

ARTICLE 4 URBAN FOREST

PART 1 GENERAL REQUIREMENTS

SECTION:

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4.4.101: TREES ON PUBLIC WAYS OR PROPERTY:

A. It shall be unlawful for any person to plant, prune, control insects and diseases, remove, destroy, cut, deface or in any way injure any tree or shrub upon a public way of the City without the approval of the City Forester.

B. Trees, shrubs, vines and evergreens planted in public rights of way shall be in conformity with an official list approved by the City Forester. The City Forester shall consider in preparing an official list the growth habits, mature size, disease resistance or other factors which minimize maintenance costs and nuisances and conform with other provisions of the ordinances of the City. Special consideration shall be given to possible interference with utility lines above plantings. Plantings not in conformity with the approved list shall be removed by the owner at the request of the City Forester.

C. The City Forester shall determine the distance between trees to be planted on public rights of way to provide for and conform with the mature growth of the species involved. (Ord. 4716; 1968 Code §§10-33.2, 10-35; Ord. 82-54; Ord. 01-42)

4.4.102: INSPECTION:

The City Forester is authorized to inspect trees, shrubs, plants, vines, logs or branches and every other type of plant material on all private and public property to ascertain the condition of the plant material in relation to disease and insects detrimental to the growth, health and life of the urban forest and the particular plant material, to discover incidence of disease, and take appropriate action to preserve and restore the growth, health and life of the plant material by spraying, removing, pruning or other remedial action. The owner or agent of the property shall be given written notice to spray, remove, prune or take any other necessary remedial action with regard to the infested plant material within a specified period of time if in the City Forester's professional judgment the conditions are or will become injurious to other private or public plant material ¹. (Ord. 4716; 1968 Code §§10-26, 10-33.1; Ord. 82-54; Ord. 01-42)

Notes

¹ 1. See part 2 of this article.

4.4.103: DUTY TO REPLACE:

A. In the event that a tree or shrub on City property or in a City right of way is removed, damaged or otherwise destroyed by any person, that person shall be liable to the City for the appraised value of the tree or shrub based upon International Society of Arboriculture appraisal standards.

B. All monies received in restitution for damage to a public tree shall be deposited into a special Tree City-USA fund. (Ord. 82-54; Ord. 88-155; Ord. 01-42)

4.4.104: DUTY TO PRUNE:

The owner of any house, building or property within the City shall not permit the branches of any shade, ornamental or other tree to project over any street, avenue or sidewalk, in front of or alongside of the house, building or property, lower than eight feet (8') from the surface of the sidewalk and fourteen feet (14') over the surface of the alley or street. In estimating these heights, the City Forester shall consider the variation of height due to normal rain, snow, sleet and foliage conditions. (Ord. 4716; 1968 Code §10-33.6; Ord. 77-190; Ord. 01-42)

4.4.105: MAINTENANCE OF PUBLIC RIGHTS OF WAY:

A. Duty Of Owner To Maintain: It shall be the duty and obligation of every person in the City to keep, care for and maintain the area between the property line and the curb line fronting or adjoining the property owned by that person. This area shall be maintained in an aesthetically pleasing manner in either drought tolerant plant material, grass or other plantings, stone aggregate, decorative rocks or like materials or in combination with or without plantings. Vegetation shall be watered and fertilized to provide optimum growing conditions.

B. Trees:

1. Any trees planted shall be on the approved list of trees as established by the City Forester.

2. Within the rights of way, the City shall provide maintenance (insect and disease control, pruning and removal) of trees only. Prior to any maintenance, the City shall attempt to notify contiguous property owners. The City shall not, however, be liable for failure to give notice.

C. Hard Surfacing: In unusual situations where drainage or traffic problems exist, or in commercial zones or properties where public buildings or uses are involved, hard surfacing such as concrete, terrazzo, brick, flagstone, asphalt or other impervious substances may be authorized by written permit at the discretion of the City Forester. In the event hard surfacing materials are authorized in conjunction with tree plantings, the owner shall construct appropriate tree wells as determined by the City Forester.

D. Comply With Other Provisions: Any shrubs or other plantings and the use of other materials shall comply with regulations concerning traffic safety and other provisions of this Code or related rules or regulations.

E. Appeal: Any person aggrieved by the decision of the City Forester may appeal that decision to the Manager who may affirm, reverse or modify the City Forester's decision. (Ord. 3416; 1968 Code §§10-119, 10-120, 10-121, 10-122; Ord. 78-142; Ord. 01-42)

4.4.106: TREE PRUNING FOR BUILDING MOVERS:

A. If, in the process of moving any building or other object along the streets, alleys or public ways of the City, it is necessary to prune any trees, the trimming shall be done at the City Forester's request and direction, and the cost of labor, material and equipment shall be paid by the person requiring the pruning. Branches over three inches (3") in diameter may not be removed unless the City Forester determines removal of the limb will not impair the aesthetic value, health or well-being of the tree. If, in the process of moving any building, machine or other object, any tree, shrub or other planting is damaged, destroyed or removed, replacement or repair shall be borne by the person moving or causing the moving of the building or other object. Payment for the moving damage caused by the City must be made within ten (10) days after billing. The City Forester may require a bond, deposit or other security in advance of the building move to assure compliance with this Code.

B. If, in the process of moving any building, machinery or other object along the streets, alleys or public ways of the City, the City Forester determines that it is necessary to remove any branch over three inches (3") in diameter or any major portion of any tree, or branch or a portion of a tree becomes broken or damaged and must be removed as a result of the moving, the person doing or requesting the moving shall pay to the City an amount determined by the City Forester or Manager as compensation for the loss of the branch or major portion of the tree removed plus a service charge for all labor and materials used in connection with the removal. All measurements to determine the size of the branches shall be made by the City. When, in the process of moving any building or other object, it is necessary to remove a tree from the streets, alleys or other public ways of the City, the value of the tree shall be paid by the person requiring its removal and the compensation received shall be used to replace the tree with a planting of comparable size and value. The determination of the value of the tree shall be made by the City Forester who shall consider the tree's age, variety and condition and current nursery estimates when arriving at a value for the tree removed. (Ord. 4716; 1968 Code §§10-34, 10-34.1; Ord. 01-42)

4.4.107: USE OF EQUIPMENT:

It shall be the duty of any person using tools on trees or shrubs to disinfect those tools properly and immediately after any work done on any individual tree or shrub. It shall be unlawful to fail to disinfect tools used on trees or shrubs. (1968 Code §10-35.1; Ord. 74-115; Ord. 01-42)

PART 2 TREES AND SHRUBS

SECTION:

4.4.201: Right Of Entry

4.4.202: The Control Of Diseased, Infested, Dangerous Or Nuisance Trees And Shrubs

4.4.203: Abatement Procedures

4.4.204: Failure To Comply With Order To Abate

4.4.205: Emergency Abatement Order

4.4.206: Appeals

4.4.207: Additional Remedies

4.4.201: RIGHT OF ENTRY:

A. Where the City Forester has reasonable cause to believe that there may exist on any public or private premises, located within the City, any infested, diseased, dead or nuisance trees and shrubs, the City Forester may enter upon the property at any reasonable hour for the purpose of inspecting, abating, removing or otherwise preventing any threatening or hazardous condition endangering other public or private trees and shrubs, or the public health, safety and welfare.

B. In the event that the owner or occupant of any premises located within the City refuses entry by the City Forester, the City Forester may apply for an entry and inspection warrant to any Judge of the Municipal Court. The warrant application shall identify the premises to be inspected, the purpose for which entry is desired, and shall state facts giving rise to the belief that a threatening or hazardous condition exists on the premises which endangers other trees and shrubs within the City, or the public health, safety and welfare. Any warrant issued shall comply with the Colorado Rules of Municipal Court and shall command the owner or occupant to permit entry by the City Forester for the purpose of inspection. (Ord. 82-54; Ord. 88-265; Ord. 01-42)

4.4.202: THE CONTROL OF DISEASED, INFESTED, DANGEROUS OR NUISANCE TREES AND SHRUBS:

A. All diseased, infested, dangerous or nuisance trees and shrubs are declared to be a threat and a hazard to trees and shrubs in the City, and may constitute a safety hazard to the public health and

welfare. If the trees, shrubs or parts thereof, are found to exist, the owner of the property shall be served with a notice and order by the City Forester to take the necessary remedial action including insect and disease control, pruning, and if necessary, the removal of trees, and shrubs in whole or part within a specified period of time.

B. It shall be unlawful to possess or transport into or within the City all or any part of trees or shrubs infected with the *Ceratocystis ulmi* fungus. The wood, branches and roots of infected trees or shrubs may be transported to a safe place for burial under a minimum of two feet (2') of earth within ten (10) days following discovery of the infection, or to other sites under conditions approved by the City Forester for processing and subsequent elimination of the disease hazard.

C. Trees or shrubs of the genus *Ulmus* in a dead or dying condition that may serve as a breeding place for the smaller European elm bark beetle (*Scolytus multistriatus*) are hereby declared to be a threat and hazard to all elm trees in the City. Transportation into or within the City or possession within the City of elm bark beetle infested trees or shrubs except for immediate burial or processing in a manner approved by the City Forester, shall be unlawful unless the bark has been completely removed.

D. It shall be unlawful to possess or transport into or within the City all or any part of a tree infested with the mountain pine beetle, *Dendroctonus ponderosae*. The wood of an infested tree may be transported to a safe place for burial under a minimum of two feet (2') of earth following discovery of the infestation, or to other sites under conditions approved by the City Forester for processing and subsequent elimination of the insect hazard.

E. It shall be the duty of the City Forester to order the owner or agent of the owner of any premises in the City containing any dead trees or overhanging boughs dangerous to life, limb or property to remove the same within a reasonable time. In the event the owner or agent of the owner fails to follow the requirements of the notice and order, it shall be the duty of the City Forester to remove or destroy the trees or boughs or otherwise correct the offending condition at the expense of the owner of the affected property. (Ord. 82-54; Ord. 88-265; Ord. 01-42)

4.4.203: ABATEMENT PROCEDURES:

A. Whenever the City Forester has reasonable cause to believe that there exists on property located within the City any diseased, infested, dangerous or nuisance trees or shrubs which are a threat and hazard to other trees and shrubs in the City, or to the public health, safety and welfare, the City Forester may commence proceedings to abate the threatening or hazardous condition.

B. The City Forester shall commence abatement proceedings by issuing a notice and order to the owner or occupant of any property upon which the City Forester has reasonable cause to believe that a threatening or hazardous condition exists. The written notice and order shall describe the condition existing on the property giving rise to the issuance of the notice and order and specify a reasonable period of time within which the condition must be abated or otherwise corrected. The notice and order must also state that an appeal is available provided a written application is made to the Manager within ten (10) days of service, posting or receipt of the notice and order. Service of the notice and order upon the owner or occupant may be made personally, by posting in a conspicuous place on the property, by first class, certified U.S. mail, sent to the owner's or occupant's last known address. (Ord. 82-54; Ord. 88-265; Ord. 01-42)

4.4.204: FAILURE TO COMPLY WITH ORDER TO ABATE:

A. It shall be unlawful for any person to fail or refuse to comply with any notice and order issued pursuant to this part. In the event that any order is not complied with in a reasonable time specified, the City Forester, after notice to the owner or agent of the owner, may request that the condition be corrected by the removal, pruning, spraying, or other approved treatment of the affected shrub or tree. The procedures outlined in the City's Sales and Use Tax Code for the collection of the costs and expenses shall apply independently and in addition to the penalty provided by the Code for violation of any provision of this chapter.

B. In the event that the owner or agent of the owner fails to pay the costs and expenses of removal, spraying, pruning, correction or abatement of the condition giving rise to the issuance of the order to abate within thirty (30) days after billing, a lien may be assessed against the property for costs in accord with the City's Sales and Use Tax Code. The lien created shall be superior and prior to all other liens excepting liens for general and special taxes. (Ord. 82-54; Ord. 88-265; Ord. 01-42)

4.4.205: EMERGENCY ABATEMENT ORDER:

A. Whenever the City Forester determines that an emergency exists which requires immediate action to protect the public health, safety or welfare, or the health of the urban forest, the City Forester may, without prior notice or hearing, issue an emergency abatement order stating that the emergency exists and requiring necessary action be taken to meet the emergency. Notwithstanding any portion of this article to the contrary, a City Forester emergency abatement order shall be effective immediately.

B. The emergency abatement order shall be in writing, state the location of the property upon which the condition exists, state with reasonable specificity the nature of the existing condition and be sworn to under oath.

C. Any person to whom an emergency abatement order is issued shall comply with the order immediately and it shall be unlawful to fail or refuse to comply.

D. Should the person receiving an emergency abatement order fail or refuse to comply with the order, the City Forester may order, without prior notice to the owner or occupant of the property, that the condition be abated by removal, insect and disease control, pruning or other approved treatment of the affected tree or shrub. Except as otherwise provided, the provisions of 4.4.204 of this part shall apply to emergency removal, insect and disease control, pruning or other abatement. (Ord. 82-54; Ord. 88-265; Ord. 01-42)

4.4.206: APPEALS:

A. The owner or occupant of property receiving a notice and order or emergency abatement order may appeal the City Forester's decision or action to the Manager, provided a written appeal is filed within ten (10) days of service, posting or mailing of the notice and order or emergency abatement order. The Manager shall conduct a hearing on the appeal within thirty (30) days of the filing of the appeal.

B. At the hearing, the appellant and the City may be represented by an attorney, may present evidence, and may cross-examine witnesses. The hearing shall be recorded electronically or otherwise. The Manager shall determine whether there is competent evidence to support the City Forester's decision. The Manager may affirm, reverse or modify the Forester's decision.

C. The Manager's decision shall constitute final agency action, and may only be reviewed by the District Court pursuant to CRCP 106(a)(4). there shall be no stay of execution of the Manager's decision pending review by the District Court, except by court order. (Ord. 82-54; Ord. 88-265; Ord. 01-42)

4.4.207: ADDITIONAL REMEDIES:

The remedies provided in this article shall be cumulative and in addition to any other remedies available to the City Forester. Nothing in this article shall be construed to preclude the City Forester from seeking other remedies in addition to, or in lieu of, the remedies granted above. (Ord. 82-54; Ord. 88-265; Ord. 01-42)

PART 3 STREET TREE PROGRAM

SECTION:

4.4.301: Legislative Declaration

4.4.302: Definitions

4.4.303: Fee Established**4.4.304: Fee Collection****4.4.305: Developer's/Builder's Option****4.4.306: Planting Requirements****4.4.301: LEGISLATIVE DECLARATION:**

The City of Colorado Springs is proud of its arboricultural heritage and annual Tree City-USA designation. City Council hereby finds that the general health, safety and welfare of the citizens and of the urban forest are dependent upon the sufficient presence of trees in newly developed and established neighborhoods throughout the City. As a matter of public policy, it is important for the City to cooperate with developers, builders and homeowners to promote the planting and maintenance of street trees in the City. It is the intent of this street tree program to provide tree landscaping along public rights of way in zone districts where landscape plans are not otherwise required by the City Code. (Ord. 01-42; Ord. 03-109)

4.4.302: DEFINITIONS:

CORNER LOT: A lot located at the intersection of two (2) or more intersecting streets with frontage on both streets.

HOMEOWNER: The person(s) owning or occupying a lot as a primary residence.

LOT FRONTAGE: That area of a lot which abuts a public or private right of way.

NEIGHBORHOOD: An area surrounding a lot, generally within the same postal zip code.

PUD: Planned unit development.

PARKWAY: The area between a street curb and a detached sidewalk.

RIGHT OF WAY: That area adjacent to a public or private street occupied or intended to be occupied by a street, crosswalk, railroad, utility easement, shade tree or other amenity.

STREET TREE: A tree located within a right of way, parkway or street tree setback along a public street right of way.

STREET TREE SETBACK: An area extending from an attached sidewalk a distance five (5) to ten feet (10') into the right of way or onto private property. (Ord. 01-42; Ord. 03-109)

4.4.303: FEE ESTABLISHED:

There is hereby established a street tree fee which shall be set annually by City Council resolution. The street tree fee shall be required in the following zone districts: A (agricultural with an associated residential use), R-1, R-2 and PUD zones with densities which accommodate single-family or two-family development, as defined by the City's Zoning Code. Where possible, the street tree fee shall fund one tree per public street frontage of each lot in these zones. The City Forester may waive the payment of any street tree fee where the lot or particular lot frontage is sufficiently forested to comply with the legislative declaration, or in accord with the procedures of section 4.4.305 of this part. (1968 Code §10-33.7; 1980 Code; Ord. 80-46; Ord. 86-39; Ord. 01-42; Ord. 03-109)

4.4.304: FEE COLLECTION:

The street tree fee shall be collected by the City upon the issuance of a building permit for the initial construction of any principal use structure in any zone district listed in section 4.4.303 of this part, on any lot platted or replatted within the City. The fee shall be collected only once per lot, shall be deposited in an interest bearing fund, the balance of which may be expended by the City Forester for supervised street tree planting programs, including the issuance of street tree certificates to be redeemed by an owner of a lot for which the street tree fee was paid for the purpose of planting a

street tree on the lot. Once paid, no street tree fee shall be refunded. (1968 Code §10-33.7; Ord. 76-105; Ord. 01-42; Ord. 03-109)

4.4.305: DEVELOPER'S/BUILDER'S OPTION:

At the option of the City Forester, payment of the street tree fee may be waived upon the developer's or builder's completion of the following conditions:

A. Developer's or builder's written agreement to plant the minimum number of required trees of a caliper size approved by the City Forester. Tree type chosen by the developer or builder shall be limited to those varieties approved by the City Forester for that particular development or site; and

B. Developer or builder assuring compliance with the written agreement by filing an acceptable letter of credit for the fee, or placing an amount equal to the fee in escrow; and

C. Developer or builder submittal of a tree planting plan indicating the proposed location, spacing and species of tree to be planted. The City Forester shall have final approval of the plan. (1968 Code §10-33.7; Ord. 76-105; Ord. 82-54; Ord. 01-42)

4.4.306: PLANTING REQUIREMENTS:

A. One street tree shall be planted on each lot with public street frontage if possible. The homeowner may reject the planting of any street tree on the lot or may choose not to redeem a street tree certificate issued by the City Forester. The City Forester may permit the planting of more than one street tree on corner lots and properties with long frontages. The homeowner may contribute funds in addition to the street tree fee to permit the planting of a larger, more expensive tree than that designated to be planted by the City Forester.

B. Should the homeowner choose not to plant a street tree or should the City Forester determine that the lot and/or neighborhood is sufficiently forested, street trees may be planted within or immediately adjacent to the neighborhood on public property. If the neighborhood is sufficiently forested to comply with the spirit of the legislative declaration, the City Forester may plant street trees on public property elsewhere in the City.

C. Street trees shall be planted in the right of way, parkway or tree setback unless safety conditions, planting requirements or maintenance concerns dictate otherwise. The City Forester may permit street trees to be planted elsewhere on the property if existing trees or natural or artificial barriers prevent planting within the right of way, parkway or street tree setback. (1968 Code §10-33.7; Ord. 76-105; Ord. 82-54; Ord. 87-73; Ord. 01-42; Ord. 03-109)