

AVON TOWN CODE
Article 14, Section 6-196

STREET TREES

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Section 1. Purpose

The requirements specified herein are intended to encourage the planting, care, and preservation of trees in the public right-of-way. The policies and procedures contained herein are intended to establish the responsibilities of the Town and its citizens towards trees in the public right-of-way, to state a preference for specific types of trees along city streets, to increase public awareness of the contribution of street trees to the air quality, wildlife habitat, and aesthetics of the Town, and to establish urban forestry practices which enhance the gathering and dissemination of information about trees, expand the number of street trees in the Town, and encourage proper maintenance techniques and accommodation of street trees.

Section 2. Definitions

For the purposes of clarity certain terms are defined in this section. Terms not defined in this section shall have meanings customarily assigned to them.

1. **“Approved Street Tree List”** is the list of trees approved by the Town of Avon for planting within the public right-of-way. See Appendix A.

2. **“Public Property”** is property owned or controlled by the Town of Avon.
3. **“Public Right-of-Way”** is land occupied or intended to be occupied by a street, alley, boulevard, road, trail, or other transportation facility which is owned by the Town or other public agency.
4. **“Street Trees”** are defined as trees lying on the public right-of-way owned or controlled by the Town including those located along roads and streets between the pavement edge and private property line and within any park or other public facility.
5. **“Town”** is Town of Avon.
6. **“Tree”** means a perennial woody plant with one main stem or in clump form up to three main stems which develops many branches and which ordinarily grows to a height of 20-feet or more.
7. **“Urban Forest”** means the collection of trees and shrubs located within the Town limits.
8. **“Committee”** means the Tree Advisory Committee established by this ordinance.
9. **“Council”** means the Town Council in Avon, Indiana.
10. **“Dripline”** means the width of a tree crown as measured by the lateral extent of the foliage.
11. **“Maintaining”** includes trimming, care, pruning, and preservation of trees.
12. **“Tree Lawn”** means public property lying between the boundary of the edge of pavement or curb and the property line except such portion thereof as may be covered by a sidewalk or used as a walkway.
13. **“Utilities”** includes both private and public utility companies.
14. **“Property Owner”** means the record owner or contract purchaser of any parcel of land in the Town of Avon.

Section 3. Creation of a Tree Advisory Committee

There is created and established by this ordinance a Tree Advisory Committee for the Town of Avon, Indiana. The Parks, Recreation, and Beautification Council (PRBC) will serve as the Tree Advisory Committee and shall be created to serve in an advisory capacity to the Avon Town Council. The Tree Advisory Committee shall consist of seven members residing within the Avon Town limits. One Town staff member shall serve as Project Coordinator and liaison to the Tree Advisory Committee.

1. Qualifications.

The goals of this Ordinance will be furthered if at least one of the seven Tree Advisory Committee members possesses a degree in forestry, horticulture, landscape architecture or is a certified arborist or a full-time professional in the tree care industry with a minimum of five years experience. If none of the members are so qualified, then an expert tree care consultant shall be utilized.

1. Compensation

Members of the Tree Advisory Committee shall serve without compensation unless determined by the Town Council.

2. Operation

The Tree Advisory Committee will select a chairperson in January of each year. A majority of its members must be present to conduct business. The Committee shall schedule its meetings and keep a journal of and minutes of its proceedings. The Committee shall be advisory only and shall submit its written recommendations to the Town Council for action and approval.

3. Duties and Responsibilities

- A.** The Committee and Staff Project Coordinator may prepare or have made a written plan for the care, replacement, maintenance, and removal or disposition of trees, shrubs and other existing vegetation within the public-right-of-way and on public property. The plan shall be presented annually to the Town Council and upon their acceptance and approval, shall constitute the official comprehensive town tree plan for the Town of Avon, Indiana.
- B.** The Committee shall develop and maintain a list of suitable trees for planting including the tree species, sizes and forms to be planted in public rights-of-way and on public property for adoption by the Town Council as the Town's Approved Street Tree List. The list shall be reviewed, updated, and submitted for approval by the Council as needed. The Tree Advisory Committee shall also create a list of trees unsuitable for planting.
- C.** The Committee shall establish educational and informational programs, pamphlets, and literature for dissemination to the public to assist the public in proper protection, maintenance, removal and planting of trees on public property. The committee shall also from time to time make recommendations on actions for the dissemination of news and information on the topic for Town Council approval.
- D.** The Committee shall study proposals for landscape modifications within the public right-of-way or on public property including removal appeals referred to them for review by the Town Council, any Town Appointed Board, Town Official, or member of the Tree

Advisory Committee. The Tree Advisory Committee shall make a recommendation for action based on their review findings to the Town Council for approval.

- E. The Committee shall advise the Town Council as needed, concerning amendments to this Ordinance or any other standards or documents prepared by the Tree Advisory Committee.
- F. The Committee shall meet at least four times annually with no less than one meeting held each quarter to conduct business and coordinate the Town of Avon's urban forestry program, grants and educational activities.

Section 4. Jurisdiction and Authority

All actions or decisions taken or made by The Tree Advisory Committee shall be subject to review by the Town Council. Any Citizen may appeal any recommendations made by the Committee to the Town Council. The Town Council shall hear the matter and make all final decisions and determine all final actions to be taken. The Committee shall have the exclusive jurisdiction and authority to:

1. Order, control, and regulate the sodding, seeding, and maintenance of lawns and maintaining, planting and removal of trees within the limits of public streets and other public places.
2. Order, control, and regulate the removal of dead and diseased trees, or portions thereof, which constitute a menace to public safety and health welfare wherever located in the Town.
3. Adopt and enforce rules, regulations, and specifications relative to subsection (1).
4. Regulate and prescribe the terms and conditions upon which permits for the maintaining and removal of trees shall be issued.

Section 5. Permitting

1. Removal

- A. Other than in emergency situations requiring immediate action, no person shall trim more than one-fifth of or remove a tree located within the public right-of-way, or employ or instruct another person or firm to carry out such actions, without first obtaining

written permission of the Tree Advisory Committee and Staff Project Coordinator. Permits are not required for work done by departments of the town or utilities and their agents or contractors.

- B.** Permits shall be granted to property owners at no charge. The permit shall be effective for thirty days after approval by the Staff Project Coordinator and the work shall be completed in the time allowed on the permit and in a manner described therein. Any permit shall be void if its terms are violated.
- C.** The granting or denial of these permits by the Staff Project Coordinator shall be made in accordance with the policies and principles set forth in this chapter or as otherwise adopted.

2. Planting

- A.** Citizens wishing to plant trees in the public right-of-way shall submit a plan indicating the location, size, and species of trees to the Tree Advisory Committee. This plan shall be consistent with the rules, regulation, and orders, including the Tree Planting Detail shown as Appendix B, adopted by the Committee. The Committee shall review submitted plans and make recommendation regarding approval of a permit to plant trees in the public right-of-way.
- B.** Whenever a tree is planted or set out in conflict with the provisions of this Chapter, it shall be lawful for the Town or designated municipal authority to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of assessments.
- C.** Permits shall be granted to property owners at no charge. The permit shall be effective after approval by the Tree Advisory Committee and the work shall be completed in the time allowed on the permit and in a manner described therein. Any permit shall be void if its terms are violated.
- D.** The granting or denial of these permits by the Staff Project Coordinator shall be made in accordance with the policies and principles set forth in this chapter or as otherwise adopted.
- E.** Tree plantings will be done with the consent of the owner of the property. Property owners will be notified by mail by the Town of tree plantings. Property owners who do not wish to have a tree planted on or adjacent to their property must respond to the Town's notification prior to plantings.

Section 6. Responsibility for Trees in the Public Right-of-Way

The owner of property on which a public street is located is ultimately responsible for the planting and removal of trees and other vegetation in that public right-of-way and for the maintenance of such vegetation in a condition that does not pose a hazard to the public health and safety or inhibit passage along the public right-of-way. At any time such owner may be called upon by the Council to carry out these responsibilities in accordance with the policies, practices, and procedures set forth in this Chapter.

The Town of Avon, through the Tree Advisory Committee and the Town Council, may also engage in the planting, maintenance, protection, and where necessary, removal of trees and other vegetation in the public right-of-way and on municipal lands in order to secure the public health and safety, maintain essential public services, improve and expand the Town's tree stock, and improve public aesthetics. These activities shall be guided by the principles and practices as set forth in this Chapter and as adopted by the Council.

Section 7. Maintenance and Care

The Council shall have all the right, power, and authority granted to municipalities under state law to require the owners of parcels of land under any public street of the Town to maintain and improve the tree lawn area. Further, the Council may, through other means or incentives, encourage voluntary efforts to improve landscaping on the public streets.

When working on trees within the public right-of-way and on municipal property, priority shall be given to maintenance rather than the replacement of flawed trees. Emphasis shall be placed on remedial practices such as pruning, wound treatment and fertilization.

Interference with signs, lights, lines of sight, walks, structures, and utilities shall first be addressed through selective pruning of branches and roots.

Only when the Staff Project Coordinator has determined that a tree creates a dangerous, unsafe, or hazardous condition or poses a threat of infestation to other trees and that these conditions cannot adequately be corrected through remedial measures, shall a tree within the public right-of-way or municipal land be removed.

1. Trimming of Trees in the Public Right-of-Way

Any tree or other vegetation, which grows over the street or obstructs the view of traffic control devices or traffic on the street within the town,

wherever located, shall be trimmed either by the Town or by an expert tree care company hired by the Town. Such vegetation shall be trimmed so that there shall be clear space of 14 feet above the surface of the curb and in such a manner as to not obstruct the view of any street light, sign, signal device, or intersection.

2. Placing Injurious Substances Near Trees

No person shall place or keep any stone, cement, or other physical or chemical substances around any tree within the limits of the public right-of-way which in any manner impedes the free entrance of water or air to the roots of such tree or stunts the growth of such tree.

3. Excavation

In the event of any excavation or construction, the owner or contractor shall place, or cause to be placed, around all trees within the limits of any public right-of-way, such guards as will effectively prevent injury to such trees. Wherever possible such guard shall be placed no closer to the trunk of such tree than the exterior limits of the drip line. Wherever possible, all building materials and debris and all building activity shall be kept beyond the drip line limits of such trees and at no time shall such material or debris be permitted within three feet of such trees.

4. Anchoring or Attaching Objects to Trees

It is unlawful to fasten or attach anything to any tree located in the public right-of-way or on Town property which is likely to injure the tree. This includes fastening any wire, rope, chain, or cable, or attaching any nail, staple or tack to a tree for the purposes of anchoring any other structure or object in, on, or adjacent to a tree.

5. Electrical Wires and Trees

Every person owning, installing or maintaining any wires charged with electrical current shall, whenever possible, securely fasten such wires so that same shall not come in contact with any tree in the public right-of-way or on public land.

6. Tree Topping

It shall be unlawful as a normal practice for any person, firm or Town department to top a tree within the public right-of-way or on municipal

land. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where pruning practices are impractical may be exempted from this ordinance at the determination of the Tree Advisory Committee.

7. Abuse

No person shall intentionally damage, carve, transplant, or remove any municipal tree, or set fire to or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree including the root zone.

Section 8. Interference Unlawful

No person, firm, or corporation shall interfere with the Tree Advisory Committee or Town of Avon, or persons acting under their authority, while engaged in planting, mulching, pruning, otherwise maintaining, or removing and tree, shrub, or plant in any public right-of-way or public place within the Town.

Section 9. Tree Inventory

The Town through the Tree Advisory Committee and Staff Project Coordinator shall compile and maintain an inventory of all trees and tree lawns within the public streets. This inventory should record the location, species, condition, size and if known the planting and maintenance history of these trees. This inventory should be kept up-to-date with updates occurring at a minimum annually.

Section 10. Replacement of Urban Tree Stock

It is the policy of the Town to maintain and expand tree cover in the Town as a whole and of individual streets and neighborhoods. The Town shall plant at least twenty percent more trees than it removes in order to maintain a planting to removal ratio of at least 1.2 to 1.

Once a tree has been removed, it shall be replaced, wherever possible, at or near its original location as soon as the planting season permits. To facilitate tree replacement, stumps should be removed promptly and thoroughly once a tree has been removed.

In order to encourage large tree canopies and maximum overall foliage, priority on planting trees shall be given to tall shade-producing species as listed in the Approved Street Tree List. Smaller trees and ornamental trees should only be used in areas in which space constraints prevent the planting of larger shade trees. Wherever possible, native species are to be preferred.

Section 11. Notice of Tree Removal

While no notice of any kind shall be necessary where the Town determines a tree should be removed because its current condition or location constitutes a hazard, in all other cases the Town shall give notice to the general public of proposed tree removal through a clear visual identification of targeted trees at least two weeks in advance of the proposed removal. Except where the property owner has requested a permit, the town shall also give written notice of intention to remove a tree in the public right-of-way to the underlying property owner at least two weeks in advance of the proposed removal. This notice shall give reasons for the proposed removal, alternatives to the removal and reasons why these will not be pursued, date of removal, and the procedures to obtain further information or to file an appeal.

In absence of an emergency, utilities and their agents and contractors should notify the Town of their intent to remove trees within the public right-of-way or on public property.

Section 12. Appeal of Tree Removal

In cases where notice of intent to remove a tree is required, any Town resident or owner of property within the Town may appeal the decision to allow or disallow the removal of a tree by the Town or its agents or contractors. In addition, any applicant for a removal permit may appeal a denial of the permit to the ~~board~~ Tree Advisory Committee. Appeals shall be made to the Tree Advisory Committee and shall be made in sufficient time for the ~~Council~~ Committee to decide these matters in the normal course of their business within thirty days of the notice of tree removal or denial of permit. Decisions of the ~~Council~~ Committee shall take into consideration the principles and policies set forth in this Chapter or otherwise adopted by the ~~Council~~ Committee. Persons wishing to appeal an adverse decision by the Committee may do so by filing with the Clerk-Treasurer a notice of appeal within 30 days of the adverse decision. The Town Council shall conduct a hearing within 60 days of the filing of the appeal. The Town Council shall enter written findings. Persons wishing to appeal the decision of the Town Council may do so by filing with a court of competent jurisdiction in Hendricks County a writ of certiorari within 30 days of the decision of the Town Council.

Section 13. Application to all Town Activities

The principles and policies set forth in this Chapter should guide the activities of all town departments including streets, utilities, sanitation, and parks. Essential activities by any Town department shall be done so as to minimize damage to trees in the public right-of-way and on municipal property.

Section 14. Trees and Sidewalk Improvements

Damage to sidewalks is in itself not sufficient reason to remove a tree if present damage can be adequately corrected and future damage can be averted by selective pruning of roots, installation of tree guards, or by sidewalk repair, replacement or realignment. Nor is convenience and efficiency during street or sidewalk repair or placement sufficient reason in itself for tree removal. Wherever possible the installation, repair, and replacement of sidewalks shall accommodate trees and shall be done in a manner that prevents damage to their roots.

Section 15. Violations

1. The Council and agents shall have authority to do all acts to enforce this chapter, including issuing of citations.

2. Any person who violates the provisions of this chapter is subject to fines as follows:

<u>Offense</u>	<u>Fine</u>
<u>Trimming</u>	<u>\$100</u>
<u>Planting</u>	<u>\$100</u>
<u>Removing</u>	<u>\$500</u>
<u>Damaging</u>	<u>\$100</u>
<u>Placing injurious substances on or near tree</u>	<u>\$50</u>
<u>Anchoring or attaching objects to tree</u>	<u>\$50</u>
<u>Other offenses</u>	<u>\$50</u>

3. Each day that a violation continues shall constitute a separate violation.

4. In addition to any fine imposed, any person whose violation of this chapter results in damage to trees may be liable for the cost of these damages up to three thousand dollars for each tree.

