



COUNCIL COMMUNICATION

TO:	Mayor and Council
FROM:	Tamara Niles
DEPARTMENT:	City Attorney's Office
DATE:	November 7, 2022
SUBJECT:	CB 65 - Amending Title 11 Chapter 5 of Englewood Municipal Code regarding Trees and Shrubs

DESCRIPTION:

CB 65 - The Englewood Code Enforcement Advisory Committee requested an ordinance amending municipal code on trees and shrubs. The proposed council bill incorporates Tree City USA standards, and provides provisions requested by CEAC.

RECOMMENDATION:

Approve an ordinance amending City codes regarding trees and shrubs

SUMMARY:

The City Code Enforcement Advisory Committee analyzed the City's tree and shrub regulations, and provided a list of areas needing revision to ensure the protection of the City's tree stock. The City Attorney's Office reviewed the CEAC analysis and form tree ordinances published by Tree City USA, and discussed potential code revisions with the City arborist Dave Lee.

Using a Tree City USA form ordinance, the City Attorney's Office drafted a proposed ordinance amending municipal code and worked with Dave Lee to revise and finalize it. The City Attorney attended the CEAC meeting on April 19, 2022 to discuss the proposal. After receiving comments and proposed revisions from CEAC, the City Attorney's office revised the proposed ordinance further, and the CEAC chairman notified the City Attorney on October 4, 2022 that the proposed ordinance was approved by CEAC and recommended for adoption by City Council.

The proposed ordinance:

Amends Municipal Code Title 5 Chapter 11, Trees and Shrubs;

Authorizes City staff to create an approved tree list for public property and a list of prohibited trees within the City that "*contribute to infectious disease or pest infestation of other Trees; threaten the health of other Trees; or threaten public health, safety, or welfare within the City.*";

Establishes that the Parks and Rec Commission also shall act as a City tree advisory board for purposes of Tree City USA designations;

Incorporates by reference established tree planting and care standards;

Adds a new prohibited act of "topping" trees on public property, or "*cutting back limbs to stubs within a Tree's crown to such a degree so as to remove the normal canopy and thereby disfigure the Tree, except that Trees severely damaged by storms or other natural causes*";

Provides clarity in wording and consistency in form; and

Eliminates the separate nuisance tree abatement process, and moves it to the nuisance code to follow established city-wide procedures for nuisances.

COUNCIL ACTION REQUESTED:

Adopt proposed Council Bill

FINANCIAL IMPLICATIONS:

None anticipated

ATTACHMENTS:

Council Bill #65

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2022

COUNCIL BILL NO. 65
INTRODUCED BY COUNCIL
MEMBER ANDERSON

AN ORDINANCE AMENDING ENGLEWOOD MUNICIPAL CODE TITLE 11 CHAPTER 5 AND EMC § 15-1-2, REGARDING TREES TO ADOPT MODEL CODE TO ENSURE PROTECTION OF CITY TREES AND MOVE CORRECTION OF TREE VIOLATIONS TO NUISANCE ABATEMENT CODES.

WHEREAS, trees can reduce the erosion of topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, provide habitat for wildlife, prevent flooding, beautify neighborhoods, and enhance business areas; and

WHEREAS, trees are vital to both public mental and physical health; and

WHEREAS, trees in the City of Englewood increase property values, enhance the economic vitality of business areas, and beautify the community; and

WHEREAS, the City of Englewood, Colorado has been recognized for 37 consecutive years as a Tree City USA by The National Arbor Day Foundation and desires to maximize its tree-planting efforts; and

WHEREAS, the Code Enforcement Advisory Committee (“CEAC”) studied Englewood Municipal Code (“EMC”) Title 11, Chapter 5 regarding Trees and Shrubs, and made several recommendations for revision to ensure compliance with Tree City USA standards and to provide additional protection against an anticipated ash tree infestation; and

WHEREAS, Tree City USA’s model tree ordinance serves as a basis to meet the goals and objectives of the City and CEAC in maintaining a healthy tree population and it enables the City to qualify for tree-related grants from various organizations; and

WHEREAS, this model tree ordinance, as revised below to meet the needs of the City of Englewood, amends the current EMC Title 11, Chapter 5 to ensure a vibrant tree population within the City; and

WHEREAS, to ensure consistency in City processes and procedures, responding to and abating nuisance tree issues shall be moved to Englewood Municipal Code regarding nuisances, as the Code amendments contained herein provide.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. Title 11 Chapter 5 of Englewood Municipal Code is hereby amended as follows (new provisions in italics, deleted provisions struck through):

Chapter 5 - TREES AND SHRUBS

11-5-1: Short Title

11-5-12: Definitions.

~~As used herein, the terms below shall be defined as follows: For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the text, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.~~

A. *City:* The City of Englewood, Colorado.

B. *Damage:* Any injury to or destruction of a Tree, including but not limited to: uprooting; removal; severance of all or part of the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; surrounding the Tree with impervious paving materials; or any trauma caused by accident or collision.

~~*Local Government:* A county, city, city and county, incorporated town, school district, special improvement district, water district, sanitation district, fire protection district, police protection district, metropolitan district, irrigation district, drainage, public corporation or any other kind of public district or political subdivision of the State organized pursuant to law.~~

C. *Person:* Any person, firm, partnership, association, corporation, company or organization of any kind.

D. *Plant:* Any organism within the Kingdom Plantae, including trees, vines, shrubs, hedges, landscape or lawn.

E. *Public Property:* all parks and open spaces, exterior areas, grounds and rights-of-way owned or maintained by the City.

F. *Public Tree:* any Tree on Public Property.

~~G. *Street Tree, Tree or Plant:* Any tree, vine, shrub, hedge or lawn. Any of a kingdom (plante) possessing cellulose cell walls is a tree or shrub in a public place except where otherwise indicated. A perennial woody plant usually having a main dominant trunk and branches forming a distinct elevated crown with a mature height greater than 5 meters (16 feet).~~

11-5-23: Reserved Authority and Responsibility for Public Property.

A. *Delegation of authority and responsibility.* The Director of Parks, Recreation, Library and Golf's designee (hereafter the "Director"), shall have authority to plant, maintain and remove Trees and Plants growing on Public Property, including removal of Trees encroaching upon electrical, telephone, gas, or any municipal water or sewer line, or any nuisance under EMC § 15-1-2.

B. *The Director shall adopt a list of approved Tree species for Public Property, and a list of prohibited nuisance Tree species within the City that: contribute to infectious disease or pest infestation of other Trees; threaten the health of other Trees; or threaten public health, safety, or welfare within the City.*

C. *Interference. No Person shall hinder, prevent, delay, or interfere with the Director or the City's agents while enforcing this Chapter.*

11-5-34: ~~Reserved~~ Tree Advisory Board.

A. *The City of Englewood Parks & Recreation Commission shall act as a Tree Advisory Board (hereafter the "Board").*

B. *Duties. The Board shall act in an advisory capacity to the Director and shall:*

1. *Coordinate and promote Arbor Day activities;*
2. *Review and update a five-year plan to plant and maintain Trees on Public Property;*
3. *Support public awareness and education programs relating to Trees;*
4. *Review City department concerns relating to Tree care;*
5. *Submit an annual report of its activities to City Council;*
6. *Assist with the annual application to renew the Tree City USA designation;*
7. *Recommend to the Director a list of preferred Tree species to plant on Public Property, and a list of prohibited nuisance species within the City; and*
8. *Other duties that may be assigned by City Council.*

11-5-45: Property Owner's Responsibility for Public Right of Way.

It shall be the responsibility at the cost of the owner, tenant, and any other Person in possession or control and agent of any property adjacent to any public sidewalk, street, avenue, highway or alley to maintain, trim, spray, remove, plant, and prune and protect all Trees and Plants located upon such public right of way to ensure compliance with Englewood Municipal Code.

11-5-56: ~~Preservation and Removal Procedures~~ Tree Planting and Care Standards.

~~When the City shall find it necessary to order the trimming, spraying, preservation or removal of trees or plants upon public or private property, as authorized in this Chapter, a written order to correct the condition shall be served upon the owner, operator, occupant, other person responsible or upon the property where the condition exists.~~

~~A. *Method of Service.* The order required herein shall be served in one of the following ways in order of preference:~~

- ~~1. *By making personal delivery of the order to the person responsible;*~~
- ~~2. *By leaving the order with some person of suitable age and discretion upon the premises.*~~

3. ~~By affixing a copy of the order to the door at the entrance to the premises in violation;~~
 4. ~~By mailing a copy of the order to the last known address of the owner of the premises by registered or certified mail, return receipt requested;~~
 5. ~~By publishing a copy of the order in a local paper once a week for three (3) successive weeks.~~
- B. ~~*Time for Compliance.* The order required herein shall set forth a time limit for compliance of not less than twenty four (24) hours and not more than forty five (45) days, as the City deems appropriate.~~
- C. ~~*Appeal from Order.* Any person to whom an order hereunder is directed may appeal, in writing, to the City within seventy two (72) hours of the service of such an order. Emergency notices, as set out in subsection F, are excluded from this procedure. The appeal shall contain the appellant's name and address, the decision being appealed and a brief explanation of why the appellant should not be required to comply with the order appealed. The City Manager or designee promptly shall meet informally with the appellant to exchange necessary information and shall issue a decision in writing to the appellant at his address stated in the appeal. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom directed.~~
- D. ~~*Failure to Comply.* When the person to whom the order is directed shall fail to comply within the specified time, the City shall remedy the condition or contract with others for such purpose and charge the cost, plus fifteen percent (15%) for administrative fees, to the person to whom the order is directed. The person remedying a condition under a contract made hereunder shall be authorized to enter premises for that purpose. Failure to comply also constitutes a Municipal ordinance violation, for which the violator may be cited and summoned into Municipal Court and, if convicted, punished according to Chapter 4, Title 1 of this Code.~~
- E. ~~*Special Assessment.* If the cost of complying with a City order to trim, spray, preserve, remove trees or take other appropriate action is not paid within thirty (30) days after receipt of a statement therefor from the City, such cost, plus twenty five percent (25%) of such cost, shall be levied against the responsible property owner or property upon which said condition exists, as a special assessment. The levying of such assessment shall not affect the liability of the person to whom the order is directed to fine and imprisonment as herein provided. Such special assessment shall be certified by the EX OFFICIO TREASURER OF THE City to the Treasurer of the County of Arapahoe, State of Colorado, and shall thereupon become and be a lien upon such property, shall be included in the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as other ad valorem taxes against such property are collected.~~
- F. ~~*Emergency Notice.* In the event the City finds a condition involving a tree, shrub or other plant which constitutes an immediate threat to life, limb or property, the City shall have authority to immediately have caused correction or remedy to such condition at the owners' or agents' expense without administrative fee. If the costs are~~

~~not paid by owner within thirty (30) days of notice of costs, the City shall initiate procedure for a special assessment as authorized under subsection E of this Section.~~

A. *Standards. Planting, maintenance, and construction activities regarding Trees shall comply with the American National Standards Institute A-300 Standards for Tree Care Operations, International Society of Arboriculture's Tree Care Best Management Practices and Managing Trees During Construction, and applicable utility clearance industry standards, all of which are incorporated by reference as if fully set forth herein.*

B. *Planting locations. No Tree may be planted within the visibility triangle of a street intersection or within 10 feet of a fire hydrant.*

C. *Trees near overhead transmission lines. Only Trees approved by an overhead transmission/distribution line's owner, licensee, or franchise holder may be planted under or within 15 lateral feet of any overhead utility wire.*

11-5-67: Removal Under Special Improvement Districts.

In the event the removal of any Plant or Tree is necessitated by a City paving or sidewalk district, the expense of such removal will be borne by the City, not subject to recovery from the owner or agent of the property unless such Plant or Tree was planted or placed with written permit from the City after the effective date of this Chapter.

11-5-78: Prohibited Acts, Conditions.

A. ~~*Public Danger. The City shall have the authority to designate unlawful trees or plants and to order the removal of existing trees or plants, where their existence is injurious to the health and safety of citizens or property.*~~

~~B.—.~~

~~*Abuse or Mutilation of Trees. Unless authorized by the City or property owner, it shall be unlawful for any Person to no person shall perform any of the following on any public property within the City or on any other private property not belonging to that person:*~~

- ~~1. Damage or cause the Damage of a Tree or Plant, cut, carve, transplant or remove any tree or shrub or injure the bark thereof;:-~~
2. Pick the flowers or seeds of any Tree or Plant;:-
3. Attach any rope, wire, sign or other contrivance to any Tree or Plant;:-
4. Dig in or otherwise disturb grass areas, or in any other way injure or impair the natural beauty or usefulness of any Public Propertyarea;:- or
5. *Top any Public Tree by cutting back limbs to stubs within a Tree's crown to such a degree so as to remove the normal canopy and thereby disfigure the Tree, except that Trees severely damaged by storms or other natural causes, where best pruning practices are impractical, may be exempted from this prohibition by the Director.*

~~D.— *Interference with City*: No person shall in any way interfere or cause any person to interfere with the City in or about the performance of duties as defined in this Chapter.~~

Section 2. Section 15-1-2 of Englewood Municipal Code regarding Nuisance is hereby amended as follows, to authorize abatement of tree nuisances as defined by newly-created subsection (Z)(60 below, through the City’s pre-existing nuisance abatement (new provisions in italics and underlined, deleted provisions struck through):

15-1-2: Definitions.

For the purpose of the application of the provisions of this Title, the following definitions shall apply:

- A. *Abatement of a Nuisance*: The removal, stoppage, prostration, repair, or destruction of anything which causes a nuisance, or constitutes a nuisance, whether by breaking or pulling it down, or otherwise destroying, effacing, or removing it.
- B. *Alley*: A public way less in size than a street, which is not designed for general travel, which is used primarily as a means of access to the rear of residences and business establishments, and which affords a secondary means of access to property.
- C. *Building*: A structure, including utilities enclosed with a roof and within exterior walls built, erected and framed of component structural parts, designed for the housing, shelter, enclosure and support of individuals, animals or property of any kind.
- D. *Building Official or Chief Building Official*: Where these terms are used in this Title or any Code in this Title, they shall mean the person designated by the City Manager, or his/her representative with the title of Building Official or Chief Building Official.
- E. *Carport*: As defined in EMC § 16-11-2(B).
- F. *City*: The City of Englewood, Arapahoe County, Colorado vested with the authority and responsibility for the enactment and enforcement of this Chapter, acting by and through its City Council under the Home Rule Charter, statutes and ordinances of said City of Englewood.
- G. *City Manager*: Chief administrative officer of the City of Englewood.
- H. *Dwelling*: Any building to be used for living or sleeping by human occupants. Temporary housing, as hereinafter defined shall not be regarded as a dwelling.
- I. *Dwelling Unit*: One or more rooms located within a dwelling, which are occupied or which are intended or designed to be occupied by one family with facilities for living, sleeping, cooking and eating.
- J. *Elements*: Wind, rain, snow, hail, sleet, or surface run-off water.
- K. *Emergency*: An existing condition actually arising from unforeseen contingencies which immediately endangers public property, health, peace or safety.
- L. *Extermination*: The control and elimination of insects, rodents, vermin or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; or by poisoning, spraying, fumigating, trapping or similar means.

M. Front Yard: See "Yard, Front" as defined in EMC § 16-11-2(B).

N. Garage, Private: A building, or part thereof, attached or detached and accessory to the main building, providing for the storage of motor vehicles, and in which no business is conducted.

O. Garbage: Animal and vegetable wastes resulting from the handling, preparation, cooking or serving of food.

P. Graffiti: The defacing of public or private property by means of painting, drawing, writing, etching, or carving with paint, spray paint, ink, knife or any similar method without written permission of the owner/property owner.

Q. Habitable Room: Any enclosed floor space meeting the requirements of this Title for sleeping, living, cooking or dining purposes, excluding such spaces as closets, pantries, bath or toilet room, service rooms, connecting corridors, laundries, unfinished attics, foyers, storage spaces, utility rooms and similar nonhabitable space.

R. Hard Surface: A surface as defined in EMC § 16-11-2(B).

S. Infestation: The presence within or around a dwelling of insects, rodents, vermin or other pests of such kind, or in such numbers as to cause a hazard to health.

T. Inoperable Motor Vehicle: Any motor vehicle that:

1. is incapable of moving in a lawful manner under its own power; or
2. lacks a current license plate; or
3. is wrecked, damaged, dismantled or incompletely assembled.

U. Junk: Scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates, used pipe or pipe fittings, used automobile or airplane tires, and other manufactured goods that are so worn, deteriorated or obsolete as to make unusable in their existing condition, but are subject to being dismantled.

V. Junk Yard: A place where junk, waste, discarded, or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including automobile wrecking yards, house wrecking and structural steel materials and equipment, but not including the purchase or storage of used furniture and household equipment, used cars in operable condition, used or salvaged materials as part of manufacturing operations.

W. Litter: Garbage, refuse, and rubbish, as defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

X. Motor Home or Motor Coach: Any wheeled vehicle which is a single, self-contained unit, with motive power, which is designed and generally and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may occasionally be driven over the public highways as a motor vehicle.

Y. Noxious Matter: Material which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects upon the physical or economic well-being of individuals.

Z. Nuisance: A condition which injures or endangers the public health, safety or welfare which includes, but is not limited to, the following:

- 1A. The conducting or maintaining of any business, occupation, operation, or activity prohibited by any Title of this Code; or
- 2B. The continuous or repeated conducting or maintaining of any business, occupation operation, activity, building, land, or premises in violation of this Title; or
- 3C. Any fence, wall, shed, deck, house, garage, building, structure, or any part of the aforesaid; or any tree, pole, smokestack; or any excavation, hole, pit, basement, cellar, sidewalk subspace, or any object stored on or in said premises; or any lot, land, yard, premises or location in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the City, in any one of the following particulars:
 - a1. By reason of being a menace, threat and/or hazard to the general health and safety of the community.
 - b2. By reason of being a fire hazard.
 - c3. By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.
 - d 4. By reason of deterioration or decay becomes rodent infested, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter.
 - e5. By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any or which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.
- 4D. Any unlawful pollution or contamination of any surface or subsurface waters in this City, or of the air, or any water, substance, or material intended for human consumption in the City; or
- 5E. Any activity, operation, or condition which, after being ordered abated, corrected, or discontinued by a lawful order of an agency or officer of the City, continues to be conducted or continues to exist in violation of any of the following:
 - a1. Any title of this Municipal Code.
 - b2. Any regulation enacted pursuant to this Municipal Code.
 - c3. Any statute of the State of Colorado.

d 4. Any regulation of the State of Colorado.

6. Any Tree as defined by EMC § 11-5-1(G), or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; threatens public health, safety, or welfare; or designated by the City of Englewood as a nuisance tree species pursuant to EMC § 11-5-2(B).

AA. *Occupant*: See Responsible Party.

BB. *Off Road Vehicle (ORV)*: Includes, but is not limited to, an all-terrain vehicle (ATV), mini-bike, dirt bike, hovercraft, dune buggy, go-cart, boat, personal watercraft, race car or other vehicles that are not street legal in the State of Colorado, experimental vehicle, aircraft, and trailers for any of the foregoing even if properly licensed. For purposes of this definition, one (1) or more "ORV's" stored on a trailer shall be considered as one (1) ORV.

CC. *Organic*: Referring to or derived from living organisms.

DD. *Owner*: See Responsible Party.

EE. *Person*: Any individual, firm, corporation, association or partnership.

FF. *Potable Water*: Water which, without further treatment, is suitable for drinking, culinary and domestic purposes.

GG. *Premises*: A lot, parcel, tract or plot of land, together with the buildings, structures thereon.

HH. *Premises, Private*: Any dwelling, house, building or other structure, designed or used, either wholly or in part, for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure, and private land on which no building exists. Private premises include business property.

II. *Property*: Land and, generally, whatever is erected, growing upon or affixed to land.

JJ. *Property, Business*: Real property on which is located a building. Property that is zoned or used for commercial use which is used principally for the sale or lease of merchandise, goods, or services, or interest in land which is generally recognized as being zoned for a retail or wholesale business.

KK. *Public Place*: Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, grounds and buildings owned or maintained by the City or other governmental agency provided for the benefit of the general public.

MM. *Putrescible*: Capable of being decomposed by microorganisms with sufficient rapidity to cause a nuisance from odors or gases.

NN. *Recreational Vehicle*: A vehicular-type portable structure without permanent foundation. Vehicle which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use and including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes.

OO. Recyclable Material: Any material or group of materials which is generated as a by-product, which can be collected and reused or reprocessed into reusable material.

PP. Refuse: All putrescible or nonputrescible waste, including garbage, rubbish, ashes, street cleanings, dead animals, offal, droppings, abandoned appliances, and vehicle parts.

QQ. Responsible Party: Person, as defined herein, who is an occupant of or has actual possession of; or is the owner, either alone, jointly or severally with others of any real or personal property, or agent of the owner. For purposes of this definition ownership shall include any person, as defined herein, who:

- 1A. Has a legal or equitable interest in real or personal property, with or without accompanying actual possession thereof; or
- 2B. Acts as the agent of a person having a legal or equitable interest in real or personal property; or
- 3C. Is the general representative or fiduciary of an estate through which a legal or equitable interest in a real or personal property is administered; or
- 4D. The record owner whether person, firm or corporation, or any agent or representative of the record owner.

RR. Rubbish: Nonputrescible waste consisting of both combustible and noncombustible wastes, such as paper, wrappings, leaves, branches, wood, waste building materials, glass, bedding, crockery, household furnishings and similar materials.

SS. Scrap Motor Vehicles: Motor vehicles not capable of being operated on public streets under the laws of the State of Colorado.

TT. Screened: Visually obscured by screening as defined in EMC § 16-11-2(B).

UU. Special Mobile Equipment: Means and consists of vehicles, self-propelled or otherwise, designed primarily for operation or use on or off the streets and highways and only incidentally used or moved upon such streets or highways. This definition shall include by way of example, but not by way of limitation, snowplows, road construction or maintenance equipment, ditch digging or excavating apparatus, well drilling or boring equipment, fire-fighting equipment, vehicles designed to transport equipment and vehicles used in connection with or for the repair and maintenance of construction or maintenance equipment temporarily or permanently mounted on such vehicles; provided, that such equipment is transported from yard to job, job to job, or job to yard and equipment primarily designed for hoisting, lifting, moving, loading or digging operations. The foregoing definition is partial and shall not include other vehicles of unusual design, size or shape that are designed primarily for purposes other than transporting merchandise or passengers.

VV. Storage/Motor Vehicle: To leave, park, stand, or halt a vehicle or motor vehicle in a certain place for a period of seventy-two (72) hours or longer.

WW. Street: Any public thoroughfare for the free passage of persons, trade or commerce, and which affords a principal means of access to property abutting along its length. This term does not include private roads.

XX. Temporary Housing: Any tent, trailer, coach or other structure used for human shelter, which is designed to be transportable, and which is not attached to the ground, to another structure, or to any utilities in a licensed trailer park.

YY. Trailer: A Trailer or Utility Trailer as defined in the 1995 Model Traffic Code *duly adopted and currently in effect in the City*, ~~as adopted~~.

ZZ. Trailer, Small: For the purpose of Title 15, Englewood Municipal Code only, a small trailer is any wheeled vehicle, without motive power and having an empty weight of two thousand (2,000) pounds or less, which is designed to be drawn by a motor vehicle and to carry its cargo load wholly upon its own structure and which is generally and commonly used to carry and transport property over the public highways.

AAA. Trash: Discarded materials including, but not limited to household wastes, furniture, construction supplies and materials, garden, lawn and landscaping supplies and wastes, scrap wood, metal, or other materials, clothing and bedding. The terms waste and trash are interchangeable for purposes of this Ordinance.

BBB. Trash Container: A container of metal, wood or plastic with a top or cover that can be securely fashioned on the container to prevent the contents from being carried or scattered by the elements or animals. Paper or plastic bags are not permitted trash containers except for grass clippings and leaves, if properly secured.

CCC. Trash Hauler: Any person, partnership, or corporation transporting trash for disposal for any fee or other compensation in the City of Englewood.

DDD. Truck: Any motor vehicle equipped with a body designed to carry property and which is generally and commonly used to carry and transport property over the public highways.

EEE. Usable Open Space: On-site space that is absent of any building or structure. Open space could contain, but is not limited to the following: sidewalks, trellises, swings, arbors, swimming pools, tennis courts, and landscaping. Surface parking is not to be considered as usable open space.

FFF. Vehicle: Means any device which is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks; such term, for the purpose of this Title, shall not include any farm tractor or any implement of husbandry designed primarily or exclusively for use and used in agricultural operation or any device moved by muscular power. This definition also means any self-propelled vehicle, which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

GGG. Vehicle, Motor: Any self-propelled vehicle that is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

HHH. Waste: The terms "waste" and "trash" have the same meaning and are interchangeable for purposes of this Ordinance. (See also Trash)

III. Weed: Weeds, grass, brush or other rank or noxious vegetation that has grown to maturity or is in excess of six inches (6") in height.

JJJ. Yard: An existing or required open space, other than a court, on the same lot with a principal building or structure, open, unoccupied and unobstructed from the ground to the sky, except as otherwise provided herein.

KKK. Yard, Front: A yard extending across the full width of the lot between the front lot line and the nearest line or point for buildings as required by setback requirements.

LLL. Yard, Rear: A yard extending across the full width of the lot between the rear lot line and the nearest line or point of the principal building.

MMM. Yard, Side: A yard between the side line of the lot and the nearest line of the building and extending from the front yard to the rear yard, or in the absence of either of such yards, to the front or rear lot line, as may be.

Section 3. The following general provisions and findings are applicable to the interpretation and application of this Ordinance:

A. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

B. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

C. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

D. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. This Safety Clause is not intended to affect a Citizen right to challenge this Ordinance through referendum pursuant to City of Englewood Charter 47.

E. Publication. Publication of this Ordinance may be in the City's official newspaper, the City's official website, or both. Publication shall be effective upon the first publication by either authorized method.

F. Actions Authorized to Effectuate this Ordinance. The Mayor is hereby authorized and directed to execute all documents necessary to effectuate the approval authorized by this Ordinance, and the City Clerk is hereby authorized and directed to attest to such execution by the Mayor where necessary. In the absence of the Mayor, the Mayor Pro Tem is hereby authorized to execute the above-referenced documents. The execution of any documents by said officials shall be conclusive evidence of the approval by the City of such documents in accordance with the terms thereof and this Ordinance. City staff is further authorized to take additional actions as may be necessary to implement the provisions of this Ordinance.

G. Enforcement. To the extent this ordinance establishes a required or prohibited action punishable by law, unless otherwise specifically provided in Englewood Municipal Code or applicable law, violations shall be subject to the General Penalty provisions contained within EMC § 1-4-1.

Introduced, read in full, and passed on first reading on the 17th day of October, 2022.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 20th day of October, 2022.

Published as a Bill for an Ordinance on the City's official website beginning on the 19th day of October, 2022 for thirty (30) days.

Read by Title and passed on final reading on the 7th day of November, 2022.

Published by Title in the City's official newspaper as Ordinance No. ____, Series of 2022, on the 10th day of November, 2022.

Published by title on the City's official website beginning on the 9th day of November, 2022 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

Othoniel Sierra, Mayor

ATTEST:

Stephanie Carlile, City Clerk

I, Stephanie Carlile, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by Title as Ordinance No. ____, Series of 2022.

Stephanie Carlile

11-5-6: - Preservation and Removal Procedures.

When the City shall find it necessary to order the trimming, spraying, preservation or removal of trees or plants upon public or private property, as authorized in this Chapter, a written order to correct the condition shall be served upon the owner, operator, occupant, other person responsible or upon the property where the condition exists.

- A. *Method of Service.* The order required herein shall be served in one of the following ways in order of preference:
 1. By making personal delivery of the order to the person responsible;
 2. By leaving the order with some person of suitable age and discretion upon the premises.
 3. By affixing a copy of the order to the door at the entrance to the premises in violation;
 4. By mailing a copy of the order to the last known address of the owner of the premises by registered or certified mail, return receipt requested;
 5. By publishing a copy of the order in a local paper once a week for three (3) successive weeks.
- B. *Time for Compliance.* The order required herein shall set forth a time limit for compliance of not less than twenty four (24) hours and not more than forty five (45) days, as the City deems appropriate.
- C. *Appeal from Order.* Any person to whom an order hereunder is directed may appeal, in writing, to the City within seventy two (72) hours of the service of such an order. Emergency notices, as set out in subsection F, are excluded from this procedure. The appeal shall contain the appellant's name and address, the decision being appealed and a brief explanation of why the appellant should not be required to comply with the order appealed. The City Manager or designee promptly shall meet informally with the appellant to exchange necessary information and shall issue a decision in writing to the appellant at his address stated in the appeal. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom directed.
- D. *Failure to Comply.* When the person to whom the order is directed shall fail to comply within the specified time, the City shall remedy the condition or contract with others for such purpose and charge the cost, plus fifteen percent (15%) for administrative fees, to the person to whom the order is directed. The person remedying a condition under a contract made hereunder shall be authorized to enter premises for that purpose. Failure to comply also constitutes a Municipal ordinance violation, for which the violator may be cited and summoned into Municipal Court and, if convicted, punished according to Chapter 4, Title 1 of this Code.
- E. *Special Assessment.* If the cost of complying with a City order to trim, spray, preserve, remove trees or take other appropriate action is not paid within thirty (30) days after receipt of a statement therefor from the City, such cost, plus twenty five percent (25%) of such cost, shall be levied against the responsible property owner or property upon which said condition exists, as a special assessment. The levying of such assessment shall not affect the liability of the person to whom the order is directed to fine and imprisonment as herein provided. Such special assessment shall be certified by the EX OFFICIO TREASURER OF THE City to the Treasurer of the County of Arapahoe, State of Colorado, and shall thereupon become and be a lien upon such property, shall be included in the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as other ad valorem taxes against such property are collected.
- F. *Emergency Notice.* In the event the City finds a condition involving a tree, shrub or other plant which constitutes an immediate threat to life, limb or property, the City shall have authority to immediately have caused correction or remedy to such condition at the owners' or agents' expense without administrative fee. If the costs are not paid by owner within thirty (30) days of

notice of costs, the City shall initiate procedure for a special assessment as authorized under subsection E of this Section.

(Code 1985, § 11-5-6; Ord. 00-7)

Introduced as a Bill by Councilman Dhority

BY AUTHORITY
ORDINANCE NO. 2, SERIES OF 1971

AN ORDINANCE AMENDING TITLE 10 OF THE '69 E.M.C. ENTITLED "PARKS AND RECREATION" BY ADDING A NEW CHAPTER THERETO, BEING CHAPTER 3, TITLE 10, '69 E.M.C. "TREE AND SHRUB ORDINANCE" REGULATING THE PLANTING AND MAINTENANCE OF TREES AND PLANTS; ESTABLISHING THE OFFICE OF THE CITY FORESTER IN THE ADMINISTRATIVE SERVICE OF THE CITY EITHER AS A FULL-TIME APPOINTED EMPLOYEE OR BY CONTRACT WITH OTHER LOCAL GOVERNMENTS AND PRESCRIBING HIS AUTHORITY; REQUIRING PERMITS FOR PLANTING, PRESERVATION AND REMOVAL IN PUBLIC PLACES; PLACING RESPONSIBILITY ON THE OWNERS OF PRIVATE PROPERTY IN ORDER TO PROTECT GROWTH IN PUBLIC PLACES; PROVIDING FOR ABATEMENT OF HAZARDOUS CONDITIONS BY THE CITY; ISSUANCE OF LICENSES FOR BUSINESS ESTABLISHMENTS; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO as follows:

That Title 10 of the '69 E.M.C. is hereby amended by adding a new chapter thereto, being Chapter 3, Title 10, '69 E.M.C. entitled, "Trees and Shrubs", as follows:

10-3-1 - SHORT TITLE

This ordinance shall be known and may be cited as, "The Tree and Shrub Ordinance", of the City of Englewood, Colorado.

10-3-2 - DEFINITIONS

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

- (1) "City" is the City of Englewood, Colorado.
- (2) "City Forester" is the City Forester of the City of Englewood, Colorado.
- (3) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (4) "Street tree" or "tree" or "plant" is any tree, vine, shrub, hedge or lawn. Any of a kingdom (plante) possessing cellulose cell walls is a tree or shrub in a public place except where otherwise indicated.
- (5) "Local Government" is a county, city, city and county, incorporated town, school district, special improvement district, water district, sanitation district, fire protection district, police protection district, metropolitan district, irrigation district, drainage, public corporation or any other kind of public district or political subdivision of the State organized pursuant to law.

10-3-3 - CITY FORESTER

There is hereby established within the Department of Parks and Recreation in the administrative service of the City, the Office of the City Forester. Said Office shall be filled either by (a) appointment by the City Manager under the provisions of Section 52, Article VII of the City Charter and Chapter 1, Title V, '69 E.M.C., or (b) as an appointee of the City Council pursuant to an agreement for services with other local governmental units. Should said office be filled by appointment by the City Council, pursuant to an agreement for services, said City Forester shall have in like manner the exclusive jurisdiction and supervision of all trees and other plants and grasses growing in public places as hereinafter set forth.

10-3-4 - AUTHORITY OF CITY FORESTER

The City Forester shall have exclusive jurisdiction and supervision over all trees, other plants and grasses growing in public places. The City Forester shall have the power to promulgate rules, regulations and specifications for trimming, spraying, removal, planting, pruning and protection of plants upon public property.

- (1) Preserve or Remove on Public Property - The City Forester shall have the authority to plant, trim, spray, preserve, and remove trees, other plants, and grasses in public places to insure safety or preserve the symmetry and beauty of such places.
- (2) Order to Preserve or Remove on Private Property - The City Forester shall have the authority and it shall be his duty to order the trimming, preservation, or removal of trees or plants upon private property when he shall find such action necessary to public safety or to prevent the spread of disease or insects to public trees and places.
 - (a) Inspection. Notice in Case of Infected Wood Pile or Plants - The City Forester may enter upon any premises without warrant to inspect all wood piles or trees, logs, shrubs, and other plants within the limits of the City whether such trees, logs, shrubs or plants are for sale or not. Upon discovering any infectious insects or diseases harbored within such wood pile or accumulation of plant matter or the existence of Elm wood, the City Forester shall at once notify the owner or an agent of the premises whereupon the same is located of the condition found and shall direct such owner or agent by notice to remedy such conditions immediately or at a time as determined by the City Forester.

(3) Issue Permit - The City Forester shall have the authority to affix reasonable conditions and regulations to the grant of a permit hereunder.

(4) Large Scale Planting Procedure - Upon receipt of an application for a permit to plant or set out an excess of twelve (12) trees or plants, the City Forester shall have the authority to require from the applicant detailed information as set out by the City Forester.

(5) Unlawful to Plant Certain Trees, Shrubs, etc. - It shall be unlawful to plant or set out female cottonwood trees (*populus deltoides* - female) or box elder (*populus alba*) and certain other undesirable plants as designated by the City Forester upon any property within the City and the planting or setting out of these certain plants is hereby declared to be a menace to public health, safety and welfare and a public nuisance.

(6) City Forester Provides Standards of Workmanship to Licensees - The City Forester shall develop and provide to all licensees copies of standards of workmanship required by the City for tree trimming, tree removal, spray applications, safety requirements, and other such rules and regulations governing the business of planting, cutting, trimming, pruning, removal or spraying plants within the City. Violation of any provisions of these standards of workmanship provided by the City Forester shall provide sufficient cause for a suspension or revocation of the license by the City Forester.

10-3-5 - PROPERTY OWNERS RESPONSIBILITY FOR PUBLIC RIGHT-OF-WAY

It shall be the responsibility at the cost of the owner and agent of any property adjacent to any public sidewalk, street, avenue, highway or alley to maintain, trim, spray, remove, plant, prune, and protect all plants located upon such public right-of-way.

10-3-6 - PROCEDURE UPON ORDER TO PRESERVE OR REMOVE

When the City Forester shall find it necessary to order the trimming, preservation, or removal of trees or plants upon public or private property as authorized in this ordinance, he shall serve a written order to correct the dangerous condition upon the owner, operator, occupant, or other person responsible for its existence.

(1) Method of Service - The order required herein shall be served in one of the following ways:

(a) By making personal delivery of the order to the person responsible.

(b) By leaving the order with some person of suitable age and discretion upon the premises.

(c) By affixing a copy of the order to the door at the entrance to the premises in violation.

(d) By mailing a copy of the order to the last known address of the owner of the premises by registered or certified mail.

(e) By publishing a copy of the order in a local paper once a week for three successive weeks.

(2) Time for Compliance - The order required herein shall set forth a time limit for compliance of not less than thirty (30) nor more than forty-five (45) days.

(3) Appeal from Order - The person to whom an order hereunder is directed shall have the right within seventy-two (72) hours of the service of such order to appeal to the Board of Adjustment and Appeals, who shall review such order at their next subsequent meeting date and file their decision thereon. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with such order within ten (10) days after an appeal shall have been determined.

(4) Failure to Comply - When the person to whom the order is directed shall fail to comply within the specified time, the City Forester shall remedy the condition or contract with others for such purpose and charge the cost, plus 15% for administration fees, thereof, to the person to whom the order is directed. The person remedying a condition under a contract made hereunder shall be authorized to enter premises for that purpose.

(5) Special Assessment - If the cost of remedying a condition is not paid within thirty (30) days after receipt of a statement therefor from the City Forester, such cost, plus 25% of such cost, shall be levied against the property upon which said hazard exists, as a special assessment. The levying of such assessment shall not affect the liability of the person to whom the order is directed to fine and imprisonment as herein provided. Such special assessment shall be certified by the Director of Finance, ex officio City Clerk to the Treasurer of the County of Arapahoe, State of Colorado and shall thereupon become and be a lien upon such property, shall be included in the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as other taxes against such property are collected.

(6) Emergency Notice - In the event the City Forester finds a condition involving a tree, shrub, or other plant which constitutes immediate threat to life, limb or property, the City Forester shall have authority to immediately have caused correction or remedy to such condition at the owners' or agents' expense without administrative fee.

10-3-7 - ABUSE OR MUTILATION OF TREES

No person shall (a) damage, cut, carve, transplant, or remove any tree or shrub or injure the bark thereof, (b) pick the flowers or seeds of any tree or plant, (c) attach any rope, wire, or other contrivance to any tree or plant, or (d) dig in or otherwise disturb grass areas, or in any other way injure or impair the natural beauty or usefulness of any public area.

10-3-8 - REMOVAL OF TREES DUE TO CITY SPECIAL IMPROVEMENT DISTRICTS

In the event the removal of any plant is necessitated by a City paving or sidewalk district, the expense of such removal will be borne by the City, not subject to recovery from the owner or agent of the property unless such plant was planted or placed with written permit from the City Forester after the effective date of this ordinance.

10-3-9 - LICENSE REQUIRED FOR BUSINESS

It shall be unlawful for any person, firm, or corporation to engage in the business of planting, cutting, trimming, pruning, removing or spraying trees, shrubs, vines or hedges within the City without further procuring a license therefore from the Director of Finance. No such license shall be issued without the written approval of the City Forester who shall first be satisfied of the competency of the applicant to engage in such business as indicated by an examination conducted by the City Forester, both oral and written. Applicants who hold current valid trimming and spraying licenses from the City of Denver may be exempted from the oral and written examination at the discretion of the City Forester. Prior to issuance of such license, the applicant shall have a Certificate of Insurance with a minimum of 10-20-25-50 Thousand Dollars, copy of said Certificate to be placed on file with Director of Finance. Said insurance shall be for the purpose of indemnifying the City of Englewood or other person from loss or damage resulting to any person or property by the negligence of such licensee. Such license shall be issued for a period of one (1) year and expire on the thirty-first day of December following its issuance. The license fee shall be Twenty-Five Dollars (\$25.00) per year, or fraction thereof, payable in advance. Any such license may be suspended or revoked by the City Forester upon written notice from the City Forester stating in what manner such licensee has violated the rules and regulations of the City Forester or any provision of any City ordinance. An appeal from such suspension or revocation may be made to the City Council by requesting such hearing within twenty-four hours of issuance of notice of suspension or revocation. Said licensee may continue to perform service until the City Council renders a final decision. Licenses are not transferable. Licensee shall supervise and be responsible for all work done under his license.

10-3-10 - INTERFERENCE WITH CITY FORESTER

No person shall in any way interfere or cause any person to interfere with the City Forester or his representative in or about the performance of his duties as defined in this ordinance.

10-3-11 - SEPARABILITY

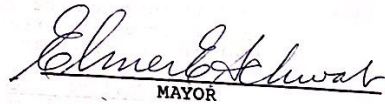
If any section, sub-section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Introduced, read in full and passed on first reading on the 18th day of January, 1971.

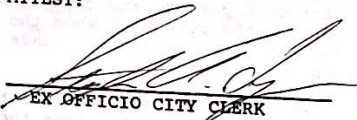
Published as a Bill for an Ordinance on the 20th day of January, 1971.

Read by title and passed on final reading on the 1st day of February, 1971.


Published by title as Ordinance No. 2, Series of 1971 on the 3rd day of February, 1971.


MAYOR

ATTEST:


EX OFFICIO CITY CLERK

I, Stephen A. Lyon, do hereby certify that the above and foregoing is a true, accurate and complete copy of an Ordinance passed on final reading and published by title as Ordinance No. 2, Series of 1971.


EX OFFICIO CITY CLERK