
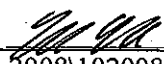


**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Discussion and Possible Motion to Adopt Ordinance No. 502 Amending BMC Chapter 12.38, Street Trees and Trees on City Property		Meeting Date: November 17, 2008
Department: Public Works	Attachments: Proposed Ordinance No. 502	Fund Source: N/A
Contact: Stephen Clark, Director		Activity Cost: N/A
Telephone: (206)248-5514		Amount Budgeted: N/A
Adopted Work Plan Priority: Yes X No		Unencumbered Budget Authority: N/A
Work Plan Item Description: City of Burien Road Standards		
PURPOSE/REQUIRED ACTION:		
<p>The purpose of this Agenda item is for Council to consider Ordinance No. 502, amending BMC Chapter 12.38, Street Trees and Trees on City Property.</p>		
BACKGROUND (Include prior Council action & discussion):		
<p>The current code provides that adjacent property owners must maintain the street trees and vegetation within the right-of-way planting strip. However, "adjacent" is not defined and may allow neighboring property owners to prune within planting strips without seeking a permit. The code also currently allows a person to apply for a pruning permit with approval of 60 percent of the neighboring property owners. The proposed amendment would remove that authority.</p>		
<p>The revised draft ordinance will require abutting property owners to provide routine care of the planting strip. Any pruning that is not part of routine care, as defined in the ordinance, can only be performed by permit. The permit application, review and approval process is given greater specificity and still provides that <u>only</u> the City may prune once a permit is issued, but at the cost and expense of the applicant. This is true even if the trees are in a dangerous condition.</p>		
<p>The attached draft of ordinance 502 shows the proposed amendments to BMC Chapter 12.38.</p>		
OPTIONS (Including fiscal impacts):		
<ol style="list-style-type: none"> 1. Approve Ordinance No. 502 2. Not approve Ordinance No. 502 		
Administrative Recommendation: Approve Ordinance No. 502		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
Suggested Motion: Move to approve Ordinance No. 502 amending BMC Chapter 12.38, Street Trees and Trees on City Property.		
Submitted by: Stephen Clark Administration 		City Manager 
Today's Date: November 10, 2008	File Code: R:\CC\Agenda Bill 2008\102008pw-1 -Street Standards.doc	

CITY OF BURIEN
WASHINGTON

ORDINANCE NO. 496502

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

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 requirements for maintenance of street trees and other vegetation in city right of way and to clarify the process for obtaining a permit to prune, crown top, remove and replace street trees and other vegetation, and to further restrict issuance of permits for the same; 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 12.38.010 BMC (Purpose). Section 12.38.010 of the Burien Municipal Code is hereby repealed and re-enacted to read as follows:

2.38.010 Purpose

Trees have substantial benefits to the public health, safety and welfare of the citizens of Burien, as well as to the environment. Additionally, the presence of trees in our community advances the economic, social and aesthetic well-being of the community by minimizing erosion, siltation and water pollution of lakes, streams and Puget Sound; providing slope stabilization and animal habitat; and reducing air pollution. Accordingly, the purpose of this Chapter is to provide for the planting, maintenance and protection of trees and other vegetation within the City of Burien (hereafter "the City") on City Property property and to provide for property owners to maintain trees and other vegetation overhanging public rights of way.

Section 2. Amendment of Section 12.38.020 BMC (Definitions). Section 12.38.020 of the Burien Municipal Code is hereby repealed and re-enacted to read as follows:

12.38.020 Definitions For purposes of this chapter, the following terms shall have the following meanings:

- A. **Abutting:** ~~Abutting shall mean having boundary lines in common.~~
- B. **City Arborist:** ~~The person~~ A certified arborist designated by the City Manager ~~public works director, or his/her designee, to assist in administering~~ the provisions of this Chapter.
- BC. **City Maintenance Responsibility List:** A list identifying the Right-of-Way and City Property ~~property~~ on which the City maintains the ~~Street-street~~ Trees-trees and ~~Other-other~~ Vegetation-vegetation. The list shall be on file with the City Clerk, and may be amended at any time by the City Manager or his/her designee.
- D. **City Property:** All Improved ~~Right~~ right-of-Wayway, ~~Unimproved-unimproved~~ Right right-of-Wayway, and all other parcels, lots, or acreages, including parks and open spaces, within the ~~City-city~~ of Burien owned or controlled by the City.
- E. **Crown:** The leaves and branches of a tree, from the lowest branch on the trunk to the top.
- F. **Crown Cleaning:** The removal of dead, dying, diseased, crowded, weakly attached, low-vigor branches and watersprouts from a tree's ~~Crown~~ crown.
- G. **Crown Raising:** The removal of the lower branches of a tree in order to provide a height of up to 8-feet for pedestrian clearance, up to 16-feet for vehicular clearance or such increase deemed appropriate by the City ~~Arborist~~ arborist.
- H. **Crown Thinning:** The selective removal of branches not to exceed more than twenty-five percent (25%) of the leaf surface to increase light penetration and air movement, and to reduce weight.
- I. **Crown Topping:** The cutting of a trunk or main branch to a point where there is no branch large and vigorous enough to become a new leader, ~~or the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.~~
- J. **Diameter at Breast Height:** ~~Diameter of a tree measured four and one-half (4 1/2) feet (forestry method) above the ground level on the downhill side for existing trees. Diameter at Breast Height may appear as the abbreviation "DBH" (Diameter Breast Height).~~

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- K. **Geologically Hazardous Area:** (See definition in BMC 19.10.190).
- L. **Hazardous Tree:** Any tree that receives an 11 or 12 rating under the International Society of Arboricultural rating method set forth in Hazard Tree Analysis for Urban Areas.
- M. **Improved Right-of-Way:** Rights-of-Way way within the City that are paved, graded, or otherwise altered in any way for the purpose of vehicle, pedestrian, or bicycle travel.
- N. **Large Street Tree:** Any conifer tree that is six feet (6') tall or more or any deciduous tree with a diameter of more than six inches (6").
- O. **Minor pruning:** Pruning of limbs no larger than one and one-half inches in diameter on street trees and no larger than one-half inch in diameter on other vegetation; provided that, the best practices, policies, techniques and methods for pruning trees established by the International Society of Arboriculture are followed. Minor pruning does not include crown thinning, crown raising, or windowing of large street trees.
- P. **Noxious Weed:** Noxious weed means any living stage, such as seeds and reproductive parts, of any parasitic or other plant of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation, or the fish or wildlife resources of the United States or the public health.
- Q. **Nuisance Tree:** A tree or other vegetation 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.
- R. **Other Vegetation:** Trees, bushes, shrubs, grasses, or other plant material on or encroaching upon Improved-improved or Unimproved-unimproved Rightsrights-Of-of Wayway.
- S. **Planting Strip:** That portion of an Improved Right-Of-Way between the street curb or edge of the traveled portion of roadway and the property line of the abutting property available and used for the purpose of planting and maintaining Street-street Trees-trees and Other-other Vegetationvegetation--.
- T. **Prune or Pruning:** The pruning-ofcutting back of limbs-a tree through Crown crown Thinningthinning, Crown-crown Cleaningcleaning, Windowing-windowing or Crown-crown Raisingraising, but not including Crown-crown Flopping-of

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trees, or any practice or act that is likely to result in death of or significant damage to the tree or other vegetation.

U. **Removal:** Removal means the act of cutting down or removing any tree or other vegetation from the public right-of-way.

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V. **Replacement Tree:** Any tree that is planted in order to satisfy the tree replacement requirements of a tree-pruning permit.

W. **Right-of-Way:** All City Property-property granted or reserved for, or dedicated to, public use for street purposes, together with City Property-property granted or reserved for, or dedicated to, public use for walkways, sidewalks, and bikeways, whether improved, unimproved, or unopened, including the air rights, sub-surface rights and easements related thereto.

X. **Routine care:** Routine care means the act of watering, fertilizing, applying pesticides, removal and control of noxious weeds and invasive plants, crown cleaning and minor pruning.

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Y. **Street Tree:** Any tree which is located within the Improved-improved or Unimproved-unimproved Rightright-of-Way-way in the City-city of Burien.

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Z. **Thinning:** The removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of remaining trees in the immediate area.

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AA. **Tree:** Any self supporting woody plant which reaches a typical mature height of twelve (12) feet or more at maturity and has a typical DBH of four (4) inches or greater

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BB. **Tree owner:** Tree owner shall mean and refer to the owner or person in control of the real property upon which 51 percent or more of the trunk is located at ground level.

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CC. **Unimproved Right-of-Way:** Rights-of-Way-way that are not paved, graded, or otherwise altered for the purpose of vehicle, pedestrian, or bicycle travel.

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DD. **Windowing:** The selective removal of branches not to exceed more than twenty-five percent (25%) of the leaf surface while retaining the symmetry and natural form of the tree in order to increase views and light penetration.

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Section 3. Amendment of Section 12.38.030 BMC (Power and Authority). Section 12.38.030 of the Burien Municipal Code is hereby repealed and re-enacted to read as follows:

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12.38.030 Power and Authority

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- A. Except as otherwise provided herein for the routine care of trees by abutting property owners and maintenance of vegetation and pruning of trees by utilities, The City shall have the exclusive power and authority over the planting, pruning, care and removal of trees and other vegetation within all City Property-property owned by the City of Burien-as necessary to ensure public safety; to minimize erosion, siltation and water pollution of lakes, streams and Puget Sound; provide slope stabilization and animal habitat; and reduce air pollution; or and to preserve and enhance the quality and beauty of such areas; provided that, the City's power and authority under this chapter shall not be interpreted as an obligation upon the city, and the city's failure to act shall not constitute a basis for any claim of liability against the city.
- B. Unless otherwise designated by the City Manager, The City Manager, or his/her designee, shall oversee the planting, care and removal of trees on the Parks Director shall oversee the planting, care and removal of trees and other vegetation on City Property-parks, as that term is defined at Chapter 7.10 BMC, and the Public Works Director shall oversee the planting, care and removal of trees and other vegetation within public right-of-way and all other City Property.
- C. The City shall maintain trees planted by the City and may remove any of the following trees located on or near City Property-property: hazardous trees; trees, or parts thereof, that present unsafe conditions; trees, or parts thereof, that are disruptive of utilities or public improvements; and, trees, or parts thereof, infected with any significant disease or insects.

Section 4. 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. City Maintenance Responsibility. The City shall maintain all trees and Other other Vegetation-vegetation on the City Maintenance-maintenance Responsibility responsibility Listlist established pursuant to this Chapter. No person shall prune or remove trees or Other-other Vegetation-vegetation on the City Property property identified on the City Maintenance-maintenance Responsibility responsibility Listlist.
- B. Abutting Owner Responsibility/Routine Care. In consideration of the value and benefits derived from the beauty and enjoyment of the street trees and other vegetation and other benefits provided by street trees and other vegetation:
 - i. The owner or person in control of property adjacent to abutting thea planting strip of anwithin Improved-improved Rightright-of-Way-way not listed on the City Maintenance List shall maintain be responsible for the routine care of Street-street Trees-trees and Other-other Vegetation

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~~vegetation located within that portion of in the such Right of Way, including the Pplanting Strip-strip that abuts thesuch property, and shall regularly inspect and remove defective conditions as necessary 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.~~

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- ii. ~~The owner or person in control of property abutting Unimproved+ unimproved Rightsrights-of-Way-way shall maintain street trees and Other other Vegetation-vegetation located within that portion of in the Rightright-of-Way-way that abuts the property and up to the center line of the Un-improved right of way, and shall regularly inspect and remove defective conditions as necessary.~~

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~~The foregoing obligation shall not apply to right of way listed on the City maintenance responsibility list.~~

- C. ~~Public Utilities. The owner of property adjacent to an Improved or Unimproved Right of Way, may Prune trees adjacent to his/her property 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.~~

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- D. ~~Public utilities shall maintain any vegetation that interferes with their utilities and may Prune-prune trees without a permit, provided that the best practices, policies, techniques and methods for pruning trees established by the International Society of Arboriculture are followed.~~

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9. Singed declaration that the applicant agrees to pay the cost incurred by the City to review the application and if approved, prune or remove and replace, if required, the street trees or other vegetation.

H. Findings. All applications for a pruning permit shall be reviewed the public works director, or his/her designee, and the final determination shall be made by the public works director. The public works director may deny, grant or grant with conditions, a pruning permit; provided that, a pruning permit may be granted only if he/she finds that the requested pruning, crown topping or removal is necessary to:

1. Protect the public safety;
2. Maintain pedestrian and vehicular clearances;
3. Protect against erosion, siltation or water pollution of lakes, streams or the Puget Sound;
4. Preserve and enhance the quality and beauty of the right of way; or
5. Protect and preserve the street trees and vegetation within the right of way.

I. Factors. The public works director shall consider the following in making his/her final determination whether or not to grant a pruning permit:

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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. Whether or not the applicant has established that the street tree or other vegetation is located on a Right-of-Way and that the applicant is eligible for apply for a pruning permit;
 - b. Whether or not the applicant has 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 agreed to pay all costs associated with reviewing the pruning request and if approved, the pruning, crown topping, removal, and replacement, if required of the street tree or trees; and
The Pruning is performed by the City but at the sole cost and expense of the applicant.
 - d. 3. Any and all relevant information provided by the applicant; and
4. The report and recommendation of the The City Arborist, which report and recommendation shall be given deference over a report and/or recommendation given by an arborist on behalf of the applicant; and
5. A staff report, if any, and any initial review and determination made by a designee of the public works director, if any; and
6. Geotechnical engineering reports and recommendations, if any, that may be requested or required by the public works director; and
6. Any other information that the public works determines is relevant to his/her determination.

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