



ORDINANCE NO. 24- 02

**AN ORDINANCE OF THE TOWN OF PENDLETON, MADISON COUNTY, INDIANA, AMENDING
ORDINANCE NO. 2022-20 GOVERNING TREES AND SHRUBS**

Recitals

WHEREAS, pursuant to Town of Pendleton No. 2022-20, the Pendleton Urban Forestry Committee consists of five (5) voting members; and,

WHEREAS, the Urban Forestry Committee has previously advised the Town Council that in the interest of efficiency and growth of the urban forestry program, it is desirable to allow up to two (2) ex officio, non-voting members in addition to the five (5) voting members; and,

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Council as follows:

SECTION 1. Chapter 96 of the Code and Ordinance No. 2022-20 are amended and restated in its entirety as follows:

CHAPTER 96: TREES AND SHRUBS

Section

General Provisions

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GENERAL PROVISIONS

§ 96.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"APPROVED STREET TREE SPECIES LIST." A list of proven trees deemed adaptable to the street conditions of the Town of Pendleton. This list is located in the Town of Pendleton Comprehensive Tree Care Manual.

"BOARD OF ZONING APPEALS." The Town Board of Zoning Appeals as provided by Indiana Code § 36-7-4-900 et seq. and Town Zoning Code § 153.03.

"CRITICAL ROOT ZONE." A circular region measured outward from the tree trunk representing the essential area of the roots that must be maintained or protected for the tree's survival. Critical root zone is one (1) foot in radial distance for every inch of tree diameter at breast height ("DBH"), with a minimum distance of eight (8) feet.

"MAINTENANCE." Trimming, care, pruning, protection, treatment, and preservation of trees.

"NOTICE OF VIOLATION." A written notice of ordinance violation.

"OWNER." The person in whom is vested the ownership, dominion, or title of property.

"PERSON." An individual, partnership, limited liability company, corporation, firm, and any other association or its agents or organization of any kind.

"PLAN COMMISSION." The Town's Plan Commission as established by Ordinance §33.15 of the Town's Code of Ordinances.

"PLANNING DEPARTMENT." The Town's planning department, which generally consists of the Town Manager, the Town Planning and Zoning Coordinator, and the Town Building Inspector.

"PUBLIC STREET." The entire area between the boundary lines of every dedicated right-of-way platted for and open to the use of the public, as a matter of right, for the purpose of vehicular and pedestrian traffic within the corporate boundaries of the Town.

"PUBLIC TREES." Trees on Town owned platted public areas.

"RIGHT-OF-WAY." Improved or unimproved public property owned by, dedicated to, or deeded to, the public or for the public's use for the purpose of providing vehicular, pedestrian, or other public use. Right-of-way may be in the form of easement or fee.

"SHRUB." A woody plant which is characteristically below twenty (20) feet in height and is multi-stemmed supporting mainly leafy growth.

"STREET TREE." Any tree with 51% or more of its trunk within the public right-of-way.

"TOPPING." The severe cutting back of stubs of limbs larger than three (3) inches in diameter within the tree's crown so as to remove the normal canopy and disfigure the tree.

"TOWN." The Town of Pendleton, Madison County, Indiana.

"TOWN COUNCIL." The duly elected Town Council of the Town.

"TOWN MANAGER." The Town Manager of the Town or her or his designee.

"TOWN OF PENDLETON COMPREHENSIVE TREE CARE MANUAL." The official arboricultural specifications manual of tree work as adopted by the Town which specifies the policies and recommended practices of urban forestry and which includes recommendations of size, spacing, and species of trees in urban forestry.

"TREE." A perennial woody plant, ordinarily with one (1) main stem or trunk, which develops many branches, and which ordinarily grows to a height of twenty (20) feet or more.

"TREE WORK." The planting, pruning, removal, treating, spraying, and any other tree maintenance or horticultural work intended for the enhancement or preservation of trees, and the removal and prevention of any and all damages to any trees caused by tree pests, blights, and diseases. Tree work shall also include excavation near trees and the planting of shrubs within the public tree lawn.

"TREE LAWN." The area within the street right-of-way that can be landscaped, including: medians, the center of roundabouts, the space between the street and the sidewalk, or between a parking lot and the street.

"UTILITIES." Both public and private utility companies.

§ 96.02 AUTHORITY

- (A) The Town shall have the authority, control, supervision, and direction over all trees and shrubs subject to these provisions.
- (B) The Town shall have all the right and authority to order the removal of any tree or shrub or part thereof on private property which is deemed to be in an unsafe condition or which by the reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, telecommunication lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest which constitutes a potential threat to other trees within the Town, or which constitutes a potential threat to other trees within the Town, or which constitutes a threat to public health or safety.
- (C) The Town shall prepare and publish guidelines and specifications for tree planting, care, maintenance, and removal in a document entitled the Town of Pendleton Comprehensive Tree Care Manual for reference and use by property owners, developers, consultants, and the general public in furtherance of the requirements and intent of this Chapter. The Manual shall be developed and maintained with the assistance of the Pendleton Urban Forestry Committee.
- (D) The Town shall review all applications for permits for any planting, removal, and/or trimming or cutting of trees subject to these provisions and shall have the authority to grant or deny permits and to attach reasonable conditions to the granting of a permit.

§ 96.03 TREE LAWN AREA MAINTENANCE

- (A) The Town shall have all the right and authority granted to municipalities under law to require the owners of parcels of land adjacent to a public street to maintain and improve the street tree lawn area. Such maintenance and improvement shall include but is not limited to leaf raking, turf grass mowing, brush collection, and landscape bed maintenance.
- (B) The surface of tree lawn areas shall be as level as practicable, and the grade thereof shall be the top lines of the sidewalk and curb. No person shall pave, gravel, remove or otherwise convert existing grassed tree lawn areas.

§ 96.04 TREE TOPPING BANNED

It shall be unlawful for any person to top any tree subject to these provisions. Topping is defined in section 96.01. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning methods are impractical, may be exempted from this practice by a written determination by the Town Manager.

§ 96.05 PUBLIC NUISANCE

All trees or shrubs within the Town which are determined by the Town Manager to constitute a public hazard or threat to health, safety, life, or property may be declared to be a public nuisance. The Town Manager may order removal of such nuisances or other violations of this Chapter.

§ 96.06 PUBLIC SAFETY AND REQUIRED CLEARANCES

- (A) Trees or shrubs subject to these provisions shall be sited as not to impede traffic visibility line of sight, at distances from street intersections as regulated by the Town of Pendleton Unified Development Ordinance and recommended in the Town of Pendleton Comprehensive Tree Care Manual.
- (B) Every owner shall remove or have removed all dead, diseased, or dangerous trees, or broken or decayed limbs which overhang or may fall upon public property and which constitute a hazard to public safety. In addition, every owner shall properly prune or have properly pruned the branches of such tree(s) or shrubs so that the branches shall not obstruct any traffic control signs or devices, the view of any street intersection, or light from any street lamp. There shall be a clearance standard space of fifteen (15) feet above any highway or street surface and eight (8) feet above any sidewalk surface to the bottom of the tree canopy. The Town shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign after notification from the Town Manager to the Property Owner.

§ 96.07 REMOVAL OF STUMPS

In the process of tree removal, stumps of trees subject to these provisions shall be ground to six (6) inches or more below ground level and the cavity filled with soil and leveled. Stump removal shall include the chipping of all limbs and removal of the stump.

§ 96.08 ARBORISTS LICENSE AND BOND

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street trees within the Town without first applying for and procuring a license. The annual license fee shall be \$25 and paid in advance, provided, however, that no license shall be required of any public utility company or town employee doing such work in pursuit of their public utility endeavor. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$100,000 for bodily injury and \$300,000 property damage indemnifying the Town or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

§ 96.09 PROHIBITED ACTIONS

- (A) No person shall in any manner obstruct or interfere with the agents or employees of the Town while carrying out the provisions of this chapter or the orders issued by the Town Council or Town Manager.
- (B) No person shall do any of the following to trees or shrubs subject to these provisions.
 - 1. Damage, cut, carve, or deface;
 - 2. Attach any wires, nails, chains, cables, advertising posters, or any other contrivance;
 - 3. Allow contact with any harmful gaseous, solid, or liquid substance; or
 - 4. Set fire to or allow to burn.

§ 96.10 TREE WORK PERMITS

- (A) All tree work, performed on trees subject to these provisions, shall follow the standards as set forth in this chapter and in the Town of Pendleton Comprehensive Tree Care Manual.
- (B) Except for the Town and its agents, no person shall, unless otherwise noted herein, take the following actions without having first secured a Tree Work Permit:
 - 1. Plant, cut, remove, or treat with pesticide any tree subject to these provisions, except as otherwise noted herein; or
 - 2. Excavate any ditches, tunnels, or trenches, lay any drive, install underground utilities, or store any substance within a ten (10) foot radius of any tree subject to these provisions. When excavating, constructing or performing street work within a ten (10) foot radius of any tree subject to these provisions, the tree shall be guarded with a fence, frame, or box, not less than four (4) feet high and eight (8) feet by eight (8) feet square and all building material, dirt, or other debris shall be kept outside the barrier. Where heavy equipment will pass repeatedly over the tree's critical root zone, a temporary layer of at least three (3) inches depth of shredded bark or wood chips shall be placed and maintained on the ground.
- (C) No permit shall be required in the following situations:
 - 1. The trimming, by a property owner, of limbs less than three (3) inches in diameter of any tree subject to these provisions in the tree plot adjoining the owner's property, which does not exceed thirty percent (30%) of the tree's canopy,
 - 2. During emergency situations, the Town or public utilities may trim or remove any trees which endanger the public, inhibit the passage on Town streets, or interfere with utilities and public infrastructure. Topping and the severe cutting back of limbs may be allowed under emergency conditions. The Town may act without prior notification to the property owner,
 - 3. Any tree work performed by a Town department or its agents, or
 - 4. During road, curb, or sidewalk construction or utility installation or repair it may be necessary for the Town to remove a non-hazard tree or trees. Trees in such situations shall be evaluated by the Town Manager as to preservation potential.
- (D) Tree Work Permits are available without a charge from the Planning Department. All permit applications shall be reviewed by the Planning Department. The granting or denial of these permits shall be made in accordance with the policies and principles of urban forest management set forth in this chapter or as otherwise adopted by the Committee.
- (E) Any tree work related to matters pending before the Board of Zoning Appeals, the Plan Commission, or the Town Council shall be accompanied by a completed Tree Work Permit. If the Board of Zoning Appeals, the Plan Commission, or Town Council approves matters which will impact trees subject to these provisions, the Tree Work Permit is deemed automatically granted and shall be forwarded to the Department. Decisions by the

Board of Zoning Appeals, the Plan Commission, or the Town Council that impact trees subject to these provisions shall be made in accord with the policies and principles of urban forest management set forth in this chapter or as otherwise adopted by the Committee.

§ 96.11 NOTICE OF VIOLATION.

(A) If the Town Manager determines there is a violation of this Chapter or a public nuisance, the Town Manager will issue a Notice of Violation (NOV) to the responsible party. For purposes of issuing a NOV, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: property owner(s); and persons who have caused the violation.

(B) The NOV shall be served upon the responsible party by mailing a copy to that person's last known mailing address. The notice shall include:

1. The address by legal description or street address of the location or premises of the tree(s) or shrub(s);
2. The kind of tree or shrub in violation of this ordinance;
3. The sections of this ordinance for which the responsible party is in violation;
4. Any actions that the responsible party may undertake to abate such violation and the time period specified to abate such violation and the time period specified to abate such violation;
5. The fact that a penalty may be assessed pursuant to Chapter 13 of the Town's Code of Ordinances; and
6. The date after which the Town may abate the nuisance or violation.

(C) The Town shall, upon order of the Town Manager, take steps to remedy the violation. If the responsible party fails to remedy the violation cited in the NOV during the correction period, the Town may bring suit in a court of competent jurisdiction to collect the accumulated fines, and any other costs associated with the remedy of the violation as are allowed by law, and any other remedies available, including to but not limited to injunctive relief.

(D) If a property owner fails to abate the violation cited in the NOV and the Town remedies the violation, the Town Clerk-Treasurer's office shall prepare a certified statement of the actual cost incurred by Town for the action. The landowner shall pay the amount in the statement to the Town Clerk-Treasurer's Office within ten (10) working days of receiving it. If the property owner should fail to pay within the ten (10) day period, a certified copy of the statement of costs shall be filed in the offices of the Madison County Auditor. The Madison County Auditor shall place the amount claimed on the tax duplicate against the property affected by the work. The amount shall be collected as taxes are and disbursed to the general fund of the Town.

§ 96.12 VIOLATION AND PENALTIES.

(A) Any person violating any of the provisions of this chapter may be issued an official warning.

(B) Any person violating any of the provisions of this chapter shall, upon a written Notice of Violation (NOV), be subject to a penalty as described in Chapter 13 of the Town Code.

§ 96.13 APPEAL.

Any person aggrieved by the Town Manager's denial of a Tree Work Permit or the issuance of a Notice of Violation shall have the right of appeal to the Urban Forestry Committee. No appeal is allowed for emergency tree removal, described in Section 96.10(C)(2). Appeals should be made within then (10) working days after the action complained of. An appeal is made by filing a written statement with the Urban Forestry Committee setting forth fully the grounds for the appeal. The Committee shall hold a public hearing on the appeal in accordance with the requirements of Section 154.01. Notice for the public hearing shall be provided in the manner prescribed by 154.01. The Committee shall render a written decision on the appeal. The decision and order of the Committee on such appeal shall be final and conclusive. All appeals from written findings of the Committee shall be made to a court of competent jurisdiction within ten (10) working days of the issuance of the findings.

URBAN FORESTRY COMMITTEE

§ 96.20 ESTABLISHMENT OF URBAN FORESTRY COMMITTEE AND AMENDMENT THERETO.

There is hereby created and established an Urban Forestry Committee for the Town of Pendleton, Indiana which shall consist of five (5) voting members, citizens and residents of the community, who shall be appointed by the Town Council President with approval of the Town Council.

§ 96.21 TERM OF OFFICE AND AMENDMENT THERETO.

In addition to the five (5) voting members, the committee may have up to two (2) ex officio, non-voting members serve on the Urban Forestry Committee, citizens and residents of the community, who shall be appointed by the Town Council President with approval of the Town Council.

The term of the five (5) persons to be appointed by the Town Council President shall be three years except that the term of two of the members appointed to the first committee shall be for only one year and the term of three members of the first committee shall be for two years. In the event that a vacancy shall occur during the term of any member, the successor shall be appointed for the unexpired portion of the term.

The term of the two (2) ex officio, non-voting persons to be appointed by the Town Council President shall be three years. In the event that a vacancy shall occur during the term of an ex officio member, the successor may be appointed for the unexpired portion of the term.

§ 96.22 COMPENSATION.

Voting members and ex-officio, non-voting members of the Committee shall serve without compensation.

§ 96.23 DUTIES AND RESPONSIBILITIES.

(A) It shall be the responsibility of the Committee to study, investigate, counsel, develop, update annually, and administer a written plan for care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs along streets and in other public areas. Such plan will be presented annually to the Town Council and upon their acceptance and approval shall constitute the official Town of Pendleton Comprehensive Tree Care Manual for the town.

(B) The Committee, when requested by the Town Council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

§ 96.24 OPERATION.

The Committee shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

§ 96.25 REVIEW BY TOWN COUNCIL

The Town Council shall have the right to review the conduct, acts and decisions of the Committee.

§ 96.26 REMOVAL OF COMMITTEE MEMBER

A majority of the Town Council may remove any member of the Committee for any cause.

SECTION 2. Any Section or Subsection of the Code that is not specifically amended or restated herein remains in full force and effect.

SECTION 3. If any provision in this Ordinance is declared invalid, the remaining provisions of the Ordinance shall remain in full force and effect.

SECTION 4. Any ordinances or provisions thereof that are inconsistent with this Ordinance are hereby superseded.

SECTION 5. This ordinance shall be in full force and effect after adoption and publication in accordance with Indiana law.

[Signature Page Follows]

Passed and adopted by the Town Council of the Town of Pendleton, Indiana, this 8th day of February, 2024.


THE TOWN COUNCIL OF THE
TOWN OF PENDLETON, INDIANA

 _____ ✓ ✓

Marissa Skaggs, President

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Steve Denny, Vice President

 _____ ✓ ✓

Jerry Burmeister, Member

 _____ ✓ ✓

Bryan Williams, Member

 _____ ✓ ✓

Cory Hall, Member

ATTEST:

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Willie Boles, Clerk-Treasurer