

**ORDINANCE NUMBER 11-02
OF THE CITY OF FRANKLIN, INDIANA**

An Ordinance to Protect the City's Tree Resources

(Amended After Introduction)

WHEREAS the selection, planting, maintenance, removal, and overall care of trees, shrubs and hedges on public property and within public rights-of-way affect such diverse matters as drainage, air and water quality, pedestrian and vehicular safety, utility placement and maintenance, disease control, the general appearance of the City of Franklin and its streetscape, and the general quality of life for Franklin's citizens.

WHEREAS, such matters are of city-wide concern and should be regulated by Ordinance.

WHEREAS, Ordinance No. 05-14 (which improved upon the City's program for the protection and maintenance of trees along public rights-of-way) should be repealed in its entirety and replaced by this Ordinance.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA, ORDAINS AND ENACTS THE FOLLOWING:

- 1) **Repeal of Ordinance 05-14:** Ordinance 05-14 is hereby repealed and replaced in its entirety by this Ordinance;
- 2) **Definitions**
 - 2.1 City or City of Franklin means the City of Franklin, Indiana, including but not limited to the Mayor, Board of Works, Common Council, Planning Department, Street Department, Tree Board, and City Arborist.
 - 2.2 Arborist is a person who holds a current ISA Certification.
 - 2.3 City Arborist is an arborist employed by the City.
 - 2.4 Tree means a perennial plant having a woody supporting main stem or trunk, ordinarily growing to definite heights and usually developing branches at some distance from the ground.
 - 2.5 Street Tree means a tree on real estate owned or controlled by the City, including trees located within public rights-of-way or within eight (8) feet of the street curb if the right-of-way cannot be determined, but excluding trees on real estate owned and controlled by the Franklin Parks and Recreation Department or Greenlawn Cemetery, or trees located within public alleys.

- 2.6 Tree Board means a group of citizens appointed pursuant to this Ordinance to carry out the duties as defined herein.
- 2.7 Tree Board Designee means any person or persons that have been designated by and who work under the auspices of the Tree Board.
- 2.8 Tree Care means the removal, planting, treating, spraying, pruning, and any other tree maintenance or cultural work intended for the enhancement or preservation of trees, as well as the removal or prevention of any and all damage to any Street Trees caused by tree pests, blights, diseases, or injury.
- 2.9 Tree Injury means to harm, damage, misuse, or contribute ill-effect toward a tree or its root system.
- 2.10 Topping means the cutting back to stubs of limbs larger than three inches (3") in diameter within the tree's crown (top) so as to remove or damage the normal canopy.
- 2.11 Tree Manual means that document created and maintained by the Tree Board that regulates Street Trees and tree care within the City.
- 2.12 Shall is mandatory and not merely suggestive.
- 2.13 Person means any person, firm, partnership, association, corporation, contractor, sub-contractor, company, or organization of any kind.
- 2.14 Utility Companies means both public and private companies, their employees, and contractors.

3) **Tree Board**

- 3.1 There is created and established a Tree Board consisting of seven (7) voting members, all of whom are to be residents of the City. The Mayor and Common Council may also appoint City employees to serve as advisors or as ex-officio members. City employees may serve as voting members provided they are City residents.
- 3.2 Tree Board members shall serve a term of three (3) years, except that the term of two (2) of the initial members shall be for only one (1) year and the term of two (2) other initial members shall be for two (2) years (in order to stagger the terms). The Mayor will appoint Tree Board members, and designate which of the initial members will serve one (1), two (2), or three (3) year terms, respectively. The Tree Board may recommend candidates to fill vacancies. In the event that a vacancy occurs during the term of any member, his or her successor shall be appointed by the Tree Board for the unexpired portion of said term. No voting member shall serve more than two consecutive full terms.
- 3.3 Members of the board shall serve without compensation.

- 3.4 The Duties and responsibilities of Tree Board (and its designees) shall be:
- a) Develop a census or inventory of the City's Street Trees, specifying type, location and condition of the trees;
 - b) Establish a pattern of orderly, periodic inspection of the condition of the trees and fully document that inspection;
 - c) Develop a master plan for the care, preservation, pruning, planting, removal and disposition of Street Trees along existing City streets and of trees along waterways outside of the City's park system.
 - d) Annually submit a request to the Mayor for a budget to cover educational and public relations expenses over and above the clerical, labor and material needs as covered by the City Street Department Budget.
 - e) Develop, maintain, and promote a Tree Care Manual to regulate all tree care for Street Trees in the City.
 - f) The Tree Board shall publish and provide a list of desirable trees for planting in both public and private areas so as to ensure public enjoyment as well as safety and welfare. This list can be included in the Tree Manual.
 - g) Consider, investigate, make findings, report, recommend upon, and keep adequate records of its actions upon any permit, matter or question that comes within the scope of its work as defined by this ordinance.
 - h) Coordinate its efforts and related projects with groups such as the Park Board, Plan Commission, Engineering Department, Greenlawn Cemetery, and Street Department.
 - i) Establish and maintain communications with the Indiana Department of Transportation ("INDOT") as to any highway projects which would affect the planting area along state highways within the City limits.
 - j) Promulgate rules and regulations for the proper administration of this ordinance including but not limited to methods of good arboriculture.
 - k) Review with the City Department of Planning and Zoning all plans and projects both municipal and private to ensure the preservation of existing trees and the planting of new trees in subdivisions or along road ways.
 - l) Review with the City Department of Planning and Zoning all public utility projects and street cut permits which might endanger existing Street Trees.

- m) Cause or order the removal of any Street Tree or part thereof which is deemed to be unsafe, in irreversible decline, or affected with injury, fungus, insect or other pests.
- n) Issue or approve any permits through the Street Department as required in the course of its duties.
- o) Verify all arborists' certifications, as well as the certifications of those persons performing Street Tree care.
- p) Conduct educational and fund-raising campaigns, and work with persons, and organizations, as well as private and public agencies to establish programs for planting and care of trees.
- q) Establish a non-reverting tree capital improvement fund. Said fund to be used for collecting and hold monies derived from both public and private sectors, and shall include those funds collected from fees, fines, or other tree violations. Said fund to be used by the Tree Board for tree care, and educational programs. In the event of the discontinuance of the Tree Board any remainder funds shall revert to the general fund of the City, and shall be designated for Tree Care.

4) Tree Board Operation

- 4.1 The Tree Board shall: organize and choose its own officers; establish and amend from time to time its own operating rules, policies, and regulations; give proper notice and access for all meetings; and keep a record of its proceedings and actions.
- 4.2 A majority of the voting members shall be required for the Tree Board to meet and conduct its business.
- 4.3 The Board of Works shall have the option and authority to review, and reverse the conduct, actions, and decisions of the Tree Board.
- 4.4 Any aggrieved person may make a written appeal to the Board of Works and Safety from any ruling, action, order, or fine of the Tree Board.

5) Regulations

- 5.1 Except as otherwise permitted, the planting and care of all Street Trees shall be done by, or under the direction of, the Tree Board, and in accordance with the Tree Care Manual.
- 5.2 The City's Street Commissioner or public utilities may trim or remove trees in emergency situations. INDOT may trim or remove trees that could endanger traffic on state highways within the City limits. In emergencies, when a tree has been severely damaged, or

- injured by storms and other causes, or is obstructing utility service, the City's Street Commissioner or public utility may resort to topping or other severe cutting back of limbs on Street Trees but must, in a timely manner, report all such incidents to the Tree Board (or its designee), with reference to location, date, and time.
- 5.3 Public utilities may perform Street Tree care as necessary for the maintenance of utility service and as is prescribed by state law, but Utilities remain responsible for proper pruning (tree care), and replacement of Street Trees which must be removed, or become injured in the course of maintaining utility lines.
 - 5.4 It is unlawful for any person to top or prune horizontally any branch more than one inch (1") in diameter, or cut limbs within the tree's canopy back to stubs larger than three inches (3") in diameter on any Street Tree without first obtaining a permit from the Tree Board, or its designee.
 - 5.5 The owner (as determined by the current deed of record) of property abutting public rights-of-way may request and obtain a permit to perform maintenance on, or to plant, Street Trees at his or her own risk and expense. All tree care shall be in accordance with the Tree Care Manual. Owners who remove (with or without a permit) a healthy tree shall be required to replace that tree.
 - 5.6 An owner shall hire only ISA Certified Arborists to perform routine Street Tree care or maintenance (after obtaining permit). The arborist must be licensed and insured prior to securing a permit for said tree care from the Tree Board or its designee.

6) Permits, Bonds and Certification Fees

- 6.1 No person (including arborists) shall plant, treat, spray or prune a Street Tree unless the Tree Board or its designee shall have first granted a proper permit. Such permits may be issued to property owners or to certified arborists.
- 6.2 No person shall remove a Street Tree unless the Tree Board or its designee shall have first granted a proper permit. Such permits may be issued only to certified arborists.
- 6.3 Every permit issued by the Tree Board or its designee shall specifically describe the work to be done, be issued according to the seasonal aptness of the proposed work, and be valid for a period of sixty (60) days from the issue date unless extended by the Tree Board.
- 6.4 Each applicant firm having an ISA Arborist's Certification must provide evidence liability insurance in the minimum amounts of Three Hundred Thousand Dollars (\$300,000.00) (per occurrence) for death or bodily injury, and Fifty Thousand Dollars (\$50,000.00) (per

occurrence) for property damage, and the insurance policy shall name the City of Franklin, Indiana as an “additional insured”. Further, each applicant must agree to indemnify the City, its elected or appointed officers, employees and agents, against all claims and damages, including the cost of defense, incurred as a result of said work.

- 6.5 The Arborist’s Certification fee shall be Twenty Five Dollars (\$25.00) paid in advance to the City of Franklin, Office of the Clerk-Treasurer, 70 East Monroe Street, Franklin, Indiana, 46131.
- 6.6 Cancellation or other termination of any insurance policy issued for or in compliance with the provisions of this Ordinance shall automatically terminate any arborist’s certificate, unless another policy complying with the provisions of this chapter shall be provided and in full force and effect at the time such cancellation or termination becomes effective.
- 6.7 Upon certification, each arborist must file with the City’s Office of the Clerk-Treasurer a cash bond of Five Hundred Dollars (\$500.00) as security against any damage to Street Trees resulting from the pursuit of such endeavors as described herein. The bond shall be refunded to the arborist (less any assessment by the Tree Board for damages caused by the arborist) upon certification being withdrawn by the arborist or revoked by the Tree Board.

7) Penalties

- 7.1 Except as otherwise provided herein, any removal or pruning of Street Trees without the consent of, or a permit issued by, the Tree Board or its designee, shall be deemed a violation of this Ordinance.
- 7.2 The City’s Building Inspector, Tree Board designee, Code Enforcement Officer, Street Commissioner, and any City law enforcement official are empowered to issue a Stop Work Order, either verbal or written, and/or a Notice of Violation to stop any cutting or removal of any Street Tree until such time as the requirements and procedures contained in this ordinance are followed. City officials shall take those reasonable and necessary steps to prevent illegal damage or injury to Street Trees.
- 7.3 The fines for violating the provisions of this ordinance are due and payable immediately. Fines remaining unpaid after five (5) days will double. Such fines are in addition to any costs of repair or replacement, costs of prosecution and collection, and court costs.

7.4 Fines are as follows:

Offense	1st Offense	2nd Offense
Topping	\$200.00 fine, and tree replacement costs	\$500.00 fine, and tree replacement costs
Tree Care, without permit, including unauthorized pruning	\$100.00 fine, and tree repair costs	\$200.00 fine, and tree repair costs
Causing Tree Injury	\$100.00 fine, and tree repair or replacement costs	\$200.00 fine, and tree repair or replacement costs
Tree Removal, or vandalism	\$200.00 fine, and tree repair or replacement costs	\$500.00 fine, and tree repair or replacement costs

7.5 The fines, as stated above, will be issued by any of the persons authorized to act under Section 7 of this ordinance, by way of a Notice of Violation, the form of which is to be developed, approved, and amended from time to time by the Tree Board.

7.6 For each day an act of commission or omission continues which is in violation of this ordinance a separate offense will be deemed to have occurred.

7.7 Appeals to the City's Board of Public Works and Safety must be made in writing within five days of a Notice of Violation being issued.

7.8 The failure to voluntarily pay the penalty at the Office of the Clerk-Treasurer within thirty (30) days of the issuance of a Notice of Violation may result in the violator being cited into a court of competent jurisdiction and, upon being found guilty, becoming liable for costs of prosecution, court costs, and the penalties set out in Section 7 of this Ordinance.

7.9 If there is a violation of any provision of this chapter that is not specifically provided for elsewhere, the violator, upon conviction, may be fined in the court a sum not exceeding Five Hundred Dollars (\$500.00) and shall be required to pay the costs of prosecution and court costs for enforcement of the same, as determined by the Court.

7.10 In the event the City's Board of Public Works and Safety deems it necessary, injunctive relief against the violator may be sought in addition to the other remedies provided in this Ordinance.

7.11 All collected fines will be held, and expensed in accordance with this ordinance.

8) Adoption of Tree Care Manual.

8.1 The enclosed Tree Care Manual is adopted as the City's program for the protection, care and maintenance of trees along public rights-of-way;

8.2 Changes to the Tree Care Manual will be recommended by the Tree Board and adopted by the City of Franklin Board of Public Works.

9) **Construction of Clause Headings.** The clause headings appearing in this ordinance have been provided for convenience and reference, and do not purport and will not be deemed to define, limit, or extend the scope or intent of the clauses to which the headings pertain;

10) **Repeal of Conflicting Ordinances.** The provisions of all other ordinances in conflict with the provisions of this ordinance are of no further force or effect, and are now repealed;

11) **Severability of Provisions.** If any part of this ordinance is held to be invalid, such part will be deemed severable and its invalidity will have no effect upon the remaining provisions of this ordinance;

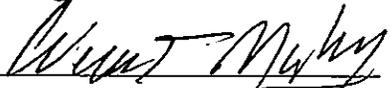
12) **Duration and Effective Date.** The provisions set forth in this ordinance become and will remain in full force and effect (until their repeal by ordinance) on day of the passage and adoption of this ordinance by signature of the executive in the manner prescribed by Indiana Code §§ 6-4-6-15, 16.

Introduced and Filed on the 4th day of April, 2011. A motion to consider same on the First Reading or day of introduction was [not offered] [sustained by a vote of 6 in Favor and 0 Opposed, pursuant to Indiana Code § 36-4-6-13.]

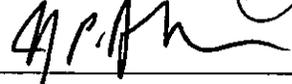
DULY PASSED on this 4th day of April, 2011 by the Common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote 6 in Favor and 0 Opposed.

City of Franklin, Indiana, By its Common Council:

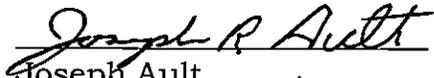
Voting Affirmative:



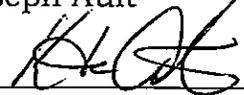
Dr. William Murphy, President



Joseph Abban



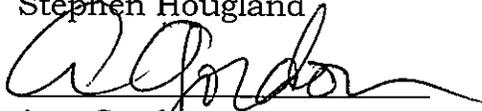
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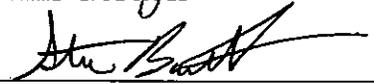
Kenneth Austin

Absent

Stephen Hougland



Ann Gordon



Steve Barnett

Voting Opposed:

Dr. William Murphy, President

Joseph Abban

Joseph Ault

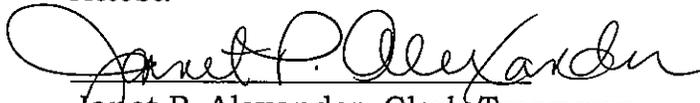
Kenneth Austin

Stephen Hougland

Ann Gordon

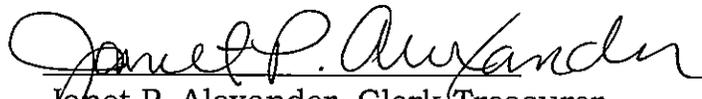
Steve Barnett

Attest:



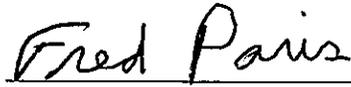
Janet P. Alexander, Clerk-Treasurer

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana Code § 36-4-6-15,16, this 4 day of April 2011 at 7:10 o'clock p.m.



Janet P. Alexander, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me this [Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1)] [Vetoed, pursuant to Indiana Code § 36-4-6-16(a)(2), this 4 day of April 2014 at 7:00 o'clock p.m.



Fred Paris, Mayor

Attest:



Janet P. Alexander, Clerk-Treasurer

Prepared by:

Robert H. Schafstall

Atty. No. 16944-41