

## **CHAPTER 19. TREES AND VEGETATION.**

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## CHAPTER 19. TREES AND VEGETATION.

### ARTICLE 1. PROTECTION, MAINTENANCE AND REMOVAL OF TREES, SHRUBS AND OTHER VEGETATION.

#### Section 19-1. Purpose and intent.

(1) Purpose. It is the purpose of this ordinance to promote and protect the public health, safety and general welfare by providing for regulation of protective methods, maintenance and removal of trees, shrubs and other plants within the City of Trinidad.

(2) Intent. It is the intent of the City Council of the City of Trinidad to promote:

- (a) The protection, maintenance, removal and survival of desirable trees, shrubs, and other plants within the City; and
- (b) The control of Dutch Elm Disease by accepted methods of treatment, removal and disposal of infected wood; and
- (c) The protection of citizens from personal injury and property damage, and the protection of the City of Trinidad from property damage, caused by improper protective efforts, maintenance, or removal of trees, shrubs, or other plants located within the City.

#### Section 19-2. Definitions.

(1) *City Inspector* shall mean a City employee and/or contractor designated by the City Manager of the City of Trinidad to enforce and carry out the purpose and intent of this ordinance including issuance of permits.

(2) *City-owned property* shall mean property owned by the City, or implied or expressly dedicated to the public for present or future use or purposes of vehicular or pedestrian traffic, or for public easements.

(3) *Parkway* shall mean City-owned property located within the sidewalk area in front of privately-owned property, which includes the area between the private property line and the curb line, if curb exists, and between the private property line and the traveled portion of the public street, if no curb exists.

(4) *Property owner* shall mean the record owner or contract purchaser of any parcel of land.

(5) *Trees, shrubs, or other plants* shall mean all vegetation, woody or otherwise, except lawn grass and flowers less than twenty four inches (24") in height.

#### Section 19-3. License required to cut or remove trees; liability license fee.

(1) Scope. Any person who engages in or solicits the business of cutting, trimming, pruning,

removing or spraying trees, shrubs or vines, shall not do so without first procuring a license therefor from the City Clerk.

(2) No license shall be issued unless the applicant has presented to the City Clerk a satisfactory public liability insurance policy covering all operations within the scope of this Chapter in the amount of One Hundred Thousand Dollars (\$100,000.00) per accident and Twenty-Five Thousand Dollars (\$25,000.00) for any accident involving bodily injury and Fifty Thousand Dollars (\$50,000.00) aggregate for property damage liability.

(3) The license fee shall be Fifteen Dollars (\$15.00) per year or fraction thereof, payable in advance.

**Section 19-4. Public nuisances.**

(1) Definition. The following are hereby declared *public nuisances* under this ordinance:

- (a) Any dead or dying tree, shrub, or other plant, whether located on city-owned property or on private property.
- (b) Any otherwise healthy tree, shrub, or other plant, whether located on city-owned property or on private property which harbors insects or diseases which reasonably may be expected to injure or harm any tree, shrub, or other plant.
- (c) Any tree, shrub, or other plant or portion thereof whether located on city-owned property or on private property which by reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public.
- (d) Any tree, shrub, or other plant or portion thereof whether located on city-owned property or on private property which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street light.
- (e) Any tree, shrub, or other plant or portion thereof whether located on city-owned property or on private property which dangerously obstructs the view in the "visibility triangle" as such may be determined by the City.
- (f) Any dead, severely damaged, diseased and/or infested elm tree as follows:
  - (I) Any living or standing elm tree or part thereof infected with the Dutch Elm Disease, *Ceratocystis ulmi* (Buisman), Mureau, or any of the elm bark beetles, *Scolytus multistriatus* (Eich.), or *Hylurgopinus rufipes* (Marsh.) or European Elm Scale, *Gossyparia supria* (Mod.), or Elm Leaf Beetle, *Galerucella xanthomelaena* (Schrank). As used herein, the word "infected" or "infection" shall mean also infested or infestation.
  - (II) Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed.
  - (III) Any dead or severely damaged branch or part of an elm tree.

**Section 19-5. Unlawful to permit public nuisance.**

It shall be unlawful for any person to permit any public nuisance as defined in this Chapter to remain on any premises owned or controlled by him/her within the City, or in the alley behind such property, or in the parkway in front of such property. Any such nuisance may be abated in the manner prescribed in this Chapter.

**Section 19-6. Inspection.**

(1) The City Inspector or designated contractor shall inspect all premises and places within the City as often as practicable to determine whether any condition described in Section 19-4 exists therein, subject to the provisions of subsection B of this Section. The City Inspector or designated contractor shall also investigate all reports of conditions described in Section 19-4.

(2) The City Inspector or designated contractor may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to him/her hereunder provided he/she has either received the consent of the owner, agent or lessee of such premises to enter upon the premises, or has obtained a search warrant from the Municipal Judge authorizing him/her to enter upon such premises for inspection purposes. The City Inspector or designated contractor shall follow the procedures set forth in "Colorado Municipal Court Rules of Procedure" in obtaining a search warrant.

(3) Upon finding conditions described in Section 19-4, the City Inspector or designated contractor shall immediately take such steps for diagnosis as may be necessary to remedy such condition.

**Section 19-7. Abatement procedure and notice.**

(1) Any public nuisance as defined in this Chapter, which is located on city-owned property, except the alleys behind privately-owned property and the parkways in front of privately-owned property shall be pruned, removed, or otherwise treated by the City to whatever fashion is required to cause the abatement of the nuisance within a reasonable time after its discovery.

(2) With respect to any elm tree-related public nuisance under this ordinance which is located either on city-owned or privately-owned property, the elm tree or part thereof constituting such a nuisance shall be removed, trimmed and disposed of, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of any condition described in Section 19-4. Such abatement procedures shall be carried out in accordance with the current technical and expert methods and plans as may be determined by the City Inspector or designated contractor. The City Inspector or designated contractor shall establish specifications for removal, treatment, trimming, and disposal methods consistent therewith.

(3) Any public nuisance as defined in this Chapter, which is located on privately-owned property or in the alleys behind such privately-owned property or within the parkway in front of such property, shall be pruned, removed, or otherwise treated by the property owner, his/her agent, lessee or occupant of such property in whatever fashion is required to cause the abatement of the nuisance.

(4) Upon the determination by the City Inspector that any public nuisance as defined in this Chapter exists on privately-owned property or in the alleys behind such privately-owned property or parkway in front of such privately-owned property, the City Inspector shall cause a written notice to be personally served upon the owner or owners of record of such privately-owned property or sent by certified mail, return receipt requested to the last known address of the owner or owners of such privately-owned property. In those instances where the nuisance consists of a diseased tree, the Inspector shall also tag and/or mark said tree, which tag and/or marking shall not be removed until the nuisance has been abated.

(5) Such notice shall contain the following:

- (a) Such notice shall describe the kind of tree, shrub or other plant or plant part which has been declared to be a public nuisance, its location on the property, and the reason for declaring it a nuisance.
- (b) Such notice shall describe by legal description or by street address the premises;
- (c) Such notice shall state the actions that shall be undertaken to abate the nuisance;
- (d) Such notice shall require the abatement of the nuisance no less than twenty (20) days after the notice is delivered or sent to the record owner or owners;
- (e) Such notice shall also state that if such nuisance shall not have been abated within the time provided, the owner, lessee or occupant may be charged with a violation of Section 19-4 for maintaining a public nuisance and assess the cost against such property.

(6) If the owner, person in control, lessee or occupant of such property fails to abate such nuisance within twenty (20) days after personal service of the notice or twenty (20) days after the date of mailing of the notice, if service was by certified mail, the City Inspector shall proceed to have such nuisance abated. Any expense incurred by the City in so doing shall be a charge and lien upon said property and shall be collected as a special assessment in the same manner as other special assessments, or such expenses may be collected from the owner of the property in an action at law.

#### **Section 19-8. Rights of property owner.**

(1) The owner, agent, lessee or occupant of any privately- owned property abutting a parkway shall have the right to:

- (a) Plant or transplant trees, shrubs, or other plants within such parkway, except that the location and, spacing of any tree or trees planted or transplanted, must be first approved by the City;
- (b) Place a container or enclosure for trees, shrubs, or other plants on such parkway;
- (c) Water or fertilize any tree, shrub, or other plant located in such parkway.

(2) This Section shall not be construed to permit such owner, agent, lessee or occupant to create a public nuisance as defined in this Chapter on either privately-owned property or within a parkway.

**Section 19-9. Responsibility for damaging trees on public property.**

(1) Any person who shall injure, damage or destroy any tree situate in any public place shall promptly notify the City Inspector of such fact.

(2) The City Inspector shall cause to be done the necessary repairing or replacement, and the person responsible for such damage or destruction shall be required to pay to the City the costs of such repair or replacement.

**Section 19-10. Interference unlawful.**

It shall be unlawful for any person to prevent, delay or interfere with the City Inspector or designated contractor while engaged in the performance of duties imposed by this Section.

**Section 19-11. Penalty clause.**

The penalty for violation of any provision of this Chapter shall be a fine of not more than Three Hundred Dollars (\$300.00) or imprisonment of not more than ninety (90) days or both such fine and imprisonment.

**Section 19-12. Severability.**

If any provision of this Article or application thereof to any person or circumstance is held invalid by any court, other provisions or applications of the Article which can be given effect without the invalid provision or application shall not be affected, and to this end the provisions of this Article are declared to be severable. (Ord. 1426, Sec. 1, 07/21/92.)

## **ARTICLE 2. HAZARDOUS GROWTH.**

**Section 19-13. Hazardous growth - Defined.**

*Hazardous growth* shall mean weeds, grass, brush, volunteer growth of bushes or herbaceous plants and other vegetation which is in excess of six inches (6") in height and shall include: Bindweed, Canada Thistle, Perennial Sowthistle, Russian Knapweed, Common Ragweed, Milkweed, Common Sunflower, Dandelion, Russian Thistle, Fireweed, Mustards Sandburs, Hairy Stickweed and grass. The foregoing enumeration is not exclusive, but rather intended to be indicative of those types of plants which are considered detrimental to health and safety, but weeds shall not include flower gardens, plots of shrubbery, vegetable gardens and small grain plots. (Ord. 1176, 7/1/80.)

**Section 19-14. Declaration by City Council.**

The City Council finds that hazardous growth contributes to and aggravates respiratory disease, that hazardous growth is a potential fire hazard endangering the inhabitants of the City of Trinidad and that hazardous growth may conceal accumulations of debris and filthy deposits. (Ord. 1176, 7/1/80.)

**Section 19-15. Cutting and removal of hazardous growth required.**

(1) It shall be the duty of each and every owner, lessee or occupant of any lot or tract of land in the city to cut below a height of six inches (6") all hazardous growth on each such lot or tract of ground, on or along any street or roadway adjoining the same, between the property line and curb line thereof, or on or along any alley adjoining the same between the property line and the center of such alley; and to keep said growth cut below six inches (6") during all times of the year.

(2) All hazardous growth shall immediately upon cutting, be removed from the lot or tract of land to a disposal sight which conforms with the law, by the owner, lessee or occupant of same.

(3) It shall be the duty of the owner, lessee or occupant of any lot or tract of land in the City to remove from said lot or tract of land, cut hazardous growth lying upon said land regardless of source or origin. (Ord. 1350, Sec. 1, 4/4/89.)

**Section 19-16. General notice to cut and remove.**

The City Clerk shall, from time to time, publish a notice in a newspaper of general circulation in the City, to all owners of property, without naming them, that it is their duty to remove hazardous growth and debris from their properties and from the streets and alleys as provided in this Article; and that, in default of cutting and removal, the work may be done under the orders of the City Manager and the cost thereof, together with an administrative fee, would be charged to said properties in the manner provided in this Article and that, in default of cutting and removing, the owners, lessees or occupants of said properties will be subject to penalties provided in this Article. (Ord. 1176, 7/1/80.)

**Section 19-17. Notice; failure to comply.**

(1) In case of failure of any owner, lessee or occupant of lots or tracts of land within the City, to cut and remove hazardous growth as provided in this Article, the City Manager or any officer or employee of the City designated by him/her, is authorized to give notice to the owner, lessee or occupant of such property by any one of the following methods:

- (a) Certified mail addressed to the last known post office address of the owner, lessee or occupant;
- (b) First class mail addressed to the last known post office address of the owner, lessee, or occupant;
- (c) Personal service of the Notice on the owner, lessee or occupant;

(d) Or if an occupied dwelling is located on such lot or tract of land and no one is on the premises at the time service is attempted, by posting the Notice in some conspicuous place on the premises.

(2) Such notice shall require the cutting and removal of such growth within fifteen (15) days of the date of the notice. In the event such work is not done within the fifteen (15) days, the City Manager may then proceed to have the work done as soon as practicable. (Ord. 1350, Sec. 2, 4/4/89.)

(3) <sup>1</sup>Any notice issued pursuant to this Section, which is served in one of the methods set forth in subsection (1), complies with the requirements of subsection (2), is issued to and served on the owner of record as shown by the most current records of the County Assessor; and advises such owner of record of the right to request an administrative hearing before the City Manager or his/her designee on the issue of ownership, shall be deemed valid and legally enforceable, unless as a result of such hearing the City Manager or his/her designee finds that such owner of record is not the current owner of said property. (Ord. 1605, eff., 5/1/99)

#### **Section 19-18. Assessing costs.**

Upon cutting and removing hazardous growth by City forces or by independent contractors employed by the City for such purpose, a charge shall be made against the owner of the property. The charge shall be actual costs for labor, equipment and materials or the contract price of an independent contractor, together with five percent (5%) thereon for inspection and other incidental costs in connection therewith. (Ord. 1330, Sec. 1, 10/20/87.)

#### **Section 19-19. Notice of assessment.**

The City Clerk, as soon as practicable after such charge has accrued, shall send by mail, addressed to the owner of such property, at the last known post office address of such owner, a notice of such charge, which notice shall contain a description of the lots or tracts of land, the name of the owner or owners and the amount of the assessment. (Ord. 1176, 7/1/80.)

#### **Section 19-20. Collection of assessments.**

(1) It shall be the duty of the owner to pay such charge within twenty (20) days after the mailing of such notice, and upon his/her failure to do so, such charge may be certified by the Clerk to the County Treasurer who shall collect the assessment, together with a ten percent (10%) penalty for cost of collection, in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes shall apply to the collection of such assessments.

(2) Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments. (Ord. 1330, Sec. 2, 10/20/87.)

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<sup>1</sup> Chapter 19, Section 19-17 is amended by the addition of subparagraph 3. (Ord. 1605, eff., 5/1/99) Chapter 19, Page 8

**Section 19-21. Penalty.**

(1) Any owner, agent, lessee, occupant or person in possession or control of land within the City who shall violate any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of not more than Three Hundred Dollars (\$300.00) nor less than Thirty Dollars (\$30.00) or imprisonment for not more than ninety (90) days, or both.

(2) Regardless of whether a notice pursuant to Section 19- 17 has been issued to any person in violation of Section 19-15 or a notice by the City Clerk has been published in a newspaper of general circulation in the City pursuant to Section 19-16, any person in violation of Section 19-15 shall be subject to prosecution in the Municipal Court and to the penalties set forth in this Section. (Ord. 1330, 10/20/87.)

**Section 19-22. Payment of assessment will not avoid fine.**

The fact that assessments have been made against property as provided in this Article for cutting and removing hazardous growth, shall not prevent the owner, lessee or occupant from being punished by fine or jailing, but such fine or penalty may be imposed on those found guilty of violating the provisions of this Article in all cases, whether an assessment has or has not been made in accordance with the provisions of this Article. (Ord. 1176, 7/1/80.)