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ORDINANCE NO. 2005 - 3
AN ORDINANCE CREATING A MUNICIPAL TREE ORDINANCE
FOR THE CITY OF ROCKPORT, INDIANA

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Section 1. Short Title.

This ordinance shall be known and may be cited as the "*Rockport Municipal Tree Ordinance*" of the City of Rockport, Spencer County, Indiana and hereafter referred to as the "ordinance."

Section 2. Purpose and Intent.

A. It is the purpose of this ordinance to promote and protect the public health, safety, and general welfare of the City of Rockport by regulation of the planting, maintenance, and removal of trees or shrubs.

B. It is the intent of the Common Council for the City of Rockport that the terms of this

ordinance shall be construed so as to promote:

1. The planting, maintenance, and survival of desirable trees with the City of Rockport; and
2. The protection of community residents from personal injury and property damage, and the protection of the City of Rockport from property damage, caused or threatened by the improper planting, maintenance, or removal of trees within the City of Rockport.

Section 3. Applicability.

This ordinance provides full power and authority over all trees, shrubs, and other plants located within rights-of-way, public parks, and other public places of the City of Rockport; and over trees and shrubs located on private property which constitute a hazard or threat to the public health and/or safety.

Section 4. Definitions.

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directory.

Adjacent Landowner is any private property owner whose land abuts a public right-of-way or any publicly owned land.

Large Trees are designated as those attaining a mature height of forty-five (45) feet or more.

Medium Trees are designated as those attaining a mature height of thirty (30) to forty-five (45) feet.

Public Park (or Park) shall include all parks and open-spaces having individual names which come under the jurisdiction of the Rockport Board of Public Works and Safety, the Rockport Park Board, or the Rockport Parks and Recreation Department.

Park Tree I is a tree located in any public park.

Parkway is that part of a right-of-way between the curb and the sidewalk usually used for utility services, tree plantings, etc. (also known as a tree lawn).

Private Tree is any tree or shrub growing on private property.

Property Owner shall mean the person owning such property as shown by the County Recorder's records for Lake County, Indiana.

Public Nuisance (with respect to trees or shrubs) shall mean any tree or shrub with an infectious disease or insect problem; dead or dying tree or shrub; any tree, tree limb, shrub, or shrub limb that obstructs street regulatory signals, traffic regulatory signs, or the free passage of pedestrians or vehicles; and any tree or shrub that poses a threat to the general health and safety of the public. The following may be declared as public nuisances pursuant to this ordinance:

1. Any dead or dying tree or shrub whether located on public or private property;
2. Any otherwise healthy tree or shrub which harbors insects or diseases which reasonably may be expected to injure or harm any tree or shrub whether

located on public or private property;

3. Any tree or shrub or portion thereof which by reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public whether located on public or private property;

4. Any tree or shrub or portion thereof which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street traffic regulatory signal or sign whether located on public or private property; and

5. Any tree or shrub or portion thereof which dangerously obstructs the view in the "visibility triangle" as determined by Rockport Police Traffic Captain whether located on public or private property pursuant to this ordinance.

Public Property shall include all property owned by the City of Rockport, Indiana.

Public Trees shall include all shade and ornamental trees now or hereafter growing on public property.

Right-of-Way is the strip of land acquired by reservation or dedication in which is intended to be occupied by a street, crosswalk, public way for use by the

Sidewalk Parkway or sidewalk treelawn is the area between the curb and a property line which includes the sidewalk and open sections of sidewalk for public trees.

Small Trees are designated as those attaining a mature height of twenty (20) to thirty (30) feet.

Street means the entire width of every public way or right-of-way when any part thereof is open to the public, as a matter of right-of-way, for purposes of vehicular and/or pedestrian traffic.

Street Trees shall be all trees and shrubs located within the parkways, treelawns, sidewalk parkways or sidewalk treelawns within the City of Rockport.

Traffic Regulatory Signal shall mean any lighted, flashing or electronic traffic signal, which regulates the flow and circulation of vehicular traffic.

Traffic Regulatory Sign shall mean any metal regulatory sign attached to a post or pole for the purpose of regulating the flow and circulation vehicular traffic.

Treelawn is that part of a right-of-way between the curb and the sidewalk usually used for utility services, tree plantings, etc. (also known as a parkway).

Tree Topping is defined as the severe cutting back of limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and to disfigure a tree's shape.

Trees and Shrubs shall mean all vegetation, woody or otherwise, except lawn grass and flowers less than twenty-four (24) inches in height.

Section 5. Creation and Establishment of a City Tree Board.

There is hereby created and established a tree board for the City of Rockport, Spencer County, Indiana with its functions and duties limited to those set forth in this ordinance. The board shall be known officially as the "Rockport Tree Board" and hereafter may be referred to as the "Board".

Section 6. Board Composition.

A. The Rockport Tree Board shall consist of five members all of whom must be citizens

and residents of the City of Rockport.

B. The Rockport Tree Board membership shall be appointed as follows:

1. One (1) member shall be appointed by the chief executive of the municipality (the mayor of the City of Rockport) other than a member appointed by the Rockport Common Council and the Rockport Park Board;
2. One (1) member shall be appointed by the Rockport Common Council other than a member appointed by the chief executive of the municipality and the Rockport Park Board; and
3. One (1) member shall be appointed by the Rockport Park Board other than a member appointed by the chief executive of the municipality and the Rockport Common Council.

C. In addition to the three appointed Board members, the Board shall consist of the Rockport Parks and Recreation Superintendent and the Rockport Street Commissioner as ex-officio members.

D. Upon the approval of the entire Board, ex-officio members of the Board may appoint a qualified member of their staff as their alternate to the Board to represent them in their absence.

Section 7. Terms of Office.

On the Rockport Tree Board, when an initial term of office expires, each new Board appointment is for a term of three (3) years.

A. Upon the establishment of the Board, the Board members, excluding ex-officio members, shall be appointed initially for the following terms of office:

1. One (1) of the three (3) appointed Board members shall serve for a term of one (1) year;
2. One (1) of the three (3) appointed Board members shall serve for a term of two (2) years;
3. One (1) of the three (3) appointed Board members shall serve for a term of three (3) years.

B. The terms of Board members shall start on a common date; however each Board member's term expires on the first Monday of January of the first, second, and third years, respectively, after the year of the Board member's respective appointment.

C. A member of the Board shall serve until a successor is appointed and qualified (qualified meaning to accept the appointment). A member is eligible for reappointment at the conclusion of his or her Board term.

D. Within thirty (30) days following the expiration of the term of any appointed Board member, a successor shall be appointed by the appropriate appointing authority. The appointed successor shall serve for a term of three (3) years. Should a Board member resign or be removed from the Board, a successor shall be appointed by the appropriate appointing authority and shall serve for the remainder of the unexpired term.

E. The Board members appointed shall serve at the pleasure of the appointing authority.

Section 8. Board Officers.

At the initial meeting of the Board or at the first meeting of each calendar year, the Board shall elect a chairperson, a vice-chairperson and a secretary from the Board membership.

Section 9. Duties of the Board.

The Board shall perform and be responsible for the following duties.

A. Within a reasonable time after the appointment of the Board, the secretary of the Board shall call a meeting of the Board to adopt rules of procedure for all regular and special meetings to fulfill the duties pursuant to this ordinance;

B. The Board shall advise and consult the City of Rockport's Common Council on any matter pertaining to this *Municipal Tree Ordinance* and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:

1. Amendments to the *Municipal Tree Ordinance*;
2. The development of an "Official Comprehensive City Tree Plan";
3. Development of policies and procedures regarding the care, preservation, selection, planting, transplanting, pruning, maintenance, and removal of trees or shrubs within the City of Rockport.
4. Establishment of educational and informational programs; and
5. Expenditure of Board funds as appropriated by the Common Council;

C. The Board shall hold regular meetings at which the subject of trees, insofar as it relates to the City of Rockport, may be discussed by its Board members, its officers, and all other interested parties.

D. It shall be the responsibility of the Board to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, selection, planting, transplanting, pruning, maintenance, and removal of trees or shrubs within the City of Rockport. The acceptance and approval of the plan by both the Board and the Rockport Board of Public Works and Safety shall constitute it as the "Official Comprehensive City Tree Plan" for the City of Rockport, Spencer County, Indiana.

Section 10. Board Compensation.

The five members of the Rockport Tree Board shall serve their respective appointed terms without compensation.

Section 11 Board Operation and Business.

A. The Board shall adopt a set of administrative rules and procedures so that the Board may effectively and efficiently conduct board business. The Board's administrative rules and procedures should include sections on officers, Board meetings, order of

business, committees, and any other sections deemed necessary by the Board. The Board shall adopt a set of administrative rules and procedures at its initial or first meeting.

B. The Board shall review its "Administrative Rules and Procedures" as needed or on an annual basis for any additions, deletions, amendments, or revisions.

Section 12. Tree Species Recommended for Planting.

A. The Board shall develop and maintain a list of desirable small, medium and large trees for planting on public property.

B. In addition, the Board shall develop, maintain and enforce a list of trees not desirable or suitable for planting on public property.

Section 13. Tree Spacing.

A. The spacing of public trees will be in accordance with the three (3) *species* size classes listed in Section 12 of this ordinance.

B. Public trees may not be planted closer to one another than the following spacing limits: small trees, fifteen (15) feet; medium trees, twenty (20) feet; and large trees, twenty-five (25) feet.

C. Per the Rockport Tree Board, exceptions to street tree spacing standards may be allowed in special plantings which are approved by the Rockport Tree Board and the Rockport Board of Public Works and Safety.

Section 14. Distance from Curb, Curb Lines and Sidewalk.

A. The distance street trees may be planted from curbs or curb lines and sidewalks will be in accordance with three (3) species size classes listed in Section 12 of this ordinance.

B. A street tree may not be planted closer to any curb, curb line or sidewalk than the following distance limits: small and medium trees, two (2) feet and large trees, three (3) feet.

C. Per the Rockport Tree Board, exceptions to planting distance from curb, curb line or sidewalk standards may be allowed in special plantings which are approved by the Rockport Tree Board and the Rockport Board of Public Works and Safety.

Section 15. Distance from Street Corners.

A. A public tree shall not be planted within twenty (20) feet of any street corner, measured from the point of nearest intersecting curbs or curb lines.

Section 16. Street, Sidewalk or Corner Clearance.

A. There shall be a public tree clearance area standard of thirteen (13) feet above any street surface and eight (8) feet above any sidewalk surface.

B. Private tree overhanging the right-of-way within the City of Rockport shall be properly pruned so that the branches of the private tree(s) shall not severely obstruct the light from any street lamp or obstruct the view of any street intersection. Said owners of trees on private property shall remove or cause to have removed all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a hazard to the safety to the public.

Section 17. Distance from Fireplugs.

A public tree shall not be planted within ten (10) feet of any fireplug so that adequate spacing and clearance is allowed in cases of emergency.

Section 18. Distance from Traffic Regulatory Signals and Signs.

A public tree shall not be planted within fifteen (15) feet of any traffic regulatory signal or sign in order to allow the necessary line of sight or vision of the traffic regulatory signal or sign.

Section 19. Utility Overhead or Underground Clearance.

Large trees may not be planted under or within ten (10) lateral feet of any overhead utility wire or line, or over or within three and one-half (3.5) lateral feet of any underground water line, sewer line, transmission line or other utility line or wire.

Section 20. Public Tree Care by the City.

The City of Rockport shall have the right to cut, trim, prune, spray, remove or otherwise treat any public trees as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public places and grounds.

Section 21. Tree Pruning.

A. The City of Rockport shall have the right to prune any public tree or shrub located on public property which includes those trees growing in the right-of-way, public parks, parkways, treelawns, sidewalk parkways and sidewalk treelawns.

B. The City of Rockport shall have the right to prune any tree, shrub or plant located on private property when it interferes with the proper spread of light along the street from a street light or when it interferes with the proper visibility of any traffic regulatory signal or sign or sight triangle at any intersection.

Section 22. Tree Topping.

A. It shall be unlawful for any person, firm, or City department to top any public tree.

B. Public trees severely damaged by storms, other natural causes, acts of God, or certain trees under utility wires, lines or other obstructions where other pruning practices are impractical may be exempt from this section for a temporary period and shall be removed at the earliest available time.

Section 23. Public Utility Company Work Standards.

A. A public utility company tree trimming policy must be reviewed by the Board prior to any trimming within the City of Rockport by said public utility company.

B. Tree limbs that grow near high voltage electric conductors or any other utility lines shall be maintained clear of such corridors by the public utility company.

C. All public utility companies shall notify the Rockport Tree Board, in writing, a minimum of thirty (30) days prior to any activities related to any work or acts related to the cutting, trimming, pruning, spraying, removing or otherwise treating public trees for the purpose of maintaining safe line clearance.

D. The public utility company shall carry out all such related work activities in accordance with accepted tree trimming policy of the public utility company, the standards of the Rockport Tree Board and this ordinance.

Section 24. Tree and Shrub Removal.

A. The City of Rockport shall have the right to remove any dead, dying, diseased, or hazardous public tree or shrub located on public property which includes those trees and shrubs growing in the right-of-way, public parks, parkways, treelawns, sidewalk parkways and sidewalk treelawns.

B. The City of Rockport shall have the right to remove any dead, dying, diseased, or hazardous tree or shrub located on private property when deemed to be a public nuisance in accordance with this ordinance.

C. The Rockport Tree Board shall have the authority to recommend in writing to the Rockport Board of Public Works and Safety the removal of any tree or part thereof on public or private property which by reason of its nature is injurious to sewer lines, utility or other public improvements, or which is affected with any injurious fungus, insect, or other pest.

Section 25. Removal of Stumps.

If a public tree is removed, the stumps shall also be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground or the average grade level.

Section 26. Landscaping.

A. In any new industrial, commercial, residential subdivision or public property development, the Board shall review any and all landscaping plans. The Board may require public trees to be planted in any of the public parks, parkways, treelawns, sidewalk parkways and sidewalk treelawns, parking lots, or other public places abutting lands henceforth developed and/or subdivided.

B. The Board may require the owner or developer of said property to be developed to replace, in kind, any and all trees, shrubs or other plants removed due to any new development. Those trees replaced by the owner or developer of said property to be developed shall be in accordance with the Board's list of desirable trees for planting

within the City of Rockport.

Section 27. Adjacent Landowner Responsibility.

A. No person shall plant or remove a tree in a public place which includes public parks, parkways, treelawns, sidewalk parkways and sidewalk treelawns or other public places without first receiving written approval from the Rockport Tree Board.

B. The Board shall review and approve all tree planting and removal requests submitted to the Board in writing.

Section 28. Abuse or Mutilation of Public Trees.

A. No person shall damage, cut, carve, transplant, or remove any public tree; attach any rope, wire, nail, staple, advertising posters, or other contrivance to any public tree; allow any gaseous liquid or solid substance which is harmful to a public tree to come in contact with them; or to set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of a public tree.

Section 29. Placing Materials on Public Property.

A. No person shall deposit, place, store, or maintain upon any public place, any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, fertilizer, to the roots of a public tree growing therein.

B. Per the Rockport Tree Board, exceptions to this section may be allowed if approved by the Rockport Tree Board and the Rockport Board of Public Works and Safety.

Section 30. Private Trees.

A. The Rockport Tree Board or a designated representative of the Rockport Tree Board as an arborist shall have the authority to enter onto private property whereon there is located a tree, tree limb, shrub, or shrub limb that is suspected to be a public nuisance.

B. The Rockport Tree Board shall have the authority to recommend in writing to the Rockport Board of Public Works and Safety the removal of any dead or diseased tree, tree limb, shrub, or shrub limb on private property within the City of Rockport, when such tree, tree limb, shrub, or shrub limb constitutes a hazard or threat to life and property, or harbor insects or disease which constitute a potential threat to other trees within the City of Rockport.

C. The Rockport Tree Board will notify in writing the Rockport Board of Public Works and Safety and the property owner of such a tree, tree limb, shrub, or shrub limb that is suspected to be a public nuisance, all in accordance with Section 31 of this ordinance.

Section 31. Public Nuisance Notification.

Any tree or shrub deemed to be public nuisance by the Rockport Tree Board pursuant to this ordinance and which is located on private property shall be cut, trimmed, pruned, sprayed, removed or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance.

A property owner may not be found in violation of this ordinance unless and until the following requirements have been satisfied:

The Rockport Tree Board shall provide written notice, to be personally serviced or sent by mail, to the property owner of record which shall include the following information:

1. Describe the kind of tree, shrub, or other plant or plant part which has been declared to be a public nuisance, its location on the property; and the reason for declaring it a public nuisance including the Section(s) of this ordinance for which the property owner is in violation;
2. Describe by legal description or by street number the location or premises or location of the public nuisance;
3. State the actions that the property owner may undertake to abate the public nuisance; and
4. Require the elimination of the nuisance no less than thirty (30) days after the notice is delivered or sent to the property owner of record.

Section 32. Immediate Threat by a Public Nuisance.

A. The Rockport Tree Board shall have the authority to recommend in writing to the Rockport Board of Public Works and Safety the immediate abatement of any public or private tree deemed to be a public nuisance as defined by this ordinance provided that said public nuisance is determined by the Rockport Tree Board or an agent of the Rockport Tree Board to be an immediate threat to person or property.

B. The Rockport Tree Board is hereby empowered to seek from any court of competent jurisdiction an order directing immediate abatement of any public nuisance.

Section 33. Claims.

In the event that a public nuisance is not abated by the date specified in the notice prepared by the Rockport Tree Board and mailed to the property owner of record who is in violation of this ordinance, the Rockport Tree Board has the authority to cause the abatement of said public nuisance. The reasonable cost of such abatement may be filed as a lien against the property upon which the public nuisance was located. In addition, the owner of the property upon which the nuisance is located shall be subject to penalties as described in Section 41 of this ordinance.

Section 34. Tree Protection.

A. Upon the discovery of any destructive or communicable disease or other pestilence which endangers the general growth or health of trees, or threatens to spread disease or insect infestations, the Rockport Tree Board shall immediately cause written notice to be served to the property owner of record upon which such disease or infested tree is situated. The notice shall require said property owner to eradicate, remove, treat or otherwise control such a condition within reasonable time to be specified in said notice in accordance with Section 31 of this ordinance.

B. The Rockport Tree Board shall prepare a set of guidelines and standards which addresses public trees near or adjacent to a construction site or area and which applies to preserving a specified percentage of forested land, open space, or to paying into a

tree planting fund so as to minimize the net loss of tree cover in the' City of Rockport. Upon approval by the Rockport Common Council, the guidelines and standards shall be known as the "*Official Tree Protection Plan*".

C. The Rockport Tree Board or a designated arborist representing the Rockport Tree Board shall have the authority and responsibility of locating, selecting, and identifying any tree which qualifies as a "landmark tree." A public or private tree may qualify as a "landmark tree" if it meets one or more but is not limited to of the following criteria: species rarity, age, association with an historical event or person, abnormality, or scenic and/or aesthetic enhancement. The Rockport Tree Board shall determine and approve any tree's status as a "landmark tree."

Section 35. Written Approval.

A. A person, firm or business may not perform any work or acts of cutting, trimming, pruning or removing public trees without first obtaining written approval to do such acts or work from the Rockport Tree Board for which no fee shall be charged.

B. Members of the Rockport Tree Board, agents of the Rockport Tree Board, and tree service firms, businesses and contractors retained by the City of Rockport to cut, trim, prune, spray, remove or otherwise treat public trees shall be exempt from receiving written approval.

C. Minor trimming or pruning of mature public trees by adjacent landowners for the specific purposes of maintaining street and sidewalk clearance shall be exempt from requiring written approval from the Rockport Tree Board.

Section 36. Written Approval Issuance.

The Rockport Tree Board shall issue said written approval at any regular or special meeting of the Rockport Tree Board.

Section 37. General Contractors License Required.

It shall be unlawful for any firm, business tree service or contractor to plant, cut, trim, prune, spray, remove or otherwise treat public or private trees without first obtaining a general contractors license from the City of Rockport.

Section 38. Interference.

It shall be unlawful for any person to unreasonably prevent, delay or interfere with the Rockport Tree Board, the Rockport Board of Public Works and Safety or any of its agents, while engaging in and about the cutting, trimming, pruning, spraying, removing or otherwise treating public or private trees pursuant to this ordinance.

Section 39. Enforcement.

The Rockport Tree Board or a designated arborist representing the Rockport Tree Board has the authority and power to promulgate and enforce rules, regulations, and specifications concerning the cutting, trimming, pruning, spraying, removal or otherwise treatment of public or private trees within the City of Rockport.

Section 40. Appeal to the Rockport Board of Public Works and Safety.

A. The Rockport Board of Public Works and Safety shall have the right to review the conduct, acts, and decisions of the Rockport Tree Board. Any person may appeal any decision or finding of the Rockport Tree Board to the Rockport Board of Public Works and Safety.

B. The Rockport Board of Public Works may hear the matter and make a final decision at any regular meeting of the Rockport Board of Public Works and Safety.

Section 41. Violation and Penalty.

The penalty or penalties for violation of the Municipal Tree Ordinance shall be the same as provided in the General Penalty section of the Rockport Municipal Code.

Section 42. Severability.

Should any section, clause, or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

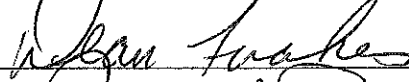
Section 43. Repeal.


Ordinance No. CC-92-1438 as well as ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

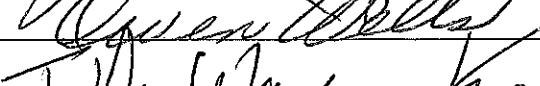
Section 44. Full Force and Effect.

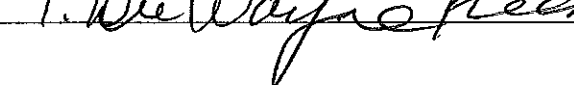
This ordinance shall be in full force and effect from and after its passage and approval according to law.

COMMON COUNCIL FOR THE
CITY OF ROCKPORT, INDIANA

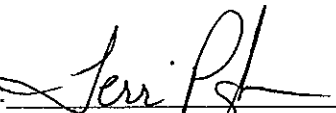








ATTEST:



Terri Payton, Clerk-Treasurer

Approved on the 23 day of March, 2005 at 8:35 o'clock p.m D.S.T

Beth A. Packer, Mayor