

ORDINANCE NO. 41-95

AN ORDINANCE REGULATING THE PLANTING, MAINTENANCE AND REMOVAL OF TREES IN THE PUBLIC STREETS, PARKWAYS AND OTHER MUNICIPAL OWNED PROPERTY; AMENDING SECTIONS 33.82 AND 33.83 OF THE CITY'S REVISED CODE OF GENERAL ORDINANCES AND REPEALING SECTIONS (C) AND (D) OF SECTION 33.84 OF THE CITY'S REVISED CODE OF GENERAL ORDINANCES.

WHEREAS, the City has established a "Tree Commission" in Ordinance No. 51-93, codified as Section 33.80 of the City's Revised Code of General Ordinances who serve in an advisory capacity only, and depend on City personnel to actually implement their recommendations and therefore, ultimately, responsibility for the community's tree management program rests with the administration, not with the commission; and

WHEREAS, the creation of a tree management program for street trees and trees on public grounds will reduce the potential of injury, death and loss of property;

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

Section 1. That Section 33.82 of the City's Revised Code of General Ordinances that currently reads:

"§33.82 DUTIES; POWERS.

(A) The duties and powers of members of the Tree Commission shall be as follows:

(1) To study, investigate, plan, advise, report and recommend to City Council and to its Municipal Properties, Buildings, Streets and Cemeteries Committee any action, program, plan or legislation which the Commission shall find or determine to be necessary or advisable for the care, preservation, trimming, planting, re-planting, removal or disposition of trees and shrubs in public ways, streets and alleys;

(2) To seek to educate and inform citizens of the City about the proper care and selection of trees and shrubs;

(3) To publicize information relative to trees and shrubs in whatever manner they decide best serves the needs of citizens of the City; and

(4) To inform citizens of the City about the legislation pertaining to trees and shrubs in force in the City.

(B) All plans, findings, advices, reports and recommendations made by the Commission shall be in writing and designate by name those members of the Commission approving or concurring therein, and those members who do not so

approve or concur therein shall have the right to state their reasons for refusing to approve or concur."

shall be repealed, amended and enacted to read as follows:

"(A) The duties and powers of members of the Tree commission shall be as follows:

(1) To study, investigate, plan, advise, report and recommend to City Council and to its Municipal Properties, Building, Streets and Cemeteries Committee or Planning Commission any action, program, plan, or legislation which the Commission shall find or determine to be necessary or advisable for the proper management of trees and shrubs in public places;

(2) To seek to educate and inform citizens of the City about the proper care and selection of trees and shrubs;

(3) To publicize information relative to trees and shrubs in whatever manner they decide best serves the needs of citizens of the City; and

(4) To inform Citizens of the City about the legislation pertaining to trees and shrubs in force in the City.

(B) That the Tree Commission shall have the authority and it shall be its duty to conduct tree surveys for all trees in or upon all public streets, avenues, highways, parks, alleys and other public places which, in its opinion, effectuate the provision of this subchapter.

(C) The Tree Commission shall have the authority to establish its procedures and guidelines for tree and shrub management. This shall be the "Master Tree Plan" and shall be subject to approval of City Council."

Section 2. That Section 33.83 of the City's Revised Code of General Ordinances that currently reads:

"§33.83 MEETINGS

All meetings of the Tree Commission, which shall be not less often than bi-monthly, shall be open to the public and notice of each meeting shall be given to all members of the Commission and to the general public at least 72 hours thereto by the Secretary of the Commission or by the City Finance Director."

shall be repealed, amended, and enacted to read as follows:

"§33.83 MEETINGS

(A) The Tree Commission of the City shall hold meetings not less often than bi-yearly. All meetings shall be open to the public, unless an executive session is entered into for a proper purpose. Notice of each meeting shall be given to all members of the Commission and to the general public at least 24 hours in advance. Regular meetings are authorized; if regular meetings are established by

the Commission, then notice thereof need only be given as required by applicable provisions of the City's Revised Code of General Ordinances that deals with the subject of public meetings. Further, if regular meetings are established, then any special meetings of the Commission shall comply with applicable provisions of the City's Revised Code of General Ordinances that deals with the subject of public meetings. The Secretary of the Commission shall cause any necessary notice, posting or publication to be given to the City Finance Director/designee, in a timely manner, so that such notice, posting or publication can be made.

(B) The Commission may, but are not required to, hold its meetings at the City's facilities. The Commission shall have access to and may make use of City personnel, equipment, supplies and other resources to reasonably enable it to carry out its functions as provided in this subchapter.

Section 3. DEFINITIONS:

That:

"**Evergreen**" means any tree that retains its green living foliage the entire year.

"**Menace Trees**" are herein defined as any tree within City limits, having attribute of damage or potential to cause damage, including but not limited to, trees which may obstruct vision to motorist as to constitute a hazard.

"**Park Trees**" are herein defined as trees, shrubs, and all other woody vegetation in public parks and all other woody vegetation in public parks and all areas owned by the City, or to which the public has free access as a park.

"**Person**" means any person, firm, partnership, association, corporation, company or organization of any kind.

"**Plant Life**" shall include, tree, shrubs, bushes and the like.

"**Principal Thoroughfare**" means any street upon which trucks are not prohibited.

"**Property Line**" means the outer edge of a street or highway.

"**Property Owner**" means the person owning such property as shown by the County Auditor's Plat of the City of Napoleon, Ohio, including the executor, administrator, or beneficiary of the estate of a deceased owner.

"**Public Places**" shall include all other grounds owned by the City.

"**Public Trees**" shall include all shade and ornamental trees now or hereafter growing on any public places.

"**Right-of-Way**" means any portion of the public way, street, alley, or sidewalk.

"**Shrub**" means a low growing, wood plant with one (1) of 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 within five (5) years of planting.

"**Street or Highway**" means the entire width of every public way, easement or right-of-way when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular and pedestrian traffic, and shall include alleys.

"**Street Trees**" are herein defined as trees, shrubs, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the City.

"**Tree**" means a tall growing wood plant with one (1) or more perennial main stems or trunk which develops branches from the aerial section of the stem rather than the base; capable of being pruned to provide at least six (6) feet of clear, branchless trunk below the crown within five (5) years of planting.

"**Treelawn**" means that part of the street or highway, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

"**Tree Topping**" means the severe cutting back of limbs to stubs and three (3) inches or more in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

Section 4. DUTY OF PROPERTY OWNER OR OCCUPIER TO MAINTAIN PRIVATELY OWNED TREES.

That:

(A) It shall be the duty of any person or persons owning or occupying property bordering on any street right-of-way 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 passage of pedestrian on sidewalks, obstruct vehicular traffic. Dead or diseased trees on private property which can impact the public right-of-way, or those which constitute hazard to life or property, or harbor insects or diseases which constitute a potential threat to other trees or shrubs within the City shall be removed or caused to be removed by the person owning or occupying the property.

(B) Should the private property owner or occupier fail to address the removal of such trees or parts thereof, the City shall have the right to cause the removal of said trees or parts thereof. For such removal the following procedures are established:

(1) The City Manager/designee shall order removal of such tree or shrub or parts thereof identified as dead diseased or a menace, by a letter sent certified mail, return receipt requested.

(2) A period of no more than fifteen (15) days from receipt of certified letter shall be permitted to affect such removal.

(3) Should the certified letter be unclaimed, the City Manager/designee shall send a letter via regular mail to the owner's last known address and the owner shall have fifteen (15) days from the date of mailing to affect such removal.

(4) Should the property owner fail to comply within the specified time, it shall be lawful for the City, its employees, or agents to enter onto the property to remove such trees or shrubs or parts thereof, and to bill the property owner for treble the actual cost of the work, or if necessary to assess the same to the property owner as provided by the law in the case of special assessments.

(5) The person to whom an order is directed may appeal the order of the City Manager/designee by notifying the City Manager of such an appeal within the fifteen (15) days after receipt of written notice. The City Manager/designee will delay enforcement of the order until such time the appeal may be presented to and decided by the Municipal Properties, Building, Streets, & Cemeteries Committees who are hereby authorized to hear such an appeal; such appeal shall be informal in nature, and the decision of the majority members of said Committee shall be a final order.

Section 5. MAINTENANCE ON PUBLIC GROUNDS

That:

(A) The City shall have the right to plant, prune, maintain, remove and manage in any manner trees, plants, and shrubs upon public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(B) The Tree Commission may recommend to the City Manager removal of any tree or part thereof which is in an unsafe condition or which by reason of its nature, is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious disease, insect or other pest. If so determined by the City Manager, such removal action may be taken by the City. Nothing in this Section shall be construed as to limiting the authority of the City Manager to authorize removal of any tree or part thereof which said Manager deems to be of an injurious nature without recommendation of the Tree Commission.

Section 6. ARBORISTS LICENSE AND BOND

That:

It shall be unlawful for any person to engage in the business or occupation of pruning, treating or removing public trees within the City that are capable of falling into the City right-of-way without first applying for and procuring a license. The license fee shall be twenty-five (\$25.00) dollars annually in advance, provided; however, that no license shall be required of any public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of Workers Compensation, evidence of liability insurance, via Certificate of Insurance, in the minimum amounts of three hundred thousand (\$300,000.00) dollars for bodily injury and three hundred thousand (\$300,000.00) dollars property damage. Such liability insurance shall contain a provision, unless waived in writing by the City Manager/designee, indemnifying the City against claims from any person(s) injured or damaged resulting from the pursuit of such endeavors as herein described. A copy of the valid policy shall be kept on file with the City.

Section 7. UTILITY PRUNING

That:

(A) Any public utility company shall obtain written approval of the City Manager/designee for any large scale pruning project undertaken for the clearing of utility lines within the City. Large scale projects are defined as those which shall involve three (3) or more trees.

(B) The City Manager/designee may remove or cause to be removed, any trees or parts thereof which by reason of its nature is injurious to existing sewers, electric power lines, gas lines, water lines, or other public improvements.

Section 8. APPROVAL REQUIRED TO REMOVE PLANT LIFE FROM PUBLIC GROUNDS

That:

No person shall remove, cut above the ground, or otherwise disturb any tree on any street, park or other public place without first obtaining written permission from the City Manager/designee.

Section 9. APPROVAL REQUIRED TO PLANT ON PUBLIC GROUNDS

That:

No person shall plant any tree on or along any street, park, or other public place without first obtaining written permission from the City Manager/designee.

Section 10.REMOVAL, REPLANTING, AND REPLACEMENT OF PLANT LIFE ON PUBLIC GROUNDS

That:

(A) Whenever it is necessary for the City to remove a tree(s) or shrub(s) from public ground, in connection with the renovation of a sidewalk, street, alley or highway, the City shall remove and replant such tree(s) or shrub(s), or replace them when practical.

(B) No person or property owner shall remove a tree(s) or shrub(s) from public ground for the purpose of construction, or for any other reason without obtaining written permission from the City Manager/designee and without replacing the removed tree(s) or shrub(s) when replacement is deemed appropriate by the City Manager/designee. Such replacement shall meet the standards of size, species, and placement as provided for in an approval issued by the City Manager/designee. The person or property owner shall bear the cost of the removal a replacement of the tree(s) and shrub(s) removed. Failure to plant replacement 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 treble the actual cost of the work, or if necessary, shall assess the property owner for the same through special assessment as provided by law.

(C) Whenever any tree or shrub is planted or set out in conflict with the Master Tree Plan, the City Manager/designee may cause removal of the same without obligating the City to replace the illegally planted material.

Section 11.REMOVAL OR MUTILATION OF TREES

That:

It shall be a violation of this Ordinance to remove, destroy, mutilate, or top any tree, shrub or other plant on public ground, or to attach or place any rope, wire (other than that approved by the City Manager/designee) sign, poster, handbill, or other thing to or on any tree or shrub growing on public ground, or to allow any gaseous, liquid, or solid substance which is harmful to such plants to come in contact with any part of the plant.

Section 12.INTERFERING WITH CITY IN REGARD TO WORK ON PUBLIC PLANTS

That:

It shall be unlawful for any person to prevent, delay, or interfere with the City, its employees or agent, while engaging in and about the management of public trees or trees on private grounds as authorized by this Ordinance.

Section 13.PENALTY

That:

(A) Any person violating or failing to comply with any provision of this Ordinance shall be, upon a finding of guilty, subject to a fine of not less than twenty five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00) in addition to any required restitution for damages incurred by the City or any special assessments levied as provided for herein. In addition, the person shall replace the plant material with a size and specie recommended by the Tree Commission. Each plant affected by non-compliance with this Ordinance shall constitute a separate violation. As to the licensing requirement, each day a person operates in the City without a license shall constitute a separate offense. (Any section of this Ordinance directing or authorizing the City, its Committees, Commissions, agents, or employees to act does not constitute a violation of this Ordinance for failure to do so.)

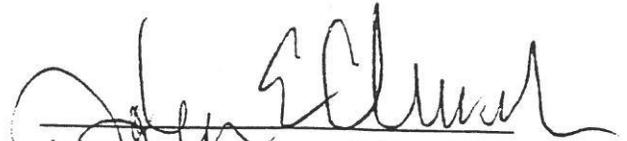
Section 14. That Subsections (C) and (D) of section 33.84 of the City's Revised Code of Ordinances is repealed by the remainder shall remain in effect. Further, the provisions of any prior Ordinance or Resolution related to the codification of sections 32.82, 33.83 and 33.84 of the City's Revised Code of General Ordinances are hereby repealed and amended so far as to conform with this Ordinance.

Section 15. That it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the City's Revised Code of General Ordinances.

Section 16. That if any other prior Ordinance or Resolution is found to be in conflict with this Ordinance, then the provisions of this Ordinance shall prevail. Further, if any portion of this Ordinance is found to be invalid for any reason, only that portion shall be held invalid and the remainder shall remain valid.

Section 17. That upon passage, this Ordinance shall take effect at the earliest time permitted by law.

Passed: May 1, 1995

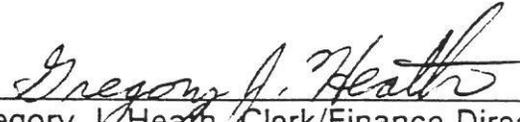

John Church, Council President

Approved: May 1, 1995


Robert G. Heft, Mayor

VOTE ON PASSAGE 7 Yea 0 Nay - Abstain

Attest:


Gregory J. Heath, Clerk/Finance Director

Recommended for codification:

Not recommended for codification:

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