

Chapter 78 TREES*

*Cross references: Administration, ch. 2; environment, ch. 38; offenses and miscellaneous provisions, ch. 50; parks and recreation, ch. 54; streets, sidewalks and other public places, ch. 66.

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ARTICLE I. IN GENERAL

Sec. 78-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department means the department of parks, recreation and forestry of the city.

Park means all public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Prohibited species means any tree of the species of poplar (*Populus Sp.*), willow (*Salix Sp.*) and box elder (*Acer Negundo*).

Public utility means any person, owning or operating any pole, line, pipe or conduit located in any public street or over or along any public easement or right-of-way for the transmission of electricity, gas, telephone service or telegraph service.

Street means all of the land lying between property lines on either side of all streets, highways and boulevards in the city.

Tree means trees, shrubs, bushes and all other woody vegetation.
(Code 1973, § 41-1)

Cross references: Definitions generally, § 1-2.

Sec. 78-2. Scope.

The terms of this chapter, unless otherwise specifically stated in this chapter, shall apply only to public streets, parkways, parks and other land publicly owned or controlled by the city.

(Code 1973, § 41-2)

Sec. 78-3. Authority of city manager.

The city manager shall have control over all trees located within the street rights-of-way and parks in the city and the planting, care and removal thereof, subject to the regulations contained in this chapter.

(Code 1973, § 41-3)

Sec. 78-4. Permits generally.

The owner of land abutting on any street may, upon obtaining prior written permission of the city manager, prune, spray, plant or remove trees in that part of the street abutting his land not used for public travel, but no person shall otherwise prune, spray, plant or remove any tree in any street or park. Every such permit shall specify the extent of the authorization and the conditions to which it is subject.

(Code 1973, § 41-4)

Sec. 78-5. Protection.

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire, or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor, and no material shall be fastened to or hung on any tree. All persons having under their care, custody or control facilities which may interfere with the trimming or removal of any tree shall, after notice thereof by the department, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the department.

(Code 1973, § 41-5)

Sec. 78-6. Excavations near trees.

Excavations and driveways shall not be placed within six feet of any tree without written permit from the city manager. Any person making such excavation or construction shall guard any tree within six feet thereof with a good substantial frame box to be approved by the department, and all building material or other debris shall be kept at least four feet from any tree. All persons desiring to make such excavation or

construction shall deposit with the city a sum sufficient to cover the cost of inspection and any damage which may result therefrom, as determined by the city council.
(Code 1973, § 41-6)

Sec. 78-7. Covering surface near trees.

No person shall place within the street right-of-way, any stone, brick, sand, concrete or other material which will in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, except a sidewalk of authorized width and location.
(Code 1973, § 41-7)

Sec. 78-8. Gas main leakage.

Gas pipes or mains within any public rights-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. If a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within 24 hours. Any damage to trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired, and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.
(Code 1973, § 41-8)

Sec. 78-9. Trimming for overhead lines; permits.

The city manager shall annually issue permits granting permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the city, in such a manner as shall keep the overhead lines of such public utilities safe and accessible. Such trimming shall be done in accordance with approved practices and under the general direction of the superintendent of the department. Such permit, as provided for in this section, shall require reasonable prior notice to the city before any work is commenced under the permit; provided, however, that in the event of an emergency requiring immediate maintenance work on the overhead lines of the public utilities, prior notice of commencing work under the permit shall not be required. The word "emergency," as used in this section, shall be defined to mean the occurrence or happening of an event which could not be foreseen by the exercise of reasonable care and foresight, which might cause damage to the overhead lines of the public utilities.
(Code 1973, § 41-9)

Sec. 78-10. Trimming trees and shrubs on private property.

- (a) Every owner of any tree overhanging any street or right-of-way within the city shall trim the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or right-of-way. The owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.
- (b) The city shall have the right to trim any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, or interferes with visibility of any traffic control device or sign, such trimming to be confined to the area immediately above the right-of-way. All shrubs and bushes located on the triangle formed by two right-of-way lines at the intersection of two streets, and extending for a distance of 25 feet each way from the intersection of the right-of-way lines on any corner

lot within the city, shall not be permitted to grow to a height of more than 30 inches above the surface of the roadway, in order that the view of the driver of a vehicle approaching a street intersection shall not be obstructed. Trees may be planted and maintained in this area, provided that all branches are trimmed to maintain a clear vision for a vertical height of eight feet above the roadway surface.

(c) No shrubbery, living hedge or similar growth of more than 30 inches in height used or designed to enclose property or placed on or along a partition line may extend beyond the front building line.

(Code 1973, § 41-10; Ord. No. O-96-352, § 1, 8-5-96)

Secs. 78-11--78-40. Reserved.

ARTICLE II. PLANTING AND REMOVAL

Sec. 78-41. Investigation of desirability of planting.

Upon recommendation of the department for the planting of trees within any street right-of-way, the city manager shall investigate the desirability of the project, and, if he shall approve thereof, he shall report his approval to the city council.

(Code 1973, § 41-21)

Sec. 78-42. Petition.

Upon a petition of the owners of more than 50 percent of the frontage along one or more blocks in any street, or upon its own initiative, the city council may, by resolution, provide for the planting or removal of trees without any report by the department or recommendation of the city manager. The petition provided for in this section shall be advisory only and shall not be binding upon or a condition to any such resolution of the city council.

(Code 1973, § 41-22)

Sec. 78-43. Planting as public improvement.

Upon approval by the council, planting of trees within any street right-of-way shall be undertaken as a public improvement, and the cost assessed to the property benefited thereby shall be in accordance with the provisions of the city Charter.

(Code 1973, § 41-23)

Sec. 78-44. Removal as public improvement.

Removal of undesirable trees within street rights-of-way, either of a prohibited species or of other undesirable varieties, may be undertaken as a public improvement, and the cost shall be assessed to the benefited property in accordance with the provisions of the city Charter.

(Code 1973, § 41-24)

Sec. 78-45. Location--Generally.

No tree of any prohibited species shall be planted in any street or park, nor shall any such tree be planted on any private property within 50 feet of any street or sidewalk right-of-way or any sewer or sewer extension.

(Code 1973, § 41-25)

Sec. 78-46. Same--Shade trees.

Shade trees planted in any street right-of-way shall be spaced not less than 40 feet apart, except that trees may be planted less than 40 feet from an existing tree in the right-of-way, providing the existing tree has been approved for removal within a period of two years from the date of planting of the new tree. The owner of a single lot may, in order to provide a shade or ornamental tree in front of his lot, secure special permission from the department to have a tree planted closer than 40 feet from an existing tree, but in no case shall such planting be within 30 feet of any existing tree, within the right-of-way.

(Code 1973, § 41-26)

Sec. 78-47. Proximity to sidewalk.

No tree shall be planted in any street right-of-way, less than 2 1/2 feet from the sidewalk; trees on private property adjacent to the sidewalk shall be planted not less than three feet therefrom.

(Code 1973, § 41-27)

Sec. 78-48. Proximity to intersections.

No tree shall be planted nearer to the intersection of any street than 25 feet from the corner of such intersection.

(Code 1973, § 41-28)

Sec. 78-49. Planting strips.

No tree shall be planted in any planting strip between the street proper and the sidewalk where the distance between the back of the curb and the sidewalk is less than four feet, six inches in width.

(Code 1973, § 41-29)

Sec. 78-50. Removal by city upon request; conditions.

Where an owner of abutting property requests the removal of a tree, the city manager is authorized, in his discretion, to require as a condition to granting of approval for such removal, that such property owner make the removal in accordance with regulations established by the department, assume all or any part of the costs of removing such tree, and also to require that the tree removed, be replaced at some other nearby location by planting another tree, not necessarily of the same type.

(Code 1973, § 41-30)

Sec. 78-51. Removal of dead, diseased and prohibited trees.

All dead trees and trees afflicted with any fatal or communicable disease, shall be removed by the department with the approval of the city manager. The city manager is hereby authorized to direct the department to remove any tree of a prohibited species, but the cost of such removal shall not be assessed against the property benefited unless the council shall have approved the removal under the provisions of section 78-44.

(Code 1973, § 41-31)

Sec. 78-52. Removal of other trees.

Trees may be removed which are not dead or infected with any disease when such trees are of an undesirable, though not prohibited, species, but only upon notice to the owner of the abutting property. If such owner shall file written objection with the city clerk within seven days after service of such notice, a public hearing on such removal shall be had before the city council, and the abutting owner shall be notified of the time

and place of such hearing. The cost of any such removal shall not be assessed to the property benefited thereby unless the city council shall order such removal originally under the provisions of section 78-44. The city manager is hereby authorized to direct the department to remove any tree growing within any street, park or public place, when such tree interferes with fire hydrants, sewer and water mains, visibility of street intersections, traffic control devices or construction within street rights-of-way.

(Code 1973, § 41-32)

Secs. 78-53--78-80. Reserved.

ARTICLE III. DEAD, DYING, DAMAGED OR DISEASED TREES

Sec. 78-81. Declared public nuisance.

Any dead, dying, damaged or diseased tree or broken or decayed tree limb which constitutes a hazard to the safety of persons or property, or any elm tree affected with the fungus *Ceratostomella Ulmi*, Dutch elm disease, so-called, or any dead or dying elm tree, or stored elm log, or elmwood, which could harbor or become a breeding place for the American or European bark beetle, the two known carriers of the disease, and any female box elder tree which is or could be the breeding place for box elder bugs (*Leptocris Trivittas*), whether on public or private property, is hereby declared to be a public nuisance.

(Code 1973, § 41-43)

Sec. 78-82. Penalty for violation.

Any person who shall violate any provisions of this article, or any lawful order issued in pursuance of the provisions hereof, shall be guilty of a misdemeanor, and, upon conviction thereof before a court of competent jurisdiction, shall be punished as prescribed in section 1-25.

(Code 1973, § 41-51)

Sec. 78-83. Inspections by forester.

The city forester, or his authorized agent, is charged with enforcement of this article, and to that end may enter upon private property at all reasonable hours for purposes of inspecting trees thereon, and may remove such specimens as are required for purposes of analysis to determine whether or not the trees are infected. It shall be unlawful for any person to prevent the city forester, or his authorized agent, entering on private property for purposes of carrying out his duties under this article, or to interfere with such city forester, or his authorized agent, in the lawful performance of his duties under the provisions of this article.

(Code 1973, § 41-44)

Sec. 78-84. Notice to remove.

Whenever any public nuisance exists, contrary to the provisions of the sections of this article, the city forester, or his authorized agent, shall give notice to the owner, or his agent, or occupant of the property, describing the tree, its location and the nature of the nuisance and ordering the owner, agent, or occupant to take such measures as may be reasonably necessary to correct or cure such nuisance, specifying the measures required to be taken.

(Code 1973, § 41-45)

Sec. 78-85. Failure to comply with notice.

It shall be unlawful for any person to permit, cause, or suffer the existence of a public nuisance from and after 30 days following the date of the notice provided therefor. (Code 1973, § 41-46)

Sec. 78-86. Removal by city; cost incurred; duty to pay; collection.

(a) In case any notice given shall not be complied with, the city forester, or his authorized agent, is hereby authorized and empowered to order the removal or abatement of the public nuisance, and shall have authority to call the necessary assistance therefor. Contracted work shall be submitted for bids and approved by the city council.

(b) Upon completion of the abatement or removal of the public nuisance, the director shall certify the cost of the removal of the public nuisance. The owner, or other persons to whom the notice was directed, shall be notified of the removal or abatement, and the cost incurred for such work, together with a statement that the cost of the work must be paid within 30 days after the date of the notice.

(c) It shall be the duty of the owner of the property, or other person to whom notice was directed, to pay the cost of such removal within 30 days after the date of receipt of the notice of completion, and in case of failure to do so, the city shall have the right to make assessment by ordinance against any property for the purpose of collection in the same manner as general taxes are collected.

(d) Service of notice under this article shall be by certified mail where the owner is a resident of the city; where the owner is a nonresident of the city, the notice shall be served by certified mail, addressed to the owner at his last known address as shown on the records in the office of the city assessor of the city.

(Code 1973, § 41-47)

Sec. 78-87. Interference with city forester or agents.

No person shall prevent, delay or interfere with the city forester, or his authorized agent, or employees in the execution or enforcement of this article; provided, however, that nothing in this section shall be construed as an attempt to prohibit a public hearing or any legal or equitable remedy in any court of competent jurisdiction for the protection of property rights by the owner of any property within the city.

(Code 1973, § 41-48)

Sec. 78-88. Appeals.

If any person is dissatisfied with a decision of the city forester, or his authorized agent, such person shall have the right to appeal such decision within ten days, as provided in this section. Such person may make a written request to the city forester within ten days of the date of his decision, and the city forester, together with the city manager and assistant city manager, shall hear any such appeals. Upon completion of the hearing, the appeal board shall render its written opinion, affirming, overruling or modifying the order.

(Code 1973, § 41-49)

Sec. 78-89. Trees on public lands to be removed at city expense.

Trees on public lands within the city shall be removed at the expense of the city.

(Code 1973, § 41-50)