

ORDINANCE NO. 2007-94

AN ORDINANCE AMENDING THE ENTIRE CHAPTER 169 OF THE CODIFIED ORDINANCES OF THE CITY OF KENT ENTITLED "TREES" TO REFLECT THE HIRING OF A CITY ARBORIST AND DEFINING THE NEW ROLES OF THE SHADE TREE COMMISSION AND THE CITY ARBORIST.

WHEREAS, the City of Kent has hired a City Arborist; and

WHEREAS, the roles of the City Arborist and the Shade Tree Commission need to be accurately reflected in Chapter 169 of the Kent Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, a majority (5) of all members elected thereto concurring:

SECTION 1. That Council does hereby amend Chapter 169 of the Codified Ordinances of the City of Kent entitled "TREES", a copy of which is marked Exhibit "A" attached hereto and incorporated herein.

SECTION 2. That any existing ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance shall take effect and be in force from and after the earliest date allowed by law.

PASSED: _____ 09/19/2007 _____
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
ACTING CLERK OF COUNCIL

I hereby certify that Ordinance No. 2007-94 was duly enacted this
19TH day of SEPTEMBER, 2007, by the Council of the
City of Kent, Ohio

ACTING CLERK OF COUNCIL

CHAPTER 169
Trees

<p>169.01 Definitions.</p> <p>169.02 Purpose</p> <p>169.03 Shade Tree Commission Established</p> <p>169.04 Shade Tree Commission Duties</p> <p>169.05 Arborist To Control Trees</p> <p>169.06 Urban Forest Management Plan (Ufmp)</p> <p>169.07 Permission Required</p> <p>169.08 Removing And Pruning Of Trees On Public Property.</p> <p>169.09 Abuse Or Mutilation Of Public Trees.</p> <p>169.10 Deleterious Substances Near Trees.</p> <p>169.11 Impeding Free Passage Of Water And Air To Roots.</p>	<p>169.12 Preservation And Replacement Of Trees On Public Property.</p> <p>169.13 Protection Of Trees From Construction Operations.</p> <p>169.14 Planting Of Trees On Public Property.</p> <p>169.15 Trees On Private Property.</p> <p>169.16 Boundary Line Trees.</p> <p>169.17 Unlawful Interference.</p> <p>169.18 Tree Work Completed By Utility Company.</p> <p>169.19 Public Disclosure, Notification, And Access.</p> <p>169.97 Cost Of Damaged Tree Replacement</p> <p>169.98 Collection Of Funds.</p> <p>169.99 Penalty.</p>
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CROSS REFERENCES

Destruction of shrubs, trees or crops - see GEN. OFF. 541.06
Open meetings - see ADM. Ch.107

169.01 DEFINITIONS.

For the purpose of Chapter 169 the following words and phrases shall have the following meanings ascribed to them respectively.

- a. **Arborist:** The City of Kent's Municipal Arborist.
- b. **Critical Root Zone (CRZ):** The area of a tree's root system that contains the majority of woody and fine roots. The area is determined by allowing one (1) to one and one-half (1 ½) feet of root radius for each inch of stem diameter at breast height (DBH).
- c. **Diameter Breast Height (DBH):** The Diameter Breast Height (DBH) shall be the diameter of the tree being measured at a vertical location fifty-four inches (54-inches) above the ground where the tree bark enters the soil.
- d. **Public Property:** Any public street, land, parcel, or property owned by the City that is not within the City Park system; any area that the City has a right or easement to maintain trees.
- e. **Standing:** Where a tree is situated or placed.
- f. **Tree Lawn:** The unpaved portion of a street right-of-way; normally the green space between the sidewalk and the curb or edge of street pavement.
- g. **Urban Forest Management Plan (Ufmp):** A document that regulates and defines the policies and standards used to manage and maintain the City's urban forest.

169.02 PURPOSE

This ordinance provides for the establishment of policies, regulations, and standards necessary to ensure that the City will continue to realize the benefits provided by its urban forest. The provisions of this ordinance are enacted to:

- a. Maintain City-owned trees in a healthy and nonhazardous condition through good arboricultural practices.

- b. Establish and maintain appropriate diversity in tree species and age classes to provide a stable and sustainable urban forest.

169.03 SHADE TREE COMMISSION ESTABLISHED

A Shade Tree Commission is hereby established consisting of five members who shall be residents of the City who shall serve without compensation for a term of four (4) years.

169.04 SHADE TREE COMMISSION DUTIES

The Shade Tree Commission shall have the following duties:

- a. The Shade Tree Commission shall meet quarterly or as needed to carry out the duties herein.
- b. The Shade Tree Commission shall be the forum for the public review and oversight of the City's treatment of trees on public property.
- c. The Shade Tree Commission shall establish, review and approve a UFMP with goals, objectives, and guidelines for the collection, maintenance, and use of data necessary to monitor the City's treatment of trees standing on public property.
- d. The Shade Tree Commission shall study the problems and determine the needs of the City in connection with the UFMP.
- e. The Shade Tree Commission shall assist the Arborist or his/her designee, as well as Council and the residents of the City by dissemination of news and information regarding the protection, maintenance, removal, and planting of trees on public property, and to make recommendations thereof.
- f. The Shade Tree Commission shall assist the Arborist in the consideration, revision and update of the UFMP as needed with goals to expand the City tree care programs for a better environmental future for Kent's citizens.
- g. When requested by City Council, the Shade Tree Commission shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of the Tree Commission's duties.

169.05 ARBORIST TO CONTROL TREES.

The Arborist shall have the following duties:

- a. The Arborist, under supervision of the Service Director, is given full jurisdiction, authority, control, supervision, and direction of all trees which now or which may hereafter exist upon any public property in the City; and over all trees that exist on private property when in the Arborist's opinion, such trees constitute a menace to public property, public safety, or public welfare of the City.
- b. The Arborist, under supervision of the Service Director, is given full jurisdiction, authority, and control in connection with the issuing of permits and/or authorizations hereinafter provided for.
- c. In the exercise of any of the powers herein granted, the Arborist, under supervision of the Service Director, shall have the authority to delegate all or such part of his/her power and duties with respect to supervision and control of trees to the Arborist's subordinates and assistants in the employ of the City as the Arborist may from time to time determine.

169.06 URBAN FOREST MANAGEMENT PLAN (UFMP)

The Urban Forest Management Plan (UFMP) as provided for in this ordinance shall be approved by the Shade Tree Commission. The UFMP shall provide specific operating procedures for the maintenance of City trees by the Service Department. The UFMP is meant to be a fluid document that can and will be updated as needs and situations change.

The implementation specifics of this ordinance are documented in the UFMP and all implementation specifics shall abide by the principals outlined in this ordinance.

Any practices inconsistent with the UFMP goals, objectives, and guidelines require approval and/or oversight by the Shade Tree Commission.

169.07 PERMISSION REQUIRED.

No person shall plant, prune, remove, cut, climb, or injure any tree existing on any public property in the City, nor authorize or procure any persons to do so, nor remove or tamper with any device placed for the protection of any such tree, nor attach any rope, wire, chain, sign, or other device either to said tree or to any device placed for the protection of said tree, or authorize or cause the same to be done, without having first obtained written permission from the Arborist to do so.

169.08 REMOVING AND PRUNING OF TREES ON PUBLIC PROPERTY.

The following practices shall abide by the standards set forth in the UFMP:

- a. No person, firm or corporation shall remove, prune, brace, cable, spray, or otherwise perform work on a public property tree without first obtaining written permission from the Arborist. The person obtaining permission shall abide by the standards as set forth in the UFMP.
- b. The Arborist shall keep all trees standing upon any public property in the City trimmed in accordance with the UFMP so that the branches of such trees projecting over any public sidewalk or private driveway are pruned so that a clear height of eight (8) feet between the lowest branches of the same and the sidewalk or private driveway is maintained for pedestrian passage. The Arborist shall prune or cause to be pruned any tree so that a clear height of fourteen (14) feet between the lowest branch of the same and the public street is maintained for vehicular passage.
- c. The Arborist shall have the right and duty to trim any tree existing on any public property in the City so as to ensure the public safety or to preserve the function or beauty of such public property. The Arborist shall further have the right to remove any such tree or any part thereof which is in an unsafe condition or which, by reason of its location or nature, is injurious or detrimental to other public improvements in the City, or is infected with any injury, fungus, insect, or other pest or disease which cannot otherwise be controlled.

169.09 ABUSE OR MUTILATION OF PUBLIC TREES.

Unless specifically authorized in writing by the Arborist or his/her designee, no person shall intentionally top, damage, cut, carve, transplant, or remove any tree or shrub located on public property; attach any rope, wire, nails, advertising posters, or other contrivance to any tree or shrub located on public property; allow any gas, liquid, or solid substance that is harmful to such trees or shrubs to come in contact with them; or set fire or permit fire to burn when such fire or the heat thereof will injure any portion of any tree or shrub located on public property.

No person shall excavate any ditches, tunnels, trenches, alleys, or driveway within a radius of ten (10) feet from any public tree or shrub without first obtaining written approval from the Arborist and an excavation permit from the Deputy Service Director/Superintendent of Engineering or his/her designee, except as provided for in 169.13.

169.10 DELETERIOUS SUBSTANCES NEAR TREES.

No person shall permit any natural or artificial gas, salt, brine, oil, liquid dye, or any other substances deleterious to trees to come in contact with soil surrounding the roots of any tree upon any public property in the City in such a manner as to kill, injure, deface, destroy, or affect the growth of such trees.

169.11 IMPEDING FREE PASSAGE OF WATER AND AIR TO ROOTS.

No person shall place or maintain upon the ground in any public property any stone, concrete, brick, or other impervious material or substance in such a manner as may impede the free access of air and water to the roots of any tree upon any public property without first having obtained written permission from the Arborist.

Unless otherwise provided for, there shall be maintained about the base of the trunk of each such tree at least nine (9) square feet of open ground for a tree three (3) inches in diameter. For every two (2) inches of increase in such diameter, there shall be an increase of at least one (1) square foot of open ground.

Nothing in this section shall prevent the City from placing or allowing to be placed and/or maintaining any public walk, street curb, street pavement, and incidentals thereto and necessary for the public health, safety, and welfare.

169.12 PRESERVATION AND REPLACEMENT OF TREES ON PUBLIC PROPERTY.

If an individual tree, or group of trees, as provided for in this ordinance, is deemed by the Shade Tree Commission to have significant cultural, historical, and/or environmental value, and said Commission is requested by any person to investigate the preservation of any tree, or group of trees, the Shade Tree Commission shall provide a forum for discussion of said tree's (or trees') preservation and for negotiation between interested parties.

The City shall use best management practices for tree preservation in the design, construction, and maintenance of public improvements, which shall be reviewed by the Arborist.

Whenever it is necessary to remove a tree(s) or shrub(s) from a tree lawn or public property, as defined, the City shall remove and replant such trees or shrubs or replace them if public property is available. The City reserves the right to recover the cost of said tree replacement from the individual or entity that causes the damage to the tree necessitating its replacement.

No person, firm, or corporation shall remove a tree(s) or shrub(s) from public property, as defined, for any purpose or reason without first requesting and obtaining written approval from the Arborist or his/her designee. Any tree(s) or shrub(s) approved to be removed by the Arborist shall be replaced with approved tree(s) or shrub(s). Such replacement shall meet the standards of number, size, species, and placement as provided for in a written approval issued by the Arborist or his/her designee. The person, firm, or corporation shall bear the cost of the removal and replacement of all trees or shrubs removed. Failure to plant replacements according to City standards shall result in replacement performed by the City or its agents. The City shall invoice the person responsible for replacement at the actual cost of the work. If said person, firm, or corporation does not make payment, the Service Director shall take such measures deemed necessary to collect for the actual cost of the work including, but limited to, provisions of section 169.98 of this ordinance.

169.13 PROTECTION OF TREES FROM CONSTRUCTION OPERATIONS.

Any construction operation that may cause damage or which impacts a public-property tree's critical root zone, trunk, and/or crown shall not commence until the Arborist has reviewed the construction operation-methods for compliance with the UFMP and the Contractor has received from the Arborist written approval to proceed.

Emergency repairs can be completed without the review and approval of the Arborist and any damage to a public property tree shall be repaired and/or replaced as directed by the Arborist. In the event that any person, firm, or corporation completing an emergency repair causes damage to a public property tree and fails to repair or replace said tree as directed shall be just cause for the Arborist to cause said repair or replacement to occur. The Service Director shall collect, by all means possible, the cost incurred.

169.14 PLANTING OF TREES ON PUBLIC PROPERTY.

No person shall plant any tree in a tree lawn or other public property without first obtaining the prior written approval of the Arborist. The person obtaining the permission shall abide by the standards as set forth in this chapter and the UFMP.

Whenever any tree or shrub shall be planted or set out in conflict with the provisions of this chapter, the Arborist may cause removal of the same without obligating the City to replace the illegally planted tree.

A list of desirable and undesirable species shall be listed in the UFMP under the section titled "Tree Selection". This list shall be approved by the Arborist and the Shade Tree Commission.

169.15 TREES ON PRIVATE PROPERTY.

All trees, plants, or shrubs standing upon private property in the City and having branches projecting into public highways or public property shall conform to the regulations herein provided; otherwise, the City shall cause such trees to be trimmed or cut down and removed in accordance with such regulations and assess the cost thereof against the owner of such lot or parcel of land according to the following:

- a. The owner shall trim or cause to be trimmed the tree, plant, or shrub so that a clear height of eight (8) feet between the lowest branches of the same and the sidewalk is maintained for pedestrian passage.
- b. The owner shall prune or cause to be pruned the tree, plant, or shrub so that a clear height of fourteen (14) feet between the lowest branches of the same and the public street is maintained for vehicle traffic.
- c. The owner shall prune or remove as the case may require, every dead, decayed, or broken tree, plant, shrub, or any part thereof so that the same shall not fall onto the public sidewalk, public property, or public street.

169.16 BOUNDARY LINE TREES.

A tree is a boundary-line tree when the boundary line passes through any portion of the trunk of a tree at the point where the trunk emerges from the ground. The responsibilities for a boundary-line tree are as follows:

- a. When a boundary-line tree is on the line between the right-of-way and private property, the City shall be responsible for maintaining the tree.
- b. When a boundary-line tree is on the line between private properties, the owners shall be equally responsible for maintaining the tree.

169.17 UNLAWFUL INTERFERENCE.

No person, firm, or corporation shall prevent, delay, or interfere with the Arborist or persons acting under his/her authority while engaged in planting, mulching, pruning, spraying, or removing any tree, shrub, or plant in any street right-of-way or public property within the City.

169.18 TREE WORK COMPLETED BY UTILITY COMPANY.

The City grants, to recognized public utilities, permission to complete necessary tree maintenance as described in the ordinance as it pertains to maintaining service to the utilities' customers. A recognized public utility shall be deemed to violate its granted permission and will become subject to the requirements of this ordinance if it is found to have aggressively damaged any tree or shrub regulated by this ordinance as determined by the City Arborist.

Aggressively damaged shall be defined as over excavation beyond the limits necessary to complete maintenance or repair of a public utility or trimming, removal or damage to trees beyond established limits of clearing to maintain service.

169.19 PUBLIC DISCLOSURE, NOTIFICATION, AND ACCESS.

The public has the right to know, to have full access to the contents of the UFMP, and to have any concerns,

objections, or exceptions pertaining to the UFMP addressed and resolved impartially by the Shade Tree Commission.

- a. Copies of the UFMP are on file in the City's Service Director's office.
- b. Except in the case of an emergency, the public shall be notified in advance of tree removal, in accordance with the UFMP guidelines.
- c. No person shall prevent, delay, or interfere with the public's access to these rights.

169.97 COST OF DAMAGED TREE REPLACEMENT

Any tree removed or damaged to the extent that in the opinion of the City Arborist will need to be removed said person causing the removal or damage shall pay for the replacement cost of the tree. Any person who causes a tree to be removed in violation of this ordinance shall replace any such tree at the violator's sole cost and expense pursuant to the tree replacement requirements set forth in this ordinance. The cost of replacement shall be \$100 for each inch of diameter as measured at the tree's DBH. If the precise DBH cannot be determined, the cost of replacement shall be determined by the City Arborist based on his/her estimate of the DBH of the removed or damaged tree.

169.98 COLLECTION OF FUNDS.

The Service Director is authorized to take such action as deemed necessary to collect all funds determined due the City and not paid within 30 days of the date of the invoice, including but not limited to the following:

- a. If the owner of the property adjoining the work completed does not pay said invoice the Service Director shall cause any amount unpaid to be certified to the County Auditor to be collected in the same manner as other property taxes.
- b. If a person, firm, or corporation does not pay within 30 days of the date of the invoice and said person, firm, or corporation is a Contractor, then said Contractor shall be restricted from obtaining additional permission to work within the City. This section does not restrict other collection measures, such as, but not limited to, collection services or litigation.
- c. If a person, firm, or corporation is under contract or agreement to do work for the City, then the City shall hold from any future payment to the Contractor all amounts invoiced by the City.

169.99. PENALTY.

Whoever violates the provisions of 169.07, 169.08, 169.09, 169.10, 169.11, 169.12, 169.13, 169.14, 169.15, and 169.17 of this chapter is guilty of a minor misdemeanor as defined in section 501.99 of the Kent Codified Ordinances. Each day of continued violation shall constitute a separate offense.