

CITY OF WINDY HILLS

ORDINANCE NO. 12-04

**AN ORDINANCE ESTABLISHING A TREE BOARD, AND RELATING TO THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES AND SHRUBS WITHIN THE CITY OF WINDY HILLS IN PUBLIC RIGHT OF WAY ADJACENT TO STREETS AND SIDEWALKS, AND ON PRIVATE PROPERTY.**

(See Appendix A for Definitions)

**WHEREAS**, the City finds as public policy that trees and shrubs are an important natural resource that contributes to the aesthetic appeal and beneficial enjoyment of all lands in the City; and

**WHEREAS**, trees in the city provide air, water, and soil protection, filter pollutants, and provide for habitat and biological diversity; and

**WHEREAS**, well selected and maintained trees contribute to significant increases in property values for residential, commercial and public lands; and

**WHEREAS**, the City resolves to have a Community Forestry Program meeting the standards of The Tree City USA® program, as sponsored by the Arbor Day Foundation in cooperation with the USDA Forest Service and the National Association of State Foresters,

**NOW THEREFORE**, be it ordained by the City of Windy Hills:

**1. REPEAL AND REPLACEMENT OF ORDINANCES**

Windy Hills Ordinance No. 94 Series 1975 and Ordinance No. 89-01 are hereby repealed and replaced by this ordinance.

## **2. APPLICABILITY**

This ordinance provides full power and authority over all trees and shrubs located within street rights-of-way, parks and public places of the City of Windy Hills; and to trees, and shrubs located on private property adjacent to street rights-of-way that constitute a hazard or threat as described herein.

## **3. TREE BOARD**

### **a. Establishment**

There is hereby established a Tree Board for the City of Windy Hills, which shall consist of five voting members who are citizens and residents of this city, and a sixth non-voting member who is a member of the City Council. The six members shall be appointed by the Mayor with the approval of the City Council. Members of the board shall serve without compensation.

### **b. Term Of Office**

The term of the six Tree Board members shall be three years, except that the term of two of the members appointed to the first board shall be for only one year and the term of two members of the first board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed by the Mayor for the unexpired portion of the term. The Tree Board may also organize and recruit committees of non-board members to implement the board's programs.

### **c. Operation**

The Tree Board shall choose its officers and make its own rules and regulations. It shall meet monthly and keep a record of its proceedings. A majority of the five voting members shall be a quorum for the transaction of business. The Tree Board reports to the Mayor and the City Council.

### **d. City Arborist**

The City shall retain the services of a certified licensed arborist to advise and assist the Tree Board with their duties and responsibilities described in this ordinance, with a cost not to exceed \$3,000 per year. The arborist shall be certified through the International Society of Arboriculture (ISA), the Tree Care Industry Association (TCIA), the Society of Municipal Arborists (SMA), or the American Society of Consulting Arborists (ASCA). This arborist or any company associated with him shall not perform any trimming, pruning or removals for the City.

### **e. Annual Tree Work Plan**

The Tree Board shall study, develop, update annually and administer a written Annual Tree Work Plan with an estimate of its cost. The plan shall address species diversity, planting needs, hazardous trees, insect and disease problems, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas, and a pattern of regular care such as pruning and watering. The plan will be presented annually to the City Council for their review, acceptance and approval.

f. Other Assignments

The Tree Board may be assigned by the City Council to research, investigate, consider, make findings, report and recommend upon any other matters of question coming within the scope of its work.

g. Arbor Day

The City of Windy Hills shall have an annual observance of Arbor Day, for which the Tree Board shall make a proclamation and hold a celebratory ceremony such as presentation of award or planting of a tree.

h. Budget

The Annual Tree Work Plan and Arbor Day observance shall be carried out with an annual budget of at least \$2 per capita according to the most recent census. The cost of a city arborist shall not be included in this budget.

i. Review by City Council, Right To Appeal

The City Council may review the conduct, acts and decisions of the Tree Board. Any owner has the right to appeal any ruling or order of the Tree Board to the City Council, who may hear the matter and make a final decision.

#### **4. LANDSCAPING**

In new developments within the city, the Tree Board and the City Council shall review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided. Landscaping of new developments shall follow the Metro Louisville Land Development Code.

## **5. TREE PLANTING, MAINTENANCE, TRIMMING, TOPPING**

### **a. Public Tree Care**

The City shall have the right to plant, trim, prune, maintain and remove trees, plants and shrubs within the right of way of all streets, avenues, lanes, squares and public grounds, as may be necessary for public safety or preserve or enhance the symmetry and beauty of such public grounds.

### **b. Owner Planting of Street Trees**

The planting of Street Trees by adjacent property owners is encouraged providing that the selection and distance between trees is in accordance with this ordinance.

### **c. City Tree Planting Program**

The City will contribute \$100 per tree towards the planting of up to two (2) new trees per property, provided that the following conditions are met. The tree(s) must be placed in a right of way, or in a private front or side yard, so the tree(s) can be seen from the street. For properties backing up to I-264, the tree(s) may be placed in the back yard also. The tree(s) must be purchased from and planted by the designated nursery with which the City has negotiated a large discount and a guarantee. The nursery gives the discount to the property owner and then deducts the City's contribution. The property owner pays the nursery a planting fee based on size of the tree(s), and agrees to take care of the tree(s). After the nursery determines the final cost of the tree considering the sale price, the discount, the City's contribution, and the planting fee, the property owner will write a check for the resulting amount payable to the City of Windy Hills. The nursery will replace a tree if it dies within a year, the owners may plant the replacement tree themselves or pay the nursery's planting fee, but the replacement tree is not guaranteed.

### **d. Trimming and Pruning**

Any tree or shrub or other plant on right of way or private property shall be trimmed or pruned when it interferes with walking or traffic, or the proper spread of light along the street from a streetlight, or with visibility of any traffic control device or sign. The person owning or occupying the property on or adjacent to which the tree, shrub, or other plant is located shall be responsible for trimming or pruning it to maintain the clearances for pedestrians and vehicles in accordance with this ordinance.

### **e. Topping**

It shall be unlawful as a normal procedure to top any Street or Park Tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Tree Board.

f. Distances And Clearances for Planting of New Trees

(1) Distance from Street Corners and Fireplugs: No street tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curb lines. No street tree shall be planted closer than 10 feet of any fireplug.

(2) Distance from Utilities: No street trees other than those species listed as Small Trees in the “Windy Hills Street Tree Listing Of Trees Acceptable For Planting” may be planted under or within 10 lateral feet (10’) of any overhead utility wire, or over or within 5 lateral feet (5’) of any underground water line, sewer line, transmission line or other utility.

(3) Distance from Sidewalk, Curb or Edge of Pavement: The distance that trees may be planted from sidewalks, curbs or edge of uncurbed street pavement depends on the three size classes of trees listed in the “Windy Hills Street Tree Listing Of Trees Acceptable For Planting”. Trees shall not be planted closer to any curb or sidewalk than the following distances:

Small trees, 2 feet.

Medium trees, 3 feet.

Large trees, 4 feet.

(4) Distance Between Trees: The distance between trees depends on the three size classes listed in the “Windy Hills Street Tree Listing Of Trees Acceptable For Planting”. Trees shall not be planted closer to each other than the following distances:

Small trees, 30 feet.

Medium trees, 40 feet.

Large trees, 50 feet except in special plantings designed or approved by a landscape architect.

(5) Clearances: Trees shall be trimmed to maintain these clearances:

Above the surface of a sidewalk, eight feet (8’).

Above the surface of a street, twelve feet (12').

Between any part of tree and adjacent sidewalk or pavement, at least one foot (1').

## **6. REMOVAL OF TREES AND SHRUBS**

### **a. Responsibility of Owners**

Owners are responsible for removing from the right of way adjacent to their property any living, dying or dead tree or limb or shrub if it obstructs street lights, traffic signs, or the free and safe passage of pedestrians and vehicles, or poses a hazard to life or property, or is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or if such tree or shrub harbors an infestation or fungus or disease.

### **b. Notice to Remove Tree or Shrub**

Upon the discovery in a right of way of any problematic tree or shrub such as described in Paragraph 6.a. above, the Tree Board shall serve written notice upon the owner of the property adjacent to the right of way upon which such diseased or infested tree is situated, requiring the owner to prune, remove or otherwise remedy such condition at his own expense within thirty (30) business days.

### **c. Replacement of Removed Street Tree**

At the owner's request, the City will replace a Street Tree after the tree and stump have been removed by the owner, and will pay for both the tree and a qualified arborist to transplant it, up to a limit of \$300. The owner shall pay any cost over \$300. The owner must choose a tree that is on the "Windy Hills Street Tree Listing Of Trees Acceptable For Planting", and that is approved by the City Arborist for the location.

## **7. REMOVAL OF STORM-DAMAGED TREES**

The City will perform and pay for the partial removal of any tree, whether in right of way or not, that due to a storm or other natural condition has been damaged so as to block a public roadway or sidewalk. The obligation of the City shall extend only to the clearing of the public roadway or sidewalk,

and any further restoration or complete removal of the tree and its cost shall be borne by the homeowner.

## **8. STUMPS, WEEDS, VINES, CURBS**

### a. Stump Removal

Stumps of Street and Park Trees shall be removed so that the top of the stump shall not project above the surface of the ground.

### b. Removal of Weeds from Sidewalks and Drainage Swales

It shall be unlawful for the owner or his agent of property abutting any public ways to permit noxious weeds or vegetation to grow or remain in the area between his property line and the paved portion of the street and it shall be the duty of such abutting owner to maintain the grass in the unpaved portion of the public way adjacent to his property and to keep sidewalks and drainage swales adjacent to his property free from obstruction.

### c. Removal of Tree Vines

Vines are detrimental to the health of trees and can obscure their condition. The owner shall remove any vines growing on the trunk(s) of their Street Tree(s) in order to allow a visual assessment of the condition of the tree(s).

### d. Curbs and Curb Stones

The owner of property may take reasonable steps to protect the right of way adjacent to his property from damage or harm, including the maintenance of curbs, curb stones or similar devices no closer than one-inch to the paved portion of the roadway in areas subject to continued abuse.

## **9. HEIGHT LIMIT IN RIGHT OF WAY**

No shrub, tree, or other plant shall be permitted that is over 3 feet in height above the established elevation of the curb level within the right of way of any street (including sidewalk area), provided, however the trunk of trees (exclusive of branches) shall be permitted within such area where otherwise in compliance with the terms of this ordinance.

## **10. PUBLIC NUISANCE TREES AND SHRUBS**

a. A living, dying or dead tree or limb or shrub on a right of way, or adjacent to a right of way but on private property, may be declared a public nuisance by the City if it obstructs street lights, traffic signs, or the free and safe passage of pedestrians and vehicles, or poses a hazard to life or property.

A representative of the Tree Board may meet with the property owner to discuss such a tree, and the City may give notice to the property owner to remedy such nuisance at the owner's expense.

b. A living, dying or dead tree or limb or shrub on a right of way, or anywhere on private property, that harbors an infestation or fungus or disease which the City Arborist determines is a contagious communicable threat to other trees within the City, may be declared a public nuisance by the City.

Owners are encouraged to report such nuisances to the City. A representative of the Tree Board may meet with the property owner to discuss such a nuisance. The City may give notice to the property owner that it intends to remediate such nuisance for the owner at City expense, and proceed to do so. The owner shall cooperate with the City's remediation. Remediation may include various measures as determined by the City Arborist, such as spraying, injecting, trimming, or removing.

## **11. ENFORCEMENT**

If a property owner does not comply with a notice from the City about a provision of this ordinance, the Mayor, at recommendation of the Tree Board and the direction of City Council, may hire and send specialists or contractors upon a property, accompanied by the City Code Enforcement Officer, to carry out the requirements of the notice. If the owner is responsible for the cost according to this ordinance, the City may then bill the property owner for the cost, and if not paid, file a lien to recover the cost.

## **12. LIABILITY, FINES, LIENS AND APPEALS**

### **a. Liability**

An owner is liable to the public for failure to trim or remove trees and shrubs within his street right of way to the requirements contained herein.



b. Fines

A property owner that is determined by the Tree Board as being in violation of this ordinance shall be subject to a fine not to exceed \$500 for each offense. The amount of the fine shall be recommended by the Tree Board and approved by the City Council.

b. Notification and Appeal

No person shall be fined for any violation of this ordinance without first having been notified in writing by the City of the violation, and having been given thirty (30) business days to correct the violation or to appeal the fine.

c. Right to Lien

Upon the failure of the owner of the property to comply with any notice specified herein, the City of Windy Hills may file a lien against the property for any unpaid fines, for the actual cost of remedying the situation, and for any attorney costs and filing fees. The claim shall be in the form of an affidavit signed by the Mayor and shall be recorded in the Jefferson County Court Clerk's Office and which lien shall bear interest at the rate of six percent (6%) per annum thereafter until paid.

**13. APPENDIX, SEVERABILITY**

Appendix A (Definitions) is part of this ordinance. The provisions of this ordinance are severable, and the invalidity of any part of this ordinance shall not affect the remaining provisions.

**14. EFFECT**

This ordinance shall take effect upon its adoption and publication as required by law.

First reading held: September 10, 2012

Second reading and adoption: October 8, 2012