

**ORDINANCE RESTATING THE TREE ORDINANCE UNDER TITLE IX, CHAPTER
99 OF THE LONG BEACH, INDIANA TOWN CODE**

ORDINANCE NO. 2023 - 04

WHEREAS, the Town Council desires to promote and protect the public health, safety, and general welfare of the Town of Long Beach, Indiana by regulating the planting, maintenance, and removal of trees or shrub; and

WHEREAS it is the intent of the Town Council that the terms of this Ordinance shall be construed to promote the planting, maintenance, and survival of desirable trees within the Town and the protection of community residents from personal injury and property damage, as well as the protection of the Town from property damage, caused or threatened by the improper planting, maintenance, or removal of trees within the Town,

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the Long Beach Town Council that **TITLE IX, CHAPTER 99 shall be restated in its entirety and now read as follows:**

Chapter 99: Tree Ordinance

Section 99.01. Short Title This Ordinance shall be known and may be cited as the "*Long Beach Tree Ordinance*" of the Town of Long Beach, Indiana.

Section 99.02. Purpose

It is the purpose of this ordinance to:

- A. Promote and enhance the beauty of the Town through tree preservation and landscaping.
- B. Safeguard the ecological environment of the Town by deterring the unnecessary clearing and disturbing of land and existing natural vegetation.
- C. Promote planting and maintenance of native trees and shrubbery on public and private land.
- D. Protect trees from disease spread from tree to tree by planting a variety of trees in an area to maintain the health of public trees and private trees.
- E. Recognize that trees are a significant part of the Town's general infrastructure and ability to attract businesses, homeowners, and visitors and as such need regular maintenance and protection.
- F. Protect community residents from damage caused or threatened by the improper planting, maintenance, or removal of trees, shrubs or other plants located within the community; and

G. Prohibit the planting of exotics and invasive species.

Section 99.03. Definitions

Certified Forester or Arborist: An independent contractor or Town employee retained to address, survey, monitor and manage the health of Town trees and the harm done by exotic invasive species (plants, insects, and exotic trees), possessing a degree in forestry or horticulture or landscape architecture, or a certified arborist with the ability to do a Level 2 Tree Risk Assessment, who shall also be licensed, and bonded, and insured.

Designated Municipal Authority: If, no Arborist is retained, the President of the Town Council may appoint a Town employee as the designated authority on a temporary basis, with powers and responsibilities limited by the individual's qualifications and abilities as determined by the Town Tree Board. The designated municipal authority shall carry identification to show such designation and current certification(s).

Nuisance Tree: A dead, diseased, weakened, or invasive tree with an accelerated potential to cause physical human harm or to cause property damage.

Shrubs and Other Plants: All vegetation, woody or otherwise, except lawn grasses and flowers less than twenty-four inches (24") in height.

Town-Owned Property: Property within the town limits of Long Beach, Indiana owned by the Town in fee simple absolute, or impliedly or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic or for public access or easements.

Town Trees: Trees not located on private property, including, but not limited to, park trees, street trees, and other trees located on Town-owned and public property, including those in the right-of-way.

Tree: A woody, perennial plant, ordinarily with one main stem or trunk, which develops many branches, and which ordinarily grows to a height of ten feet or more with a diameter more than six inches at a height of five feet (5').

Tree Lawn: Tree Lawn is herein defined as the public property located in the area between the pedestrian walkway and the edge of the paved area of the street or curb; or, if there are no curbs or the curbs are adjacent to the sidewalks, the area from the edge of the road pavement to the edge of the right of way as measured from the center of the road and is generally twenty feet (20') from the center line of the roadway, twenty-five feet (25') from the center line of Lake Shore Drive; and suitable for tree planting and sustainable tree growth.

Tree Topping: Tree topping is herein defined as the severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree as to remove the normal tree canopy and disfigure the tree.

Section 99.04. Creation and Establishment of a Town Tree Board There is hereby created a Town Tree Board for the Town of Long Beach, Indiana. Responsibilities of the Town Tree Board shall be entrusted to a committee with no fewer than three (3) members appointed by the Long Beach Town Council.

Section 99.05. Term The term of members of the Long Beach Tree Board shall be two years.

Section 99.06. Duties and Responsibilities It shall be the responsibility of the Town Tree Board to study, investigate, counsel, develop, and recommend updates of this Ordinance to the Town Council for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, alleys, along streets, in the tree lawn, at stops leading to the beach, and in other public or Town-owned areas.

Town Tree Board, when requested by the Town Council, may consider, investigate, make findings, report, and recommend upon any special matter or question coming within the scope of this Ordinance. The Town Tree Board may further establish educational and informational programs, pamphlets, and online communications for dissemination to the public to assist in the proper care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs within the Town of Long Beach.

The Town Tree Board may have the authority to consult with a certified arborist as necessary and shall coordinate with the Street Superintendent. Any expense more than \$500 must get prior approval from the LB Town Council.

Section 99.07. Tree Species to be Planted the Tree Board will provide a list of native trees for planting on Town Owned property with information based on Years until Maturity, Mature Height in feet (Small under 20 feet, Medium under 40 feet, and Large over 40 feet), Soil Drainage and Light Need with updates provided when needed. The Tree Board will also create and maintain a list of exotic or non-native trees prohibited for planting on Town Owned property, which will be updated from time to time and placed on file with the Clerk's Office. See Exhibit A and B to this Ordinance for these lists.

Section 99.08. Spacing Based on the size classes listed in Section 99.07 and Exhibit A of this Ordinance, no public trees may be planted closer together than the following distances without the approval of the Tree Board: small trees, twenty (20) feet; medium trees, thirty (30) feet; and large trees, forty (40) feet.

Section 99.09. Utilities No Town trees other than those species listed as small trees according to this Ordinance may be planted under or within ten (10) horizontal feet of any overhead utility wire or within fifteen (15) lateral feet of any fire hydrant. Although the Indiana Utilities Regulatory Commission (IURC) regulates the utility, the Town Tree Board may ask to review a utility tree trimming plan before any trimming by the utility company.

Section 99.10. Town Tree Care The Town of Long Beach shall have the right to plant, prune, maintain, or remove trees, shrubs, and plants as well as eliminate invasive trees, shrubs, and plants within the Town rights-of-way, including, right-of-way lines of all streets, roadways, and alleys and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Street Superintendent retains the authority to remove a tree(s) periodically throughout the year when deemed dead; under an emergency condition; or, any Town Tree or part of any such tree which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest. The Street Superintendent will submit a list of trees dangerous or dead to the Tree Board for review, prior to contacting a tree service for the removal of such trees.

This Section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of said trees is in accordance with Sections 99.07, 99.08 and 99.09 of this Ordinance, but it is recommended that property owners inform the Tree Board or its designee (Street Superintendent) before any such plantings on Town Owned property or structures.

Section 99.11. Tree and Vegetation Clearance. Any tree overhanging any a Town right-of-way, including streets, roadways, and alleys, may be pruned so the branches shall not obstruct the light from any streetlamp or obstruct the view of any intersection sign, as well as provide a clear space of at least sixteen (16) feet above street surface. All dead, diseased, invasive, or dangerous Town trees, or broken or decayed limbs on or over Town property, which constitute a menace to the safety of the public, shall be removed. Any such pruning or clearing shall only occur after the Town has provided notice by certified mailing to adjacent property owners at least fourteen (14) days prior to the commencement of any such work. This notification requirement also applies to the removal or trimming referred to in section 99.10.

The Town shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, obstructs the free passage of pedestrian, bicyclist, or vehicular traffic, or interferes with visibility of any traffic control device or sign. Clear vision of a sight triangle at a corner intersection of two road right-of-way lines with the two sides of the triangular area being twenty-five feet in length measured along the abutting right-of-way lines, and the third side being a line connecting these two sides. The clear vision triangle must be free from visual obstruction. Shrubs and other landscape features may be permitted in the clear vision triangle area if they are trimmed and maintained so that they are not more than twenty-four inches (24") above grade. Trees shall not be planted closer than twenty-five feet to the corner intersection of two road right-of-way lines at street intersection; however, trees with at least eight feet of limbless trunk may be permitted within the clear vision triangle area.

Pruning shall be limited to the offending branches but may not be limited to the property line when such limited pruning will endanger the health of an entire tree. Pruning shall begin only after the homeowner has been notified by certified mail sent to the address of record obtained from the Town of Long Beach Water Department at least fourteen (14) days prior to the start of the proposed work. Only one (1) attempt will be made to notify homeowner. Tree limbs that grow near high voltage electrical conductors shall be maintained clear of such conductors by the electric utility company in compliance with any applicable franchise agreements.

See Exhibits C for illustrations intended to be informative and instructive in the application of this Section.

Section 99.12. Removal of Stumps and Other Debris All stumps of Town trees may be removed when conditions allow. Any resulting hole shall be filled to surface level and replanted to remain consistent with adjacent conditions. If this work cannot be done immediately or is not practical, the area shall be protected according to current Town practice for excavations. Debris shall be removed by the Town in a timely manner. All contractors shall be responsible for the removal and the disposal of all debris from any tree pruning or removal they perform. Debris shall be removed within one (1) week of completion of work.

Section 99.13. Interference with Town Tree Board It shall be unlawful for any person to prevent, delay, or interfere with the Town Tree Board or any individual or company working for or at the direction of the Tree Board while engaging in and about the inspecting, planting, cultivating, mulching, pruning, spraying, or removing any Town trees, or as specifically authorized in this Ordinance, any trees on private grounds after being given proper notice in Section 99.11.

Section 99.14. Arborist Registration Any arborist, or person or firm engaging in the business or occupation of pruning, treating, or removing Town trees and/or private trees must register at the Town Clerk's office and be listed on the Town's list of contractors. Contractors must be licensed, bonded, and insured. Arborist must be able to perform a Level 2 Tree Risk Assessment.

Section 99.15. Appeal of Tree Board Decision Any person may appeal from any ruling or order by the Tree Board to the Long Beach Town Council, who shall hear the matter and make a final determination of the issue on behalf of the Town. Property owners will receive notification of the Tree Board's final determination Any appeal shall be initiated by filing a written request with the Long Beach Town Council requesting a review hearing within five (5) days of the property owner's notification of the Tree Board's actions and decisions and before any work begins. Determinations regarding emergencies under Section 99.17 shall not be appealable to the Town Council.

Section 99.16. Public Nuisances

A. The following are hereby declared public nuisances under this Ordinance:

1. Any invasive, dead, or dying tree, shrub, or other plant located on Town property so designated by the Town Tree Board
2. Any otherwise healthy tree, shrub, or other plant located on Town property which harbors insects or diseases which reasonably may be expected to injure or harm any other tree, shrub, or other plant as designated by the Town Tree Board
3. Any tree, shrub, or other plant located on Town property which by reason of location or condition, constitutes an imminent danger to health, safety, or welfare of the public as designated by the Town Tree Board. The Town of Long Beach and the Town Tree Board will not be held liable in the event they are not notified or otherwise unaware of an existing threat.

B. The Town Tree Board or its representatives shall have the right to inspect as follows:

1. Any public nuisance under this Ordinance which is located on or over Town property shall be pruned, removed, or otherwise treated in whatever fashion is reasonably required to cause the abatement of the nuisance within a reasonable time after its discovery by the Town of Long Beach or its agents, officers, or employees, all at the direction of the Town Tree Board.
2. The Town is empowered to request and/or cause the immediate abatement of any public nuisance on the public right-of-way provided that the nuisance is determined by the Town Tree Board to be an immediate threat to any person or property. The Town may utilize its officers, agents, and employees to effectuate an immediate abatement of any imminent threat to person or property.
3. Public nuisances on Town property, as defined in Sub-Section A, above, may be referred to the Indiana Department of Natural Resources by the Town Tree Board to provide proper evaluation, treatment, and handling as defined by Indiana State Code, as well as protect the trees in surrounding areas from the spread of insects, fungus, or disease.

Section 99.17. Permits Required A permit must be obtained from the Town Tree Board by any tree removal contractor working on behalf of a property owner prior to removal of any tree located on Town property. All persons receiving a permit under this Ordinance shall abide by the Arboriculture Specifications and Standards of Practice adopted by the Urban Forest Management Plan, including the American National Standards Institute (ANSI) A300 and Occupational Safety for Tree Working Industry Z133.1.

Permits shall not be required by the Town Tree Board, or any Town employee(s), or contractors retained by and working under the supervision of or under the direction of the Town Tree Board or a certified forester working on the behalf of the Town Tree Board.

In cases of emergency, where a tree or limb is deemed to be of imminent danger to the safety of the public, including, but not limited to the falling of a tree from or onto Public Property, Town employee(s) may rely on their experience and judgement to remove the hazard without first communicating with the Town Tree Board. The Street Superintendent will attempt to notify the Tree Board of emergency actions prior to implementation. An “after action” report will be prepared for a matter of record and may be sent in the form of an email describing the condition and action taken.

Section 99.18. Abuse or Mutilation of Town Trees Unless specifically authorized by the Town Tree Board, no person shall intentionally damage, cut, carve, transplant, or remove any municipal tree; attach any rope, wire, nails, advertising poster, or other contrivance to any tree, allow any gaseous, liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire to or permit any fire to burn when such fire or the heat therefrom will injure any portion of any tree including the root zone. Failure to procure the necessary permit will result in the offender being assessed the proper fees and costs required for reparations. Violation of this Ordinance shall subject the person(s) to the Long Beach Municipal Code. Unintentional damage, including but not limited to, construction damage, damage by vehicular accidents, damage by fire, or accidental spills of any gaseous, liquid, or solid substance which is harmful to trees, the person(s) responsible for the damage shall indemnify the Town of Long Beach, Indiana for replacement or reparation costs as directed by the Ordinance.

Section 99.19. Protection of Trees All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work shall, if space exists, be guarded with a protective barrier such as a fence, frame, or box not less than four (4) feet high and eight (8) feet square, or at a distance in feet from the tree equal to the diameter, at chest height, of the trunk in inches, whichever is greater. All building material, dirt, or other debris shall be kept outside the barrier. No person may excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any public tree without first obtaining a written permit from the Town Tree Board.

Section 99.20 Placing Materials on Public Property No person may deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete, container, storage contrivance, or other materials which may impede the free passage of air, water, and fertilizer to the roots of any tree, shrub or plants growing therein, except by written permit from the Town Tree Board. In the Tree Board’s sole discretion, temporary allowances may be made for permitted construction sites.

Section 99.30 Monetary Penalty

Any person violating any provision of this chapter for which no fine is specified is subject to a fine in a sum of \$500 for a first violation, \$1,000 for a second violation, and not less than \$2,500 and up to \$7,500 for a third and each subsequent violation. Fines shall accrue daily and each day

a violation continues shall be construed as a separate offense. Nothing herein shall be construed to limit any other remedies at law or equity.

This Ordinance shall take effect, and be in full force and effect, from and after its passage and adoption by the Town Council of the Town of Long Beach, LaPorte County, Indiana, and publication, if any, all in conformance with applicable law.

The Sections of this Ordinance shall be codified and made part of the Town Code of Ordinances and all sections and subsections may be renumbered or re-lettered as necessary to achieve such purpose.

It is the intent of the Town Council that if any section, subsection, sentence, clause or phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed to render invalid or unconstitutional the remaining provisions of this Ordinance.

ALL OF WHICH IS PASSED AND ADOPTED by the Long Beach, Indiana Town Council this 9th day of October, 2023.

LONG BEACH TOWN COUNCIL

By:



Bob LeMay, President



John Kocher



Mary Lou McFadden



John Wall



Mike Johnstone

ATTEST:



Tim Perry, Clerk-Treasurer