

ORDINANCE NO. 289

AN ORDINANCE ADOPTING RULES, REGULATIONS, AND SPECIFICATIONS CONCERNING THE TRIMMING, SPRAYING, REMOVAL, PLANTING, PRUNING, AND PROTECTION OF TREES AND OTHER PLANTS WITHIN THE TOWN OF EADS, COLORADO.

BE IT ORDAINED BY THE TOWN OF EADS, STATE OF COLORADO, as follows:

Section 1. That the Town of Eads, hereafter known as the "Town", shall appoint a person to be known as the "Town Forester" whose powers and duties are hereinafter specified.

Section 2. The Town Forester shall have the duty and authority to enforce the rules, regulations, and specifications concerning the trimming, spraying, removal, planting, pruning, and protection of trees, shrubs, bushes and other plants upon the right-of-way of any street, alley, sidewalk, or other public place within the City Limits. As used in this ordinance, a street right-of-way shall include, but not be limited to, that portion of all lands dedicated to the public use on a lot owners side of the curb and gutter.

Section 3A. It shall be unlawful to sell or import into the Town or to plant or cause to be planted with the City Limits any of the following trees:

- Any cotton bearing cottonwood tree (Genus Populus).
- Any box elder tree (Acer Negundo).
- Any other tree, shrub, bush or plant which may be specified from time to time by resolution of the Eads Tree Board.

Section 3B. In addition, it shall be unlawful to plant or cause to be planted any species of tree, shrub, bush or plant on the right-of-way of any street, alley, sidewalk, or other public place within the Town which by its habit or growth would obstruct, restrict, or conflict with the necessary and safe use of the public rights-of-way.

Section 4. It shall be unlawful for any person, either for himself or another, to plant, remove, destroy, or cause to be planted, removed, or destroyed, any tree in or upon the public right-of-way of any street, alley, sidewalk, or other public place within the Town without having first obtained a written permit.

Section 5. Any person desiring to plant, remove, or destroy any tree, shrub or bush in or upon the public right-of-way of any street, alley, sidewalk or other public place within the Town shall first make written application at the office of the Town Clerk upon forms furnished by the Town. Such application shall set forth the name and address of the applicant, the name and address of the person doing the work, the kind or species of

tree to be planted or removed, and the location of the same, together with such other information as the Town shall require. The applicant shall, at the time of making application, agree in writing to, in all respects, save the Town harmless and protect the Town and the public at all times in connection with the planting, removing, or destruction of any tree to be planted or removed under such permit.

Section 6. The Town Forester shall inspect the location and if, in his or her opinion, it is desirable that such tree, shrub or bush to be planted or removed, as the case may be, he or she shall issue a permit. Such permit shall set forth the name of the person who shall perform the work, the location at which the tree is to be planted or removed, and any conditions or requirements made by the Town in connection therewith. Failure to comply with the requirements of any such permit shall constitute a violation of this ordinance.

Section 7. It shall be unlawful for any person to engage in the business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating trees or other plants within the Town without first procuring a license from the Town.

Section 8. Any person desiring a license pursuant to this ordinance shall make application at the office of Town Clerk on forms to be provided by the Town. The Town Forester shall examine the application and interview the applicant, either orally or in writing as the Town Forester shall deem advisable, in order to determine the applicant's qualifications and competence to engage in the business applied for.

Section 9. Every license issued hereunder shall show on its face the types, classifications, or kinds of services for which the licensee is licensed and authorized to perform. All motor vehicles and other major equipment used by any person licensed hereunder in conducting the licensed business shall be clearly identified with the name of the licensee. The requirement of this Section 9 shall not apply to any motor vehicle or equipment which a licensee has leased, rented or borrowed for a term of less than one year.

Section 10A. No such license shall be issued until the applicant has presented to the Town a satisfactory certificate of insurance covering all proposed operations of the applicant in the Town. The applicant shall procure and maintain, at its own expense, the following coverages:

1. Worker's Compensation insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance.
2. Commercial general or business liability insurance plus motor vehicle liability insurance with coverage equal to not less than the per occurrence and general

aggregate limits maintained by the Town on its insurance coverage from time to time.

Minimum coverages specified in this Section 10A may be altered and amended from time to time by resolution of the Town of Eads Board of Trustees.

Section 10B. Such insurance policy or policies must be in effect for at least the term of the license and shall require at least thirty (30) days advance notice to the Town before cancellation. In the event of the cancellation or termination of any such required insurance policy during the licensed term, the license shall be terminated without notice or other action by the Town, and the holder thereof shall surrender the same to the Town unless the licensee presents to the Town a substitute insurance policy meeting the requirements of this section.

Section 11. No license or renewal thereof shall be issued hereunder until the applicant has paid a license fee of Fifteen Dollars (\$15.00) for the original license. Every license issued hereunder shall expire one (1) year after the date of its issuance. Renewal applications may be submitted at the office of the Town Clerk any time within thirty (30) days prior to the date the license will expire. The amount of the license and renewal fee may be altered and amended from time to time by resolution of the Town of Eads Board of Trustees.

Section 12. Upon the verified complaint in writing by any person, the Town may suspend or revoke any license issued hereunder for violations of this ordinance. The complaint shall be submitted in writing to the Town of Eads and shall state the date, time, and place of the violation for which the suspension or revocation of said license is requested. Before suspending or revoking any license pursuant to this section, the Town shall first mail, by certified mail, a copy of the complaint to the license holder and give notice to the license holder of a date, not less than five (5) days after the date of mailing of such notice, on which the Town Forester will hold a hearing to determine whether or not such license should be suspended or revoked.

Section 13. In the event of any suspension or revocation of a license by the Town of Eads, the licensee shall have the right to appeal such suspension to the Board of Trustees of the Town of Eads. Any such appeal must be submitted in writing to the Town within ten (10) days after the date of suspension or revocation of the license. The Board of Trustees shall have the power to overrule or otherwise modify any order of the Town Forester suspending or revoking any license.

Section 14. Property owners shall have the right to plant and care for trees, shrubs, bushes and other plants on any abutting street right-of-way, alley, sidewalk, or other public place in accordance with this ordinance.

Section 15. It shall be the duty of the owner or occupant of any property to remove any dead or dying trees, shrubs or bushes or dead or dying limbs dangerous to life, limb, or property, when located upon the owned or occupied premises or upon any right-of-way abutting the owned or occupied premises, whenever required to do so by notice given by the Town served upon the owner or occupant of such property in accordance with this ordinance. Such work shall be performed within such reasonable time as may be specified in the notice.

Section 16. All owners, occupants and other persons in possession of any tree, shrub or plant, (including but not limited to trees, shrubs and plants situated in the public right of way abutting real property owned, occupied or possessed by such person) shall without notice trim or remove any trees, shrubs or other plants when such trimming or removal is required to provide for the safe use of any street, alley, sidewalk or other public way. The Town may enter upon all public property and rights of way, without notice to any party, to trim or remove any trees, shrubs or other plants when such trimming or removal is required to provide for the safe use of any street, alley, sidewalk or other public way. The provisions of this Section shall take precedence over every other provision of this ordinance.

Section 17. Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth, health, life, or well-being of trees or plants in the Town, or which is capable of causing an epidemic spread of communicable disease or insect or other infestation, such as Dutch Elm Disease, the Town shall at once cause written notice to be served upon the owner of the property upon which such diseased tree is situated, which notice shall require such property owner to eradicate, remove, or otherwise control such condition within a reasonable time to be specified in such notice.

Section 18. The planting keeping or maintenance of any tree, shrub or other plant in violation of this ordinance is declared to be a prohibited public nuisance. Any such nuisance may be abated as herein provided or, at the option of the Town, in such manner as is provided in Ordinance 230, as the same may be amended from time to time, or in such manner as may be provided in any other ordinance which provides civil remedies relating to the abatement of nuisances, whether now in effect or hereafter adopted. However, criminal penalties for violation of this ordinance shall only be as provided by this ordinance.

Section 19. It shall be unlawful for any person to fail to comply with the requirements of any notice given pursuant to this ordinance within the time specified in such notice.

Section 20. Any notice given by the Town Forester pursuant to this ordinance shall allow at least ten (10) days after the time the notice is served on the property owner for the property owner to perform the work required. During such period, the property owner shall have the right to appeal the order of the Town Forester to the Board of Trustees by filing with the Town Clerk a notice that said property owner desires to

appeal from such order. Such appeal shall be submitted in writing to the Board of Trustees within five (5) days from the date of service of the order. If any property owner files a notice of appeal with the Board of Trustees, the Board shall schedule a hearing to consider such appeal. Until a final determination by the Board of Trustees sustains all or any part of the order of the Town Forester, it shall set the time within which the required work shall be done.

Section 21. Except as otherwise specifically herein provided, any notice authorized or required by this ordinance may be served by delivering a copy of such notice to the record owner or occupant of such property or by leaving a copy of such notice at such owner's or occupant's usual place of abode with some member of his family over the age of 18 years. In case there is more than one owner or occupant of property, service upon any owner shall be adequate service upon all co-owners, and service upon any occupant of the age of 18 shall be adequate service on all occupants. If any owner or occupant of any property cannot be found in the Town, service may be made by mailing a copy thereof to such owner or occupant postage prepaid, certified mail, addressed to the last known address and by posting a copy of such notice in a conspicuous place on the premises involved. Service by mail shall be completed five (5) days after the date of the notice is deposited in the mails and posted on the premises.

Section 22. If any work required by this ordinance is not accomplished within the time specified on the notice, the Town shall cause the work to be done and the cost of the same to be collected from the property owner. Any notice given pursuant to this ordinance shall state that if the required work is not done within the time specified, the Town will cause the same to be done at the expense of the property owner. If the Town causes the work to be done, the Forester shall send a statement in such amount to the property owner at his last known address. Any such statement shall be paid by the property owner within thirty (30) days after the statement is mailed to him.

Section 23. If the property owner fails to make said payment, said expense is to be paid out of the general fund of the Town. The Board of Trustees shall by an order entered of record assess the amount of the expense as a special assessment against the property and such assessment from the time of making the same shall constitute a lien upon such property until the same shall have been paid or satisfied.

Section 24. In order to accomplish the purposes of this ordinance, the Town is hereby authorized to go upon any property in the Town for the purpose of inspecting trees and other plants.

Section 25. The imposition of any penalty for a violation of this ordinance shall not be construed as a waiver of the right of the Town to collect the costs of removal or treatment of any tree or other plant in accordance with the provisions of this ordinance.

Section 26. Any person, firm, corporation or unincorporated association violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any offense is committed, continued, or permitted. Upon the conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000.00 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

Section 27. The Board of Trustees of the Town of Eads, State of Colorado, hereby finds, determines and declares that an emergency exists, and this ordinance is necessary for the immediate preservation of the public peace, health and safety and shall be in full force and effect upon its adoption.

INTRODUCED, PASSED, APPROVED and ordered published by the Mayor and Board of Trustees of the Town of Eads, Colorado, this 13th day of June, 1995.

ATTEST:

Lester Williams, Mayor

Dora B. Pearcey, Town Clerk