

Dear City Council Members:

December 22nd 2008

Council member my name is Kris Maudslien, 16923 32nd Ave S.W. Burien WA 98166. I am writing this letter in regards to the possible amendment 502 of the BMC Chapter 12.38

On the surface this proposed amendment looks to be simple and straight forward, a far cry better than the proposed 502 we were introduced to 5 weeks ago. What this proposed code change fails to recognize is the "Public". Public works director, Steven Clark's interpretation of BMC 12.38 is if a citizen is not in this proposed maintenance area they have no right to apply for a tree trimming permit in the Public Right-of-Way. This is flat wrong! Is it Steven Clark's intentions to convert Public Right-of-Way to individual Right-of-Way when it comes to city trees? It states at the top of your ordinance draft that Mr. Clark would like to further restrict applications for pruning, does Council know how many applications have been applied for in the 5 years this code has been around, one, mine. How could you possibly restrict this further and still have public process.

Council the only way any of you could vote to approve this amendment is if you know beyond any doubt that the public (that is anyone outside the maintenance area) has a right to apply for and receive a permit to address vegetation in the Public Right-of-Way, as long as existing criteria are met. As you know I am working on this with my attorney and the City of Burien attorney and we all are unclear on how Steven Clark would interpret this amendment and how it will be applied to chapter 12.38.

This being said if this council is unsure or has any doubt, as many of us do regarding this proposal, this amendment cannot pass. Please vote no regarding this matter.

Thank you for your careful consideration regarding this matter, as I am unable to attend the meeting on December 29th 2008

Sincerely
Kris Maudslien

Janet Stallman

From: on behalf of Council
To: rmaudslie@comcast.net
Subject: RE: Letter for City of Burein Ccouncil

Kris Maudslie,

Your letter has been forwarded to our City Attorney for reply. It will appear in the Correspondence for the Record in a future agenda packet.

Janet S.

From: rmaudslie@comcast.net [mailto:rmaudslie@comcast.net]
Sent: Wednesday, December 24, 2008 12:25 PM
To: Council
Subject: Letter for City of Burein Ccouncil

CFTR: 01/12/09

Janet Stallman

From: on behalf of Janet Stallman
To: StahlfeldE@aol.com
Cc: Stephen Clark; Burien City Attorney
Subject: RE: Proposed Ord. No. 502

Mr. Stahlfeld:

Thank you for your email. I have forwarded your communication to our Public Works Department and City Attorney for reply. Your email will be a part of the Correspondence for the Record in a future agenda packet.

Janet S.

From: StahlfeldE@aol.com [mailto:StahlfeldE@aol.com]
Sent: Wednesday, December 24, 2008 11:55 AM
To: Council
Subject: Proposed Ord. No. 502

Dear City Councilmembers:

I am concerned that proposed Ord. No. 502 will make a substantive change to BMC 12.38.040(B) and (C) that is not stated and perhaps misleading to either the Council or the citizens of Burien.

Specifically, the staff "background" for the proposed ordinance indicates that "neighboring property owners must go through the established permit process to trim trees" within a different property owner's ROW area. That clearly implies that a citizen has a right to apply for a permit to prune trees in the ROW not immediately in front of his property, which is what I (and a Superior Court judge) believe has been the intent of the existing law. Such a law makes sense because clearly a property owner can be threatened by a tree not immediately in front of his property, and at minimum he or she should have the right to apply to the City for a permit to have the City prune the tree at the property owner's expense.

However, staff in the public works department have taken the position that if a property owner does not have the right to prune trees pursuant to BMC 12.38.040(B) and/or (C), then the property owner has no right even to apply for a permit to have the City prune the trees. The staff denied Kris Maudslien's permit citing subsection (B) and saying "as you are not the abutting property owner, a permit cannot be issued to you." The public works director argued the same to the city hearing examiner, and the City Attorney argued the same to the Superior Court Judge (see the City brief at pages 12-13).

If such an interpretation continues, changing subsection (B) and (C) will substantively change who can apply for a tree permit, *notwithstanding what staff wrote in the "background."*

Perhaps this is unintended, but I am aware that sometimes staff have not fully advised elected officials of the significance of certain actions (see the recent Port of Seattle problems). I am of course not privy to private discussions between staff and the Council, but you owe it to Burien citizens to state openly whether you intend to restrict who may apply to prune trees within the City ROW. Of course, if City staff will indicate on the record that they no longer follow the position taken with Kris Maudslien, then this issue will be resolved. However, I have received no such indication, despite a specific request.

Thank you for your attention to this letter. I will be unable to attend the December 29 meeting, because I have longstanding plans to be out of town visiting my wife's family over the holidays.

Very truly yours,

Eric R. Stahlfeld
145 SW 155th Street, Ste 101
Burien, WA 98166
(206) 248-8016 (o)



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December 28, 2008

Kris Maudslien
16923 32nd Ave S.W.
Burien, WA 98166

Re: Your Letter Dated December 22, 2008
Tree Ordinance

Dear Mr. Maudslien:

Thank you for your letter expressing your concerns regarding the proposed amendment to Chapter 12.38, the City of Burien Tree Code.

The purpose of this proposed amendment is to clarify the rights, duties and obligations of property owners to maintain street trees and other vegetation within adjacent public rights of way. The Tree Code currently provides that the owner of property adjacent to an improved right of way shall maintain street trees and other vegetation within the planting street and may also prune trees within the adjacent right of way. However, the Tree Code does not clearly define that portion of the public right of way in which the adjacent property has such rights, duties and obligations. The proposed amendment addresses this problem by limiting such rights, duties and obligations to that portion of the right of way falling within a clearly defined maintenance area. This amendment is not, however, intended to modify those provisions within the Tree Code that address the requirements issuance of permits for pruning and removal of trees.

Section 12.38.040(e) of the Tree Code currently provides that the pruning and removal of trees within the public right of way is prohibited except as specifically allowed under the Tree Code or pursuant to an approved permit. As noted above, property owners are authorized to prune trees in the adjacent right of way and thus are not required to obtain a permit for pruning. The proposed amendment will clarify that this authorization to prune trees without a permit applies only to the street trees within the newly defined maintenance area adjacent to the applicant's property. A property owner desiring to have trees pruned that are not within that property owner's maintenance area will be required to seek issuance of a permit pursuant to the provisions of Section 12.38.040(e). The proposed amendment to the Tree Code does not change this process. As you have indicated in your letter, anyone applying for a permit must demonstrate that all of the conditions required for pruning of the particular tree or trees be satisfied before a permit will be issued.

Mr. Kris Maudslien
December 29, 2008
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I hope that the foregoing addresses your concerns.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Martin".

Mike Martin
City Manager

cc: Eric Stahlfeld