

Chapter 118 VEGETATION*

*Editor's note: Ord. No. 1806, adopted April 28, 2003, amended ch. 118 in its entirety to read as herein set out. Formerly, chapter 118 pertained to similar subject matter and derived from the Code of 1963, §§ 3.51--3.70, 3.72, Ord. No. 1727, adopted March 27, 2000, and Ord. No. 1728, adopted March 27, 2000. Ord. No. 1806 also renumbered the former article III as article IX. This historical notation of former article III has been retained for reference purposes.

Article I. Title and Purpose

Sec. 118-1. Title.

Sec. 118-2. Purpose.

Article II. Definitions

Sec. 118-3. Definitions.

Article III. General Provisions

Sec. 118-4. Responsibility.

Sec. 118-5. Jurisdiction.

Sec. 118-6. Right to inspect private property.

Sec. 118-7. City disclaims liability.

Sec. 118-8. Registration required.

Sec. 118-9. Registration fee; bond.

Sec. 118-10. Prohibited actions.

Sec. 118-11. Unlawful interference, planting, maintenance, and removal.

Sec. 118-12. Emergency removal.

Article IV. Construction Provisions

Sec. 118-13. Tree location survey.

Sec. 118-14. Tree protection plan; city and privately owned trees.

Sec. 118-15. Tree protection measures.

Sec. 118-16. Excavations and driveways near trees

Sec. 118-17. Tree removal/relocation from public property.

Article V. Maintenance of Trees on Or Encroaching Upon Public Property

Sec. 118-18. Tree planting, care and removal.

Sec. 118-19. Responsibilities of property owners.

Article VI. New Tree Growth

Sec. 118-20. Tree replacement.

Sec. 118-21. Tree replacement schedule.

Sec. 118-22. Spacing and distances from curb and sidewalk.

Article VII. Enforcement

Sec. 118-23. Enforcement and administration.

Sec. 118-24. Exceptions.

Sec. 118-25. Sanctions, remedies, and penalties.

Article VIII. Hazardous, Infectious and Nuisance Plants

Sec. 118-26. Hazardous, infectious and nuisance conditions.

Sec. 118-27. Notice of nuisance.

Sec. 118-28. Service of notice.

Sec. 118-29. Management of extreme infectious tree diseases.

Secs. 118-30--118-65. Reserved.

Article IX. Grass and Noxious Weeds

Sec. 118-66. Dense, noxious growth prohibited.

Sec. 118-67. Cutting required.

Sec. 118-68. Work done at owner's expense.

Sec. 118-69. Reserved.

ARTICLE I. TITLE AND PURPOSE

Sec. 118-1. Title.

Articles I through VIII shall be known as the City of Birmingham Tree Preservation Ordinance.

(Ord. No. 1806, 4-28-03)

Sec. 118-2. Purpose.

Birmingham's urban forest profoundly affects the community's distinctive character and enhances its visual appeal. The trees are a vital part of that appeal with a natural ecosystem that promotes erosion control, wildlife habitats and water quality. The city is charged with protecting the health, safety and welfare of its current and future residents and the urban forest is an integral part. This chapter provides the city the ability to promote the urban forest through the protection of city-owned trees and privately owned trees adjacent to construction sites. This chapter will establish standards for appropriate selection, location and maintenance of those trees.

(Ord. No. 1806, 4-28-03)

ARTICLE II. DEFINITIONS

Sec. 118-3. Definitions.

The following words and phrases used in this chapter shall have meanings as ascribed in this section, unless otherwise noted.

City means the City of Birmingham.

Development means the man-made change to real estate including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or other drilling operations.

Dripline means the imaginary vertical line that extends downward from the outermost tips of tree branches to the ground.

Owner means any individual, firm, partnership, association, company or organization, or legal entity, including utilities, or government agencies conducting operations within the city.

Park means all public parks or areas owned by the city for free access, excluding public rights-of-ways.

Pruning means the normal seasonal trimming, shaping, thinning or cutting of a tree, or branches or water sprouts, advantageous to the health and growth of the tree.

Removal means the elimination, movement, or taking away of any city-owned tree from its present location.

Right-of-way means the strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation that is occupied, or intended to be occupied, by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer or other similar uses.

Root protection zone means a tree dripline that the staff arborist may expand or contract depending on the species of the trees and based on site-specific conditions, so as to improve the chances that the tree will not be damaged during construction and to permit construction to take place.

Staff arborist means the designee(s) of the director of engineering and public services, who is/are assigned with the responsibilities of administration and enforcement of this chapter.

Tree means woody vegetation with a root system, a trunk system supporting a defined crown and of a species that grows to a height of 15 feet or more unless of a weeping growth pattern.

Tree survey and protection plan means a written plan having text and graphic illustrations indicating the methods that are used to preserve city-owned trees during development and privately owned trees on adjacent property during development.

Tree service means a business offering the service of removing, transplanting or the trimming of trees to the public.

(Ord. No. 1806, 4-28-03)

ARTICLE III. GENERAL PROVISIONS

Sec. 118-4. Responsibility.

The director of engineering and public services shall be charged with the duty of interpreting and enforcing the provisions of this chapter under the supervision of the city manager. The director of engineering and public services, or his/her designee, may act on behalf of the city manager to interpret and enforce this chapter.

(Ord. No. 1806, 4-28-03)

Sec. 118-5. Jurisdiction.

(a) *City jurisdiction.* The city shall have control of all trees, shrubs and other plantings in any street, park, public right-of-way, public easement, or other public places in the city limits. The city shall be empowered to plant, prune, trim, spray, treat, cultivate, care for, maintain, remove and replace such trees, shrubs and plantings. Furthermore, the city shall have the ability to ensure the protection of city-owned trees on public property during building and construction practices.

(b) *Staff arborist jurisdiction.* The staff arborist shall be empowered to implement the requirements of this chapter and shall control all city-owned trees, shrubs and other plantings in rights-of-way, parks and public areas. The staff arborist shall be empowered to prune, trim, spray, treat and cultivate privately owned trees, shrubs and plantings on private land that encroach upon, over or under public lands.

The staff arborist shall create and maintain a list of trees, shrubs and other plantings that are prohibited in the city. The staff arborist shall make the list of prohibited trees, shrubs and other plantings available to the public.

(Ord. No. 1806, 4-28-03)

Sec. 118-6. Right to inspect private property.

The staff arborist may enter upon private property with the permission of the property owner or occupant at reasonable hours to inspect trees, shrubs and plantings and remove specimens for analysis to determine whether such trees, shrubs and plantings are infected, infested or diseased. No damages shall be awarded to any private property owner for the destruction or injury to any tree, shrub or planting, suspected of being infected, infested or diseased, if done by the staff arborist in accordance with this article. The staff arborist may observe and visually inspect privately owned trees, shrubs and plantings from any and all public property without prior consent to determine if trees, shrubs or plantings are infected, infested or diseased.

(Ord. No. 1806, 4-28-03)

Sec. 118-7. City disclaims liability.

Nothing contained in this chapter shall impose any liability for damages, or a duty of care and maintenance upon the city, its officers, employees or their designees.
(Ord. No. 1806, 4-28-03)

Sec. 118-8. Registration required.

Any person, firm or corporation engaging in the business of providing tree services shall first be registered with the city clerk.
(Ord. No. 1806, 4-28-03)

Sec. 118-9. Registration fee; bond.

An application for a tree service business shall include a registration fee as set forth in appendix A. The applicant shall sign an acknowledgement of receipt of a copy of chapter 118 of this Code and an agreement to comply with the terms and provisions of said chapter. Tree service registration shall not be granted unless the applicant has also executed a bond in favor of the city that complies with the provisions of section 26-38 of this Code. The sum of the bond shall be conditioned upon the faithful performance of this Code and the laws of this state.
(Ord. No. 1806, 4-28-03)

Sec. 118-10. Prohibited actions.

(a) No person, firm or corporation shall break, injure, abuse, mutilate, kill or destroy any tree or set any fire, or permit any fire or the heat thereof, or allow toxic chemicals or other injurious materials to injure, seep or drain near any tree, shrub or planting that is owned by the city.

(b) No person, firm or corporation shall permit any electric wires or any other lines or wires to come in contact with any tree owned by the city unless that tree is protected by methods approved by the staff arborist, and no person, firm or corporation shall attach any electric installations to any city-owned tree. All persons, firms and corporations shall comply within 24 hours after the director of engineering and public services, or his/her designee serves notice to protect, move, or cut off the electricity from any service line for the purpose of trimming or removal of any city-owned tree where such wire may interfere with the proposed work.
(Ord. No. 1806, 4-28-03)

Sec. 118-11. Unlawful interference, planting, maintenance, and removal.

There shall be no interference with the director of engineering and public services or persons acting under his/her authority who are engaged in planting, mulching, maintaining, pruning or removing any city-owned tree, shrub or planting in any street or public place in the city.
(Ord. No. 1806, 4-28-03)

Sec. 118-12. Emergency removal.

The staff arborist shall have the authority to authorize the removal of city-owned trees in the event of an emergency, where such trees constitute a hazard to the health and safety of people and existing structures. Such events include, but are not limited to, storm damage where a tree is endangering a utility line or building.
(Ord. No. 1806, 4-28-03)

ARTICLE IV. CONSTRUCTION PROVISIONS

Sec. 118-13. Tree location survey.

All tree location surveys and tree protection plans submitted as part of a site plan shall apply to city-owned trees in the adjacent public right-of-way and to all privately owned trees that encroach onto a construction site. Prior to development or construction, a tree survey and protection plan shall be submitted together or separately, and shall meet the following requirements:

- (1) Indicate the location of all city-owned trees located on public property within 25 feet of abutting property lines including the entire right-of-way. Identify the species, size and dripline area;
- (2) Indicate the location of privately owned trees on adjacent property within 25 feet of the property line;
- (3) Tree location surveys shall be of the same scale (1"-20") as regular submitted site plans and meet the same requirements; and,
- (4) Clearly denote trees proposed to be planted, removed or relocated with a unique symbol in the site plan. Any relocated tree shall identify the new location. Required symbols for denoting trees are:

GRAPHIC LINK: [Tree Denotations](#)

(Ord. No. 1806, 4-28-03)

Sec. 118-14. Tree protection plan; city and privately owned trees.

The tree protection standards established by the International Society of Arboriculture shall be used as a guideline. The tree protection plan shall identify at a minimum:

- (1) An indication of the size and type of fencing to be used during construction for any city-owned trees;
- (2) Clearly describe how city and privately owned trees on adjacent property are to be protected during demolition and construction. Privately owned trees are limited to those that encroach within the open space of the construction site as required by the current set back regulations of the city, unless the developer or owner has been granted a variance by the board of zoning appeals. No protection is required for portions whose limbs or roots exceed the open space of the adjacent property where construction activities are proposed;
- (3) Clearly describe how city-owned trees are to be relocated on a permanent basis, including the proposed use of tree wells, protective barriers, tunneling or retaining walls;
- (4) Clearly describe how the mitigation of removed city-owned trees would be accomplished, including the proposed location and care of replacement trees; and,
- (5) Indicate how privately owned trees on adjacent property within 25 feet of the property line will be protected during demolition and construction. Protection afforded privately owned trees is for the construction period only. All disputes regarding privately owned trees between property owners after the certificate of occupancy is issued shall be a civil matter between those private property owners and not subject to the regulations of this article.

(Ord. No. 1806, 4-28-03)

Sec. 118-15. Tree protection measures.

- (a) Prior to development activities adjacent to publicly owned trees, the developer or contractor shall erect barriers as approved by the staff arborist for the protection of those city-owned trees. Barriers shall remain until all site activities have been completed. Barriers may not be relocated or removed without prior approval of the staff arborist. Barriers shall be freestanding and in no way adhered to or attached to the city-owned

tree. Barriers shall be visible and strong enough to withstand pressure from anything piled against it.

(b) The following activities are prohibited in regards to activity within the root protection zone of city-owned trees; changing grade, stripping topsoil, dumping or placing of solvents, building materials, construction equipment or soil deposits. Additional pruning of any portions of city-owned trees required for clearance during construction must be performed by an arborist registered with the city and requires prior approval from the staff arborist.

(c) If a city-owned tree is damaged during construction, it shall be reported immediately by the developer or property owner and evaluated by the staff arborist for recommended treatments to be applied. Any roots damaged during grading or development shall be exposed to sound tissue and cut cleanly with a saw. If temporary haul or access roads are required over root areas of city-owned trees, a roadbed of six inches of mulch shall be created to protect the roots. Maintenance of the six-inch depth is required during the time needed for such use.

(d) When barriers may be ineffectual in protecting roots in the root protection zone, the developer or contractor shall provide temporary buffers to prevent root damage as approved by the staff arborist. The developer or contractor shall maintain a 4--6" thickness for coverage by material for protecting roots until final grading has been completed.

(Ord. No. 1806, 4-28-03)

Sec. 118-16. Excavations and driveways near trees

Excavations, driveways and driveway approaches shall not be placed within six feet of any city-owned tree without prior approval of the staff arborist. Anyone making such excavation or construction shall guard city-owned trees with a quality wooden-frame box as prior approved by the staff arborist. Building material or other debris must be at least four feet from city-owned trees.

(Ord. No. 1806, 4-28-03)

Sec. 118-17. Tree removal/relocation from public property.

If a private property owner requests the removal or relocation of a city-owned tree on adjacent public property, and only if the staff arborist determines such removal or relocation is not contrary to the intent of this chapter or the public interest, the staff arborist is authorized to require said property owner to assume all or any part of the costs of removing or relocating the city-owned tree. The staff arborist shall require said property owner to assume all or any part of the costs of tree replacement or relocation, which shall be in accordance with sections 118-20 and 118-21.

Prior to removal or relocation of the city-owned tree, the private property owner making the request shall file an application with the city department of public services.

(Ord. No. 1806, 4-28-03)

ARTICLE V. MAINTENANCE OF TREES ON OR ENCROACHING UPON PUBLIC PROPERTY

Sec. 118-18. Tree planting, care and removal.

(a) No person shall prune, trim or treat city-owned trees, shrubs or plantings without prior approval from the staff arborist;

(b) No person shall cut, break down or destroy any city-owned trees, shrubs or plantings without prior approval from the staff arborist;

(c) No person shall plant trees, shrubs or other plants in the city rights-of-way, parks or public areas without approval of the staff arborist and then only if they are of variety and size approved by the staff arborist;

(d) No person shall use city-owned trees as anchors or to hang or fasten any material. This section does not prevent the city from hanging items as it sees fit;

(e) No person shall place on public or private property any stone, brick, sand, concrete or other material that will impede the full and free passage of water, air or fertilizer to the roots of any city-owned tree; and,

(f) No person shall plant any variety of poplars, willows or box elders or other quick growing trees as designated by the staff arborist pursuant to a list of prohibited trees, shrubs or plantings kept and maintained by the staff arborist, in any location where the roots of the tree, shrub or planting are likely to injure the sewers or heave the street or sidewalk surfaces.

(Ord. No. 1806, 4-28-03)

Sec. 118-19. Responsibilities of property owners.

(a) Any privately owned tree, shrub or plant overhanging the streets or highways in the city shall be trimmed so that its branches shall not obstruct the light from any street lamp and so that there shall be a clear space of 14 feet above the surface of such street or highway;

(b) Any privately owned tree, shrub or plant overhanging a sidewalk of the city shall be trimmed so that there shall be a clear space of eight feet above the surface of such sidewalk;

(c) No privately owned tree, shrub or plant shall be allowed to encroach upon, under or over any sidewalk in a manner to interfere with the free passage of persons using such sidewalk;

(d) When the staff arborist discovers that any privately owned tree, shrub or plant is in violation of this section, he/she shall forthwith serve written notice upon the owner, his/her agent or the occupant of the subject private property. The notice shall describe the tree, shrub or plant, its location, the nature of the violation, and order the owner, agent, or occupant to trim, prune or remove the tree, shrub or plant. Any such notice shall be complied within 30 days after service of notice on the owner, agent or occupant of the subject private property, or within such additional time as the notice specifies; and,

(e) All privately owned dead, diseased or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public shall be removed.

(Ord. No. 1806, 4-28-03)

ARTICLE VI. NEW TREE GROWTH

Sec. 118-20. Tree replacement.

(a) Replacement of city-owned trees shall measure a minimum of two and one half inches in caliper for deciduous trees, or six feet in height for evergreens. Replacement of any city-owned trees shall have shade potential and other characteristics comparable to the trees proposed for removal and shall be State Department of Agriculture Nursery Grade No. One (#1) stock or better. Replacement trees shall be mulched and guaranteed for two (2) years by the property owner;

(b) The developer or contractor shall replace all trees within 12 months of the removal of city-owned trees where replacement is required, or prior to issuance of the final certificate of occupancy, whichever is earlier;

(c) The developer or contractor shall plant and properly support trees required to be planted in accordance with this section prior to issuance of the final certificate of occupancy; and,

(d) The developer or contractor shall be required to replace city-owned trees originally indicated and intended to be saved when such trees are extensively damaged or removed in violation of an approved site plan.

(Ord. No. 1806, 4-28-03)

Sec. 118-21. Tree replacement schedule.

In association with guidelines established by the International Society of Arboriculture and the Michigan Forestry and Parks Association Replacement Plan Requirements:

(1) Where the staff arborist determines relocation or replacement of city-owned trees is not feasible or desirable, relocation or replacement may occur at another approved location within the city;

(2) Where the staff arborist determines it is not feasible or desirable to relocate or replace city-owned trees on-site or at another approved location within the city, the developer or owner shall pay into the city tree fund a replacement fee in an amount calculated according to guidelines established by the International Society of Arboriculture. The city shall use the city tree fund for the purpose of maintaining and preserving wooded areas, planting and maintaining trees within the city and expenses related to the administration and enforcement of this section.

(Ord. No. 1806, 4-28-03)

Sec. 118-22. Spacing and distances from curb and sidewalk.

All city-owned trees planted in the rights-of-way shall be spaced not less than 40 feet apart. Trees may be planted less than 40 feet from an existing tree in the right-of-way provided the existing tree has been approved by the staff arborist for removal within five years of the date of the planting of the new tree. The staff arborist may grant an owner of a single lot permission to have a tree planted closer than 40 feet from an existing tree in order to provide a shade or ornamental tree in front of the owner's lot where none already exists.

(Ord. No. 1806, 4-28-03)

ARTICLE VII. ENFORCEMENT

Sec. 118-23. Enforcement and administration.

This chapter shall be enforced by the enforcement official(s) as the city manager appoints and authorizes.

The city shall have the authority to promulgate additional administrative rules, regulations and procedures that are consistent with the provisions of this chapter in order to implement and administer this chapter.

(Ord. No. 1806, 4-28-03)

Sec. 118-24. Exceptions.

The city commission, or its designee, may grant an exception from the requirements of this chapter when undue hardship will result from strict compliance. In granting an exception, the city may attach whatever conditions the city commission deems necessary to further tree protection. Those seeking an exception shall submit an application for exception as prescribed by the staff arborist, pay fees established in

appendix A of this Code, and provide such additional information as may be required by the staff arborist.

(Ord. No. 1806, 4-28-03)

Sec. 118-25. Sanctions, remedies, and penalties.

(a) Municipal civil infraction. Any person who violates any section of this chapter shall be responsible for a municipal civil infraction, subject to a fine as provided herein, plus costs and other sanctions for each infraction. Each violation of this chapter shall be deemed a separate offense.

(1) For a first offense, a civil fine as set forth in appendix A;

(2) For a second offense and any subsequent offense, a civil fine as set forth in appendix A.

(b) Injunctive relief. Activity or conduct in violation of this chapter is declared to be a nuisance per se and the city may commence a civil suit in any competent jurisdiction for an order abating or enjoining the violation.

(c) Fee for illegally removed city-owned trees. In addition to civil fines or sanctions providing for a determination of responsibility for a violation of this article, and notwithstanding whether or not the city has commenced a civil suit for injunctive relief:

(1) Payment to the city tree fund. Any person removing or causing removal of any city-owned tree will, in accordance with this chapter, forfeit and pay to the city a civil fine trebled to the value to the total of trees as computed from the International Society of Arboriculture Shade Tree Evaluation Guide, or the Michigan Shade Tree Evaluation Guide. The fee shall accrue to the city and the city may file a civil action to recover additional fees. The city shall place any sum collected in the city tree fund.

(2) Tree replacement. Alternatively, the city may require replacement of illegally removed or damaged city-owned trees as restitution in lieu of the fee. Replacement will be on an inch-for-inch basis computed by the diameter 4'6" above existing grade of the aforesaid tree, unless the city approves an alternative basis for replacement or restitution. The city will use other reasonable means to estimate tree loss if removal or damage prevents exact measurement.

(3) Fee payment and tree replacement. The city may also require a combination of fee payment and tree replacement.

(d) The city may also issue a "stop work order" or withhold issuance of a certificate of occupancy, permits or inspections until the sections of this chapter have been met. Failure to obey a stop work order shall constitute a violation of this chapter.

(Ord. No. 1806, 4-28-03)

ARTICLE VIII. HAZARDOUS, INFECTIOUS AND NUISANCE PLANTS

Sec. 118-26. Hazardous, infectious and nuisance conditions.

It shall be unlawful for the person owning or occupying property to possess or keep on said property trees, plants, vines or parts thereof in a dead or dying condition that may be considered a hazardous condition or serve as breeding places for infectious diseases or insects that can become destructive within the city, such as, but not limited to, the European Elm Bark Beetle, Oak Wilt fungus, Ash Borer, Poison Ivy, Boxelder Bug, Asian Longhorn Beetle, Gypsy Moth caterpillar and certain basal or stem cankers.

(Ord. No. 1806, 4-28-03)

Sec. 118-27. Notice of nuisance.

If any tree, plant, vine or part thereof on private property is found to be a hazard, infected or infested, and to be a nuisance under this chapter, the staff arborist shall give written notice of the nuisance to the owner of the property where such tree, plant, vine or part thereof is situated, requiring the removal and destruction of such tree, plant, vine or part thereof within a period of 30 days following such notice. The removal and destruction of any such nuisance or hazardous tree, plant, vine or part thereof shall be directed and supervised by the staff arborist. Such notice shall also inform the owner of such property that unless such tree, plant, vine or parts thereof is/are removed and destroyed in compliance with the terms thereof within such 30-day period, the city will proceed with the removal and destruction of such plant, and assess the cost thereof against the property in accordance with the provisions of this Code.
(Ord. No. 1806, 4-28-03)

Sec. 118-28. Service of notice.

Service of notice upon the owner of the property, as prescribed by this section, shall be made either by personal service or by certified mail, return receipt requested, addressed to the owner at his/her last known address, as shown by the records of the city assessor. If the address of the owner as revealed by the records of the city assessor is different than the address of the property upon which the subject tree, plant, vine or part thereof is located and such property is occupied, service of the notice shall also be made on the occupant of the property by either personal service or first-class mail.

If the staff arborist discovers that any tree, plant or vine growing on private property within the city is afflicted with any hazardous and infectious insect infestation or tree disease, he/she shall forthwith serve a written notice upon the private property owner or their agent and/or the occupant of the property, describing the tree, plant or vine, its location and the nature of the infestation or disease and ordering the owner, agent and/or occupant to take such measures as may be reasonably necessary to cure such infestation or disease and to prevent the spreading thereof, specifying the measures required to be taken.
(Ord. No. 1806, 4-28-03)

Sec. 118-29. Management of extreme infectious tree diseases.

(a) No person, firm or entity shall prune or trim oak or elm trees between April 1 and October 15, regardless of location. Exceptions include pruning from storm damage, construction, utility work or accidents;

(b) The property owner, developer and/or contractor shall repair or cause to be repaired any oak or elm trees injured between April 1 and October 15 on the day of the injury, by removal of jagged surfaces, followed promptly by sealing with a tree pruning sealer or latex paint;

(c) Property owners, developers and/or contractors shall, to the extent known to them, report to the department of engineering and public services any oaks, elms or Ash that exhibit symptoms of Oak Wilt, Dutch Elm Disease or Emerald Ash Borer and/or show signs of decline or death;

(d) Private property owners, developers or contractors shall perform or cause to be performed upon trees confirmed to have Oak Wilt, Dutch Elm Disease or Emerald Ash Borer one or several of the following practices:

(1) Trees not infected, but potentially root-grafted to a tree that was killed or diseased, should be treated by injection of an approved fungicide by a company licensed within the state and registered with the city;

(2) In lieu of or in addition to fungicide injections for disease management, infected trees may be treated by trenching;

(3) Dead oak and elm trees shall be removed and properly disposed of by chipping to less than three inches above ground or removed to a disposal site for debarking, burning, or burial; and,

(4) Stumps left by removal of oak and elm trees shall be promptly removed or buried.

(e) Responsibility for oaks and elms in this section will reside with the property owner(s). In right-of-way situations, the responsibility will reside with the road commission for the county or the city. In utility easements, the relevant utility company shall perform all pruning or trimming between October 16 and March 31.

(f) Trees of all species and varieties determined by laboratory analysis to be hazardous, infectious or nuisances, are hereby declared to be a public nuisance, and shall be removed and destroyed within 30 days following notification to the property owner of the discovery of such infection. Any person given notice of the existence of such a tree may, within five days, apply to the staff arborist for a permit to treat said tree in conformance by a method approved by the staff arborist. The staff arborist shall have the right to inspect the treatment administered to any hazardous, infectious, or nuisance tree and if he/she determines that the permit holder has failed to comply diligently with all necessary requirements and procedures, or that the treatment is unsuccessful, he/she shall give notice to the permit holder that the permit is revoked and that the tree must be removed.

(Ord. No. 1806, 4-28-03)

Secs. 118-30--118-65. Reserved.

ARTICLE IX. GRASS AND NOXIOUS WEEDS*

*Editor's note: Ord. No. 1806, adopted April 28, 2003, intended to redesignate the former article III as article VIII. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as article IX.

Sec. 118-66. Dense, noxious growth prohibited.

No owner of any parcel of land with the city or the agent of such owner shall permit on such parcel of land or upon any sidewalk abutting the same, or upon that portion of any street or alley adjacent to the same between the property line and the curb or traveled portion of such street or alley, any growth of weeds, grass or other rank vegetation to a greater height than eight inches on the average, or any accumulation of dead weeds, grass or brush. No such owner or agent shall permit on such land poison ivy, ragweed or any other poisonous, noxious or unhealthful growths.

(Code 1963, § 9.41; Ord. No. 1806, § 4-28-03)

Sec. 118-67. Cutting required.

Prior to the enforcement of this chapter in any calendar year, the city manager is authorized to notify the owner of any parcel of land, or the agent of the owner, to cut, destroy and/or remove the material and vegetation referred to in section 118-66 and to keep it cut, destroyed and/or removed. Such notice shall be given by publishing the same in a newspaper circulating in the city and by such other method as may be directed by the city commission.

(Code 1963, § 9.42; Ord. No. 1562, § 9.42, 6-14-93; Ord. No. 1806, § 4-28-03)

Sec. 118-68. Work done at owner's expense.

(a) If at any time during a period commencing ten days after the publication of notice and October 15 next following, the city manager shall find that any owner or owner's agent has failed to cut, destroy and/or remove the material and vegetation referred to in section 118-66, he shall cause such material and vegetation to be cut, destroyed and/or removed, bill the owner for the cost thereof at rates established by the city commission.

(b) Such unpaid charges shall become a lien upon the property on which such work has been done or upon the property abutting or adjoining the alley, street or sidewalk upon which such work has been done upon the completion of the work.

(c) Payment shall be due to the city within 30 days of the bill being sent to the property owner for the performance of such services. The bill shall notify the property owner of his or her right to dispute all or any part of the bill before a hearing officer, as established by section 1-17 of this Code, prior to the due date of the bill. Except as otherwise determined by the hearing officer, if payment is not received by the city within 30 days after such billing, the city treasurer shall add an additional penalty of one percent per month to the delinquent bill. The city treasurer shall annually, on May 1, certify any delinquent billing, or any part thereof, together with all accrued interest and penalty, to the commission; and, it shall be transferred and reassessed, with an additional 15 percent penalty, on the next annual city tax roll. Such charges so assessed shall be collected in the same manner as general city taxes.

(Code 1963, § 9.43; Ord. No. 1806, § 4-28-03; Ord. No. 1830, 4-19-04)

Sec. 118-69. Reserved.

Editor's note: Ord. No. 1830, adopted April 19, 2004, repealed § 118-69 in its entirety, which pertained to waiver of charges and derived from the Code of 1963, § 9.44, and Ord. No. 1806, adopted April 28, 2003.