

Chapter 86 VEGETATION*

***Cross references:** Land development regulations, ch. 34; zoning, § 34-481 et seq.; subdivisions, land divisions and other divisions of land, § 34-1201 et seq.; parks and recreation, ch. 50; streets, sidewalks and other public places, ch. 66.

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ARTICLE I. IN GENERAL

Secs. 86-1--86-30. Reserved.

ARTICLE II. TREES, SHRUBS AND PLANTS*

***Charter references:** Authority to regulate trees and shrubs in public ways, § 10.08.

Sec. 86-31. Definitions.

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

Public ways and places means all land lying between property lines on either side of all public boulevards, alleys, streets, and highways in the city.

Trees means shrubs which grow higher than 15 feet. Shrubs under 15 feet in height may include vines and plants. The term "growth" includes any or all shrubs, vines and plants, unless the context otherwise requires.

(Code 1978, § 34-16)

Cross references: Definitions generally, § 1-2.

Sec. 86-32. Control of trees on public ways.

(a) The department of public works shall have complete charge and control over the planting, cutting, trimming and removal of trees and other growth upon all public ways and places, and the department shall promulgate rules and regulations for the control of the same which shall be consistent with this chapter and subject to the approval of the council.

(b) The city assumes full responsibility for the cost of maintaining, cutting, trimming and removal of trees and shrubs upon all public ways and places; however, in cases where damage is maliciously or negligently caused to trees or growth located in public ways or places, the city shall have the right to reimbursement from the perpetrators of such damage.

(Code 1978, § 34-17)

Cross references: Streets, sidewalks and other public places, ch. 66.

Sec. 86-33. Prohibited varieties.

No person except the city, shall plant, remove or destroy any ornamental shade tree or shrub in any public way; or plant any poplar, box elder, basswood, cottonwood, willow, soft maple, common catalpa, horse chestnut, or "ailanthus glandulosa" tree anywhere within the city without first procuring a permit from the department of public works.

(Code 1978, § 34-18)

Sec. 86-34. Gas pipes and mains; leaks and repairs.

Gas pipes or mains within or beneath any public way shall be so maintained as to avoid any leakage therefrom to protect any trees, shrubs or plants nearby. If any 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. The city may repair any leak not stopped within 24 hours, and the owner of the pipe or main causing the leak shall be charged with the cost of repair and the damage caused thereby.

(Code 1978, § 34-19)

Sec. 86-35. Tampering with trees in public ways.

No person shall cut, mutilate, remove, saw or trim any tree within any public way or place in the city to make room for any telegraph, telephone or electric lines, moving buildings or machinery or other things or for repairing sidewalks without first procuring a permit from the department of public works. No person shall attach, tack, or in any manner fasten, to any tree in a public way or place any wire, rope, chain, cable, sign, cardboard, poster or other article, nor hitch any animal thereto.

(Code 1978, § 34-20)

Cross references: Streets, sidewalks and other public places, ch. 66.

Sec. 86-36. Permit required for trimming of trees by public utilities.

No person owning or operating any busline or other motor transportation over the city streets or any public utility lines upon, above, or below the surface shall trim, cut, or cause it to be trimmed or cut along any public way, place or park without first having submitted to the department of public works a plan of the work to be done and having procured a permit for such work; provided, however, that nothing in this section shall be construed to apply to the removal, under the direction of the department, of any stump, roots, tree, shrub, vine, plant, or its part, wherever such removal shall be found necessary in the construction or repair of any street, sidewalk, sewer, pavement, or other public improvement.

(Code 1978, § 34-21)

Sec. 86-37. Application for a permit; approval.

Application for any permit required by the provisions of this article shall be made in the form and manner prescribed by the city clerk. No permit shall be granted unless the permit is approved by the superintendent of public works.

(Code 1978, § 34-22)

Sec. 86-38. Obstructions prohibited; trimming of trees on private property; notice.

The owner or person in charge or control of any lot or parcel of private property within the city, upon which any tree, shrub, vine or plant may be standing adjacent to any public way, shall trim or cause to be trimmed, either at the property line, or to a clear height of at least eight feet above the surface of such public way, all branches which overhang any portion of such public way, or which obstruct or interfere with the passage of light from any street lighting system, and shall not plant or maintain any so close to any property line as to obstruct thereby the vision of travelers along the streets. The city may enter upon any such private premises to do such trimming as it determines necessary or to remove such obstructions prohibited in this section upon the failure of the owner so to do after notice to him in writing. The owner shall, or the city may, remove from such tree, shrub, plant or vine, all dead, decayed, unsightly, broken or dangerous limbs and branches that overhang, or are close to the public ways. When any such tree, shrub, plant or vine is dead, the owner shall remove the same, or after notice of such intention to the owner, the city may do so and charge the cost to such owner.

(Code 1978, § 34-23)

Sec. 86-39. Excavations and other similar work; guards required.

In any excavation, or the erection, alteration or repair of any building or structure, or other work, the owner, or someone for him, shall place or cause to be placed such guards around all nearby trees, shrubs and plants in the public way as will effectually prevent injury to them.

(Code 1978, § 34-24)

Sec. 86-40. Leaving stones, bricks, sand on ground nearby growths.

No person shall place or maintain upon the ground in any public way or place of the city, any stone, brick, sand, concrete, or other material or article, which may injure or which may in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, shrub, vine, or plant, without leaving an open space of ground not less than four feet in diameter around the growth.

(Code 1978, § 34-25)

Sec. 86-41. Destruction of diseased trees and other growths; owner or occupant duty.

The owner or occupant of any lot or parcel of private property on which is located any tree or other growth, if infected by disease or by injurious insects or if in a dangerous condition, shall destroy the tree or growth when such destruction is necessary for the protection of other trees or growths and for the public safety, health and welfare.

(Code 1978, § 34-26)

Sec. 86-42. Owners and occupants; failure to perform acts; city authority; costs and charges.

If the owner or occupant of any lot or parcel of private property fails to perform any duty required of him by this article, the department of public works may serve notice upon such owner and occupant directing him to cause such work to be done and upon his failure to comply with the notice, the city may enter upon such private premises and perform the work required and charge the cost to the owner or occupant. The notice and cost shall be served and charged respectively.

(Code 1978, § 34-27)

Secs. 86-43--86-70. Reserved.

ARTICLE III. HARMFUL VEGETATION

Sec. 86-71. Prohibited generally.

It shall be declared a nuisance and is unlawful for any owner, lessee, occupant, agent or representative of such owner, lessee or occupant having possession or control of any occupied or unoccupied lot or land, or any part, in the city to permit or maintain on any such lot or land, or on or along the sidewalk, street or alley adjacent to such lot or land between the property line and the curb or middle of the alley or for ten feet outside the property line if there is no curb, any growth of weeds, grass or other rank or harmful vegetation of a height greater than eight inches on the average, or to permit or allow any accumulation of dead weeds, brush, grass or other rank or harmful vegetation. It shall further be unlawful to permit or allow on such lot or land any other vegetation such as poison ivy, ragweed, thistle, jimson or other weeds of a like kind, or any other poisonous, noxious or unhealthful, harmful or detrimental growth.

(Code 1978, § 34-39)

Sec. 86-72. Duty to abate nuisance; failure to comply.

The city manager or his designee has the sole discretion of making a determination that any condition described in section 86-71 has occurred. Upon such a determination it shall be the responsibility of the city to advise the person whose address appears on the records of the city of the violation describing the nature of the violation and the time period in which it must be corrected which shall be no longer than seven business days from the date of the notice. It shall be the duty and responsibility of the owner, occupant, lessee, or agent of the owner to be responsible for correcting the violation set forth in the notice. The failure to make the corrections within the time frame shall result in a second notice being issued ordering the corrections be taken within three business days from the date of the notice. Failure to do so shall authorize the city to enter the property to correct the same as further described herein.

(Code 1978, § 34-40; Ord. No. 849, 8-1-2006)

Sec. 86-73. Failure to act.

Should any person receiving the notice fail to act within the time prescribed in the notice and the city has taken the corrective action and has assessed its costs as a lien, the person, upon receiving notification of such lien or notice of charges, has ten days to appeal to the city council to contest the assessment of costs provided that person can show that the city had the incorrect owner or address on its records and no notice was received by the person taking the appeal. If the notice was provided to an address on the city records, but not delivered to the person appealing, that is not a defense to the assessment of the costs incurred by the city.

(Code 1978, § 34-41; Ord. No. 649, 8-1-2006)

Sec. 86-74. Abatement by city; lien upon property.

(a) If the person receiving the notice does not cut, remove or destroy the material and vegetation within the time required in section 86-73, the city manager or his authorized agent shall cause such material or vegetation to be cut, removed or destroyed at the expense of such person and bill such person for the costs at rates established by resolution of the city council.

(b) Charges for the removal of such material and vegetation shall be a lien upon the lot or land and if such charge remains unpaid for a period of 60 days after it has been rendered, a lien for such charge shall be assessed against the lot or land pursuant to the provisions of chapter 46 of this Code and chapter 9.12 of the city Charter.

(Code 1978, § 34-42)

Sec. 86-75. Continuous offenses.

Where it appears from the records of the city that prior offenses of the same nature have occurred within the same year or the preceding year, the city can dispense with the notice and immediately enter the premises to correct the condition without notice to the owner. Upon the completion of the corrective action, the city shall take all action necessary to collect all fees, expenses and costs arising from its enforcement action. The city shall by first class mail send a notice of its costs to date incurred in the corrective action taken.

(Ord. No. 649, 8-1-2006)