

ORDINANCE NO. 312-B

AN ORDINANCE RE-ESTABLISHING AND RESTATING THE
TOWN OF MIDDLEBURY TREE ORDINANCE

WHEREAS, Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, in consideration of public safety, aesthetics, economic stability, and property values, the Town Council of the Town of Middlebury, Indiana finds that it is in the public interests of the Town of Middlebury to establish and create a tree ordinance;

WHEREAS, pursuant to the authority vested by Indiana Code Sections 36-1-3-1 et. seq. and Indiana Code Sections 36-5-2-1 et. seq., the Town Council of the Town of Middlebury desires to establish a tree ordinance for the Town of Middlebury, Indiana subject to the provisions hereinafter stated;

NOW, THEREFORE, BE IT ORDAINED, ORDERED AND RESOLVED by the Town Council of the Town of Middlebury, Indiana, as follows:

Section 1. Title

This Ordinance shall be known as the Town of Middlebury Tree Ordinance.

Section 2. Definitions and Interpretations

- 2.1 Town Trees are herein defined as Trees, excluding Street Trees, in public parks in the Town of Middlebury and in all other areas owned by the Town of Middlebury.
- 2.2 Person is herein defined as any individual, partnership, corporation or other entity.

- 2.3 Street Trees are herein defined as Trees located within the right-of-way of all public streets, avenues, alleys, and ways within the Town of Middlebury.
- 2.4 Trees are herein defined as trees, shrubs, bushes, and all other woody vegetation.
- 2.5 Top or Topping is herein defined as the cutting back of Tree limbs or stubs larger than three (3) inches in diameter within the Tree's crown.
- 2.6 Town is herein defined as the Town of Middlebury, Indiana.
- 2.7 Town Council is herein defined as the Town Council of the Town of Middlebury, Indiana.
- 2.8 For purposes of this Ordinance, the singular shall include the plural and the plural shall include the singular, unless the context requires otherwise.

Section 3. Creation and Establishment of a Tree Board

There is hereby created and established a Tree Board for the Town which shall consist of at least three (3) members but no more than nine (9) members. A majority of the members shall be citizens and residents of the Town, and all members shall be appointed by the Town Council. It is recommended that at least one (1) member of the Town Park and Recreation Board be a member of the Tree Board. The Tree Board shall function under the jurisdiction of the Town Council.

Section 4. Term of Appointment

The terms of the persons appointed to the Tree Board shall be three (3) years. The members of the Tree Board in place upon the adoption of this Ordinance shall continue to serve as members of the Tree Board and shall continue to serve the staggered terms for which they were originally appointed. All members of the Tree Board, however, shall serve at the pleasure of the Town Council and may be removed and/or replaced at any time by the Town Council. In the event a vacancy shall occur during the term of any member, the successor shall be appointed by the Town Council for the unexpired portion of the term.

Section 5. Compensation

Members of the Tree Board shall serve without compensation.

Section 6. Powers, Duties and Responsibilities of the Tree Board

The Tree Board shall have the duty and responsibility and shall be empowered to study, investigate, counsel, and participate in the care, preservation, pruning,

planting, replanting, removal, and disposition of Street Trees and Town Trees. The Tree Board shall develop a written five (5) year plan addressing the care, preservation, pruning, planting, replanting, removal, and disposition of Street Trees and Town Trees. Such plan shall be presented every five (5) years to the Town Council, and upon acceptance and approval by the Town Council, such plan shall constitute the official comprehensive tree plan for the Town. The Tree Board, when requested by the Town Council, shall consider, investigate, make findings, report, and recommend upon any special matter or question coming within the scope of its work. The Tree Board shall also have such other powers, duties, and responsibilities as are delegated to the Tree Board pursuant to the terms and provisions of this Ordinance.

Section 7. Operation of the Tree Board

The Tree Board shall hold meetings, choose its own officers, make its own rules and regulations, and keep a record of all of its proceedings consistent with the requirements of Indiana statutes governing the operations of public agencies including the Indiana Open Door Law and the Indiana Access to Public Records Law. A majority of the members of the Tree Board shall constitute a quorum for the transaction of any business.

Section 8. Planting of Street Trees and Town Trees

- 8.1 Size of Trees. As a part of the comprehensive tree plan to be accepted and approved by the Town Council, the Tree Board shall designate Trees as small, medium, or large Trees and shall determine the standard of measurement used in classifying Trees as small, medium, or large Trees.
- 8.2 Species of Trees. As a part of the comprehensive tree plan to be accepted and approved by the Town Council, the Tree Board shall maintain a list of official Street Tree species and Town Tree species for the Town according to the size designations of small, medium, or large Trees. Following the acceptance and approval of the comprehensive tree plan, only the approved Street Tree species and Town Tree species may be planted in their respective areas according to the size designations unless the prior written approval of the Tree Board is obtained. In the event that an area qualifies as both a Street Tree area and a Town Tree area, then the Tree species from either list may be used.
- 8.3 Spacing of Street Trees. The spacing of Street Trees shall be determined by the Tree Board or the Town in accordance with the size designations determined under subsection 8.1 above and the Tree species.
- 8.4. Distance from Curbs and Sidewalks. The distance that Street Trees and Town Trees may be planted from curbs or curb lines and sidewalks shall be determined by the Tree Board or the Town in accordance with the size designations determined under subsection 8.1 above and the Tree species.

- 8.5 Distances from Street Corners and Fire Hydrants. Street Trees and Town Trees shall be planted no closer than thirty (30) feet to any street corner, measured from the point of nearest intersecting curbs or curb lines and no closer than ten (10) feet to any fire hydrant.
- 8.6 Distances from Utilities. Street Trees and Town Trees, other than those designated as small Trees, may not be planted under or within ten (10) lateral feet of any overhead utility line, or over or within five (5) lateral feet of any underground water line, sewer line, transmission line, or other utility line.

Section 9. Removal and Replacement of Trees

- 9.1 Subject to the authority of the State of Indiana with respect to the right-of-way of any state highway, the Town shall have the authority to plant, prune, maintain, and remove Street Trees and Town Trees as may be determined to be necessary for the public safety or for the preservation and enhancement of the symmetry and beauty of the Street Tree and Town Tree areas.
- 9.2 The Town may remove or cause or order to be removed any Street Tree or Town Tree or part thereof which is dead or diseased; which is affected by any injurious fungus, insect, or other pest; which is in an unsafe condition; or which by reason of its nature or location is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements or utilities.
- 9.3 If a Street Tree or part of a Street Tree is in need of removal, the property owner shall be notified in writing by the Tree Board or the Town of the need for the removal. The property owner shall have sixty (60) calendar days after receipt of a written notice to have the Street Tree or part of the Street Tree removed. In the event the owner fails to comply with the notice, the Tree Board or the Town shall have the authority to remove such Street Tree, or part of the Street Tree, and request that the property owner reimburse the Tree Board or the Town for fifty percent (50%) of the cost for the Street Tree and stump removal.
- 9.4 In certain locations, Street Trees or Town Trees have been planted in close proximity to public sidewalks. Roots of such Trees may have caused damage to a public sidewalk, which repair may require cutting of these roots. In such cases, the Tree Board shall be consulted in writing prior to cutting any roots. In the event a public sidewalk cannot be repaired or replaced without the removal of such a Tree, the Tree may be removed after written consultation with the Tree Board. Once consulted, the Tree Board shall provide a written response to the request within 10 working days. If a written response is not received within 10 working days, then the roots of the Street Tree or Town Tree or the entire tree may be removed.

- 9.5 Nothing contained herein shall prohibit the Town from removing any Street Tree or part thereof without notice and charging half the cost thereof to the owner in the event that it is determined that an emergency exists. The Tree Board shall make such recommendations as it deems appropriate to assist the Town in implementing this section.
- 9.6 Property owners may file a request with the Tree Board to receive a Street Tree at a fifty percent (50%) cost share. In determining who may receive a Street Tree, the Tree Board shall consider the following factors and award Street Trees under this Section in its discretion:
- A. Whether funding is available for this purpose;
 - B. Whether the property owner had a Street Tree removed;
 - C. Whether the Tree can be planted in a location without negatively affecting the nearby streets, alleys, sidewalks, utilities, building and other Trees; and
 - D. The order in which requests were filed.
- 9.7 If the Town removes a Street Tree for road widening purposes or utility construction, the Town shall offer to plant a replacement Street Tree at the request of the property owner and at the Town's expense.

Section 10. Damaging or Injuring Trees

Unless approved or authorized by the Tree Board or Town, it shall be unlawful for any Person to:

- A. Damage, cut, carve or injure any Street Tree or Town Tree;
- B. Attach any sign, wire, or injurious material to any Street Tree or Town Tree. However, wires or other supports used to stabilize Trees shall not be deemed to be unlawful; or
- C. Cause any gaseous, liquid or solid substance harmful to Trees to come in contact with roots, leaves, or bark of any Street Trees or Town Trees.

Section 11. Tree Topping or Removal

Unless approved or authorized by the Tree Board or Town, it shall be unlawful for any Person to Top or remove any Street Tree or Town Tree. Prior to any Topping or removal, the Tree Board or Town shall review and investigate the request and shall approve or deny the request.

Section 12. Tree Clearances

- 12.1 The owner of any Tree overhanging any right-of-way within the Town shall prune the branches so that such branches;
- A. Shall not obstruct the light from any street lamp,
 - B. Shall not obstruct the view of any street intersection,
 - C. Shall not obstruct the visibility of any traffic control device or sign, and
 - D. Allow for a clear space of eight (8) feet above the surface of a public sidewalk and fourteen (14) feet above the surface of a street.
- 12.2 The owner shall perform the pruning at the owner's expense within thirty (30) calendar days after receiving a written notice from the Town. In the event the owner fails to comply with the notice, the Town shall have the authority to perform the pruning and to charge the cost of pruning to the owner.
- 12.3 Nothing contained herein shall prohibit the Town from performing the pruning without notice and charging the cost thereof to the owner in the event that it is determined that an emergency exists. The Tree Board shall make such recommendations as it deems appropriate to assist the Town in implementing this section.

Section 13. Dead, Damaged or Diseased Tree Removal on Private Property

- 13.1 The Town shall have the authority to remove or cause or order to be removed any dead, damaged, or diseased Trees on private property within the Town or any Trees which are affected by any injurious fungus, insect, or other pest on private property within the Town when it is determined that such Trees may constitute a hazard to person or property or when such Trees may threaten other Trees within the Town. The owner shall remove such Trees or parts thereof at the owner's expense within sixty (60) calendar days after the date of service of notice from the Town. In the event the owner fails to comply with the notice, the Town shall have the authority to remove such Trees and to charge the cost of removal to the owner.
- 13.2 Nothing contained herein shall prohibit the Town from removing any such Tree or part thereof without notice and charging the cost thereof to the owner in the event that it is determined that an emergency exists. The Tree Board shall make such recommendations as it deems appropriate to assist the Town in implementing this Section.

Section 14. Removal of Stumps

All stumps of removed Street Trees and Town Trees shall be eliminated below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

Section 15. Interference with Official Action

It shall be unlawful for any Person to prevent, delay, or interfere with any agents or employees of the Town or of the Tree Board while engaging in and about the care, preservation, pruning, planting, replanting, removal, and disposition of any Street Trees, Town Trees, or other Trees as authorized in this Ordinance.

Section 16. Arborist Insurance

It shall be unlawful for any Person to engage in the business or occupation of the care, preservation, pruning, planting, replanting, removal, and disposition of Street Trees or Town Trees or other Trees as authorized by this Ordinance on behalf of the Town without first filing evidence of liability insurance in the minimum amounts of five Hundred Thousand Dollars (\$500,000) for injury and property damage combined indemnifying the Town or any person injured or damaged as the result of the pursuit of such endeavors as herein described. For purposes of this Section, utility companies, Town employees, and volunteers of the Tree Board shall not be considered to be engaged in the business or occupation of the care, preservation, pruning, planting, replanting, removal, and disposition of Street Trees or Town Trees or other Trees as authorized by this Ordinance on behalf of the Town.

Section 17. Severability

The provisions of this Ordinance are hereby declared to be severable. If any provision contained in this Ordinance shall be declared to be invalid or void for any reason, such declaration shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

Section 18. Enforcement and Penalties

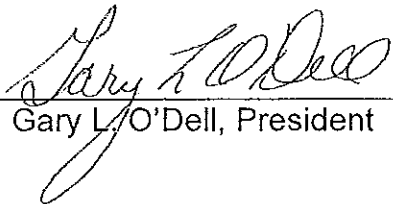
This Ordinance shall be enforced by the Town Council of the Town of Middlebury or its authorized agents. Any Person who is found to have violated any provision of this Ordinance shall be punished by a fine of not less than Twenty-Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) for each separate offense. Each day that a violation exists with respect to any provision of this Ordinance shall constitute a separate offense.

Section 19. Effective Date and Repealing Effect

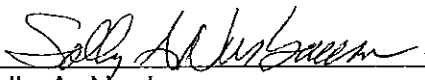
This Ordinance shall take effect upon adoption and publication in accordance with the requirements of law. This Ordinance repeals Ordinance No. 312 dated July 5, 1994 and Ordinance No. 312-A dated September 16, 2002 of the Town as well as any other ordinances or parts thereof in conflict herewith.

ORDAINED AND ADOPTED this 23 day of December, 2011.

TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA

By 
Gary L. O'Dell, President

Attest:


Sally A. Musbaum
Clerk-Treasurer