

Chapter 4

TREES

8-4-1: DEFINITIONS:

For the purposes of this chapter, 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 directive.

CONSTRUCTION ACTIVITIES: Any activities involving the building or repair of structures, the moving or removing of fifty (50) or more cubic yards of earth, or the construction of vehicular access for such activities.

PRIVATE PROPERTY: All real property or interests therein not owned by the city.

PUBLIC PROPERTY: All real property owned by the city.

RIGHT(S) OF WAY: The city's possessory interest in any real property which is used or which may be used for vehicular or pedestrian traffic, or utilities. "Rights of way" may include lands lying between the property lines on either side of public streets, roads and alleys.

TREES: Any single- or multi-stem woody plant that attains a minimum mature height of fifteen feet (15') with a minimum mature trunk diameter of four inches (4") as measured six inches (6") above the ground. (Ord. 3, Series of 2014)

8-4-2: AUTHORITY:

(A) Authority: The city manager, or his designee, shall have jurisdiction and supervision over all trees and other plants growing within rights of way and on public property within the city; and over all trees located on private property that constitute a nuisance as described below. He/she shall have the power and duty to promulgate rules, regulations and specifications for trimming, removing, planting, pruning, and protection of all plants and trees within the city. Included in such rules, regulations and specifications shall be the following:

1. Rules relating to planting, trimming, spraying, preserving and removing of trees and plants in the city to protect the public health, safety and welfare and to prevent the existence of nuisances and the spread of disease. For purposes of this chapter a tree shall be deemed a nuisance if it, or any part of it:
 - (a) Appears dead, dangerous or likely to fall and poses a danger to adjacent property or to persons or personal property;
 - (b) Protrudes into a vehicular clearance zone of fourteen feet (14') above any street or alley;
 - (c) Protrudes into a pedestrian clearance zone of ten feet (10') above any public sidewalk;
 - (d) Obstructs a curb, gutter, street, sidewalk or traffic control device;

(e) Significantly or repeatedly interferes with or causes damage to public sanitary or storm sewers;

(f) Is infected with a disease which may be spread to other trees or plants.

2. Standards of workmanship for tree trimming, tree removal, spray applications and safety requirements.

(B) Inspection On Private Property: The city may, from time to time, seek entry onto private property in order to inspect the trees located thereon. The city shall first seek the property owner's permission to conduct such an inspection. Should the property owner object to the inspection, the city may seek, from a court of competent jurisdiction which shall include the municipal court, a warrant to inspect the premises in accordance with this chapter. Should a condition of extreme danger be known to exist, the warrant requirements of this section may be dispensed with, but only if there is reasonable cause to believe that the delay involved in compliance with the warrant requirement would pose a serious and imminent danger to persons or property.

(C) Inspections For Disease Or Infestation: The city may inspect any tree or tree part, including logs or branches, existing or growing upon any property within the city. The city shall determine if any destructive and communicable disease or insect infestation exists, which may be detrimental to, or endanger, the good health and well being of trees in the city. Upon discovery of such destructive and communicable disease or insect infestation, the city shall serve written notification to the property owner of such condition and order corrective action to eradicate, remove, or otherwise control such condition within a specified time. Destructive and communicable diseases or insect infestations may include, but are not limited to: Dutch elm disease, thousand cankers black walnut disease, and emerald ash borer. (Ord. 3, Series of 2014)

8-4-3: LICENSING:

(A) License Required; Insurance; Fee:

1. It shall be unlawful for any person or entity to engage in the business, for compensation, of cutting, trimming, pruning, or removing trees within the city without having first obtained a license therefor. No such license shall be issued until the competency of the applicant to engage in such business has been satisfactorily demonstrated by an examination conducted by the city. Applicants who hold current valid trimming licenses from another city or county in the state may be exempted from the examination at the discretion of the city manager, or his designee.
2. The applicant shall present proof of liability insurance in the amount of five hundred thousand dollars (\$500,000.00) per occurrence and evidence of workers' compensation insurance.
3. Licenses shall be issued for a period of up to one year and expire on December 31 following issuance. The license fee shall be set at a rate that recovers the cost of the services provided and administered by the city manager or his designee.
4. Any applicant who feels that they have been wrongfully denied a license may, within ten (10) days of the denial, appeal the denial to the board of adjustment, whose decision shall be final and subject to judicial review.
5. Any issued license may be suspended or revoked by the city manager, or his designee, upon written notice to the licensee, stating in what manner such licensee has violated the rules and

regulations of the city manager, or his designee, or any provision of this chapter. Said written notice shall inform the licensee of the alleged reasons for the proposed suspension or revocation and shall be served personally or by certified mail, return receipt requested, to the licensee's address as shown on his/her application. Said notice shall also inform the licensee of a hearing date, to be held within thirty (30) days of the licensee's receipt of the written notice, at which time an informal administrative hearing shall be held.

6. At such hearing, the licensee may assert grounds in mitigation or in denial of the charges stated on the written notice. The burden of proof that any alleged violation had in fact occurred rests with the city. Within thirty (30) days of said hearing the city manager, or his designee, shall supply the licensee with his/her written opinion. Said opinion is final and may be subject to appeal pursuant to rule 106 of the Colorado rules of civil procedure. Said licensee may continue to perform service until the city manager, or his designee, renders a final decision.
 7. Licenses are not transferable. Licensees shall supervise and be responsible for all work done under his/her license.
 8. All automobiles, trucks, and trailers used by the licensee for all work done under his/her license, shall have the name of such licensee displayed on both sides thereof in plain and legible figures and letters not less than three inches (3") in height, which shall be kept in such condition as to permit the same to be readily distinguished and read at a distance of at least sixty feet (60'), and it shall be unlawful and grounds for suspension or revocation of the license for any licensee to conduct work within the city limits under the license without such identification being so displayed.
- (B) Summary Suspension: Nothing contained in subsection (A) of this section shall be deemed to preclude the summary suspension of any license. A summary suspension may be ordered by the city manager, or his designee, when he/she, in the exercise of his/her reasonable discretion, has reasonable grounds to believe that the licensee is engaging in practices or omissions which may constitute an immediate risk of harm to persons, or real or personal property. Notice of such summary suspension shall be personally served or served by certified mail, return receipt requested, and is effective upon receipt. Any licensee wishing to appeal the imposition of summary suspension may, within ten (10) days of the summary suspension, appeal the summary suspension to the board of adjustment, whose decision shall be final and subject to judicial review. The filing of any such appeal shall not stay the imposition of summary suspension.
- (C) Hearing Officer: The city manager may appoint a hearing officer to act in his/her place for any hearing permitted or required to be held pursuant to this section. (Ord. 3, Series of 2014)

8-4-4: OWNER'S RESPONSIBILITIES AND GENERAL PROHIBITIONS:

- (A) Every owner shall comply with the regulations adopted by the city manager, or his designee, and shall be responsible for the normal care, including the watering, pruning, control of diseases and pests, and removal (if required), of trees and plants located on rights of way adjacent to their property.
- (B) It shall be unlawful for any person on public property, rights of way or on property not owned by him/her, unless authorized by the owner thereof, otherwise by the provisions of this chapter, or by any order made by the city manager, or his designee, pursuant hereto, to:

1. Damage, cut, carve, transplant or remove any tree, or injure the bark thereof;
2. Attach any sign, notice or other object to any tree or fasten any wires, ropes, cables, nails or screws to any tree in a manner that could prove harmful to the tree;
3. Pour any material on any tree or on nearby ground which could be harmful to the tree.

(C) It shall be the duty of any person planting or growing a tree on any public property to:

1. First obtain the permission of the city and comply with any requirements imposed as part of that permission;
2. Properly care for and trim such trees so that they do not cause a hazard to public or private places or interfere with streetlights, poles, signs or traffic control devices and so that the minimum clearance of any overhanging portion is ten feet (10') above any sidewalk and fourteen feet (14') above any street. (Ord. 3, Series of 2014)

8-4-5: REMOVAL OF TREES; PERMIT REQUIRED:

(A) It shall be unlawful for any person or entity on any public or private property within the city, excluding lots which contain single-family residences, to remove a tree whose trunk is greater than four inches (4") in diameter (as measured 12 inches from the ground) without first having obtained a written permit from the city to do so. In reviewing the application for a permit, the city manager, or his designee, shall review and take into consideration approved land uses, landscaping or other approved city plans. For purposes of this section, "removal" means the destruction or displacement of a tree by cutting, bulldozing or other mechanical or chemical means, which results in the physical transportation of the tree from its site and/or death of the tree. "Removal" shall also mean the pruning down of any tree more than thirty three percent (33%) of its size in any three hundred sixty five (365) day period.

(B) Tree removal restrictions created in this section shall not apply to the activities of utilities which are regulated by the Colorado public utility commission.

(C) Application for a permit as required herein shall be made on forms provided by the city. There shall be no fee for an application form or for the issuance of any permit which may be issued under this section.

(D) Permits for the removal of trees, as such terms are defined in subsection (A) of this section, shall be granted by the city under the following conditions:

1. The trees are diseased and the applicant has considered possible alternatives, including those in subsection (F) of this section;
2. The trees are dead;
3. The trees are in a location or in such condition as to endanger the public or an adjoining property owner and the applicant has considered possible alternatives, including those in subsection (F) of this section;

4. The removal of the trees is necessary due to construction activities and the applicant has considered possible alternatives, including those in subsection (F) of this section; or
 5. The overcrowding of trees at a specific location threatens their health and makes the requested removal appropriate.
 6. The trees significantly impede the normal water flow of a carrier ditch, canal, storm sewer or the floodway of a natural watercourse.
- (E) Permits granted under subsection (D)4 of this section, shall require, to the extent possible, replacement plantings on the site of a similar quantity to those removed. Replacement plantings shall be not less than the minimum caliper sizes specified in subsection 10-5-8(E) of this code.
- (F) For purposes of considering possible alternatives related to permits issued in subsection (D) of this section, the following are illustrative and not intended to be exclusive:
1. Pruning as an alternative to removal of a diseased tree;
 2. Pruning as an alternative to removal of a tree, which is in a location or in such a condition as to endanger the public or the adjoining property owner; and
 3. When feasible, preserving existing trees as a component of site layout if the option does not impact the best land use design for the site.
- (G) In case of emergencies or natural disasters, including, but not limited to, windstorms, floods, lightning strike or fire, the requirements of this section requiring a permit may be waived by the city manager, or his designee.
- (H) Any person who is denied a permit may, within ten (10) days of the date that written notice of the denial is mailed by the city, appeal the decision of the city manager, or his designee, to the city's board of adjustment. The appeal shall be de novo and the burden of proof shall be on the applicant to show that the criteria specified herein for the issuance of a permit to remove a tree has been met. The board of adjustment's decision shall be final and shall be subject to judicial review.
- (I) Each instance of removing a tree in contravention to the permit requirements specified herein shall be deemed a separate offense.
- (J) This chapter and the rules and regulations adopted under the authority of this chapter shall be liberally construed so as to protect existing trees within the city. (Ord. 3, Series of 2014)

8-4-6: CERTAIN TREES PROHIBITED:

It shall be unlawful to plant or set out female cottonwood trees (*Populus deltoides*-female), silver poplars (*Populus alba*), Siberian elms (*Ulmus pumila*), Russian olives (*Elaeagnus angustifolia*), tamarisk (*Tamarix ramosissima* or *Tamarix parviflora*) or female box elders (*Acer negundo*) and certain other undesirable plants as designated in rules promulgated by the city manager, or his designee, upon any property within the city, and the planting or setting out of these certain plants is hereby

declared to be a public nuisance. Excepting those trees which are deemed to be nuisances pursuant to subsection 8-4-2(A) of this chapter and except for tamarisk (*Tamarix ramosissima* or *Tamarix parviflora*), nothing contained in this section shall be interpreted to require the removal of any existing trees specified in this section. (Ord. 3, Series of 2014)

8-4-7: PROCEDURE UPON ORDER TO PRESERVE OR REMOVE:

When the city manager, or his designee, orders spraying, trimming, preservation or removal of trees or plants on public property, rights of way, or private property as authorized in this chapter, or in regulations adopted pursuant to the terms hereof, he/she shall serve a written order to correct the dangerous condition upon the owner, operator, occupant, tenant, or other person responsible for the premises.

(A) Method Of Service: Any order of the city manager, or his designee, shall be served in one of the following ways:

1. By making personal delivery of the order to the owner of the premises which contains the tree to which the order is directed;
2. By leaving the order with a person over the age of eighteen (18) years who resides at such premises;
3. By affixing a copy of the order to the door at the entrance to such premises; or
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, in the event all of the above methods have failed to achieve service.

(B) Time For Compliance: Unless the city manager, or his designee, determines, in the exercise of his/her sole discretion, that there exists a present risk of harm or injury due to the condition of a tree or its location, the order allowed herein shall set forth a time limit for compliance of not less than forty five (45) days nor more than ninety (90) days. In all cases of present risk, the order shall state an earlier time for compliance which is reasonable in light of the degree of risk.

(C) Appeal From The Order: The person to whom an order hereunder is directed shall have the right within seven (7) calendar days of the service of such order to appeal to the board of adjustment which shall review such order at its next subsequent meeting. The city shall have the burden of proof to show that the order was reasonable under the totality of the circumstances. Unless the order is revoked, it shall remain in full force and be obeyed by the person to whom directed. It shall be unlawful for any person to whom an order is directed to fail to comply with such order if not appealed, or within seven (7) days after an appeal shall have been determined against him/her. Any person who receives an order which requires an emergency action on his/her part shall comply with said order not later than the time set forth in the order and shall be entitled to a postcompliance hearing wherein the propriety of the order and the costs associated therewith, may be determined. At such hearing the burden of proof shall be on the city to show that the action ordered was reasonable in light of the imminency and potential severity of the emergency. In the event that the board of adjustment deems any actions taken in response to an emergency order to be unreasonable, the city shall be responsible for the costs associated with complying with the order. Such a hearing shall be requested in writing on a form supplied by the city within seventy

two (72) hours of the service of such order or the right to such hearing shall be deemed waived. The hearing shall be heard by the board of adjustment at its next regularly scheduled meeting.

- (D) **Failure To Comply:** It shall be unlawful for any person to fail to timely comply with any order issued by the city manager, or his designee. When the person to whom the order is directed shall fail to comply within the specified time, the city is authorized, in the public interest, and after the obtaining of a warrant from the municipal judge authorizing execution of the order by the city or its agents, which warrant shall be issued upon the sworn testimony or sworn affidavit of the city manager, or his designee, that the order has not been executed and no city appeal has been timely filed, to enter or cause others to enter the property to spray, trim, prune, treat or remove any or all of the diseased or dangerous trees or otherwise carry out the provisions of the order. The cost of this service, including labor, equipment and materials, shall be charged to the property owner, plus fifteen percent (15%) for administrative fees. The city manager, or his designee, and persons remedying the condition subject to the order and warrant are hereby authorized to enter the premises for the purposes of carrying out its terms and shall not be subject to nor liable for any claims of trespass.
- (E) **Costs:** If the costs of remedying a condition subject to an order are not paid within ninety (90) days after receipt of a statement therefor from the city, such costs, plus twenty five percent (25%) of such costs, shall be charged against the property upon which said hazard exists. The charge shall not affect the liability of the person to whom the order was directed to potential criminal penalties as herein provided. Such charge shall be certified by the director of finance or city clerk to the appropriate county treasurer and shall thereupon become and be a lien upon such property, shall be included with the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as taxes against such property are collected.
- (F) **Emergency Actions:** Notwithstanding anything contained in this chapter to the contrary, if the city finds a condition involving a tree, shrub or other plant which constitutes an imminent threat to life, limb or property, the city shall have the authority to immediately correct or remedy or cause the correction of such condition at the owner's expense without the imposition of any administrative fees or incurring liability for trespass. The costs of any such emergency action shall be otherwise treated as specified in subsection (E) of this section.
- (G) **Injunctive Relief:** Nothing contained in this chapter shall be construed as preventing the city from seeking and obtaining injunctive relief from the appropriate district court to enforce the provisions of this chapter or any rules or regulations adopted pursuant hereto. (Ord. 3, Series of 2014)

8-4-8: INTERFERENCE WITH DUTIES:

It shall be unlawful for any person to physically interfere or cause any person to physically interfere with the city manager, or his designee, in or about the performance of his/her duties as set forth in this chapter or regulations adopted under the authority of this chapter. (Ord. 3, Series of 2014)

