

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 402

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON ADDING A NEW CHAPTER 12.38 TO THE BURIEN MUNICIPAL CODE REGARDING STREET TREES AND TREES ON CITY PROPERTY

WHEREAS, the City Council of the City of Burien desires to adopt regulations concerning street trees and trees on City property;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. New BMC Chapter 12.38 Adopted. BMC 12.38, attached hereto as Exhibit A and incorporated by this reference as if fully set forth herein, is hereby adopted as the City's regulations regarding Street Trees and Trees on City Property.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 1ST DAY OF DECEMBER, 2003, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 1ST DAY OF DECEMBER, 2003.

CITY OF BURIEN

Wing Woo, Mayor

ATTEST/AUTHENTICATED:

Janice Roegner, City Clerk

Approved as to form:

Lisa Marshall, City Attorney

Filed with the City Clerk: November 26, 2003
Passed by the City Council: December 1, 2003
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Chapter 12.38
STREET TREES AND
TREES ON CITY PROPERTY

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12.38.010 Purpose Trees have substantial benefits to the public health, safety and welfare of the citizens of Burien, as well as to the environment. Additionally, the presence of trees in our community advances the economic, social and aesthetic well-being of the community by minimizing erosion, siltation and water pollution of lakes, streams and Puget Sound; providing slope stabilization and animal habitat; and reducing air pollution. Accordingly, the purpose of this Chapter is to provide for the planting, maintenance and protection of trees within the City of Burien (hereafter “the City”) on City Property.

12.38.020 Definitions For purposes of this chapter, the following terms shall have the following meanings:

- A. **City Arborist:** The person designated by the City Manager, or his/her designee, to administer the provisions of this Chapter.
- B. **City Maintenance Responsibility List:** A list identifying the Right-of-Way and City Property on which the City maintains the Street Trees and Other Vegetation. The list shall be on file with the City Clerk, and may be amended at any time by the City Manager or his/her designee.
- C. **City Property:** All Improved Right-of-Way, Unimproved Right-of-Way, and all other parcels, lots, or acreages, including parks and open spaces, within the City of Burien owned by the City.
- D. **Crown:** The leaves and branches of a tree, from the lowest branch on the trunk to the top.
- E. **Crown Cleaning:** The removal of dead, dying, diseased, crowded, weakly attached, low-vigor branches and watersprouts from a tree’s Crown.

- F. **Crown Raising:** The removal of the lower branches of a tree in order to provide a height of up to 8-feet for pedestrian clearance, up to 16-feet for vehicular clearance or such increase deemed appropriate by the City Arborist.
- G. **Crown Thinning:** The selective removal of branches not to exceed more than twenty-five percent (25%) of the leaf surface to increase light penetration and air movement, and to reduce weight.
- H. **Crown Topping:** The cutting of a trunk or main branch to a point where there is no branch large and vigorous enough to become a new leader.
- I. **Geologically Hazardous Area:** (See definition in BMC 19.10.190).
- J. **Hazardous Tree:** Any tree that receives an 11 or 12 rating under the International Society of Arboricultural rating method set forth in Hazard Tree Analysis for Urban Areas.
- K. **Improved Right-of-Way:** Rights-of-Way within the City that are paved, graded, or otherwise altered in any way for the purpose of vehicle, pedestrian, or bicycle travel.
- L. **Other Vegetation:** Trees, bushes, shrubs, grasses, or other plant material on or encroaching upon Improved or Unimproved Rights-Of Way.
- M. **Planting Strip:** That portion of an Improved Right-Of-Way used for the purpose of planting and maintaining Street Trees and Other Vegetation.
- N. **Prune or Pruning:** The pruning of a tree through Crown Thinning, Crown Cleaning, Windowing or Crown Raising, but not including Crown Topping of trees, or any practice or act that is likely to result in death of or significant damage to the tree.
- O. **Replacement Tree:** Any tree that is planted in order to satisfy the tree replacement requirements of a tree permit.
- P. **Right-of-Way:** All City Property granted or reserved for, or dedicated to, public use for street purposes, together with City Property granted or reserved for, or dedicated to, public use for walkways, sidewalks, and bikeways, whether improved, unimproved, or unopened, including the air rights, sub-surface rights and easements related thereto.
- Q. **Street Tree:** Any tree which is located within the Improved or Unimproved Right-of-Way in the City of Burien.

- R. **Unimproved Right-of-Way:** Rights-of-Way that are not paved, graded, or otherwise altered for the purpose of vehicle, pedestrian, or bicycle travel.
- S. **Windowing:** The selective removal of branches not to exceed more than twenty-five percent (25%) of the leaf surface while retaining the symmetry and natural form of the tree in order to increase views and light penetration.

12.38.030 Power and Authority

- A. The City shall have the exclusive power and authority over the planting, care and removal of trees and vegetation within all City Property owned by the City of Burien as necessary to ensure public safety or to preserve and enhance the quality and beauty of such areas.
- B. The City Manager, or his/her designee, shall oversee the planting, care and removal of trees on City Property. The City shall maintain trees planted by the City and may remove any of the following trees located on or near City Property: trees, or parts thereof, that present unsafe conditions; trees that are disruptive of utilities or public improvements; and trees infected with any significant disease or insect.

12.38.040 Tree Protection, Maintenance and Permit Requirements

- A. The City shall maintain all trees and Other Vegetation on the City Maintenance Responsibility List established pursuant to this Chapter. No person shall prune or remove trees or Other Vegetation on the City Property identified on the City Maintenance Responsibility List.
- B. The owner of property adjacent to an Improved Right-of-Way not listed on the City Maintenance List shall maintain Street Trees and Other Vegetation located in the Right-of-Way, including the Planting Strip between the sidewalk and curb, and the strip between the property line and the sidewalk or, if no sidewalk exists, the strip between the property line and the shoulder of the street. The owner of property abutting Unimproved Rights-of-Way shall maintain trees and Other Vegetation located in the Right-of-Way.
- C. The owner of property adjacent to an Improved or Unimproved Right-of-Way, may Prune trees adjacent to his/her property provided that the best practices, policies, techniques and methods for pruning trees established by the International Society of Arboriculture are followed, including Crown Cleaning, Crown Thinning, Crown Raising and Windowing. Crown Topping is not permissible. The City shall prepare and distribute educational materials describing best practices, policies, techniques, methods and procedures for pruning trees.

- D. Public utilities shall maintain any vegetation that interferes with their utilities and may Prune trees provided that the best practices, policies, techniques and methods for pruning trees established by the International Society of Arboriculture are followed.
- E. No person shall perform Pruning other than that permitted by this Chapter or remove trees in Planting Strips, Improved or Unimproved Right-of-Way without an approved Tree Permit. A Tree Permit **will not be issued** to a private individual for the pruning or removal trees or Other Vegetation on City Property identified on the City Maintenance Responsibility List, including streets, parks and open spaces. The issuance of a Tree Permit shall be based on the following:
1. The applicant demonstrates in the following order that all of the following conditions have been satisfied:
 - a) The applicant establishes that the tree is located on a Right-of-Way;
 - b) The applicant submits a valid petition executed by at least sixty percent (60%) of the property owners located within a three hundred foot (300') radius of the subject tree(s) in favor of the proposed Pruning of the tree;
 - c) The applicant pays a fee to cover all costs associated with reviewing the pruning request; and
 - d) The Pruning is performed by the City but at the sole cost and expense of the applicant.
 2. The City Arborist determines that the requested action or treatment is necessary based upon meeting one of the following criteria:
 - a) Consideration of generally accepted arboriculture standards established by the International Society of Arboriculture;
 - b) Determination that the tree is a "Nuisance Tree," i.e. a tree which is causing physical damage to property or has been damaged by past maintenance practices, and for which generally accepted arboriculture practices cannot correct the problem;
 - c) Action or treatment can be performed without adversely affecting the health of the tree or adjacent tree(s);
 - d) Action or treatment can be performed without adversely affecting Geologically Hazardous Areas; or
 - e) Determination that the existing trees and Other Vegetation are appropriate for the location.

3. A Tree Permit shall not be granted if the sole purpose of the proposed action is the removal of a tree for view enhancement.
 4. When the City Arborist determines that the removal of a tree is necessary in connection with a Tree Permit, the tree(s) shall be replanted or replaced. The cost of the removal and replacement of the tree shall be the responsibility of the permittee. Replacement Trees shall meet the following guidelines:
 - a) All Replacement Trees shall be at least six feet tall coniferous tree or have a minimum 2-inch caliper deciduous tree, unless a smaller size tree or shrub is approved by the City Arborist;
 - b) The number of replacement trees shall be at the ratio of three Replacement Trees for every one tree removed;
 - c) In lieu of planting Replacement Trees, and at the sole discretion of the City Arborist, the permittee may contribute to the City's tree fund a dollar amount equal to the value of the Replacement Trees, including installation costs; and
 - d) The permittee may be required to maintain all Replacement Trees in a healthy condition for period of two years after planting. The permittee may be obligated to replant any Replacement Tree that dies, becomes diseased or is removed during this two-year time period.
- F. **Permission to Crown Top healthy trees shall not be granted.** Trees that are severely damaged by storms or other causes, or certain trees under utility wires, or other obstructions where other pruning practices are impractical, may be topped for public safety.
- G. The removal of trees in Geologically Hazardous Areas is subject to the requirements contained in BMC Chapter 19.40, *Critical Areas*. No cutting of trees in "Geologically Hazardous Areas" is allowed between October 1 and April 1 of any calendar year unless approved by the Public Works Director, or is required due to an emergency-situation involving immediate danger to life and property.
- H. In addition to the requirements of this Chapter, persons must comply with all applicable federal and state laws, rules and regulations including, without limitation, the Endangered Species Act, the Bald Eagle Protection Act and the Migratory Bird Treaty Act, as now existing or herein adopted or amended.

12.38.050 Tree Planting on City Property The following rules shall apply to any planting on Rights-of-Way and City Property:

- A. New planting of trees and Other Vegetation on City Right-of-Way shall be allowed by permit only to ensure proper selection and placement of appropriate plant materials. The purpose of this requirement is to enhance aesthetic continuity and minimize Right-of-Way maintenance.
- B. **Planting Plan Required.** A tree-planting plan drawn to scale shall accompany each permit application. Such plan shall show graphically the following:
 - 1. Location and species of existing trees and vegetation;
 - 2. Location and species of proposed trees and vegetation;
 - 3. Location of property lines and Right-of-Way lines;
 - 4. Dimension of Planting Strip or tree well;
 - 5. Location and type of utility; and
 - 6. Location of proposed facilities (Example: irrigation system).
- C. Tree planting methods shall be in accordance with the standards and specifications as developed by the City.
- D. New trees planted in the Right-of-Way shall be selected from a list of recommended species approved by the City. This list will be periodically updated.

12.38.060 Violations - Penalties

- A. **Minimal Penalties.** In addition to or as an alternative to any other penalty provided herein or by BMC 8.45, any person who violates any provision of this Chapter shall be guilty of a misdemeanor, and shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000, or by both such imprisonment and fine.
- B. **Nuisance.** Any person violating the provisions of this Chapter is hereby declared to have committed, or to continue to commit, a nuisance and is subject to applicable enforcement provisions contained in BMC 8.45.
- C. **Action Under RCW 64.12.030.** In addition to or as an alternative to any other penalty provided herein, the City may bring an action in trespass under the Timber Trespass Statute, RCW 64.12.030 for the removal or damage to any tree or ornamental shrub on City Property. Should the City obtain judgment against a person or persons under RCW 64.12.030, the City shall be entitled to treble the amount of damages claimed or assessed therefore.

- D. Additional Enforcement Procedures. The provisions of this Chapter are not exclusive, and may be used in addition to any other remedies in law or equity.

12.38.070 Appeal Denials of Tree Permits may be appealed to the City of Burien Hearing Examiner in the same manner as a Type 1 Decision and using the same process, standards of review, and time periods set forth in BMC 19.65.065.

12.38.080 City Maintenance Responsibility List There shall be maintained in the office of the City Clerk a City Maintenance Responsibility List for Street Trees and Other Vegetation on Right-of-Way and City Property. This list shall be as set forth below, but may be amended at any time by the City Manager, or his/her designee:

- A. All trees and Other Vegetation on designated City-owned property, including all Parks, Open Space, City Hall and the Burien Community Center.
- B. Any tree or Other Vegetation that the City has planted in the interest of the City.
- C. Any tree or Other Vegetation in a Right-of-Way that impedes vehicle or pedestrian traffic or obstructs the vision of vehicles or pedestrian.
- D. Trees and Other Vegetation along the following Rights-of-Way or in the following areas:
 - 1. SW 152nd Street from 1st Avenue South to 10th Avenue SW;
 - 2. 4th Avenue SW from SW 128th Street to SW 156th Street;
 - 3. Ambaum Blvd SW from SW 116th Street to SW 144th Street;
 - 4. 13th Avenue SW from SW 144th Street to the entrance of Seahurst Park;
 - 5. SW 150th Street from 1st Avenue South to Ambaum Boulevard SW
 - 6. The west side of 6th Avenue SW from SW 148th Street to SW 150th Street;
 - 7. The north side of SW 148th Street from 1st Avenue South to 2nd Avenue SW; and
 - 8. The Triangle Park area formed by the intersection of Ambaum Boulevard SW, 8th Avenue SW and SW 154th Street.