

CHAPTER 35

TREE CODE

35-1-1 **TITLE.** This Chapter shall be known and may be cited as the "Breese Tree Code" of Breese, Illinois.

35-1-2 **PURPOSE AND INTENT.**

(A) **Purpose.** It is the purpose of this Code to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within Breese, Illinois.

(B) **Intent.** It is the intent of the City Council of Breese, Illinois that the terms of this Code shall be construed so as to promote:

- (1) the planting, maintenance, restoration, and survival of desirable trees, shrubs and other plants within the City; and
- (2) the protection of community residents from personal injury and property damage, and the protection of Breese from property damage, caused or threatened by the improper planting, maintenance, or removal of trees, shrubs, or other plants located within the community.

35-1-3 **DEFINITIONS.** As used within this Code, the following terms shall have the meanings set forth in this Section:

"ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR BREESE" (hereinafter, "Arboricultural Specifications Manual"). A manual prepared by the Arborist pursuant to the ordinance containing regulations and standards for the planting, maintenance and removal of trees, shrubs and other plants upon City owned property.

"ARBORIST". The City Arborist of Breese, Illinois.

"CITY-OWNED PROPERTY". Property within the City limits of Breese, Illinois and;

(A) owned by the City in fee simple absolute, or

(B) implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, or for public easements.

"PROPERTY OWNER". The record owner or contract purchaser of any parcel of land.

"TREES, SHRUBS, AND OTHER PLANTS". All vegetation, woody or otherwise, except lawn grass and flowers less than **twenty-four (24) inches** in height.

35-1-4 THE BREESE TREE COMMISSION; ESTABLISHMENT, COMPOSITION, APPOINTMENT OF MEMBERS, DUTIES.

(A) **Establishment.** The Breese Tree Commission (hereinafter "Tree Commission") is hereby established. Its functions and duties are limited to those set forth in this Code.

(B) **Composition.** The Tree Commission shall be composed of **eight (8)** commissioners. **Five (5)** commissioners shall be appointed by the Mayor with the approval of the Council. These **five (5)** commissioners shall serve without pay and shall reside within the City of Breese, Illinois. The remaining **three (3)** commissioners shall be ex-officio commissioners and shall not vote. For example, the **three (3)** ex-officio commissioners shall be: the Director of Public Works, the Director of Parks and Recreation of the Breese Park District or his/her representative, and the Arborist. Subject to the exceptions in paragraph (C), immediately below, each commissioner of the Tree Commission shall serve a term of **three (3) years**.

(C) **Appointment of Members.** **One (1)** of the **five (5)** commissioners initially appointed to the Tree Commission, who is not an ex-officio member, shall serve for a term of **one (1) year**; **two (2)** of the **five (5)** commissioners initially appointed shall serve for a term of **three (3) years**. Term shall start on a common date. Determination of the length of terms of the **five (5)** commissioners initially appointed shall be by lot. The Mayor shall designate the Chairperson of the Tree Commission.

(D) **Expiration of Vacation of Terms.** Within **thirty (30) days** following the expiration of the term of any appointed commissioner, a successor shall be appointed by the Mayor with the approval of the Council, and the successor shall serve for a term of **three (3) years**. Should any commissioner resign or be removed from the Tree Commission, a successor shall be appointed by the Mayor and shall serve for the unexpired period of the vacated term. A member of the Tree Commission may be removed by the Mayor with the approval of a majority of the Council.

(E) **Duties.** The Tree Commission shall perform the following duties:

- (1) Within reasonable time after the appointment of the Tree Commission, upon call of the Chairperson of the Tree Commission, the Tree Commission shall meet and adopt rules of procedure for regular and special meetings to fulfill the duties imposed upon it by this Code.
- (2) The Tree Commission shall advise and consult the Arborist on any matter pertaining to the Breese Tree Code and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:
 - (a) amendments to the Code and alterations or revisions to the Arboricultural Specifications Manual, and alterations or revisions of the Urban Forestry Plan;
 - (b) policy concerning selection, planting, maintenance, and removal of trees, shrubs, and other plants within the City;

- (c) allocation of funds to the Arbor Division, and expenditures of funds by the Arbor Division;
 - (d) establishment of educational and informational programs;
 - (e) development of policies and procedures regarding the Arborist's duties;
 - (f) issuance of permits required by this Code.
- (3) The Tree Commission, upon the request of any person who disagrees with the decision of the Arborist, shall hear all issues of the disputes which arise between the City Arborist and any such person whenever those issues involve matters or the interpretation or enforcement of the Arboricultural Specifications Manual, the Urban Forest Plan, or of the disputes regarding the issuance of permits, or the concurrence or nonconcurrence of the Arborist in permits required under other ordinance or laws, or the abatement of nuisances. The decision of a majority of the appointed members of the Tree Commission with regard to such dispute shall be binding upon the Arborist. Nothing in this Section shall be construed to limit the jurisdiction of any Court of Law with respect to such disputes.

35-1-5

CITY ARBORIST; ESTABLISHMENT, DUTIES.

- (A) **Establishment.** The position of the Arborist is hereby established.
- (B) **Duties.** The Arborist shall perform the following duties:
 - (1) The Arborist, with the assistance of the Tree Commission, shall develop, and each subsequent year, update the Urban Forestry Plan. The Plan shall outline urban forestry program activities for a minimum of the next **five (5) years**. This plan shall describe the urban forestry activities to be undertaken by the City, the reasons for those activities, the possible funding source(s), the means of accomplishing the activities, the alternatives available to the City to fund or accomplish the activity, the projected date of completion, and the consequences if the activity is not completed. Activities may include but are not limited to street tree inventory, planting, tree removal, beautification projects, and educational projects.
 - (2) The Arborist, with the assistance of the Tree Commission shall develop and periodically review and revise, as necessary, the Arboricultural Specifications Manual. This manual shall contain regulations and standards for the planting, maintenance, and removal of trees, shrubs and other plants upon City-owned property.

- (3) The Arborist shall cause the Urban Forestry Plan and the Arboricultural Specifications Manual, and all revisions and amendments to it, to be published and promulgated and shall cause **three (3) copies** of the Manual and all revisions and amendments to it, to be available for public inspection at the office of the City Clerk. Notice that such information is available for public inspection shall be published in a newspaper of general circulation with Clinton County at least **one (1) weekday** of each of **four (4) consecutive weeks** immediately following the initial availability of the Arboricultural Specifications Manual, or revisions or amendments thereto. The Arboricultural Specifications Manual, and any revisions and additions thereto shall become effective on the **tenth (10th) day** following the final publication in a newspaper of general circulation required under this paragraph.
- (4) The Arborist shall make available to any interested person copies of the Tree Code information about the activities of the Tree Commission, copies of the Arboricultural Specifications Manual and copies of the Urban Forestry Plan.
- (5) The Arborist shall administer the Urban Forestry Plan, the Tree Code and the provisions of the Arboricultural Specifications Manual.
- (6) The Arborist shall perform whatever acts are necessary, including the planting and maintenance of trees, shrubs, and other plants located on City owned property, conform with the Urban Forestry Plan, the Arboricultural Specifications Manual, and this Code.
- (7) The Arborist shall issue such permits as are required by this Code, and shall obtain as a condition precedent to the issuance of such permits the written agreement of each person who applies for such permits that he or she will comply with the requirements of this Code, the Urban Forestry Plan, and with the regulation and shall have the right to inspect all work performed pursuant to such permits. If the Arborist finds that the work performed is not in compliance with the requirements of this Code, the Urban Forestry Plan, or with the regulations or standards of the Arboricultural Specifications Manual. The Arborist shall provide written notice of his/her finding to the permit applicant. The notice shall contain a copy of Section 35-1-8(C)(5) of this Code; and
 - (a) the permit shall be nullified and shall be void and;

- (b) the Arborist may issue a written order that the permit applicant cease and desist all work for which the permit was required, and;

- (c) the permit applicant shall be subject to penalty under the terms of this Code, and;
 - (d) the Arborist may take steps to correct the results of the noncomplying work and the reasonable costs of such steps shall be charged to the permit applicant.
- (8) The Arborist shall establish a program of public information and education that will encourage the planting, maintenance, or removal of trees, shrubs, and other plants on private property in furtherance of the goals of the Urban Forestry Plan.

35-1-6 PERMITS.

(A) **Scope of Requirement.** No person except the Arborist, an agent of the Arborist, or a contractor hired by the Arborist may perform any of the following acts without first obtaining from the Arborist a permit for which no fee shall be charged, and nothing in this Section shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law:

- (1) plant on City owned property, or treat, prune, remove, or otherwise disturb any tree, shrub or other plant located on City owned property, except that this provision shall not be construed to prohibit owners of property adjacent to City owned property from watering or fertilizing without a permit any tree, shrub, or other plant located on such City owned property;
- (2) trim, prune, or remove any tree or portions thereof if such tree or portions thereof reasonably may be expected to fall on City owned property and thereby cause damage to persons or property;
- (3) place on City owned property, either above or below ground level, a container for trees, shrubs, or other plants;
- (4) damage, cut, tap, carve, or transplant any tree, shrub, or other plant located on City owned property;
- (5) attach any rope, wire, nail, sign, poster, or any other man-made object to any tree, shrub, or other plant located on City owned property;
- (6) dig a tunnel or trench on City owned property.

(B) **Issuance.** Within **seven (7) days** of receipt of the application, the Arborist shall issue a permit to perform within **thirty (30) days** of the day of issuance any of the acts specified in parts (A), and (B), immediately above, for which a permit is requested whenever;

- (1) such acts would result in the abatement of a public nuisance; or
- (2) such acts are not inconsistent with the development and implementation of the Urban Forestry Plan or with any regulations or standards of the Arboricultural Specifications Manual; and whenever;

- (3) an application has been signed by the applicant and submitted to the Arborist detailing the location, number, size, and species of trees, shrubs, or other plants that will be affected by such acts, setting forth the purpose of such acts and the methods to be used, and presenting any additional information that the Arborist may find reasonably necessary;
- (4) the applicant agrees to perform the work for which the permit is sought in accordance with the provisions of this Code, the Urban Forestry Plan and with the regulations and standards set forth in the Arboricultural Specifications Manual; and
- (5) the applicant certifies that he or she has read and understands those provisions of the Urban Forestry Plan, this Code, and of the Arboricultural Specifications Manual which are pertinent to the work for which the permit is sought; and
- (6) if the work for which a permit is issued entails the felling of any tree or part thereof, located on private property, which, as a result of such felling reasonably may be expected to fall upon City owned property and if such felling is done by one other than the owner of the property on which such felling is done, then the applicant shall agree to indemnify and to hold the City of Breese harmless for all damages resulting from work conducted pursuant to the permit and shall deposit with the City Clerk a **One Hundred Thousand Dollars (\$100,000.00)** per person/**Three Hundred Thousand Dollars (\$300,000.00)** per accident for Bodily Injury Liability and **Fifty Thousand Dollars (\$50,000.00)** aggregate for Property Damage Liability, which policy shall name the City of Breese as an additional insured.

(C) **Public Utility Companies.** Nothing in this Section shall be construed to exempt public utility companies or their agents from any of the requirements of this Code.

35-1-7

PUBLIC NUISANCES.

(A) **Definition.** The following are hereby declared public nuisances under this Code:

- (1) any dead or dying tree, shrub, or other plant, whether located on City owned property or on private property;
- (2) any otherwise healthy tree, shrub, or other plant, whether located on City owned property or on private property, which harbors diseases which reasonably may be expected to injure or harm any tree, shrub, or other plant;
- (3) any tree, shrub, or other plant, or portion thereof, whether located on City owned property or on private property, which by reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public;

- (4) any tree, shrub or other plant or portion thereof whether located on City owned property or on private property which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street sign on City property;
- (5) any tree, shrub or other plant or portion thereof whether located on City owned property which dangerously obstructs the view as such may be determined by the Street Superintendent pursuant to this Code.

(B) **Right to Inspect.** The officers, agents, servants and employees, of the City have the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part that is suspected to be a public nuisance.

(C) **Abatement.** The following are the prescribed means of abating public nuisances under this Code:

- (1) Any public nuisance under this Code which is located on City owned property shall be pruned, removed, or otherwise treated by the property owner in whatever fashion is required to cause the abatement of the nuisance within a reasonable time after its discovery.
- (2) Any public nuisance under this Code which is located on private owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. No property owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:
 - (a) the Arborist shall cause a written notice to be personally served or sent by registered mail to the person to whom was sent the tax bill for the general taxes for the last preceding year.
 - (b) such notice shall describe the kind of tree, shrub, or other nuisance, its location on the property; the reason for declaring it a nuisance.
 - (c) such notice shall describe by legal description or by common description the premises.
 - (d) such notice shall state the actions that the property owner may undertake to abate the nuisance.
 - (e) such notice will require the elimination of the nuisance no less than **thirty (30) days** after the notice is delivered or sent to the person to whom was sent the tax bill for the general taxes for the last preceding year.
- (3) The Arborist is empowered to cause the immediate abatement of any public nuisance provided that the nuisance is determined by the Arborist to be an immediate threat to any person, or property.

35-1-8 **INTERFERENCE WITH ARBORIST.** No person shall unreasonably hinder, prevent, delay, or interfere with the Arborist or his/her agents while engaged in the execution or enforcement of this Code.

35-1-9 **VIOLATION AND PENALTY.** Any person who violates any provision of this Code or who fails to comply with any notice issued pursuant to the provisions of this Code upon being found guilty of violation, shall be subject to a fine not to exceed **Two Hundred Dollars (\$200.00)** for each separate offense, each day during which any violation of the provisions of this Code shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this Code, the injury, mutilation, or death of a tree, shrub, or other plant located on City owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens, as published by the International Society of Arboriculture.

35-1-10 **APPEAL.** Any party who elects to dispute any action or decision by the City Arborist or Tree Commission shall be entitled to appeal to the City Council for a final determination.

(Ord. No. 791; 04-15-94)