

## ORDINANCE 76-99

**AN ORDINANCE ESTABLISHING A PROCESS TO INVENTORY AND REGULATE THE KIND, LOCATION, AND AMOUNT OF TREES AND OTHER LANDSCAPE MATERIALS PLANTED BY PRIVATE PROPERTY OWNERS ON PUBLIC PROPERTY AND RIGHT-OF-WAY, AND CREATING A PERMIT PROCESS WHICH ESTABLISHES GUIDELINES FOR THE PLANTING AND MAINTENANCE OF TREES AND SHRUBS IN PUBLIC AREAS AND RIGHT-OF-WAY BY ADJACENT PROPERTY OWNERS; AND FURTHER ESTABLISHING AN APPEAL PROCESS FOR APPLICANTS ADVERSELY AFFECTED BY ADMINISTRATIVE DECISIONS REGARDING THE APPLICATION OR INTERPRETATION OF THE ORDINANCE; AND FURTHER ESTABLISHING RESPONSIBILITY FOR THE MAINTENANCE OF TREES AND SHRUBS BY ADJOINING PROPERTY OWNERS; AND FINALLY PROVIDING THAT ANY PERSON FOUND TO BE IN VIOLATION OF THIS ORDINANCE SHALL BE SUBJECT TO A FINE OF NOT LESS THAN \$10.00 NOR MORE THAN \$500.00.**

**WHEREAS**, the Board of Commissioners hereby finds and declares that trees and landscape bushes are an economic asset that enhance the aesthetic appeal of the community and help cleanse the environment; and

**WHEREAS**, in order to manage, protect, and to promote the health, safety, and welfare of the citizens of Owensboro, a permanent process is necessary to inventory and regulate the kind, location, and number of trees and other landscape materials planted by private property owners on public property and right-of-way; and

**WHEREAS**, in order to minimize risks to the safety and welfare of the citizens of Owensboro, this ordinance establishes a process whereby property owners must contact the City Horticulturist to determine if a permit is necessary when planting trees or shrubs within fifteen (15) feet of the curb or edge of pavement, in order to eliminate obstructions to sight triangles for vehicular traffic and to eliminate the placement of trees and shrubs with root systems that may cause damage to public improvements (i.e., sidewalks, curbs, street pavement and utilities); and

**WHEREAS**, this ordinance authorizes adjoining property owners to plant certain trees and shrubs in public right-of-way upon the issuance of a conditional permit which establishes guidelines for the planting and maintenance of trees and bushes in public areas and right-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1. Title:** This ordinance shall be known and may be cited as the "Tree Ordinance of the City of Owensboro, Kentucky."

**Section 2. Definitions:** The following words and phrases, when used in this ordinance, shall have the meanings respectively ascribed to them in this section:

A. "City Horticulturist" - The City's employee or appointed representative who is trained, educated and skilled in forestry, horticulture, arboriculture, or landscape architecture.

B. "Downtown Core Area" - The area bounded on the south by Fifth Street, on the north by the riverfront, on the west by Walnut Street, and on the east by Crittenden Street.

C. "Tree" - any self-supporting woody plant which has a well-defined stem(s) or a seedling or a sapling thereof, planted with the intent to allow the plant to grow to maturity.

D. "Large Trees" - Trees that may be expected to attain a mature height of forty (40) feet or more.

E. "Medium Trees" - Trees that may be expected to attain a mature height of twenty-five (25) to forty (40) feet.

F. "Small Trees" - Trees that may be expected to attain a mature height of twenty-five (25) feet or less.

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G. "Shrub" - A woody plant or bush that is not tree-like in habit and produces multiple branches or shoots from near the base.

H. "Street Lawn" - Where sidewalks are present, this shall be the area between the sidewalk and the back of street curb or edge of pavement. When sidewalks are not present, the area from the property line to the back edge of curb or pavement.

I. "Public Nuisance" - Any dangerous, diseased, or dead tree, shrub, or portions thereof, located on public right-of-way or on private property adjoining thereto, which unreasonably interferes with, obstructs, or renders dangerous for use by pedestrian or vehicular traffic, any public property, street, or sidewalk thereon.

J. "Right-of-Way" - Real property owned by, or dedicated to the City for public use, such as streets, medians, sidewalks, pedestrian/bikeways, utility facilities or driveways constructed thereon.

K. "Reasonable" - Acting in an ordinarily prudent manner with due regard for the health, safety, and well-being of people who use City property, streets, sidewalks, and other public right-of-way areas.

L. "Person" - Any person, corporation, partnership, company, contracting firm, or other association, organization or entity, including vendors or other service providers under contract with the City of Owensboro.

**Section 3. Tree and Shrub Planting; Permit Required; Restrictions; Appeal Process:**

A. Permit Required for Trees and Shrubs Planted on Public Right-of-way: Any person may plant a tree or shrub within unimproved public right-of-way, a median, or street lawn that is immediately adjacent to his or her property, upon obtaining a permit from the City of Owensboro. Since right-of-way widths vary throughout the City, property owners must contact the City Horticulturist when planting trees or shrubs within fifteen (15) feet of the curb or edge of pavement to determine if a permit is necessary. Permits authorized herein shall be issued at no cost to the

applicant by the City Horticulturist provided the following conditions are met:

(1) The applicant must apply for a permit at least ten (10) working days prior to actual planting.

(2) The City Horticulturist shall conduct an on-site visit and approve tree\shrub species and location of proposed planting.

(3) Applicant must locate all underground utilities prior to the on-site visit.

(4) The applicant shall acknowledge his or her responsibility for the reasonable maintenance of all permitted trees and/or shrubs after they are planted, which shall constitute a binding, real covenant between applicant, applicant's successors in interest, and the City.

(5) Trees planted in the street lawn shall meet the following minimum linear spacing requirements:

(a) Forty (40) feet between large trees.

(b) Thirty (30) feet between medium trees.

(c) Twenty (20) feet between small trees.

(6) The minimum width of a street lawn planting area shall be five (5) feet for small trees, eight (8) feet for medium trees, and ten (10) feet for large trees. The tree shall be centered in these areas. Due consideration shall be given for future right-of-way improvements (e.g. street widening, sidewalks, etc.)

(7) No tree shall be planted closer than ten (10) feet to the nearest fireplug or utility pole.

(8) No tree shall be planted within thirty (30) feet of the nearest end of the street curb radius where traffic control devices are present.

(9) Only small trees shall be planted under or within fifteen (15) lateral feet of overhead utility wires.

(10) No shrub shall be planted in such manner as to interfere with necessary access to any public utility or traffic control device or mailbox.

B. Tree Removal and Maintenance; Restrictions in Downtown Core Area; Appeals:

(1) It shall be unlawful for any person to cut, carve, poison by use of any gaseous liquid, herbicide, or other toxic substance harmful to trees, transplant, temporarily or permanently attach any signs, boards, or other items excluding tree support devices, or damage any trees or shrubs located on City property, any street lawn, or other public right-of-way.

(2) Any excavation in the public right-of-way, street lawn, or other City owned or controlled property is subject to provisions set forth in Chapter 24, Section 24-61, of the Owensboro Municipal Code.

(3) The City shall assume responsibility for removal of a tree in the right-of-way only if one or more of the following conditions exist:

- ◆ A tree is dead or severely damaged;
- ◆ A tree is damaging or potentially damaging infrastructure;
- ◆ A tree must be removed because of a City-related construction project;
- ◆ A tree is causing an unacceptable safety risk.

(4) The adjoining property owner(s) may remove a tree and stump at their expense when the tree does not qualify for removal by the City.

(5) The City is authorized to prune trees growing on private property that, in the judgment of the City's agent, present an

unacceptable safety risk to vehicular or pedestrian traffic in the right-of-way, or may order the pruning or removal of any permitted trees or shrubs from any publicly owned or dedicated right-of-way when same are determined to be a public nuisance as defined herein in Section 18-1 of the Owensboro Municipal Code. No provision herein shall restrict the right of any public utility, with prior approval of the City Horticulturist, to prune or remove any tree or shrub on public right-of-way, to allow for the reasonable use and maintenance of their respective facilities.

(6) Downtown Core Area:

(a) No trees or shrubs shall be planted, pruned, or removed by any person other than the City, its licensed agent or contractor, on or from City property or right-of-way within the Downtown Core Area. Decisions of the City Horticulturist may be appealed according to the provisions set forth in Section 3, Subsection B (8).

(b) Decorations: No trees or shrubs located on City owned property or public right-of-way within the Downtown Core Area shall be decorated in any manner by any person other than the City of Owensboro, its licensed agents, contractors, or other authorized persons, in connection with any festival, holiday, or other community event, without the prior written approval of the City Manager.

(7) The City reserves the right to deny the issuance of any permit authorized herein under circumstances that are harmful to the health, safety, welfare, and/or interest of the public.

(8) Appeal: Any applicant for a permit required by this section, or any property owner in the Downtown Core Area, adversely affected by the decision of the City Horticulturist in the application or interpretation of any of the provisions in this section of the ordinance may appeal said decision to the City Manager. The appeal provided herein shall be perfected by filing written notice thereof with the City Clerk, with

a copy thereof to be filed with the Facilities Maintenance Department of the City, within ten (10) days after notification of the decision on an application for a permit. The notice of appeal required herein shall set forth the reasons why the appeal is being taken and what relief is sought. The appeal shall be heard by the City Manager within twenty (20) days after the filing of the notice of appeal. The appellant shall be notified of the date, time, and location of the hearing, and for good cause only, may be granted a continuation of the hearing to a mutually convenient date and time.

The hearing on the appeal shall be conducted under rules uniformly applicable to both the appellant and the City. Both the appellant and the City shall have the right to make statements, offer and examine witnesses, and present evidence in support of their respective positions, cross-examine witnesses, and submit any other information relevant to the adjudication of an appeal. At the conclusion of the hearing on the appeal, or within ten (10) days thereafter, the City Manager shall issue a written decision containing findings of fact based upon the evidence produced at the hearing and shall notify the affected parties, in writing, of his decision. If the appellant is dissatisfied with the City Manager's decision, the appellant may appeal same to the Owensboro Board of Commissioners by giving written notice thereof to the City Clerk within seven (7) days of the City Manager's decision. The Board of Commissioners shall proceed to consider the appeal and render a decision either affirming, rejecting, or modifying the City Manager's decision within thirty (30) days after the notice of appeal is filed. In rendering its decision, the Board of Commissioners may, in its sole discretion, request additional information, new evidence, or testimony from the parties involved or other witnesses. The Board of Commissioners

shall mail to the appellant a copy of its final decision within five (5) days after the decision is rendered.

**Section 4. Maintenance of Trees and Shrubs; Violation.**

A. Responsibility of Adjoining Property Owners. All trees and/or shrubs for which a permit has been issued under Section 3 of this ordinance shall be reasonably maintained by the permittee or current owner of the property adjoining the street lawn or public right-of-way on which the tree or shrub is located. Adjacent property owners may perform minor routine maintenance on all other non-permitted trees and shrubs located within the street lawn or other public right-of-way. Maintenance shall include, but is not limited to, pruning, removal of dead or diseased limbs, and/or insect control. Adjoining property owners shall prune permitted trees and shrubs to improve visibility of traffic control devices, comply with sight visibility requirements, and provide sufficient overhead clearance for vehicular and pedestrian traffic on adjoining streets and sidewalks. Adjoining property owners shall also maintain and repair, if necessary, any abutting public street or sidewalk, or other public right-of-way damaged by the root system, trunk, or limb of a privately owned tree, at the property owner's expense.

B. It shall be unlawful for a property owner or occupant of any house, building, or lot to permit any trees or shrubs, including trees or shrubs located on private property or permitted within street lawns, to grow in a manner which interferes with or damages public streets or sidewalks located on adjacent public right-of-way or interferes with street traffic, visibility of traffic control devices, violates sight visibility requirements at intersections, or which obstructs the passage of adjoining right-of-way, or otherwise creates an imminent risk of injury or damage to vehicular and pedestrian traffic.



**Section 5. Public Nuisance Abatement; Penalties.**

A. Public Nuisance Abatement: The commission of any act, or omitting to perform any duty, or suffering or permitting any condition or thing in violation of any provision of this ordinance shall constitute a "public nuisance," which the City may proceed to abate in accordance with Section 18-1, et seq, of the Owensboro Municipal Code.

B. Penalties: Any person violating any provision of this ordinance shall be, upon conviction or a plea of guilty, subject to a fine of not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00).

**INTRODUCED AND PUBLICLY READ ON FIRST READING,** this the 5th day of October, 1999.

**PUBLICLY READ, ADOPTED, AND APPROVED ON SECOND READING,** this 19th day of October, 1999.

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Waymond O. Morris, Mayor

ATTEST:

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Carol Blake, City Clerk