

**CITY OF BURIEN**  
**WASHINGTON**  
**ORDINANCE NO. 502**

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**AN ORDINANCE OF THE CITY OF BURIEN,  
WASHINGTON, RELATING TO TREES ON CITY  
PROPERTY; AMENDING CHAPTER 12.38 BMC TO  
CLARIFY MAINTENANCE RESPONSIBILITIES AND  
CLARIFY PROCESS FOR AND FURTHER RESTRICT  
APPLICATIONS FOR PRUNING, CROWN TOPPING AND  
REMOVAL OF STREET TREES; PROVIDING FOR  
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE  
DATE**

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WHEREAS, the City Council has previously enacted chapter 12.38 of the Burien Municipal Code (the “Tree Code”) to regulate the pruning, care and removal of trees and other vegetation on City property; and

WHEREAS, the City Council desires to amend the Tree Code to clarify the portion of the public right of way that adjacent property owners have the right and obligation to maintain; and

WHEREAS, the City Council finds it to be in the best interest of the public health, safety and welfare to amend the Tree Code;

NOW, THEREFORE, the City Council of the City of Burien, Washington, do ordain as follows:

Section 1. Amendment of Section 12.38.040 BMC (Tree Protection, Maintenance and Permit Requirements). Section 12.38.040 of the Burien Municipal Code is hereby repealed and re-enacted to read as follows:

12.38.040 Tree Protection, Maintenance and Permit Requirements

A. The City shall maintain all trees and Other Vegetation on the City Maintenance Responsibility List established pursuant to this Chapter. No person shall prune or remove trees or Other Vegetation on the City Property identified on the City Maintenance Responsibility List.

B. The owner of property adjacent to an Improved or Unimproved Right-of-Way not listed on the City Maintenance List shall maintain Street Trees and Other Vegetation located within the maintenance area. Maintenance Area shall mean that area of the Right-of-Way described as follows: the right-of-Way area bounded by the property owner’s boundary line contiguous to the Right-of-Way extending perpendicular on either

end to the centerline of the Right-of-Way. Maintenance Area within an Improved Right-of-Way shall include the Planting Strip between the sidewalk and curb, and the strip between the property line and the sidewalk or, if no sidewalk exists, the strip between the property line and the shoulder of the street; provided that, it shall not include the planting area within a center median.

C. The owner of property adjacent to an Improved or Unimproved Right-of-Way, may Prune trees within the owner's Maintenance Area provided that the best practices, policies, techniques and methods for pruning trees established by the International Society of Arboriculture are followed, including Crown Cleaning, Crown Thinning, Crown Raising and Windowing. Crown Topping is not permissible. The City shall prepare and distribute educational materials describing best practices, policies, techniques, methods and procedures for pruning trees.

D. Public utilities shall maintain any vegetation that interferes with their utilities and may Prune trees provided that the best practices, policies, techniques and methods for pruning trees established by the International Society of Arboriculture are followed.

E. No person shall perform Pruning other than that permitted by this Chapter or remove trees in Planting Strips, Improved or Unimproved Right-of-Way without an approved Tree Permit. A Tree Permit will not be issued to a private individual for the pruning or removal trees or Other Vegetation on City Property identified on the City Maintenance Responsibility List, including streets, parks and open spaces. The issuance of a Tree Permit shall be based on the following:

1. The applicant demonstrates in the following order that all of the following conditions have been satisfied:

- a) The applicant establishes that the tree is located on a Right-of-Way;
- b) The applicant submits a valid petition executed by at least sixty percent (60%) of the property owners located within a three hundred foot (300') radius of the subject tree(s) in favor of the proposed Pruning of the tree;
- c) The applicant pays a fee to cover all costs associated with reviewing the pruning request; and
- d) The Pruning is performed by the City but at the sole cost and expense of the applicant.

2. The City Arborist determines that the requested action or treatment is necessary based upon meeting one of the following criteria:

- a) Consideration of generally accepted arboriculture standards established by the International Society of Arboriculture;

b) Determination that the tree is a “Nuisance Tree, “ i.e. a tree which is causing physical damage to property or has been damaged by past maintenance practices, and for which generally accepted arboriculture practices cannot correct the problem;

c) Action or treatment can be performed without adversely affecting the health of the tree or adjacent tree(s);

d) Action or treatment can be performed without adversely affecting Geologically Hazardous Areas; or

e) Determination that the existing trees and Other Vegetation are appropriate for the location.

3. A Tree Permit shall not be granted if the sole purpose of the proposed action is the removal of a tree for view enhancement.

4. When the City Arborist determines that the removal of a tree is necessary in connection with a Tree Permit, the tree(s) shall be replanted or replaced. The cost of the removal and replacement of the tree shall be the responsibility of the permittee. Replacement Trees shall meet the following guidelines:

a) All Replacement Trees shall be at least six feet tall coniferous tree or have a minimum 2-inch caliper deciduous tree, unless a smaller size tree or shrub is approved by the City Arborist;

b) The number of replacement trees shall be at the ratio of three Replacement Trees for every one tree removed;

c) In lieu of planting Replacement Trees, and at the sole discretion of the City Arborist, the permittee may contribute to the City’s tree fund a dollar amount equal to the value of the Replacement Trees, including installation costs; and

d) The permittee may be required to maintain all Replacement Trees in a healthy condition for period of two years after planting. The permittee may be obligated to replant any Replacement Tree that dies, becomes diseased or is removed during this two-year time period.

F. Permission to Crown Top healthy trees shall not be granted. Trees that are severely damaged by storms or other causes, or certain trees under utility wires, or other obstructions where other pruning practices are impractical, may be topped for public safety.

G. The removal of trees in Geologically Hazardous Areas is subject to the requirements contained in BMC Chapter 19.40, Critical Areas. No cutting of trees in “Geologically Hazardous Areas” is allowed between October 1 and April 1 of any calendar year unless approved by the Public Works Director, or is required due to an emergency-situation involving immediate danger to life and property.

H. In addition to the requirements of this Chapter, persons must comply with all applicable federal and state laws, rules and regulations including, without limitation, the Endangered Species Act, the Bald Eagle Protection Act and the Migratory Bird Treaty Act, as now existing or herein adopted or amended.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 29<sup>TH</sup> DAY OF DECEMBER, 2008, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 29<sup>TH</sup> DAY OF DECEMBER, 2008.

CITY OF BURIEN  
/s/ Joan McGilton, Mayor

ATTEST/AUTHENTICATED:  
/s/ Monica Lusk, City Clerk

Approved as to form:  
/s/ Chris D. Bacha  
Kenyon Disend, PLLC  
Interim City Attorney

Filed with the City Clerk: December 9, 2008  
Passed by the City Council: December 29, 2008  
Ordinance No. 502  
Date of Publication: January 1, 2009