

By: John Rohyana

An Ordinance to amend Chapter 1026 of the Street, Utilities and Public Services Code in its entirety.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That Chapter 1026 of the Street, Utilities and Public Services Code is hereby amended as follows:

CHAPTER 1026
Trees and Shrubs

1026.01 DEFINITIONS.

As used in this Chapter:

- (a) Arboriculture" means the selection, planting, maintenance and removal of trees.
- (b) "Commission" means the Tree and Public Gardens Commission of the City.
- (c) "Department" means the Service Department of the City
- (d) "Director" means the Service Director of the City, or any representative the Director so designates.
- (e) "Evergreen" means any tree that retains its green living foliage the entire year.
- (f) "Other plants" means all other vegetation not trees, shrubs or evergreens.
- (g) "Park" means all public parks having individual names and street islands.
- (h) "Person" means any individual, firm, partnership, association, corporation, business trust, joint stock company, unincorporated organization, religious or charitable organization, or any owner, person, persons or entities.
- (i) "Plant materials" means all trees, shrubs, evergreens and other plants.
- (j) "Private property" means all real estate within the City except real estate that is owned, leased, controlled or occupied by the United States government, State of Ohio, Franklin County government, City of Bexley or any department or agency thereof.
- (k) "Property owner" or "owner" means any one or more of the following:
 - (1) the property owner or owners in fee simple of a parcel of real estate including the life tenant or tenants, if any;
 - (2) the record owner or owners as reflected by the current records of the Office of the Auditor of Franklin County, Ohio, including the executor, administrator or beneficiary of the estate of any deceased owner; and
 - (3) the purchaser or purchasers of such real estate under any contract for the conditional sale thereof.
- (l) "Pruning" means to cut branches, stems, etc. from a plant to improve growth and shape.

- (m) "Public Street" means all the entire width of land lying within the dedicated right-of-way or easement and includes alleys.
- (n) "Public place" means all other ground owned by the City that is not part of a "public street" or park.
- (o) "Occupant" means the person or persons who are from time to time in possession of any house or other structure located on private property, or who are exercising dominion or control over any house or other structure located on private property.
- (p) "Shrub" means a low growing woody plant with one or several perennial main stems producing branches, shoots or multiple stems from or near the base of the plant and incapable of being pruned to provide at least six (6) feet of clear branchless trunk.
- (q) "Tree lawn" means that part of a street lying between the property line and that portion of the street used for vehicular traffic.
- (r) "Trees" when used by itself, means any woody plant that generally includes those having one or more perennial main stems or trunk, which grows to a mature height of over ten (10) feet.
- (s) "Trees, shrubs and evergreens" when used together means all woody vegetation, including but not limited to, all ground covers.
- (t) "Topping" means the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

1026.02 PURPOSE.

The purpose and intent of this Chapter is the preservation and promotion of landscaping to improve the appearance of pedestrian and vehicular use areas and property abutting public rights of way within the City; to protect, preserve, manage and promote property values within the City; and to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature and artificial light glare within the City.

1026.03 MANAGEMENT AND MAINTENANCE.

The City shall have charge, custody and control of trees, shrubs and evergreens planted or to be planted in or on public streets, alleys, parks and other public places. The City shall have authority to plant, prune, spray, remove and otherwise maintain such trees, shrubs and evergreens in the public streets and parks or upon property owned or controlled by the City of Bexley.

1026.04 PLANTING PERMIT.

It shall be unlawful for any person to plant or set out any tree, shrub or evergreen in or on any public street, park or public place without first obtaining a written permit. To obtain a permit, an application must be filed with the Commission specifying the species, cultivar, or variety, size, grade, location, method of planting, method of support, and pruning of the trees, shrubs and evergreens concerned. The application may be approved or disapproved by the Commission. If the application is approved, a permit shall be issued; however, the permit may be declared void if its terms are violated.

1026.05 REMOVAL, REPLANTING AND REPLACEMENT OF TREES AND SHRUBS IN PUBLIC PLACES.

Wherever it is necessary to remove a tree or shrub from a tree lawn or other public place in connection with a public project, or due to the condition of the tree or shrub, the City shall remove and replant such tree or shrub or replace them with an equivalent number, size and species of tree or shrub to the satisfaction of the Commission.

Any person desiring to remove any tree or shrub in a public street, park or public place shall first obtain a permit from the Commission by written application. The permit shall be issued when the Commission determines that the removal is necessary and the applicant agrees to pay the cost of the removal and provide for replacing the tree or shrub. All stumps must be removed twelve inches below the surface of the ground. All residual material shall be removed from the site at the time and the site restored. The replacement shall meet the standards of size, species and placement as provided for by the Commission. Failure to plant replacements per City standards shall result in replacement performed by the City, its employees, or agents and the City shall bill the property owner or person responsible for replacement and an administrative charge, or if necessary shall assess the property owner the same through special assessment as provided by law.

Whenever any tree or shrub shall be planted or set out in conflict with the provisions of this Chapter, the Commission may cause removal of the same but the City shall not be obligated to replace the tree or shrub planted without compliance with this Chapter.

1026.06 PROTECTION DURING BUILDING OPERATIONS.

All trees, shrubs and evergreens on public streets, parks or public places located where any excavation, construction or repair on public or private property could damage them shall be protected by and at the expense of the owner, contractor or agent responsible for such excavation or construction. The protection shall be a substantial fence or guard as directed by the Director, protecting the trees, shrubs and evergreens from the materials and debris of construction, all of which shall be kept outside the protected area. No person shall by any type of construction, excavation or repair reduce the size of a tree lawn without first procuring permission from the Director.

1026.07 PROTECTION OF WIRES DURING PRUNING OR REMOVAL.

Whenever the Director determines it necessary to prune or remove any tree or shrub in a public street, park or public place, and it is necessary to move or cut off the electricity from any wire designed to carry electric current; then the Director shall serve notice on the owner of such wire, to protect such wire, and such owner shall comply with such order within twenty-four (24) hours after the service of such notice.

1026.08 OPEN SPACES AROUND TREES.

No person shall place or maintain upon the ground in a public street, park or public place any stone, brick, sand, concrete, or other material which may injure or impede the passage of water, air and fertilizer to the roots of any trees, shrubs or evergreens unless a permit has been issued by the Director. A permit shall be issued upon written application outlining the work to be performed and approved by the Director. The permit shall require an open space not less than two (2) feet in width from the trunk of any trees as a condition to its issuance.

1026.09 PROHIBITED SPECIES.

(a) The following species shall not be planted along the public streets or public places:

- (1) *Acer negundo* (Boxelder);
- (2) *Acer saccharinum* (Silver maple);
- (3) *Aesculus hippocastanum* (Horse chestnut)
- (4) *Ailanthus altissima* (Tree of heaven);
- (5) *Betula pendula* (European white birch);
- (6) *Catalpa* (Catalpa – all common species, cultivars and varieties);
- (7) *Ginkgo biloba* (Ginkgo): female only;
- (8) *Liquidambar styraciflua* (American sweet gum – UNLESS FRUITLESS VARIETY);
- (9) *Malus* (Apple);
- (10) *Morus* (Mulberry – all fruiting species, cultivars and varieties);
- (11) *Populus* (Poplar – all common species, cultivars or varieties);
- (12) *Pyrus calleryana* “Bradford” (Bradford pear);
- (13) *Robina pseudoacacia* (Black locust);
- (14) *Salix* (Willow – all common species, cultivars or varieties);
- (15) *Sorbus acuparia* (European mountain ash);
- (16) *Ulmus americana* (American elm);
- (17) *Ulmus pumila* (Siberian elm)

(b) This section shall not apply to the Bexley Parks Department.

(c) Whenever any tree or shrub shall be planted or set out in conflict with the provisions of this Chapter, the Director may cause removal of the same and the City shall not be obligated to replace the tree or shrub planted without compliance with this Chapter.

1026.10 ABUSE OR MUTILATION OF TREES AND SHRUBS.

Unless issued a written permit by the Director, 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. No person shall permit any fire to burn where such fire or heat there from, or heat from any source, will injure any portion of any tree or shrub in any public street, park or public place.

1026.11 TAMPERING AND TREATMENT OF TREES AND SHRUBS IN PUBLIC PLACES.

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. Without permit, 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 Department.

1026.12 TOPPING.

It shall be unlawful as a normal practice for any person, firm, or City department to top any street tree, park tree, or other tree on public property. 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 section by the Commission.

1026.13 INTERFERENCE WITH CITY.

No person shall hinder, prevent or interfere with the agents or employees of the Department while the employees are engaged in planting, maintaining or removing any tree, shrub or evergreen in any public street, park or public place.

1026.14 MANDATORY STREET TREE PLANTING.

Whenever a new structure or an addition of 1,000 square feet or more of floor area is constructed, the property owner shall provide to the City one three inch caliper tree of a specie designated by the Commission for each 1,000 square feet of floor or lot area or for every 20 feet of lot frontage, whichever is greater. The trees shall be planted in the tree lawn of the subject property or another location as determined by direction of the Commission.

1026.15 EXCAVATION PROHIBITED.

No person shall excavate any ditch, tunnel, trench or lay any drive within a radius of ten (10) feet from any tree, shrub or evergreen standing on any public street, park or public place without first obtaining a permit from the Director. If, in the opinion of the Department, the digging of any trench will result in injury to any tree, the City will require that tunneling be done in lieu of trenching.

1026.16 DEAD OR DISEASED TREES.

It shall be unlawful for any property owner to maintain, or permit to stand on his property, any dead, diseased or damaged tree, shrub, evergreen or other plant which is deemed by the Department to be a menace to the public peace, health or safety. The Director may remove or cause or order to be removed, any tree or part thereof which by reason of its nature is injurious to public improvements or is deemed a menace by condition to the health, safety and welfare of the public. The Director shall order removal of such tree or shrub identified as dead, diseased or a menace, by letter sent first class mail. The owner shall have fifteen (15) days from the date of mailing to affect such removal. If the property owner fails to comply within the specified time, the City, its employees or agents may enter onto the property to remove such tree or shrub and to bill the property owner for the cost of the work and an administrative fee, or if necessary to assess the property owner as provided by law in the case of special assessments.

The person to whom an order is directed may appeal the order of the Director by notifying the Commission of such an appeal within fifteen (15) days after receipt of written notice. The Director will delay enforcement of the order until such time that the appeal may be presented to and decided by the Commission.

1026.17 DUTY OF PROPERTY OWNER TO PRUNE PRIVATELY OWNED TREES.

It shall be the duty of any person or persons owning or occupying real estate bordering on any street upon which property there may be trees or shrubs, to prune, or cause to be pruned such trees or shrubs in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, obstruct view of any street or alley intersection or generally obstruct vehicular traffic. Tree limbs extending over a sidewalk shall be trimmed to such an extent that no portion of the same shall be less than eight feet above the sidewalks. Tree limbs extending over streets and alleys shall be trimmed to a minimum of fifteen (15) feet so as to not interfere with the normal flow of traffic.

If any person or persons owning or occupying real estate property bordering on any street fails to prune trees or shrubs as herein provided above, the Director shall order such person or persons within fifteen (15) days after receipt of written notice, to so prune such trees or shrubs.

The order required wherein shall be served by mailing a copy of the order to the last known address of the property owner by first class mail. The owner shall have fifteen (15) days from the date of mailing to comply.

When a person to whom an order is directed shall fail to comply within the specified time, the City, its employees or agents may enter onto the property to prune such trees or shrubs and to bill the property owner for the cost of the work and an administrative charge, or if necessary to assess the property owner for same as provided by law in the case of special assessments.

1026.18 PUBLIC TREE CARE.

The City shall have the right to plant, prune, maintain and remove trees and shrubs within the rights of way of all streets, alleys, parks and other public grounds as may be necessary to insure public safety or to preserve or enhance the health of the plant material.

1026.19 PENALTY; EQUITABLE REMEDIES.

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.

Section 2. That Chapter 1026 as in effect prior to the effective date hereof is hereby repealed in its entirety.

Section 3. That this Ordinance shall be effective from and after the earliest period allowed by law.

Passed: _____, 2001

President of Council

Attest: _____
Clerk of Council

6/12/01 First Reading
6/26/01 Second Reading
Tabled.

Approved: _____, 2001

David H. Madison, Mayor