

**§ 309-8. Protection of trees, plants and other park property.**

- A. No person shall climb any tree or pluck any flower or fruit, wild or cultivated, or break, cut down, trample upon, remove or in any manner injure or deface, write upon, defile or ill-use any tree, shrub, flower, flower bed, turf, ornament, statue, building, fence, bridge, structure or other property within any park or park approach or within any other area under the control of the Commissioner of Parks.
- B. All trees on park approaches in front of any property upon which building operations are being carried on shall be properly boxed to protect the same during the progress of such work. No trench for any purpose shall be dug within five feet of any such tree, and the sidewalks and driveways shall not be located within three feet of any such tree, except as may otherwise be permitted by the Commissioner of Parks in writing.
- C. No person shall, without the written permit of the Commission of Parks, cut, remove, plant, break or injure or post any sign or placard upon any tree or plant in any of the streets or public places in the City, nor shall any person injure or remove any device placed or intended to protect any tree or shrub in any of the streets or public places in the City. No person shall fasten a horse or other animal to any tree or shrub or to any device for the protection of the same or allow a horse to stand within five feet of any tree or shrub in any street or public place of the City.

### **§ 467-1. Legislative determination of intent.**

The Common Council determines that trees are an exquisite and valuable resource and that Buffalo's urban forest needs nurturance and the protection of law. The Council further determines the following:

- A. Buffalo is aiming to once again become known as the "City of Trees," with beautiful, mature trees the norm in our City rather than the exception. For that reason, the preservation of existing tree assets and the early planting of new and/or additional trees on site is an important part of development.
- B. A mature tree provides beauty, shade, oxygen, air cleansing, the dampening of visual and auditory pollution, drainage, protection from wind, microclimate moderation and natural habitat.
- C. A mature tree represents an enormous investment of energy, water, light, nutrients and time by the natural world.
- D. The urban forest increases the value of property in our City and is a collectively beneficial resource; as such, the public has an interest in the preservation of healthy trees.
- E. Healthy trees should not be cut down without due consideration of the value of the tree; and when due consideration yields an overriding reason to destroy a tree, the health of the urban ecology demands that the resources represented by the tree are replaced through plantings.
- F. A sapling, even when properly planted, does not replace the ecological, social and economic resources of a mature tree, particularly in light of the fact that the survival rate for saplings is diminished in an urban environment.
- G. The convenience of clearing all trees from a piece of land and planting trees and shrubs at the end of the building process must be weighed against the resources that are destroyed in the process, and this Council wishes to foster a building process that conserves trees where possible.
- H. Commercial establishments do not have an overriding right to destroy or prevent the growth of trees that interfere with the sight lines between their signage and passersby. Such a right has not existed for neighborhood businesses along Buffalo's great streets of commerce and exceptions should not be made for new businesses.

- I. Parking lots can create climatic, aesthetic and environmental problems, such as oppressive heat in summer and harsh wind shear in winter, large, unsightly aesthetic voids and increased contaminated runoffs. Trees and other vegetation can enhance the visual environment, moderate the parking area microclimate, increase drainage and decrease the nuisances of noise and glare.

**§ 467-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

COMMISSIONER — The Commissioner of Human Services, Parks and Recreation.

DHFF — Diameter at a height of four feet.

PERMITTEE — One who applies for a permit for an action that may involve the destruction of live trees.

PUBLIC AGENCY — An agency, such as a City department, which is not required to obtain a permit from the City of Buffalo for work within the City.

SHADE TREE — A tree of a species that is expected to grow to a height of at least 25 feet at maturity.

STREET TREE — A tree planted in the public right-of-way of any street within the City of Buffalo.

**§ 467-3. Abuse and mutilation prohibited; applicability.**

- A. Without authorization from the Commissioner of Human Services, Parks and Recreation, no person, firm or corporation shall:
  - (1) Damage, cut, carve, transplant or remove any tree, shrub or plant or injure the bark thereof.
  - (2) Pick the seeds, flowers or leaves of any tree, shrub or plant.
  - (3) Attach any rope, wire or other contrivance to any tree, shrub or plant.
- B. This section shall apply to any tree, shrub or plant in the City of Buffalo on any public street, public park or public property, including those trees, shrubs and plants in the City of Buffalo between the public sidewalks and public street curbs.
- C. Residents shall be given the right to care for their street trees, including:

- (1) Notification of the Forestry Office of:
    - (a) Damage to or destruction of a tree.
    - (b) Problems due to disease or insect infestation.
    - (c) Request for planting a new tree where one does not exist.
    - (d) Damage to person or property due to a street tree.
    - (e) Intrusion of branches into a pedestrian, cyclist or motor vehicle pathway.
  - (2) Routine watering.
  - (3) Removal of tree stakes and wiring two years after installation.
- D. Citizens shall be allowed to perform routine maintenance, i.e., trimming, pruning and mulching if the following conditions have been met:
- (1) Approval of the Forestry Office.
  - (2) Use of only hand tools (without motors, chainsaws prohibited).
  - (3) Ladders not to be used.
  - (4) Follow current trimming and pruning practices of a professional organization recognized by the Commissioner.

#### **§ 467-4. Reward.**

The Commissioner of Human Services, Parks and Recreation is hereby authorized to offer and pay a reward for not less than \$100 nor more than \$1,000 for any information leading to the apprehension and conviction of any person violating any provision of this chapter or of any other chapter of the Code of the City of Buffalo relating to the abuse and mutilation of trees, shrubs and plants.

#### **§ 467-5. Penalties for offenses.**

Any person, firm or corporation violating any of the provisions of this chapter, upon conviction for each violation thereof, shall be fined in an amount not exceeding \$1,500 or be imprisoned for a period not exceeding 15 days, or both such fine and imprisonment.

#### **§ 467-6. Buffalo Urban Forest Fund.**

- A. A separate fund is hereby created to be known as the "Buffalo Urban Forest Fund," which shall be used to receive moneys given to the City for the planting and protection of trees. This shall include moneys received in the course of administering and carrying out the provisions of this chapter. The Commissioner of Human Services, Parks and Recreation shall direct how the funds are spent. Such expenditures shall be directly related and limited to the procurement of trees and the necessary materials and labor to plant them.
- B. This fund shall be separate and distinct from the City's general fund but shall be maintained on the same fiscal year as that of the City.

#### **§ 467-7. Prohibited acts.**

Without authorization from the Commissioner of Human Services, Parks and Recreation, no person shall cut, remove, plant, break or injure any tree, plant or shrub in any of the streets and public places of the City; nor shall any person injure, misuse or remove within two years of placement any device placed and intended to protect any tree, plant or shrub in any part of the streets or public places in the City; nor shall any person fasten or attach any signs, markers, ropes, wires or other objects or tie any animal to such trees, plants and shrubs nor place paving or other hard surfacing over the area surrounding the roots thereof in such a manner as to deprive said tree, plant or shrub of necessary light, air and water. A conviction for a violation hereof shall not preclude a civil action brought by the City to recover full damages for the loss of or injury to such tree, plant or shrub.

#### **§ 467-8. Trees and development.**

- A. Process.
  - (1) For any action requiring a City permit that may involve the destruction of live trees or for actions for public uses that may involve the destruction of live trees, the permittee or public agency must prepare a site plan showing the location of all existing trees which are of a maturity of having grown to three inches of diameter and a height of four feet (dhff). The plan shall include the location, species and dimensions of such trees. The plan will also show the species, size and location of all new trees and related vegetation. A landscaping plan and planting schedule shall be made part of the plan. The City shall reserve the right to require or

undertake verification of this site plan before any work can be done on the site. The site plan shall be forwarded to the Commissioner of Human Services, Parks and Recreation, who shall have five business days from the date the site plan is submitted to the Permit Office to object to any removals or proposed plantings. The removal of any trees of greater than 10 inches dhff requires express written permission from the Commissioner of Human Services, Parks and Recreation. **[Amended 6-24-1997, effective 7-7-1997]**

- (2) If the removal of trees is not objected to by the Commissioner, the permittee or public agency must provide on-site, replacement trees, for which the combined diameter at a height of four feet (dhff) breast height, must be at least equal to the combined dhff of the trees removed. The Commissioner is hereby authorized to keep a table showing the number of replacement trees of various widths necessary to assure this requirement is met, using six-inch increments of dhff. If the site cannot accommodate the number of trees hereby required as replacements, the permittee or public agency shall be required to pay to the Buffalo Urban Forest Fund an amount determined by the Commissioner of Human Services, Parks and Recreation to be equal to the value of the difference between the dhff of the required replacement trees and the dhff of the trees replaced on site. The accidental killing of a tree during the course of construction activity shall be a removal. Nothing contained herein shall prevent the Common Council from requiring additions or revisions to the landscape plan for the development.
- (3) The permittee or public agency shall undertake, at his or her expense, the planting of trees as soon as excavation work, if any, is finished and no tasks remain to be done that require vehicles to traverse the point where trees are to be planted.

B. Specifications.

- (1) On public property between the sidewalk and the curb, trees shall be planted and shall be spaced not more than 30 feet apart, depending on the tree variety used. The tree(s) shall be centered between the walk and the curb and shall be spaced to maximize the number of trees planted on the property. The types of trees to be planted will be as designated for the street under the master planting programs on file with the City Forester's office.

- (2) To maintain functional and aesthetic values, a tree (or trees) must exist or be planted on the front of each lot in the space between the sidewalk and the curb. However, should it be shown that there is already a well established tree planted between the building and the sidewalk or in the space between the sidewalk and the curblineline, whose crown already reaches over the greenspace to be planted, and it can be shown that this will cause overcrowding of the new tree, and may result in deforming the symmetry of the tree crowns as the tree approaches maturity, this space may be permitted to remain unplanted.
- (3) To eliminate upheaving of sidewalks and curbs, appropriate species should be chosen if the tree lawn (planting strip) is less than three feet wide. No tree shall be planted if the tree lawn is less than 14 inches wide, in which case the Buffalo Urban Forest Fund can be used at the Commissioner's discretion to pay for plantings on adjacent properties.
- (4) Whenever it is feasible, trees shall be planted at the earliest possible time by the permittee or public agency in front of all vacant lots when they are prepared or improved for development. The decision whether to plant trees shall take into account the anticipated use of any heavy equipment or other activity that would likely endanger a newly planted tree.
- (5) On corner properties the Tree Layout Guide for Intersection Visibility, a copy of which shall be kept in the Permit Office, shall be observed, so that no tree shall be planted nearer than 50 feet to an intersection on one side of the street nor nearer than 30 feet to an intersection on the other side of the street in order to allow a clear path of visibility for traffic approaching the intersection.
- (6) Trees shall be planted so that they will not conflict with utilities, such as water mains (taps), sewer lines, lamp standards, fire hydrants, etc., or with road or utility improvements planned or under study. Utility contractors shall be responsible for all damage to trees, including the roots. Accidental killing of trees by utility contractors shall be considered a removal as detailed in § 467-7.
- (7) Any tree contractor planting trees in the City of Buffalo shall do so complying with specifications set forth by the Commissioner of Human Services, Parks and Recreation. The

Commissioner of Human Services, Parks and Recreation may specify how much additional topsoil shall be added to a tree planting to overcome inadequate topsoil at the planting location. The nursery supplying the trees shall be certified by the New York State Department of Agriculture and Markets, Division of Plant Industry. Trees should be transplanted stock. Collected stock or field-grown trees shall not be allowed.

- (a) Trees shall be guaranteed to grow for at least two growing seasons after being planted.
  - (b) Street trees must have strong, straight trunks, and the head (crown) of the tree must be at least six feet above the ground.
- (8) Trees that are normally brittle, short lived, rapid growing or fibrous rooted shall not be planted as street trees. The Commissioner of Human Services, Parks and Recreation shall maintain annually updated lists of acceptable trees for various types of plantings, taking into account maintenance concerns, costs, habitat concerns and the desirability of using native species. The Commissioner shall make copies of lists of acceptable trees available upon request. **[Amended 6-24-1997, effective 7-7-1997]**

**§ 467-9. Enforcement. [Added 6-24-1997,<sup>1</sup> effective 7-7-1997]**

It shall be the duty of the Police Department, the Community Development Department, the Human Services, Parks and Recreation Department and the Administration and Finance Department (Bureau of Administrative Adjudication) to enforce this chapter. In addition, any project which fails to comply with the requirements of this chapter, the project site plan or other agreements made relative to trees shall be deemed to be in violation of this chapter and may be subject to the suspension, revocation or nonrenewal of licenses or permits issued by the City as well as any other penalty applicable by law.

**§ 467-10. Appeals.**

Appeals for exceptions to the provisions of § 467-8 must be submitted to the City Planning Board, which shall make a recommendation on the appeal to the Common Council. Exceptions must be consistent with the legislative intent of § 467-1 and must be approved by the Common Council. Appeals under this chapter for trees on City-owned

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1. Editor's Note: This ordinance also redesignated former § 467-9, Appeals, as § 467-10.

property can give weight to the City's role in financing and administering the City's tree planting program.