

## Chapter 130 VEGETATION\*

\***Charter references:** City council, § 4.1 et seq.; functions of city manager, § 8.5.

**Cross references:** Buildings and building regulations, ch. 26; mobile homes, trailers, and recreational vehicles, ch. 70; parks and recreation, ch. 86; planning, ch. 90; soil erosion and sedimentation control, ch. 98; streets, sidewalks and other public places, ch. 106; shrubs and bushes at intersections, § 106-108; trees at intersections, § 106-109; subdivision and combination of lands, ch. 110; zoning, ch. 138.

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### ARTICLE I. IN GENERAL

Secs. 130-1--130-30. Reserved.

### ARTICLE II. TREES, BUSHES AND SHRUBS

#### Sec. 130-31. Purpose of article.

The purpose of this article is to promote the general welfare, health and safety of the public by protecting and preserving city water and sewer lines, public streets and sidewalks, the delivery of necessary heat and light to city residents and by controlling certain diseases and destructive insects through the regulation of the planting, maintenance and removal of all trees within the city.

(Code 1981, § 31-16)

#### Sec. 130-32. 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:

*Bond:* Cash, certified check or surety bond.

*Contractor:* Any person, proprietorship, partnership or corporation engaged in the business of planting, removing, cutting, trimming, pruning, spraying or otherwise treating trees.

*Park:* Any park, tot lot or area owned by the city to which the public has free access for any use thereon permitted by law.

*Parkway:* All land located between the public sidewalk and the curb of any public street or roadway.

*Private tree:* Any tree now existing or which may exist on land owned by a person or entity which is not part of any governmental unit.

*Prohibited species:* Any species of a tree which is listed on the schedule of prohibited tree species on file in the office of the city manager or designee.

*Public tree:* Any tree now existing or which may exist on any land owned by the city, any park, any parkway, any roadway or any public street.

*Public utility:* Any franchised entity owning or operating a pole, line, pipe, wire or conduit for the transmission of electricity, gas, telephone, water, sewage or cable television service.

*Topping:* The severe cutting back of limbs to stubs larger than three inches within the tree's crown to the extent that the natural canopy is removed and the tree is disfigured.

(Code 1981, § 31-17)

**Cross references:** Definitions generally, § 1-2.

### **Sec. 130-33. Authority of city manager or designee.**

(a) The city manager or his designee shall have the power and control over all trees now existing or which may be planted within the boundaries of the city. This power shall be limited by the constitutions of the United States and the state, the laws of the state, the city Charter and this Code, and the language of this article. In no instance shall the city manager or his designee have any authority over trees located on private property unless that authority is specifically granted by this article or by state or federal statute.

(b) The city manager or his designee shall prepare, maintain and annually update a schedule of:

- (1) Prohibited species of public trees;
- (2) Prohibited species of private trees; and
- (3) Official public trees.

The schedule of prohibited species of private trees may be issued only upon approval of the city council. Such approval is not required for the issuance of the other schedules. All three of these schedules shall be made available to the public.

(Code 1981, § 31-18)

### **Sec. 130-34. Administration of article.**

The city manager shall have the power to administer this article by adhering to the recommended practices of the United States and state departments of agriculture, all federal and state forestry and environmental regulations and the practices of tree preservation which are generally accepted by qualified persons in the field of forestry and tree management. The city manager shall also have the power to promulgate and delegate the rules and regulations consistent with the recommended practices of these agencies. All rules and regulations adopted by the city manager in the administration of this article shall be placed in writing, retained by the city manager or his designee and be made immediately available for review by any member of the public who requests them or who may be affected by the provisions of this article. Any person requesting copies of

these rules or regulations may be required to pay a fee for their copying providing that such fee is identical to the fee charged by the city for the copying of any other matter of public record.

(Code 1981, § 31-19)

### **Sec. 130-35. Enforcement of article.**

Violation of any portion of this article by any person shall be deemed a misdemeanor. Also, each violation of this article shall constitute a nuisance for which the city may seek abatement under any provision allowed by law.

(Code 1981, § 31-20)

### **Sec. 130-36. Tree board.**

(a) *Established; terms; membership; compensation.* A tree board is hereby created. It shall consist of nine members appointed from the citizenry of the city, one of whom may be a member of the city council. The term of each member shall be three years, except for when a city councilmember is appointed who will serve for a one-year term. The director of the department of public works shall be an ex-officio member of the tree board. If a candidate is available, the council shall also appoint for a one-year term, beginning each October, one high school student who is a resident of the city and who shall serve as an advisory member of the tree board, but who shall have no voting powers. Members shall receive no compensation.

(b) *Qualifications of members.* Members of the tree board must demonstrate a genuine interest in and a reasonable amount of knowledge of tree management and preservation.

(c) *Tree management/preservation program.* The tree board shall assist the city manager in developing a comprehensive tree management and preservation program for the city. It shall serve as a clearing house for information on trees. It shall present to the city council an annual report on its activities.

(d) *Officers; rules/regulations; journal; meetings.* The tree board shall choose its own officers and make its own rules and regulations concerning its meetings. It shall keep a journal of all of its proceedings. Its meeting shall be open to the public. It shall keep minutes of its meetings and properly file them with the city manager. The city shall provide reasonable assistance to the tree board to enable it to function properly.

(e) *Requests.* The tree board shall consider, investigate and report on any matter within the scope of its responsibilities when requested to do so by the city council or the city manager.

(Code 1981, § 31-21; Ord. No. 1-94, § 1, 1-31-1994)

**Cross references:** Boards and commissions, § 2-176 et seq.

### **Sec. 130-37. Site plans.**

When the development of any property requiring site plan approval occurs, the city planning commission shall review landscaping plans and may require trees to be planted on or near the site consistent with the elements of the adopted master plan and with the comprehensive tree management plan.

(Code 1981, § 31-22)

### **Sec. 130-38. Contractors.**

(a) *License, bond and insurance required.* No contractor shall engage in the business of removing or trimming any private or public tree in the city without first obtaining an annual license from the city. No license shall be granted a contractor except upon

presentation of a bond and necessary insurance certificates in such form as to protect the city and any person in the city from damage to person or property resulting from the contractor's negligence. The bond shall equal the amount of the deductible on the individual contractor's existing liability insurance coverage but in no event shall be less than the amount of \$500.00. Liability insurance must be at least \$300,000.00 per person, \$500,000.00 per occurrence and \$200,000.00 for property damage per occurrence. No license shall be granted unless the contractor provides proof of workers compensation insurance coverage for all employees who are required to be covered by the Workers Disability Compensation Act (MCL 418.101 et seq., MSA 17.237(101) et seq.). Each contractor must pay an annual license fee of at least \$10.00 which may be increased by simple resolution of the city council.

(b) *Conditions.* A condition of every annual license issued to a contractor shall be that the contractor must remove from this city all tree trunks, limbs, branches and debris of any kind resulting from the trimming or removing of each tree within 48 hours of the actual cutting of the tree and that no tree trunks, limbs, branches or debris of any kind shall block, cover or impede any public sidewalk or street after the end of work on any day.

(c) *Exception.* No annual license shall be required of any public utility company so long as a franchise agreement is in effect or a city employee is doing such work during the course of his employment with the city or the public utility.

(Code 1981, § 31-23)

### **Sec. 130-39. Prohibited trees.**

(a) *Prohibited species; private.* No private tree on the schedule of prohibited species of private trees shall be planted by any person on any land in the city.

(b) *Prohibited species; public.* No public tree on the list of prohibited species of public trees shall be planted by any person on any public land in the city.

(Ord. No. 53-95, § 1, 3-6-1995)

### **Sec. 130-40. Tree planting.**

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

*Large tree:* Any tree which may obtain a mature height of 50 feet or more.

*Medium tree:* Any tree which may obtain a mature height of not less than 30 feet, but less than 50 feet.

*Small tree:* Any tree which may obtain a mature height of less than 30 feet.

(b) *Schedule of official public trees.* The city manager or his designee shall promulgate a schedule of official public trees, and only trees on that schedule may be planted as a public tree within the city unless the written authorization of the city manager or his designee is obtained prior to the planting.

(c) *Payment.* The city shall pay the cost of planting any public tree. Public trees planted on a parkway shall be planted at the city's expense if the planting is required by the city. If a property owner requests the planting of a public tree on a parkway, that owner shall bear the cost of such a planting. The city may not plant a public tree on a parkway at a citizen's request without first obtaining the request in writing from the owner of the property in front of which the parkway exists and without first notifying the property owner that he must bear the cost of the requested planting.

(d) *Restrictions.* The following provisions constitute restrictions on where any public or private tree may be planted. The city manager or his designee for good cause shown

may waive any of these requirements upon the written request of the person or entity desiring the waiver provided that the request for a waiver is made in writing. No tree may be planted in violation of these requirements without first obtaining the written approval of the city manager or his designee:

- (1) No private tree shall be planted within six feet of any street right-of-way line, as measured from the center of the tree trunk.
- (2) Small trees shall not be planted within five lateral feet of any underground line of a public utility.
- (3) Medium trees shall not be planted within ten lateral feet of any underground line of a public utility.
- (4) Large trees shall not be planted within 15 lateral feet of any underground line of a public utility.

(Code 1981, § 31-24; Ord. No. 53-95, § 1, 3-6-1995)

### **Sec. 130-41. Tree maintenance and protection.**

(a) *Injuring; mutilating.* No person shall break, injure, mutilate, kill, destroy, set fire to or permit a fire to be set to any public tree or shrub. No person shall knowingly cause or permit to be caused the seepage, drainage, injection or emptying of any chemicals or other materials harmful or injurious to a tree on, into or within 20 feet of any tree in the city. Normal treatment of lawns with weed killer and lawn fertilizer shall be exempt from this section unless the weed killer or lawn fertilizer used is contained on a list of prohibited chemicals published by any agency of the governments of the United States or the state.

(b) *Hanging material on.* No person shall use any public tree as an anchor. No person shall fasten or hang any material of any kind to any public tree. No person shall attach any electrical wire or insulation to any public tree. This subsection does not apply to residential Christmas holiday decorations or when special permission is given a residential owner by the city manager. Such information as species, size, location and condition shall be used in judging individual requests.

(c) *Abatement of interference.* Any person who has under his care, custody or control any facility which interferes with the care or removal of a public tree by the city must promptly abate such interference upon the request of the city manager or his designee.

(d) *Permits.* The city manager or his designee shall cause the issuance of annual permits for public utilities to trim and remove trees within the city in such a manner as to keep the overhead lines of a public utility safe and accessible. These permits shall require reasonable prior notice to the city before any work is commenced thereunder except if the trimming or removal of a tree occurs under an emergency. The term "emergency" in this subsection means any event or occurrence which could not have been reasonably foreseen by the public utility in the reasonable exercise of care and foresight and which may cause damage to the overhead lines of the public utility.

(e) *Utilities.* Public utilities have the responsibility to maintain their overhead or underground pipes, conduit mains or lines in such a manner as to prevent any leakage therefrom. In the event of such a leakage, the public utility charged with maintaining the line as to prevent leakage shall be charged the cost of removal and replacement of any public or private trees which occur in order to repair the leak.

(f) *Topping.* The topping of any public tree is prohibited without written authorization of the city manager or his designee.

(g) *Excavation.* No excavation or driveway may be placed within six feet of any public tree without first protecting the tree by the construction of a frame box around its trunk. The minimum requirements of such a frame-box guard shall be established by the city

manager or his designee. These requirements shall be given to any person who applies for a permit to make such an excavation or build such a driveway.

(h) *Impeding passage of water and nutrients.* No person shall place in any street right-of-way or any parkway any sand, stone, concrete, brick or material of any other kind which will in any way impede the full and free passage of air, water or fertilizer to the roots of any public tree.

(i) *Maintenance by owners.* All property owners shall maintain trees located upon their property in such a manner that there shall be at least eight feet of vertical clearance between sidewalks and all tree limbs.

(Code 1981, § 31-25; Ord. No. 54-95, § 2, 3-6-1995)

### **Sec. 130-42. Tree removal.**

(a) No person may remove or cut down a public tree without written authorization from the city manager or his designee. Any person who violates this subsection shall be required, in addition to any other penalties imposed by this article or any other law, to replace all public trees so removed or cut down at the violator's expense.

(b) The city shall have the right to cause the removal of any private tree or any part thereof which meets the definition of the nuisance as set forth in section 78-1. In order to cause the removal of any such private tree, the city shall follow and fully comply with the procedures for abating such a nuisance as set forth in chapter 78.

(Code 1981, § 31-26)

Secs. 130-43--130-75. Reserved.

## **ARTICLE III. NOXIOUS WEEDS\***

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\*Cross references: Nuisances, ch. 78; noxious weeds at intersections, § 106-110.

State law references: Depositing of noxious weeds on highways prohibited, MCL 247.51, MSA 28.181.

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### **Sec. 130-76. Exemptions.**

Exempted from the provisions of this article are flower gardens, plots of shrubbery, vegetable gardens and small grain plots. An exemption under the terms of this section cannot be claimed unless the land has been cultivated and cared for in a manner appropriate to such exempt categories.

(Code 1981, § 31-44)

### **Sec. 130-77. Cutting required.**

No person occupying any premises and no person owning any unoccupied premises shall permit or maintain on any such premises any growth of weeds, grass or other rank vegetation to a greater height than eight inches, or any accumulation of dead weeds, grass or brush. No such occupant or owner shall cause, suffer or allow poison ivy, ragweed, poisonous plants, or plants detrimental to health, to grow on any premises in such manner that any part of such ivy, ragweed, poisonous or harmful weed shall extend upon, overhang or border any public place, or allow seed, pollen or other poisonous particles or emanations therefrom to be carried through the air into any public place.

(Code 1981, § 31-41; Ord. No. O-9-99, § 1, 11-1-1999)

**Sec. 130-78. Duty of occupant or owner.**

It shall be the duty of the occupant of every premises and the owner of unoccupied premises within the city to cut and remove or destroy by lawful means, all such weeds, grass or rank, poisonous or harmful vegetation, except compost, which shall be maintained by proper composting procedures, as often as may be necessary to comply with the provisions of section 130-77; provided, however, that the cutting, removing or destroying of such weeds, grass and vegetation between April 15 and November 15 of each year, shall be deemed to be in compliance with the requirements of this article.

(Code 1981, § 31-42)

**Sec. 130-79. Abatement by city.**

Notice of violation of sections 130-77 or 130-78 shall be given by delivering the notice personally to the owner of the property, by leaving notification at his residence, office or place of business or by mailing notice to such owner at his last known address; or in the alternative, if the owner is unknown, by posting the notice in a conspicuous place on the premises for five days. One notification for failure to comply with the provisions of either sections 130-77 and 130-78 shall be given for the growing season between April 15 and November 16 of each year.

Upon notification, the occupant or owner of unoccupied premises shall cause the weeds, grass and other vegetation to be removed or destroyed within five days and continue to maintain such vegetation at a height of no greater than eight inches. Failure to cure a violation of section 130-77 or 130-78 in a timely manner will cause the city to abate the violation(s). The actual cost of such cutting, removal or destruction, plus 15 percent for inspection, enforcement and administrative costs in connection therewith, shall be collected as a special assessment against the property as provided in Chapter 86.

(Code 1981, § 31-43; Ord. No. O-9-99, § 1, 11-1-1999)