

**VILLAGE OF BERRIEN SPRINGS  
ORDINANCE NUMBER 378**

AN ORDINANCE TO AMEND CHAPTER 42 ENTITLED  
“VEGETATION,” ARTICLE II ENTITLED “VEGETATION  
IN PUBLIC PLACES”

**NOW THEREFORE**, the Village of Berrien Springs ordains:

**Section 1.** Chapter 42 entitled “Vegetation,” Article II entitled “Vegetation in Public Places” is hereby deleted and replaced with the following new Article II:

**ARTICLE II - TREE ORDINANCE**

**Sec. 42-26. Purpose and Intent.**

A. It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees and shrubs on public places, curblawns and street rights-of-way within the Village of Berrien Springs.

B. It is the intent of the Village Council that the terms of this chapter shall be construed so as to: (1) promote the planting, maintenance, restoration, and survival of desirable trees and shrubs on public places, and street rights-of-way within the Village; (2) provide protection from personal injury and property damage to individuals, corporations, and other businesses caused or threatened by the improper planting, maintenance or removal of trees and shrubs, on public places, and street rights-of-way within the Village; and, (3) to plant, remove and replace trees or shrubs within curblawns, upon request, to the extent the annual budget will allow. Third parties who request removal of a tree that is approved by the Village must pay the Village \$250.00 per tree to help cover the cost to replace the tree(s) and to cover administration costs. See Section 42-31 (A)(6) below.

**Sec. 42-27. Applicability.**

This Chapter provides complete power and authority over all trees and shrubs located within the street rights-of-way, parks, cemeteries, curblawns, and other public places of the Village; and to trees and shrubs located on private property that constitute a hazard or threat to the safe use by the public of any street, sidewalk or public place in the Village.

**Sec. 42-28. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

VILLAGE TREE: Any tree planted or growing on Village-owned or maintained property.

CURBLAWN: The part of a street right-of-way, not covered by sidewalk or paving, lying between the sidewalk proper and the curb or outside edge of the street.

**DRIPLINE:** An imaginary vertical line extending downward from the outermost tips of the tree branches to the ground.

**LARGE TREES:** Those trees which attain a height of 45 feet or more at maturity. Examples of large trees include but are not limited to: ash, green and white; linden; maple, sugar, red and Norway; sweetgum, tulip; ginkgo and oak.

**MEDIUM TREES:** Those trees which attain a height of 30 feet to 45 feet at maturity. Examples of medium trees include but are not limited to: golden rain, hawthorn, Japanese tree lilac, Bradford pear, redspire pear, aristocratic pear, hybrid locust and Columnar Norway Maple.

**PROPERTY OWNERS:** The individual or party owning such property as shown on the Oronoko Township's Assessor's records.

**PUBLIC PLACE:** Property owned by the Village of Berrien Springs.

**SHRUB:** A low growing, multi-stemmed woody perennial.

**SMALL TREE:** Any tree located on a street right-of-way or curblawn, but in most cases between the sidewalk and the street.

**STREET TREE:** Any tree located on a street right-of-way or curblawn, but in most cases between the sidewalk and the street.

**TOPPING:** The severe cutting back of tree limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

**TREE:** A plant which can be grown with a single stem or trunk and is over 10 feet in height.

#### **Sec. 42-29. Tree Committee.**

A Tree Committee shall be created and membership shall include representation from the Public Properties and Ordinance and Public Utilities Committees. The purpose of the Tree Committee is to develop guidelines, subject to Village Council approval, related to the implementation and enforcement of this chapter and recommend modifications or changes as might become necessary to the Public Works Superintendent.

#### **Sec. 42-30. Landscaping.**

In new subdivisions or when the development of commercial property occurs by private enterprise, landscaping plans shall be submitted to the Public Works Director or his/her designee who shall review the plans and may require the developer to plant trees along any of the streets, parking lots, parks, and other public places abutting lands henceforth developed and/or subdivided.

**Sec. 42-31. Tree planting, maintenance and removal.**

**A. Tree Planting**

- (1) **Prohibited Trees.** The owner of property abutting any street may, upon obtaining prior written permission from the Public Works Department, plant trees in the curblawn and street rights-of-way after which they shall become a Village tree. The following species shall not be planted in the aforementioned locations: Populus Spp., (White Poplar or Aspen); Acer Negunda (Box Elder); Ailanthus Altissima (Tree of Heaven); Catalpa (Catalpa); Ulmus (American, Winged, Slippery, Rock, Cedar, and Siberian Elm); Juglans (English Walnut, Butternut, Black Walnut); Robinia Pseudoacacia (Black Locust); Salix Alba (Willow); Abies (Fir); Alnus (Alder); Betula Spp. (Paper Birch, Yellow Birch, Sweet Birch, River Birch, and Gray Birch); Juniperus (Common Juniper); Taxus (Yew); Thuja (Cedar); Sassafras Albidum (Sassafras); Elaegnus Angustifolia Russian-Olive); Maclura Pomifera (Osage-Orange); Morus Alba (Mulberry); Prunus Serotina (Black Cherry); Ginkgo Biloba (Ginkgo or Maidenhair – female sex).
- (2) **Spacing.** No trees shall be planted closer together than the following: small trees, 25 feet; medium trees, 35 feet; and large trees, 45 feet. Special landscape plantings may be excepted from this provision upon written approval by the Public Works Department.
- (3) **Utilities.** No street trees other than those species listed as small or medium trees may be planted under or within 10 lateral feet of any overhead primary electric wire.
- (4) **Distance from curb and sidewalk.** No trees may be planted any closer to any curb or sidewalk than the following distances: small trees, two feet; medium trees, three feet; and large trees, four feet.
- (5) **Exempt trees.** Trees planted prior to the enactment of this chapter are exempt from the spacing provisions of this section.
- (6) **The Village's goal is to plant 3 new trees for every one tree removed, depending on the budget.** Except as otherwise set forth herein, when a third party requests removal of a tree that is approved by the Village, the requesting party must pay the Village \$250.00 x 3 to help cover the costs to replace the one tree with three trees and to cover administrative costs.

**B. Trees and shrub maintenance.**

- (1) **Village trees.**
  - (a) All maintenance performed on trees located in public places, curblawns and street rights-of-way will be performed by the Village or its agents unless an exemption is made in writing by the Public Works

Superintendent. Pruning will be conducted according to the National Arborist Association's Pruning Standards for Shade Trees, revised 1988. Future revisions to the National Association's Pruning standards will be accepted as the current revised standard.

- (b) The minimum clearance of any overhanging portion thereof shall be eight feet over sidewalks and 15 feet over all streets except major thoroughfares which shall have a clearance of 16 feet.
- (2) Street corner clearance and other visual obstructions.
- (a) No property owner shall maintain on their property any tree, shrub, hedge or other vegetation at a height greater than three feet above the surface of the street within a distance of 25 feet from the street right-of-way line or as otherwise determined by the Village traffic engineer at an intersection corner. No person shall maintain any tree, shrub, hedge or other vegetation anywhere on his/her property which interferes with the clear view of traffic of drivers approaching an intersection.
  - (b) Failure to prune trees, shrubs, hedges or other plantings as required in Subsection B(2)(a) above may result in a written notice to comply from the Director of the Public Works Department.
  - (c) The written notice to comply shall be served by certified mail to the last known address of the property owner.
  - (d) The property owner shall have 21 days from receipt of the notice to comply. Prosecutions for violations of this section may be commenced by issuance of an appearance ticket. The Public Works Superintendent or his/her designee is authorized to issue and serve such appearance tickets.
  - (e) Any tree, shrub or other planting planted on private property but physically obstructing by overhang or other means the public right-of-way, public street or sidewalk or obstructing street lights, traffic signs or the vision of vehicular traffic shall be pruned by the Village in accordance with this section.
- (3) Abuse or mutilation of trees. Unless specifically authorized by the Public Works Superintendent, or by ordinance, no person, firm, or corporation shall damage, cut, carve, transplant or remove any Village tree or street tree nor attach any rope, wire, nails, advertising poster or other contrivance, nor allow any substance which is harmful to such trees to come in contact with them, nor set fire, nor permit any fire to injure such trees.
- (4) Trenching. Open trenching for new utility lines and services in the curblawn, street right-of-way, or public place shall not occur within  $\frac{1}{2}$  the crown radius of the tree and never closer than one foot of any tree. Boring will be required within those limits.

- (5) Placement of materials. No person, firm, or corporation shall deposit, place, store or maintain upon any public place, curblawn or street right-of-way for more than 15 days any stone, brick, sand, concrete, or other materials within the dripline of any tree which may impede the free passage of water, air or fertilizer to the roots of any tree, except by written permit of the Public Works Superintendent.
- (6) Overhead tree pruning by utility companies.

- (a) All line clearance tree trimming or other construction work requiring tree trimming to trees located in public places, curblawns or street rights-of-way by any utility shall be conducted in accordance with the standards set forth in §42.31(B). Acts of God, the loss of utilities services due to weather and like emergencies constitute an exception to this subsection.
- (b) For nonemergency trimming of trees by a utility company, the utility shall provide written notice to the Public Works Superintendent at least 15 days in advance of the tree trimming. Said notice shall provide the exact location of the proposed trimming. Trimming shall be conducted in accordance with this chapter and the direction of the Public Works Superintendent.
- (c) Line clearance distances shall be:

	<b>Primary (feet)</b>	<b>Secondary (feet)</b>	<b>Transmission (feet)</b>
Top trimming	5 to 7	1 to 3	6 to 8
Side trimming	4 to 6	1 to 3	10 to 14
Over trimming	6	1 to 3	None

- (d) Utility companies shall provide notice to adjacent house addresses of residents prior to curblawn tree pruning activities for nonemergency trimming.

- (7) Topping. No person, utility or other party may top any street tree, Village tree or tree located at a public place. 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 subsection at the determination of the Public Works Superintendent.

C. Tree removal. Only the Village or its agent may remove street trees or Village trees. Any other person requesting to remove street trees or Village trees must obtain a permit

from the Public Works Superintendent. Unless otherwise directed by the Tree Committee, when a third party requests removal of a tree that is approved by the Village, the requesting party must pay the Village \$250.00 x 3 to help cover the costs to replace the one tree with three trees and to cover administrative costs. Village trees and street trees may be removed for the following reasons only:

- (1) Where the tree is at least 90% dead;
- (2) Where the tree constitutes a public hazard;
- (3) Where the tree is diseased;
- (4) Where the trees are planted too closely together;
- (5) Where necessary for the installation of public streets, infrastructure improvements or driveways after review by the Tree Committee and the Public Works Superintendent;
- (6) Where unique circumstances exist, and request is made for the removal upon the recommendation of the Tree Committee and the Public Works Superintendent;
- (7) Trees whose roots lift sidewalks or driveways shall not be removed unless it is not possible to remedy the problem by relocating the sidewalk or by cutting and removing roots. Contractors shall provide 15 days notice to the Public Works Superintendent before commencing such operation. Street trees may not be removed for the installation of new driveways without a permit from the Public Works Superintendent.
- (8) Tree shall not be removed for the sole reason that the tree roots are clogging the sewers.

**Sec. 42-32. Permit.**

- A. Unless otherwise permitted by this chapter, no person, firm, or corporation may perform any of the following acts on curblawns, street rights-of-way or public places without first obtaining a permit from the Public Works Superintendent.
  - (1) Plant trees or shrubs.
  - (2) Remove trees or shrubs.
  - (3) Trim trees or shrubs.
  - (4) Spray trees or shrubs.
  - (5) Tree surgery.
- B. The person, firm, or corporation receiving such permit shall abide by the specifications and standards of practice in this chapter, and shall as a condition of such permit agree to

hold the Village harmless from any and all liability which might result from the work or activity authorized. Before any permit shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts as prescribed by the Village for bodily injury and property damage indemnifying the Village or any person injured or damaged resulting from the pursuit of such activities as herein described.

**Sec. 42.33. Enforcement authority.**

A. The responsibility for enforcement of this chapter shall be vested in the Public Works Superintendent or his/her designee. Prosecutions for violations of this chapter may be commenced by issuance of an appearance ticket. The Public Works Superintendent or his/her designee is authorized to issue and serve such appearance tickets. A party found to be in violation of this chapter may be subject to fines and costs up to \$500.

B. No person, firm, or corporation shall hinder, prevent, delay or interfere with the Public Works Superintendent, Village employees or agents of the Village engaged in the implementation or enforcement of this chapter. However, nothing herein shall prohibit an interested party from pursuing any legal remedies to which they might have a right.

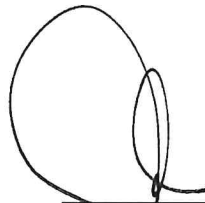
**Sec. 42.34. Appealability.**

With the exception of appearance tickets, any enforcement or permitting requirement of this chapter may be appealed in writing to the Village President.

YEAS: 5

NAYS: 0

Dated: January 18, 2021



\_\_\_\_\_  
Jesse Hibler, Village President

Ordinance declared adopted:



\_\_\_\_\_  
Rachael E. Kuzda, Deputy Clerk

I hereby certify that the above and foregoing Ordinance was duly adopted by the Village Council of Berrien Springs and published in the *Journal Era*, a weekly newspaper published in the Village of Berrien Springs, in the issue of said newspaper dated and published on the 28 day of January, 2021.



\_\_\_\_\_  
Rachael E. Kuzda, Deputy Clerk