

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

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## **Article I. General Provisions**

### **12.20.010 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.

"Shall" is always mandatory and not merely suggestive.

"Street trees" means trees lying on real estate owned or controlled by the city, excluding the real estate owned or controlled by the park and recreation department, and cemetery department and excluding real estate contained within public alleys.

"Tree" means a perennial plant having a woody supporting main stem or trunk, ordinarily growing to definite heights and usually developing branches at some distance from the ground.

"Tree care" means the treating, spraying, removal, pruning, and any other tree maintenance or cultural work intended for the enhancement or preservation of trees and the removal and prevention of any and all damage to any street trees caused by tree pests, blights and diseases.

"Topping" means the cutting back of the leading shoot or shoots or major limbs which form the natural canopy of the tree so as to disfigure the tree's crown. (Prior code § 97.01)

### **12.20.020 Street tree species to be planted.**

A. The tree board shall provide lists of trees undesirable for planting in public places in the city so as to insure the public safety and welfare. These undesirable trees shall not be recommended for general planting, and their use shall be restricted to special locations where they can be used to advantage because of certain characteristics of adaptability, landscape effect, or compatibility with existing curbs, sidewalks and utility lines. The tree board shall provide lists of tree species, varieties and cultivars desirable for planting in public spaces. Other species, varieties and cultivars may be added or deleted as experience demonstrates their superiority.

B. The desirable species should be classified by size, into three groups: large (maximum height over forty (40) feet), medium (maximum height forty (40) feet) and small trees (maximum height twenty-five (25) feet).

C. No species other than those included on the tree board's list of desirable trees may be planted as street trees without special written permission of the city tree board. If such special permission has not been received, the cost of removal and replacement of the undesirable trees shall be charged to the individual or firm who planted the trees. (Prior code § 97.02)

### **12.20.030 Size and spacing.**

A. Minimum size for small trees at planting is one and one-half inches d.b.h. (diameter at breast height measured four and one-half feet from the ground); for medium and large trees two inches d.b.h.

B. The spacing of street trees will be in accordance with the three species size classes of the tree board's list of desirable trees. Minimum and maximum spacing between tree plantings shall be: small trees, twenty (20) to twenty-five (25) feet, medium, trees, twenty-five (25) to thirty (30) feet and large trees, thirty-five (35) to forty (40) feet; except in special plantings designed or approved by the tree board, or except as consistent spacing with already existing trees dictates. (Prior code § 97.03)

### **12.20.040 Distance from curbs, sidewalk, street corner, driveways, fire hydrants and utilities.**

A. Except for special plantings approved by the tree board, no tree may be planted so that its center is closer than two feet to a sidewalk. No large tree (see Section 12.20.030 of this chapter) may be planted so that its center is closer than three feet to a curb; no small or medium tree (see Section 12.20.030 of this chapter) may be planted so that its center is closer than two feet to a curb. New tree plantings will be lined up with neighboring trees provided that the neighboring trees meet the above-mentioned distances.

B. No street tree shall be planted closer than twenty-five (25) feet of any street corner, measured from the point of nearest intersecting curbs or curb lines.

C. No street tree shall be planted so that its center is within ten (10) feet of the edge of a driveway.

D. No street tree shall be planted so that its center is within ten (10) feet of any fire hydrant.

E. No street tree shall be planted so that at the tree's full growth the limbs in the tree's crown are within five lateral feet of any overhead electric line.

F. No street tree may be planted so that its center is within five lateral feet of any underground water line, sewer line, transmission line or other utility. (Prior code § 97.04)

### **12.20.050 Planting-City responsibility.**

Except as provided in Sections 12.20.060 through 12.20.080 of this chapter, the planting of all street trees shall be done according to the tree board's city tree plan, at the expense of the city and with the proper permit. (Prior code § 97.05)

#### **12.20.060 Planting-Owner-occupant responsibility.**

A. The owner or occupant of property abutting public ways may plant street trees at his or her own expense in accordance with Sections 12.20.020 through 12.20.040 of this chapter, provided he or she secures a permit from the tree board or its designee.

B. An owner or occupant who gains a permit to remove a healthy tree may be required by the tree board to replace that tree. (Prior code § 97.06)

#### **12.20.070 Replanting-Public utilities responsibility.**

Public utilities are responsible for the replacement of street trees which must be removed in order to maintain utility lines. Species, spacing and size requirements of Sections 12.20.020 through 12.20.040 of this chapter must be adhered to. (Prior code § 97.07)

#### **12.20.080 New subdivisions.**

Subdivisions with preliminary plats submitted to the city after the passage of this chapter will be planted at the expense of the developer in compliance with this chapter except as the subdivision control ordinance specifically indicates otherwise. (Prior code § 97.08)

### **Article II. Tree Care**

#### **12.20.090 Routine street tree care.**

A. Within the limits of the city tree plan and of the tree board's budget and except as provided by subsections C through F of this section, the city shall assume the expense of tree care (as defined in Section 12.20.010 of this chapter) for street trees.

B. All routine street tree care undertaken by the city shall be initiated by the tree board or its designee and undertaken either by trained city employees or a certified arborist.

C. The owner-occupant shall be responsible for the routine care of street trees in the right-of-way between his or her property and the street, such as watering, raking, and preparing leaves, twigs and other debris for removal by the city.

D. Should an owner-occupant wish to perform routine trimming on a street tree in the right-of-way between his or her property and the street, he or she may do so at his or her own risk and with a proper permit (see Section 12.20.180 of this chapter), but subject to the limits of subsection G of this section.

E. An owner-occupant may hire a certified arborist to perform routine street tree care. The arborist must then secure a permit from the tree board or its designee.

F. Public utilities may trim street tree roots and branches as necessary for the maintenance of utility service and as is prescribed by state law and limited in subsection G of this section. The cost of such tree care is not the responsibility of the city.

G. It is unlawful for any person to top (see Section 12.20.010 of this chapter), or prune horizontally a branch of more than one inch in diameter, or cut limbs within the tree's canopy back to stubs larger than three inches in diameter, on any street tree.

H. A homeowner may trim limbs less than one inch in diameter. (Prior code § 97.15)

#### **12.20.100 Emergency tree care.**

A. The city street commissioner or public utilities may act to trim or remove trees in extreme emergency situations.

B. The State Highway Department may act to trim or remove trees endangering traffic on state highways within the city limits.

C. In extreme emergencies, when a tree (or trees) has been severely damaged by storms or other causes or is obstructing utility wires, and the like, the street commissioner or public utilities may resort to topping or other severe cutting back of limbs of street trees but must report all such incidents to the tree board. (Prior code § 97.16)

**12.20.110 Pruning, corner and sidewalks clearance.**

The tree board or its designee shall have the right to prune or cause to be pruned any street trees and privately owned trees overhanging any street or public right-of-way or sidewalk: which constitutes a menace to the safety of the public, which obstructs the light from any street lamp at the intersection, which obstructs the motorist's view of any street intersection or any traffic control device or sign, or which obstructs or endangers passing vehicles and pedestrians. (Prior code § 97.17)

**12.20.120 Dead or diseased tree removal.**

A. Except in emergency situations (Section 12.20.100 of this chapter), the tree board or its designee shall have the exclusive right to cause or to approve the removal of any dead, diseased, or otherwise unsafe street tree.

B. The tree board shall have the right to spray or to cause the removal of any dead, diseased, or otherwise unsafe tree on private property within the city, when such trees constitute a hazard to life, health, and property, or harbor insects or disease which constitute a threat to other trees throughout the city.

C. The tree board will notify in writing the owners of trees described in subsection B of this section. Removal or spraying shall be done at the owner's expense within sixty (60) days after the date of service of notice (unless, within those sixty (60) days, the owner can demonstrate to the board his or her inability to comply).

D. In the event of an owner's failure to comply with notice to spray or remove a tree or trees or demonstrate inability to comply, the board shall have the authority to have the dead, diseased, or otherwise unsafe tree sprayed or removed and may charge the full cost of spraying or removal to the owner's real property tax. (Prior code § 97.18)

**12.20.130 Removal of stumps.**

In the process of tree removal, all stumps of street trees shall be removed at least six inches below the surface of the ground. (Prior code § 97.19)

**12.20.140 Construction.**

A. In order to protect existing vegetation intended for preservation, developers and construction firms must place substantial barriers around the vegetation at or beyond the drip line of enclosed trees, and no machinery, tools, chemicals or temporary soil deposits may be permitted within the barriers nor may any notice or other object be attached to protected trees. These barriers are to remain in place until after the completion of all heavy construction on the site, and no burning may take place within the sensible distance of preserved vegetation.

B. Significant changes in grading or water flow which would adversely affect preserved vegetation must be avoided or mitigated through protective measures.

C. The tree board, or its designee, may substitute alternative means in lieu of the required barriers where appropriate to specialized circumstances.

D. These restrictions shall not be interpreted as applying to public utilities or utility subcontractors doing routine utility work. However, public utilities and their subcontractors must take reasonable care to protect trunks, branches and roots of existing trees and shrubs. (Prior code § 97.20)

**12.20.150 Injury to trees.**

A. It is unlawful for any person to fasten or attach in any way to any defined street tree any rope, wire, sign, poster, handbill, or other object; except, however, that the police department may attach temporary traffic and parking control signs as necessary, but so as not to damage the trees.

B. It is unlawful for any person in any other way to injure or deface or permit any animal to injure or deface any such tree.

C. It is unlawful for any person to remove, damage, or otherwise misuse any guard or protective device placed around any public tree by the city without written consent of the tree board. (Prior code § 97.21)

**12.20.160 Ground cover.**

A. Grass and other vegetative ground cover is to be used in those portions of the setback areas and tree plots not occupied by other landscape materials. Normally trees should be mulched around their bases.

B. Special uses of gravel, crushed stone, or riprap at the base of street trees must be approved by the tree board. (Prior code § 97.22)

**12.20.170 Parking lots.**

A. A five-foot curbed landscaped strip, lying wholly within the property line, shall be provided along those sides of parking lots that abut public streets. All plantings required by this section shall meet the guidelines already established in this chapter, especially the minimum spacing standards of Sections 12.20.030 and 12.20.040 of this chapter.

B. Landscaped islands with concrete curbs shall be provided within parking lots in proportion to the area of the parking lot. At least five percent of the total parking lot area shall be devoted to landscaping. A minimum of one tree per three hundred (300) square feet of the five percent area shall be provided. This interior landscaping requirement is separate from the street frontage requirement.

C. All plantings required in this section shall meet the guidelines already established in this chapter.

D. Exceptions from subsections A and B of this section shall be granted only by a majority vote of the tree board. (Prior code § 97.23)

**Article III. Permits, Bonds and Certification****12.20.180 Permit requirements and exceptions.**

A. No person shall plant, treat, spray or prune a street tree or hire a certified arborist to care for a street tree unless the tree board or its designee shall have first granted a proper permit. Such permits may be issued to property owners or to certified arborists.

B. No person shall remove a street tree unless the tree board or its designee shall have first granted a proper permit. Such permits may be issued only to certified arborists.

C. No permits shall be necessary in the emergency situations detailed in Section 12.20.100 of this chapter.

D. Every permit issued by the tree board or its designee shall specifically describe the work to be done, be issued according to the seasonal aptness of the proposed work, and be valid for a period of sixty (60) days from issue date unless extended by a board decision. (Prior code § 97.30)

**12.20.190 Arborist's certification.**

A. It is unlawful for any person to work for hire on the tree care of street trees within the city without first applying for and procuring an arborist's certificate from the tree board or its designee; provided, however, that none shall be required of city employees doing such work in pursuit of their public service endeavors.

B. Work done by employees of the holders of arborist's certificates shall be deemed in compliance with this section.

C. Before any certificate shall be issued, each applicant shall demonstrate to the tree board or its designee that he or she has adequate knowledge of arboriculture and adequate equipment and insurance.

D. Each applicant must provide evidence of possession of liability insurance in the minimum amounts of three hundred thousand dollars (\$300,000.00) (per occurrence) for death or bodily injury and fifty thousand dollars (\$50,000.00) (per occurrence) for property damage and the insurance policy shall name as "additional insured" and indemnify the city, its elected or appointed officers, employees and agents, from the cost of defense and/or payment of any claim or judgment for damages.

E. Cancellation or other termination of any insurance policy issued for or in compliance with the provisions of this chapter shall automatically terminate any arborists' certificate, unless another policy complying with the provisions of this chapter shall be provided and in full force and effect at the time such cancellation or termination becomes effective.

F. The certificate fee shall be twenty-five dollars (\$25.00) paid in advance to the tree board. (Prior code § 97.31)

**12.20.200 Arborist's performance bond.**

A. Upon certification, each arborist must file with the city clerk-treasurer a cash bond of up to five hundred dollars (\$500.00) as security against any damage to street trees resulting from the pursuit of such endeavors as described in this chapter.

B. The bond shall be refunded to the arborist (less any assessment by the tree board for damages caused by the arborist) upon certification being withdrawn by the arborist or revoked by the board. (Prior code § 97.32)

**12.20.210 Arborist's certificate revocation.**

The tree board may revoke certification when it has evidence of the arborist's failure to apply principles of good arboriculture, and may hear appeals of any person whose application for an arborist's certificate has been denied. (Prior code § 97.33)

**12.20.220 Review by board of public works and safety.**

The board of public works and safety shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the city tree board to the board of public works and safety who may hear the matter and make final decision. (Prior code § 97.34)

**12.20.230 Violation-Penalty.**

A. In acknowledgement of the fact that street trees, as defined in this chapter, are the property of the city, any removal or pruning of the same without the consent of the city may be deemed a violation of the criminal statutes dealing with crimes against property, including governmental property, subject to the discretion of the county prosecutor and the court system. The police department, the street commissioner, the mayor, the tree board, and the board of public works and safety may, jointly or severally, act to have any such wrongful action reviewed by the prosecutor for the filing of charges as may be appropriate based on any applicable criminal statutes, including but not limited to the following:

1. Theft or receiving stolen property (IC 35-43-4-2);
2. Conversion (IC 35-43-4-3);
3. Criminal mischief (IC 35-43-1-2); or
4. Any such other crime, statute or law pertaining to the improper destruction, taking or damage of private property or governmental property which may be applicable.

B. The building inspector, a tree board member, the city planner, the street commissioner, and any city law enforcement official is empowered to issue a stop work order, either verbal or written, as to any cutting or removal attempts on a city street tree until such time as the procedures contained in this chapter are followed. The city law enforcement officers are empowered to take those reasonable and necessary steps to prevent illegal damage to other city property, buildings or grounds.

C. The fines for violating the provisions of this chapter are as follows:

<b>Section Violation</b>	<b>If Paid Within 48 hours</b>	<b>After 48 Hours and Within 30 Days</b>
1. A violation of § 12.20.020(C)	Cost of removal and replacement	Cost of removal and replacement
2. A violation of § 12.20.090(G)		
a. Topping	\$100.00	\$200.00
b. Pruning without an approved permit of limbs larger than one inch but less than three inches:		
First offense-letter		
Second offense	\$10.00	\$25.00
c. Pruning without an approved permit of limbs larger than three inches:		
First offense	\$25.00	\$50.00
Second offense	\$50.00	\$100.00
3. A violation of § 12.20.140(A)	\$25.00	\$50.00
4. A violation of § 12.20.140(B)	\$25.00	\$50.00
5. A violation of § 12.20.150(A)	\$10.00	\$25.00
6. A violation of § 12.20.150(B)	\$25.00	\$50.00
7. A violation of § 12.20.150(C)	\$10.00	\$25.00
8. A violation of § 12.20.180(B)		
Tree removal:		
First offense	100 plus replacement	250 plus replacement



	costs	costs
Second offense	\$500.00	\$500.00
9. A violation of § 12.20.190(A)	\$10.00	\$25.00

D. The above fines will be issued by any of the persons authorized to act under subsection B of this section by way of a notice of violation. If the person receiving such notice of violation chooses, he or she may discharge any such obligation within forty-eight (48) hours (excluding weekends and holidays) with respect to such notice by voluntarily paying the sums indicated in subsection C of this section by mail or in person at the office of the clerk-treasurer for fines assessed pursuant to the sections enumerated under subsection C of this section.

E. Each day an act of commission or omission which is in violation of this chapter constitutes a separate offense. The failure of a violator to pay the amount within forty-eight (48) hours shall result in the violator becoming liable for the full penalty as provided.

F. Any persons or violators who have received a notice of violation and who have not made payment within the forty-eight (48) hours, pursuant to subsection D of this section, shall pay the prescribed penalty pursuant to subsection C of this section by mail or in person at the office of the clerk-treasurer within thirty (30) days of the issuance of the notice of violation.

G. If the fine is not paid either within the forty-eight (48) hour period at the lesser amounts or within thirty (30) days at the full amounts, the violation will be referred to the city attorney for prosecution. The failure of a violator to voluntarily pay the penalty at the office of the clerk-treasurer within such thirty (30) days of the issuance of the notice of violation shall result in the violator being cited into any court of competent jurisdiction and, upon being found guilty becoming liable for costs of prosecution, court costs, and the penalties set out in subsection C of this section. Any person found guilty of any violation of this chapter shall be fined in a sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), in addition to the penalties pursuant to subsection C of this section, and the violator shall further be responsible for the costs of prosecution, the same of which are to be assessed and determined by the court.

H. 1. If there is a violation of any provision of this chapter that is not specifically provided for elsewhere, the violator, upon conviction, may be fined in the court a sum not exceeding five hundred dollars (\$500.00) and shall be required to pay the costs of prosecution and court costs for enforcement of the same, as determined by the court of competent jurisdiction.

2. The city attorney is authorized to file and attempt to obtain injunctions for the enforcement of this chapter, and should the court find that there was or has been a violation, the violator may become liable for costs of prosecution, court costs, and the penalties prescribed in this chapter. (Prior code § 97.99)

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