ORDINANCE NUMBER 07- 27

AN ORDINANCE OF THE TOWN OF WESTFIELD TO ESTABLISH POLICIES FOR ALL TREES IN PUBLIC AREAS

WHEREAS, the Town of Westfield, Indiana, hereinafter "Town", is a duly formed municipal corporation within the State of Indiana and governed by the Town Council, hereinafter "Council",has the duty, responsibility and authority to establish, monitor, and maintain ordinances for the general welfare of the public and to foster economic growth for the citizens, and to serve as a steward for all public properties and be fiscally responsible to the citizens it represents; and,

WHEREAS, the Town finds that trees are an important asset to the natural ecosystem, beneficially contribute to the character of the community, and positively influence the quality of life within the community; and,

WHEREAS, it is decided provide minimum standards for street and park trees throughout the City. Trees are viewed as a critical element to promote the desired image of the community, enhance the visual appearance and land values, and protect the health, safety and welfare of the public ; and

WHEREAS, after being fully advised in the matter,

NOW THEREFORE BE IT ORDAINED BY THE WESTFIELD TOWN COUNCIL THAT:

SECTION I. The Town of Westfield hereby adopts the policies and procedures necessary to accomplish the goals set out above as outlined in Exhibit "A" attached hereto and incorporated by reference herein.

SECTION II. In addition to any other penalties contained herein, the General Penalty Provision of Section 1-6 of the Westfield Code of Ordinances shall apply.

SECTION III. That the provisions of this Ordinance shall be effective upon passage, publication and any applicable waiting period pursuant to Indiana law.

ADOPTED AND PASSED THIS____DAY OF ____, 2007, BY THE
WESTFIELD TOWN COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD TOWN COUNCIL
Hamilton County, Indiana

WESTFIELD TOWN COUNCIL

Voting For	**Voting Against**	**Abstain**
_____	_____	_____
J. Andrew Cook	J. Andrew Cook	J. Andrew Cook
_____	_____	_____
Jack Hart	Jack Hart	Jack Hart
_____	_____	_____
John Dippel	John Dippel	John Dippel
_____	_____	_____
Bob Smith	Bob Smith	Bob Smith
_____	_____	_____
Ron Thomas	Ron Thomas	Ron Thomas
_____	_____	_____
Robert Horkay	Robert Horkay	Robert Horkay
_____	_____	_____
Joseph Plankis	Joseph Plankis	Joseph Plankis

ATTEST:

_____
Clerk-Treasurer, Cindy Gossard

This ordinance prepared by
Brian Zaiger, Attorney at Law
KRIEG DEVAULT. LLP
12800 North Meridian
Carmel IN 46032
317-238-6266

City of Westfield
Public Tree Ordinance

A. Intent:

The City finds that trees are an important asset to the natural ecosystem, beneficially contribute to the character of the community, and positively influence the quality of life within the community. The purpose of this section is to provide minimum standards for street and park trees throughout the City. Trees are viewed as a critical element to promote the desired image of the community, enhance the visual appearance and land values, and protect the health, safety and welfare of the public. The street and park tree elements of the section are intended to:

1. Provide for the protection, preservation, replacement, and proper maintenance of trees within and overhanging public property including rights-of-way;
2. Protect the integrity of streetscapes and park property;
3. Provide a tree planting maintenance program;
4. Provide the minimum regulation necessary to ensure that trees within and overhanging public property, including rights-of-way, are preserved wherever possible.

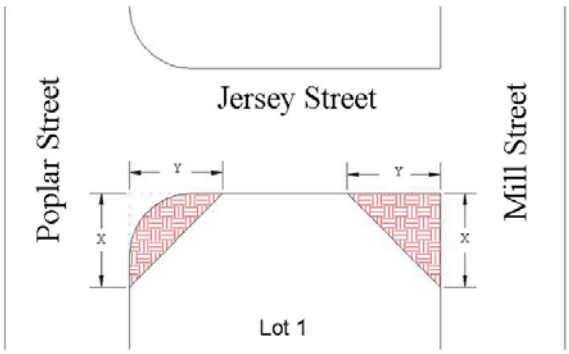
B. Prohibitions:

It shall be a violation of this code for any person other than the City of Westfield or its designee, or a private utility or their designee, to:

1. Tie, tack, nail, wire or otherwise attach any sign, poster, handbill, or other object to any street tree, park tree, or other woody vegetation on public property;
2. Prune, spray, treat, top, or remove park trees, except when overhanging private property;
3. Prevent, delay, or interfere with the City or its designee engaged in the planting, cultivating, mulching, pruning, spraying, treating, removal, or otherwise maintain woody vegetation on public property.

C. Definitions:

1. Abutting Property Owner: adjacent or bordering holder or proprietor of land.
2. Caliper: A standard trunk diameter measurement for trees. Caliper measurements are taken six inches above the finished grade for trees with a diameter of four inches or less and twelve inches above the finished grade for larger sizes.
3. Clear Vision Triangle: a triangular area located at the intersection of two streets, two sides of which are measured from their corner intersection for a distance specified within the ordinance. The third side of the triangle is a line across the corner of the lot joining the end of the other two sides. Where the lot lines at intersection have rounded corners, the lot lines will be extended in a straight line to a point of intersection. See diagram below.



4. Deciduous Tree: a tree that sheds its foliage at the end of the growing season.
5. Evergreen Tree: a tree that has foliage that persists and remains green throughout the year.
6. Large Tree(s): mature tree height over 40 feet.
7. Medium Tree(s): mature tree height 20 to 40 feet.
8. Ornamental Tree: a deciduous tree that is typically grown because of its shape, flowering characteristics or other attractive features and typically grows to a mature height of 20 feet or less.
9. Park Tree(s): a tree located within a City of Westfield park
10. Public Tree(s): a tree located in the public right-of-way, within a City of Westfield park, or on City of Westfield property.
11. Small Tree(s): mature tree height under 20 feet.
12. Street Tree(s): a tree located in the public right-of-way strip adjacent to a road, street, drive, court, or alley.
13. Tree: a woody plant which at maturity is 13 feet or more in height with an erect perennial trunk and having a definite crown of foliage.

D. Tree Standards

1. General

a. All trees shall be hardy to the region, be free of disease and insects at time of planting and conform to the American Standard for Nursery Stock of the American Association of Nurserymen.

b. Tree stakes, guy wires and tree wrap will be installed at time of planting and removed after one year.

2. Species

a. The City's Parks and Recreation Department shall establish, update, and maintain a listing of appropriate street and park trees for planting within public property.

b. A copy of the list shall be available in the City's Parks and Recreation Department offices during regular business hours.

3. Caliper

a. Deciduous trees shall measure at minimum two (2) caliper inches twelve (12) inches above grade.

b. Evergreen trees shall measure at minimum six (6) feet from grade.

c. Ornamental trees shall measure at minimum two (2) caliper inches six (6) inches above finished grade.

E. Tree Maintenance:

1. The City, or its designee, shall plant, prune, maintain and if necessary, remove, all street and park trees, as well as other woody vegetation, within or overhanging public property, including rights-of-way, as determined to be reasonably appropriate to enhance public safety with consideration given to symmetry and beauty of public grounds.
2. Trees that were planted, and approved, as part of an overall development plan, are the responsibility of the property management group, homeowners association, or adjoining property owner to the right of way.
3. Property owners abutting public rights-of-way who have trees encroaching on right-of-way shall be required to remove tree branches that hang above any sidewalk or street to a distance of eight (8) feet above the surface of a sidewalk or a distance of twelve (12) feet above a street.
4. The City reserves the right to remove any and all trees from public property or rights-of-way when it becomes necessary and expedient to remove in order to carry out any plan of street sidewalk, curb improvement, street improvement, or other infrastructure project adopted by the City.
5. Trees located in a public right-of-way may be removed by the City of Westfield, or its designee, based on any one of the following criteria. Trees not meeting these criteria may be removed at the abutting property owner's expense.
    a. Tree(s) is dead or dying
    b. Tree(s) is deemed hazardous for which the condition can not be resolved or corrected through pruning or other reasonable arboricultural practices.
    c. When tree(s) are not deemed dead, dying or hazardous, the following factors will be considered:
        1. Life expectancy of the tree;
        2. Desirability of the tree species;
        3. Amount of space for growth;
        4. Overall quality and structural integrity of the tree;
        5. Persistent and uncontrollable insect, disease, or fruiting problems;
        6. Frequency and extensiveness of maintenance requirements;
        7. Feasibility and timeliness in which a replacement may be planted;
        8. Proximity and quality of trees near to tree marked for removal;
        9. Wishes and desires of the abutting property owner;
        10. Quality and extend of past pruning and other tree maintenance practices;
        11. Extent and frequency of damage being caused to surrounding infrastructure such as, but not limited to, sidewalks, streets, and sewers;
        12. Location with regard to street lights, traffic control devices, clear vision triangle, and growing space requirements.

F. General Requirements:

Except as specifically authorized by the City Parks and Recreation Department and the City Public Works Department the spacing of trees shall be in accordance with the following sizes and no tree may be planted (as measured from the center of the tree):

1. Closer than the following:
    a. Small Trees, 30 feet
    b. Medium Trees, 40 feet
    c. Large Trees, 50 feet
2. Closer to any curb, curb line, or sidewalk than the following:
    a. Small Trees, 2 feet
    b. Medium Trees, 3 feet
    c. Large Trees, 4 feet
3. Within clear vision triangle of 40 feet on Collectors, Local Roads and Streets, and 75 feet for Primary Arterials and Secondary Arterials, measured from the point of the nearest intersection curbs or curb lines.
4. Within ten (10) feet of any fire hydrant.

G. Permitting:

Individual property owners desiring to plant a tree(s) in the public right-of-way strip abutting the owner's property shall obtain a permit from the City Parks and Recreation Department. Application shall include:

1. Site plan showing:
    a. Location of existing and proposed plantings;
    b. Identification of each species of tree at each existing and proposed location;
    c. Identification and location of other structures within public rights-of-way (including but not limited to: regulatory signs, hydrants, manholes, or storm drains).
2. Plant schedule listing the type and number of trees to be planted;
3. Proof of ownership of abutting property;
4. Watering plan.

H. Permit shall be wired to the tree with a City of Westfield issued tag for a period of six (6) months.

I. Violations:

1. Notification: Whenever a tree is found not to be in compliance with Tree Maintenance item E, the City Code Enforcement Officer shall give the abutting property owner written notice to trim such trees within seven (7) days of receipt of notice.
2. Failure to Comply: on failure of the owner to cause said violations to be brought into compliance, the City or designee shall trim the trees in accordance with applicable standards.
3. Cost of Corrective Actions: The cost of causing the violations to be brought into compliance shall be charged to the abutting property owner, and shall be payable within thirty (30) days of the completion of the corrective actions.

4. Recovery of Costs: If within 30 days of billing the abutting property owner fails to pay charges, the City shall file suit to collect the amount due for the work completed.
5. Continued Violation: Payment of the penalty for any violation of any provision of this chapter shall not excuse the violation or permit it to continue, nor shall payment be withheld to prevent enforcement correction of the prohibited conditions.

J. Appeals Process:

1. Should a property owner be denied a permit or found to be in violation of this ordinance section, they may appeal to the City Board of Public Works. Application may be submitted to the City Public Works Department.