

**PROPOSED AMENDED ORDINANCE 28 - 23**

**An Ordinance to amend Chapter 1456.01 Registration Required; to amend Chapter 1026.09 in order to provide standards for care in the areas surrounding trees in the tree lawn; to amend Chapter 1026.99 Penalty; Equitable Remedies; and to add Chapter 1494, Mosquito Control Treatment**

By: Lori Ann Feibel

**Whereas,** the City, as well as private donors, have invested significantly in the planting of trees in the tree lawn of the City's public streets, parks, and public places; and

**Whereas,** such trees provide significant benefit to the City and its residents in cleaning the City's air, providing shade, intercepting storm water, increasing home values, adding to the beauty of the community, reducing stress, and enhancing economic stability; and

**Whereas,** the City is the first city in the United States to have been certified an arboretum, and is committed to maintaining that certification; and

**Whereas,** "mulch volcanoes" are an improper tree care technique in which mulch is piled against the trunk of a tree that leads to damage of trees through cankers, splitting, disease, decay, insect infestation, and root rot, all of which can lead to the death of a tree; and

**Whereas,** Section 1026.09 currently provides for the protection of any in the tree lawn of any public street, or in any park or public place, but does not expressly prohibit residents or landscapers from creating mulch volcanoes around such trees; and

**Whereas,** Section 1026.99 provides appropriate penalties for action that cause damage to trees in the tree lawn of any public street, park or public place;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY:**

**Section 1.**

That 1456.01 of the City of Bexley Codified Ordinances be amended as follows:

**1456.01 REGISTRATION REQUIRED.**

No person shall engage in or work at the trade or occupation of plumber, General Contractor, **Tree Lawn Landscape Professional, Mosquito Control Contractor**, electrician, sewer tapper or heating and cooling contractor in the City, until that person obtains a registration in accordance with the provisions of this chapter.

“General contractor” as used in this chapter means any person or firm engaged in the construction, alteration or addition of any structure which requires a building permit under the Ohio Basic Building Code or the C.A.B.O. One and Two-Family Dwelling Code as adopted by the City.

**“Mosquito Control Contractor” as used in this chapter means any person or firm engaged in the lawful application of airborne pesticides intended for mosquito control.**

**“Tree Lawn Landscape Professional” as used in this chapter means any person or firm engaged in work in the Tree Lawn that would include any of the following: the planting of new material; the placement of mulch or other similar landscape material; the installation, replacement, or repair of hardscape material.**

**“Tree Lawn” as used in this chapter refers to that section of the City right-of-way between the sidewalk and the curb.**

Occupying homeowners who perform work on their own property with their own hands are not required to be registered but must comply with all other procedures.

## **Section 2.**

### 1026.09 TREATMENT OF TREES AND SHRUBS IN PUBLIC PLACES.

(a) It shall be unlawful for any person to break, deface, injure, mutilate, kill or destroy any tree, shrub or evergreen in any public street, park or public place.

**(b) No person shall place mulch or soil above ground level within two inches from the trunk of the tree, and no more than 2” deep above the ground level within 3’ of the outside of the trunk of any tree, shrub or evergreen in any public street, park or public place.**

(~~b~~c) No person shall permit any fire to burn where such fire or heat therefrom, or heat from any source, will injure any portion of any tree or shrub in any public street, park or public place.

(~~e~~d) No person shall damage, deface, injure, mutilate or remove any label or sign identify the nature or species of any tree, shrub or evergreen in any public street, park or public place.

(~~e~~e) Without a written permit by the Director:

(1) No person shall attach any rope, wire, nails, advertising poster or other contrivance to any tree or shrub in any public street, park or public place.

(2) No person shall use, authorize or procure any person to use herbicides or other chemicals on any trees, shrubs or evergreens; spray, cut, break, injure, prune or treat any tree or shrub in any public street, park or public place. If in the judgment of the Director, the desired cutting, pruning, treatment, trimming, or spraying appears

necessary and proper and the proposed method and workmanship are approved, the Director may issue a written permit for such work, and any work done under such permit shall be performed in strict accordance and under supervision of the Public Service

### **Section 3.**

That Section 1026.99 be amended as follows:

#### **1026.99 PENALTY; EQUITABLE REMEDIES.**

- (a) Whoever violates or fails to comply with any provision of this chapter shall be deemed guilty of a misdemeanor of the fourth degree and fined not exceeding two hundred fifty dollars (\$250.00) or imprisoned for not more than thirty days, or both for each offense in addition to any required restitution for damages incurred by the City or any special assessments levied as provided for herein. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues. The application of a penalty under this section shall not preclude the City from seeking an injunction to enjoin prohibited acts or specific performance to compel actions required under this chapter or making application for and obtaining any other appropriate equitable remedy.
- (b) **In the instance of a violation of 1026.09(b), the City may, prior to the pursuit of criminal prosecution, pursue the following intervention:**
  - 1) **In the case of an initial violation committed by a property owner, provide a written notice of the violation to the property owner and remove the excess mulch or soil.**
  - 2) **In the case of a subsequent violation committed by the same property owner at the same property, provide a written notice of the violation to the property owner and remove the excess mulch or soil and issue a \$20 civil penalty for each area around a tree, shrub, or evergreen that requires correction.**
  - 3) **In the case of any violation by a Tree Lawn Landscape Professional, provide a written notice of the violation to the Tree Lawn Landscape Professional and the property owner and remove the excess mulch or soil and issue a \$20 civil penalty to the Tree Lawn Landscape Professional for each area around a tree, shrub, or evergreen that requires correction.**
  - 4) **In the case of subsequent violations to those violations covered by subsection (b)(2) and (b)(3) hereof, the penalties authorized by subsection (a) shall apply.**

**Section 4.**

That Section 1494, Mosquito Control Treatment be created as follows:

**Section 1494 Mosquito Control Treatment**

- (a) **Mosquito Control Treatment, Notification Required.** Mosquito Control Contractors, as defined by Section 1456.01, must provide 48 hour advance notice in writing to all adjacent property owners prior to the provision of airborne mosquito control treatment at a property; for the purpose of this section notification via email is acceptable provided that the adjacent property owner has consented to email notification. Written notice shall provide the estimated time of application as well as the chemical(s) being applied, the method of application, as well as any additional information deemed relevant by the Contractor.
- (b) **Penalty.** [we should really review how we apply penalties to contractors in general, I think this should be a civil penalty]

**Section 5.**

This ordinance shall go into effect from and after the period allowed by law.

Passed: \_\_\_\_\_, 2022

\_\_\_\_\_  
Troy Markham, Council President

Attest: \_\_\_\_\_  
Matt McPeek Clerk of Council

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Mayor Ben Kessler

First Reading:  
Second Reading:  
Third Reading: