas, and

Whereas, the provisions of this ordinance merely clarify existing practice.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HUDSON, INDIANA, AS FOLLOWS:

The Hudson Town Code is hereby amended to add Chapter 5, Article 3, as follows.

Article 3. Trees and Shrubs

1. **Definitions**- as used in this ordinance, the following terms may be defined:
 - a) Consulting Arborist shall mean an individual who is trained and certified by the International Society of Arboriculture, in the art and science of planting, caring for and maintaining individual trees and forests.
 - b) Plants shall mean all trees, shrubbery and other plants that grow to a height of greater than 12 inches, but excludes weeds.
 - c) Shrubs shall mean any woody, perennial plant with multiple stems that grows to a height of less than ten feet. This may include ornamental grasses.
 - d) Flora shall mean any and all trees, shrubbery and other plants, which grow to a height of greater than 12 inches, but excludes weeds.
 - e) Tree shall mean any woody, perennial plant and includes those having a single stem or multiple stems that grows to a height of over ten feet.
 - f) Topping shall mean the indiscriminate cutting back of tree branches to stubs or lateral branches that are not large enough

to assume the terminal role. Other names for topping include "heading," "tipping," "hat-racking," and "rounding over."

g) Owner(s) shall mean any one or more of the following:

- In fee simple of a parcel of real estate, including the life tenant(s).
- As reflected by the most current records in the town assessor's office.
- The purchaser(s) of such real estate under any contract for the conditional sale thereof.

2. **Jurisdiction:** the Town of Hudson shall have control of all trees, shrubs, and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the town limits, and shall have the power to plant, maintain, remove, and replace such trees, shrubs and other plantings.
3. The Town Manager shall be established as the **Tree Program Supervisor**. The Tree Program Supervisor shall assist in the management of the natural resources within the Town by enforcement of the sections within this ordinance and evaluation of the overall tree management program. The Hudson Park Board is designated as the **Tree Board** for the Town of Hudson and shall have the responsibility of providing supervisory oversight of the Tree Program Supervisor.
4. **Appeals:** Any action of the Tree Program Supervisor may be appealed to and heard by the Park Board. To be effective, an appeal must be filed within ten (10) days after the decision of the Tree Program Supervisor. The appeal shall be in writing and shall be filed with the Clerk-Treasurer of the town for placement on the Park Board agenda. The appeal shall clearly specify the reasons for which a hearing is requested. The appeal must state the reasons for the appeal and should include the remedy requested. The decision of the Park Board may be appealed to the Town Council by filing a written appeal with the Clerk-Treasurer of the Town of Hudson within ten (10) days of the receipt of the Park Board decision. The appeal will be placed on the Town Council agenda. The decision of the Town Council shall be considered as final.
5. **Enforcement:** The Tree Program Supervisor/Town Manager is hereby charged with the responsibility for the enforcement of this ordinance and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the Town Legal Counsel is hereby authorized to institute appropriate proceedings to that end.
6. **Performance evaluation of Ordinance:** The Tree Program Supervisor shall collect and maintain all records and data necessary to objectively evaluate whether progress is being made toward the stated goals of this ordinance. An annual summary and analysis of the evaluation, and recommendations for action shall be prepared at the direction of the Tree Program Supervisor and the consulting arborist and presented to the Town Council. The Town Council shall consider the report and recommendations and take all actions

deemed necessary to accomplish the goals of this ordinance. These actions may include, but are not limited to, revision or amendment of this ordinance or the adoption of other resolutions or ordinances.

7. **Severability:** Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held to be invalid.
8. **Local government disclaims liability:** Nothing contained in this ordinance shall be deemed to impose any liability upon the town, its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant on his property or under his control in such condition and to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, pleasure ground, boulevard, alley or public place within the town.
9. **Responsibility of property owners:** It shall be the duty and responsibility of every person owning or occupying any real property within the Town of Hudson, to keep all trees and plants on that property trimmed in such a manner that there is a clearance of at least fourteen feet above any street or alley, and a clearance of at least seven feet over any sidewalk. It shall also be the duty and responsibility of every person owning or occupying any real property within the Town of Hudson to keep all trees on that property trimmed in such a manner that they do not obstruct the view of any traffic sign or device for vehicle traffic in the direction controlled by that traffic sign or device.
10. **Penalties for Tree Removal and Damage Violations:** Any Person who neglects or refuses to comply with, or assists in the violation of, any of the provisions of this Chapter, or any order, permit, or notice issued pursuant thereto, shall be fined not more than \$1,000 for each such violation and shall pay in addition the cost of replacement as provided in this Section. Each day any such violation continues shall constitute a separate offense, and each Tree Removed or Damaged shall also constitute a separate offense. Any Person who causes a Tree to be Removed or Damaged in violation of this Chapter, or any order, permit, or notice issued pursuant thereto, shall repair or replace any such Tree at the violator's sole cost and expense pursuant to the Tree replacement requirements set forth in sections of this ordinance. The cost of replacement shall be \$100 for each DBH inch of the Removed or Damaged Tree. If the precise DBH cannot be determined, the cost of replacement shall be determined by the Tree Program Supervisor based on the Consulting Arborist's estimate of the DBH of the Removed or Damaged Tree. The Person responsible for the violation shall pay the replacement cost of the tree to the Town. The location, species, and planting specification for replacement Trees shall be approved prior to replanting by the Tree Program

Supervisor pursuant to the requirements of sections in this ordinance.

11. **Penalty for planting, arboricultural work or encroachment violations:** If the Tree Program Supervisor determines that a violation exists regarding planting, maintenance or encroachment of trees or flora upon property within the right of way the following shall occur:
 - a) A preliminary notice shall be given to the owner or occupant of such property, either verbally or by posting the notice on the property. The notice shall state the nature of the alleged violation, corrective action necessary and a date, not less than two weeks, when the property will be re-inspected to determine if compliance has been effected. After re-inspection, if it is determined that the violation has been corrected, the owner or occupant shall not be liable for any charges by reason of the preliminary notice procedure.
 - b) If any violation is not corrected as a result of the preliminary notice, or no preliminary notice is given, or the condition exists on a vacant lot or unoccupied, unimproved real estate, the Tree Program Supervisor shall give to the owner of such real estate written notice of the existing condition. Such notice shall be given by Certified Mail, stating the nature of the violation, describe the real estate upon which the condition exists and demand abatement of the condition and set a date, not less than two weeks after the date of such notice. The property shall then be re-inspected to determine if abatement has been effected. If the Certified Mail is not returned within thirty calendar days or if the address of the owner is unknown and cannot be ascertained after due diligence, it shall be sufficient to give notice by publication in the Town newspaper circulation. The owner(s) notified by publication shall have ten days from the date of the published notice in which to abate the offending condition.
12. **"Topping" prohibited:** The practice of topping and/or other especially destructive maintenance practices such as severely trimming trees in public streets is strictly forbidden. "Severely trimmed" shall mean the cutting of the branches and/or trunk of a tree in a manner which will substantially reduce the overall size of the tree area so as to destroy the existing symmetrical appearance or natural shape of the tree in a manner which results in the removal of main lateral branches leaving the trunk of the tree in a stub appearances. The standards identified in the ANSI A300 standards describe trimming methods, which will give maximum benefits to both trees and people. These specifications and methods are available from the Tree Program Supervisor.
13. **Action on failure to abate:** if upon re-inspection of the offending real estate, and, where notice has been given by publication, after the lapse of the ten day notice period, it is determined by the Tree Program Supervisor that abatement has not

occurred, and shall be allowed to enter upon such private property or right of way and proceed with corrective action.

14. **Procedural and labor charges:** Services rendered in the enforcement of this ordinance to any owners(s) shall pay to the Town of Hudson the following fees and charges:
 - a) Fifty dollars (\$50.00) for each inspection to determine compliance.
 - b) Twenty-five dollars (\$25.00) for property ownership determination.
 - c) All costs for notice publication.
 - d) Twenty dollars (\$20.00) for services performed in perfecting a lien.
 - e) Ten dollars (\$10.00) for Certified Mail preparation and sending.
 - f) Forty (\$40.00) per man-hour plus equipment charges, as determined by the Tree Program Supervisor, for services rendered in violation abatement.

15. **Resolution of conflicts between trees and structures:** Where sidewalk or curb damage due to tree roots occurs, every effort shall be made to correct the problem without removing or damaging the tree. The Tree Program Supervisor, in conjunction with the consulting arborist shall be responsible for developing or approving corrective measures. Corrective action may include alteration of sidewalk and/or curb construction.

16. **Situations which are declared to be a public nuisance:** Any tree, shrub or groundcover, or plant growing or standing on private property in such a manner that any portion thereof interferes with any public street, sidewalk, alley or restricts the flow of traffic or visibility of such street, sidewalk, alley or intersection thereof to any person or persons lawfully using such streets, sidewalks, alleys or intersections shall constitute a public nuisance.

17. **Destruction of diseased or hazardous trees and plants:** The Town of Hudson shall have the exclusive authority to destroy any plants in or on public streets, alleys, ways, places, easements, and parks if infected by disease or injurious insects, or if in the judgment of the Tree Program Supervisor, represents a dangerous condition or hazard to the public. Such destruction may also be effected when necessary for the protection of other flora or in any other case when the public safety, health or welfare is or may be adversely affected.

18. **Abatement of hazards and public nuisances:** The Town of Hudson may remove or trim such tree, may permit any public utility to do so, or may require the property owner to remove or trim such tree on private property or on a public parking area abutting upon the property of the owner. The failure of the property owner, or his duly authorized agent, to remove such tree or perform specified maintenance on the tree, after fifteen (15) days notice

by the Tree Program Supervisor shall be deemed a violation of the provisions of this chapter, and the Tree Program Supervisor may then remove or trim such tree and assess the cost thereof against the property.

19. **Cleanup of Trimmings:** All private tree care firms shall be responsible for cleanup of trimmings in a prompt fashion. No trimmings shall remain on the ground in excess of 7 days. All private tree care firms working for residents and all commercial or non-residential businesses must dispose of trimmings at their expense. Any tree care work completed by a resident on their property may make use of the public vegetation burn pile located south of the railroad track.

20. **Permit required for any planting within Town right of way:** Other than a planting conducted by the Town of Hudson, no person shall plant any tree on any street, park, easement, or town owned property except according to policies, regulations and specifications established pursuant to this section:
 - a) All trees or plant material planted on or in the public street, sidewalk area, alley or parks shall be required by this code to have the approval of the Tree Program Supervisor or the consulting arborist and be granted a special permit for such planting.
 - b) Plants shall be located and planted under the supervision of the Tree Program Supervisor or designee, who shall supervise such planting and locating. In the performance of such work, consideration shall be given to the following factors; provided, that setbacks permit and considerations of safety do not interfere. No tree shall be planted in any public street, alley, place or park in the Town of Hudson less than 30 feet away from any other tree planted along the same area or at a distance of less than 3 feet from any established sidewalk or curb bordering any public right of way, except by written permission by the Tree Program Supervisor.
 - c) The Tree Program Supervisor shall have the power to set forth any further specifications required and may alter methods of planting, reject any tree or tree species, or suspend the right of a permit holder to plant, for any reason and without advance notice.
 - d) Trees that must be removed shall be replaced by new planting, except in unusual circumstances or where construction or space is prohibitive.
 - e) Plant material selected may vary, depending on location; however, they must be of high quality and of suitable species, and not of the prohibited species prescribed. All plant materials must conform to the specifications set forth by the American Association of Nurserymen Plant Standards.
 - f) Planting procedures shall comply with ANSI A300 standards for the installation of nursery stock. Suitable maintenance plans and procedures must be submitted prior to installation and shall be subject to the approval of the Tree Program Supervisor and the consulting arborist.

- g) Permit holder shall guarantee survival of each tree for a minimum of one year after planting date. Any tree not surviving the minimum shall be replaced either by the permit holder or the department at the permit holder's expense. After a period of one year, all plant materials shall become property of the Town and becomes the responsibility of the Town.
 - h) The coordination of tree planting on public ways with landscaping on private property so as to achieve the above purposes is deemed desirable.
 - i) Trees may not be planted in parkways that are less than 5' between curb and sidewalk.
21. **Landscape Structures prohibited:** No landscaping structures may be constructed within the public rights of way that will hinder or endanger the flow of pedestrian or vehicular traffic along. A consultation should be completed with the Tree Program Supervisor prior to any type of structure being constructed within a public right of way.
22. **Harming public trees forbidden:** It shall be a violation of the provisions of this Chapter for any person to abuse, destroy or mutilate any tree, plant or shrub in the right of way or any other public place, or to attach or place any rope, wire (other than one used to support a young or broken tree), chain, sign, poster, handbill or other things to or on any tree growing in a public place, or to cause or permit any wire charged with electricity to be placed or attached to any such tree, or allow any gaseous, liquid or solid substance which [is] harmful to such trees to come in contact with their roots, [trunks,] or leaves. No person shall perform any arboricultural work on any plant material on Town property unless first granted a special permit indicating the approved activity on each designated plant. All work on Town trees including pruning, protecting, bracing, relocating, cultivating, spraying or removing will be allowed only when permitted by the Tree Program Supervisor.
23. **Conservation of forest and woodland resources during development:** No person, business or corporation shall destroy or significantly alter any forest or woodland through tree damage or removal, clearing, grading, tilling, burning, application of chemicals, or any other means unless they apply for special permitting. No person, business or corporation shall be granted a permit for subdivision, grading, building or the construction of any improvement on wooded or forested lands unless they possess a valid permit. Any alteration of wooded or forested lands shall conform to the conditions and specifications of the Town of Hudson Tree Management Program.

Prohibited Species List: The following tree species shall not be planted along any public street, alley, right of way or park. The town shall not place, nor permit to be placed, any tree or shrub, which will cause or tend to cause a hazardous or unsafe condition

either for motorists or pedestrians. Other species of trees and plants may be added at any time and subject to revision.

<i>Species</i>	Common Name	<i>Species</i>	Common Name
<i>Acer negundo</i>	Box Elder	Albiziaspp	Mimosa
<i>Ailanthus altissima</i>	Tree of Heaven	Betula platyphylla	White Birch
<i>Betula papyrifera</i>	Paper Birch	Elaeagnus angustifolia	Russian Olive
<i>Betula pendula</i>	European White Birch	Maclura pomifera	Osage Orange
<i>Catalpa bignoides</i>	Southern Catalpa	Malus spp.	Common apple
<i>Morus species</i>	Mulberry	<i>Juglans nigra</i>	Black Walnut
<i>Populus nigra</i>	Lombardy Poplar	<i>Gingko species</i>	Gingko, except seedless cultivars
<i>Populus deltoides</i>	Cottonwood	<i>Robinia pseudoacacia</i>	Black Locust
<i>Salix species</i>	Willows, all	<i>Ulmus species</i>	Elms, all

Section II. All prior Ordinances or parts thereof inconsistent with any provisions of this Ordinance are hereby repealed.

Section III. This Ordinance is hereby passed and adopted at a regular meeting of the Town Council of the Town of Hudson, Indiana, this ____day of _____, 2006.

Sean Walker
President, Town Council

Brian Hayes
Town Council Member

Gene Hamm
Town Council Member

ATTEST:

Atta Hayes, Clerk - Treasurer