# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

## NO CHANGE FROM PREVIOUS READING

**DATE:** February 23, 2015

**ITEM:** Amendment to City Code - Title 7 (Public Ways and Property), Chapter 10 (Trees and Shrubs) - Amend Ordinance to Include Changes Needed Due to Emerald Ash Borer Management - City Initiated

1. Ordinance - Approval of Second, Third Readings and Final Adoption

**FINANCIAL IMPACT:** None

**BACKGROUND:** The purpose of this chapter is to promote and protect the public health, safety, and general welfare and to preserve the benefits provided by trees by providing for the regulation of the planting, maintenance, and removal of trees and shrubs within the City. Due to emerald ash borer management and changes in City staff and Department responsibilities related to trees and shrubs, several revisions are necessary. A summary of the major changes is provided below:

1. 7-10-3 Authority of the Code Enforcement Officer – This section was added to give authority to the Code Enforcement Officer to enforce nuisance abatement of trees and shrubs growing on private property.

2. 7-10-5-D Duties of the City Forester – A section was added to describe the role of the City Forester in assisting and advising Code Enforcement Officers on tree-related matters on private property.

3. 7-10-6-A3 Permit Required – A section was added to include a permit for treatment of a tree in the public right-of-way for disease or insect infestation. This will allow the abutting private property owner to treat a street tree with approval by the City Forester.

4. 7-10-7-E1 General Standards – Language was added to address City treatment and pre-emptive removal of public trees due to a risk of becoming diseased or insect ridden. This section also references the Council direction to allow treatment of street trees by the abutting property owner when not being treated by the City and not deemed to be a nuisance or hazard.

5. 7-10-9 Insurance and Bond for Businesses Engaged in Working with Trees and Shrubs – Changes to this section require businesses to provide proof of insurance and bonding to the City when working on public trees and shrubs. The section requires insurance and bonding for working on private property, but the businesses do not have to provide proof to the City.

6. 7-10-11-B Appeal – All references to appeals going to a Shade Tree Commission were removed. The appeal process was changed to being considered by the City Manager or designee with the decision of the City Manager or designee being final.

**OUTSTANDING ISSUES:** None

**RECOMMENDATION:** That the Council approve the second reading, waiver of the third reading, and final approval of the proposed Ordinance.

**Lead Staff Member:** Sally Ortgies, Superintendent of Parks

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | |
| Appropriations/Finance | |
| Legal | |
| Agenda Acceptance | RTG |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | N/A |
| Dates(s) Published | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | Public Works | | |
| Date Reviewed | 2/2/15 | | |
| Recommendation | **Yes** | No | Split |

# ORDINANCE NO._____

**AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, BY AMENDING TITLE 7, "PUBLIC WAYS AND PROPERTY", CHAPTER 10, "TREES AND SHRUBS"**

**BE IT THEREFORE ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:**

**SECTION 1:** Title 7, Chapter 10, Sections 1 – 14, are hereby amended by deleting ~~strike through~~ text and adding underline text.

**7-10-1: PURPOSE:**

The purpose of this Chapter is to promote and protect the public health, safety, and general welfare and to preserve the ~~appearance and beautify the City~~ benefits provided by trees by providing for the regulation of the planting, ~~care~~ maintenance, and removal of trees and shrubs within the City~~, and to protect the public health, safety, and general welfare~~.

**7-10-2: DEFINITIONS:**

For use in this Chapter, the following terms are defined.

CITY FORESTER: The City Manager or any person designated by the City Manager of the City of West Des Moines to enforce this Chapter ~~his/her designee~~.

CLOSING: A closing exists any time the movement of pedestrian or vehicular traffic shall be stopped on a public way, for reason of public safety, as a result of any action covered by this Chapter.

CODE ENFORCEMENT OFFICER: The City Manager or any enforcement officer designated by the City Manager of the City of West Des Moines to enforce this Chapter.

NUISANCE: Whatever is injurious to health, public safety, indecent, or offensive to the senses, or an obstruction to the free use of property so as ~~essentially~~ to unreasonably interfere with the enjoyment of life or property.

PERSONS: An individual, firm, partnership, domestic or foreign corporation, company, association, trust, or legal entity.

PROPERTY OWNER: A person owning or responsible for private property in the City~~, as shown by the County Auditor's plat of the City~~.

PUBLIC PROPERTY: Any and all property not defined as public right of way (ROW) located

within the confines of the City and owned by the City of West Des Moines, Iowa, or held in the name of the City by any of the departments, commissions, or agencies within the City government.

PUBLIC RIGHT OF WAY (ROW): All the land lying between property lines on either side of all public streets, alleys, and boulevards~~/~~ or parkways, including public easements and grants to the City of West Des Moines, Iowa. The term used herein shall include vertical directions above and below the ground surface within the public right of way.

PUBLIC TREE~~/~~ OR SHRUB: Any perennial woody plant, shrub, or tree located on public right of way or public property of the City of West Des Moines.

PUBLIC UTILITY COMPANY: Includes purveyors of electricity, natural gas, water, telephone, communications services and cable television services, and storm and sanitary sewer facilities, who are ~~either~~ governmental agencies, who are performing services related to City-initiated public improvement projects, or who have a valid franchise to operate within the City of West Des Moines.

SHRUB: Any woody perennial plant less than fifteen feet (15') tall at maturity, multiple stemmed, and adaptable to shaping, trimming, and pruning without injury.

TREE: Any woody perennial plant greater than fifteen feet (15') at maturity.

**7-10-3: AUTHORITY OF THE CODE ENFORCEMENT OFFICER:**

The Code Enforcement Officer shall have the authority to enforce nuisance abatement of trees and shrubs growing on private property which violate City ordinances or policies.

**7-10-4 ~~3~~: AUTHORITY OF THE CITY FORESTER:**

The City Forester shall have the authority to perform and to regulate the planting, maintenance, and removal of public trees and ~~/~~shrubs ~~on City right of way, alley, and boulevards/parkways~~. The City Forester ~~in conjunction with other City departments will work in management of other~~ shall manage public ~~property~~ trees and shrubs ~~resources~~ in order to ~~ensure~~ promote and protect public health, safety, and general welfare and to preserve the benefits of City tree resources. The City Forester ~~will~~ shall enforce nuisance abatement of trees~~/~~ and shrubs growing on public ~~and private~~ property which violate City ordinances ~~and~~ or policies.

**7-10-5 ~~4~~: DUTIES OF THE CITY FORESTER:**

The City Forester shall have and exercise the following duties pertaining to public trees~~/~~ and shrubs ~~in the public right of way~~:

A. Pruning or Removal: To prevent indiscriminate pruning or removal of public trees~~/~~ and shrubs.

B. New Plantings: To regulate and locate new plantings of public trees~~/~~ and shrubs in accordance with the City Forestry Standards of Practice and Specifications.

C. Secure Compliance: To order persons to comply with the duties placed upon them by this Chapter.

**D. Advise: To assist and advise Code Enforcement Officers and other City employees regarding** trees and shrubs on public and private property.

~~D~~ E. Supervision: To supervise all ~~work~~ activities by City employees and contractors in the ~~tree~~ planting, maintenance, and ~~pruning~~, removal~~, and preservation~~ of public trees~~/~~ and shrubs. To supervise does not require the City Forester to be physically present to directly monitor such activities.

~~E~~ F. Issue Permits: To issue all tree~~/~~ and shrub permits in accordance with Section 7-10-~~5~~ 6 of this Chapter.

~~F~~ G. Conditions of Permit: To affix reasonable conditions to the granting of a permit hereunder and supervise work done under the permit.

~~G~~ H. ~~Removal/~~Replacement of Public Trees~~/~~ and Shrubs for Public Improvement: ~~May cause to be removed any public tree/shrub that interferes with the making of public improvements, if the City Forester determines that there is no reasonable method of making the public improvements without removing the tree/shrub; and make arrangements with appropriate persons performing public or private improvements to replace removed public tree/shrub with a minimum plant that is thirteen inches (13") in caliper~~ If replacement of public trees or shrubs is required, it shall occur within one hundred twenty (120) calendar days after ~~said~~ the public improvement ~~is~~ has been completed, or within the appropriate planting season at the discretion of the City Forester.

~~H~~ I. Removal of Trees or Shrubs for Nuisance Abatement: To remove or require removal of any public tree or shrub in whole or part ~~or branches and roots, public or private~~ that is so hazardous, diseased, or insect ridden as to be deemed a nuisance.

~~I~~ J. Notification of Future Tree or Shrub Removal on Public ~~or Private~~ Property: To provide written notification via ~~personal service or~~ certified mail with return receipt requested and regular mail to the abutting property owner at least fourteen (14) calendar days prior to any scheduled removal. Unclaimed or returned mail shall not constitute improper notification. The ~~notice~~ notification shall provide that the abutting property owner must contact the City within fourteen (14) calendar days of the date of the mailing if the property owner has any questions or concerns regarding the tree or shrub removal ~~will state the date when the tree or shrub is to be removed, and the appeal process~~. Notification shall not be required for the removal of a public tree~~/~~ or shrub in an emergency situation as determined by the Ceity F~~f~~orester. Notification shall also not be required if the abutting property owner requested the removal of the public tree or shrub. No right is conferred upon or provided to the abutting property owner due to notification

of removal.

**7-10-~~5~~ 6: PERMIT REQUIRED:**

No person shall plant, remove, treat, ~~spray,~~ prune, cable, brace, or otherwise disturb a public tree~~/~~ or shrub without first applying for and receiving a permit from the C~~c~~ity F~~f~~orester. Requests for permits must be made a minimum of forty-eight (48) business hours in advance of the time the work shall begin. A permit will not be required to prune branches that are less than six inches (6") in diameter. All work shall be performed in accordance with the "City Forestry Standards of Practice and Specifications". The C~~c~~ity shall be exempt from acquiring ~~individual job~~ permits to perform necessary maintenance to public trees~~/~~ and shrubs or to remove public trees and shrubs as part of a City-initiated public improvement project~~; however, city departments or agencies shall operate under an annual permit to perform various work pursuant to this chapter~~. Property owners shall be exempt from acquiring permits for planting, removing, or otherwise disturbing a public tree or shrub if the work is being performed as part of a development agreement approved by the City. If being performed as part of a development agreement, the City Forester shall be notified a minimum of forty-eight (48) business hours in advance of the time the work shall begin.

A. Required Permits and Ensuing Conditions of Issuance: The following permits with the ensuing conditions of issuance shall be obtained before any private person or entity performs any work on public trees~~/~~ and shrubs:

1. Planting: A permit shall be issued for planting within the public right of way or on public property when the C~~c~~ity F~~f~~orester finds that the new planting is desirable and the method of workmanship will be satisfactory and that the new planting(s) will conform to ~~with~~ the "City Forestry Standards of Practice and Specifications". A permit shall be denied if the planting(s) will likely create a future public nuisance or danger. Any tree planted within the public right of way or on public property pursuant to this Chapter shall become the property of the City.

2. Removal: A permit shall be issued for ~~any~~ removal~~/replacement~~ of a public tree~~/~~ or shrub, including where the C~~c~~ity F~~f~~orester finds the tree~~/~~ or shrub interferes with performing ~~public~~ improvements within the public right of way or on public property, or the tree~~/~~ or shrub creates a public nuisance or danger ~~to public safety~~. All public tree~~/~~ or shrub removal shall conform to ~~with~~ the "City Forestry Standards of Practice and Specifications".

No person shall close any street, alley, boulevard~~/~~ or parkway, highway, sidewalk, or trail to remove a public tree~~/~~ or shrub or private tree, or any portion thereof, without first obtaining the approval for such closing from the C~~c~~ity in writing.

3. Treatment: A permit shall be issued for the treatment of any tree located within the public right of way for disease or insect infestation. A permit will only be issued when the tree has been designated by the City Forester as a candidate for possible treatment. When required by law, treatment shall be performed by a commercial pesticide applicator licensed to perform work in the State of Iowa and shall consist of chemical treatments approved by the City Forester.

B. Permits; Contents of Permit Application: The application shall be made on a form supplied by the Ceity. A fee ~~should~~ may be assessed for the permit to cover the cost of administration. Fees will be established by resolution of the Ceity Ceouncil. Fees will not be required from public agencies or franchised utilities ~~to~~ that operate within the Ceity. The applicant shall, at the time of making the application, agree in writing to, in all respects, save the Ceity harmless, indemnify the City, and protect the Ceity and the public at all times in connection with work done under such permit.

C. Inspection of Location Designated by the Permit: The Ceity Fforester shall inspect the location designated by the permit, and if in his~~/~~ or her opinion it will be desirable that such tree or shrub be planted, removed, treated, or otherwise disturbed, ~~he/she~~ the City Forester shall issue a permit.

D. Improper Planting: Trees and shrubs planted within the public right of way or on public property without authorization or in accordance with an issued permit, and public trees~~/~~ and shrubs found growing in violation of the "City Forestry Standards of Practice and Specifications", are subject to removal by the Ceity Fforester following the appropriate notification. ~~notices. If the trees or shrubs are not in violation other than a permit was not acquired, the person shall acquire a permit at double the cost.~~

E. Utility Requirements: All public utilities, their agents, employees, and subcontractors shall operate under an annual permit to prune public trees~~/~~ and shrubs for the purpose of eliminating potential hazards to public safety, to maintain their facilities, and to install or replace existing utilities. The annual permit requirement shall not apply to City-initiated public improvement projects. The utility company shall provide to the Ceity Fforester a copy of its work specifications and work schedule a minimum of forty eight (48) business hours prior to the commencement of any work. In cases of emergency, notification shall be given a maximum of forty eight (48) hours after the commencement of work. All work must comply with the "City Forestry Standards of Practice and Specifications".

**7-10-~~6~~ 7: GENERAL STANDARDS:**

Any person growing a tree, shrub, garden, or other vegetative growth, or installing landscaping, structures, or other objects located within private property which encroaches upon the public right of way or that interferes with the vision triangle as provided in this code, or any person growing a public tree or shrub, shall comply with the following standards:

A. Maintenance: Public trees or shrubs located within the public right of way shall be maintained by the owners of abutting property in accordance with this Section and the "City Forestry Standards of Practice and Specifications" at the cost of the property owner. Maintenance includes but is not limited to watering, fertilizing, insect and disease control, treatment, and pruning. The City may perform maintenance of trees and shrubs located within the public right of way at the discretion of the City Forester.

~~A.~~ B. Pruning: Trees or shrubs in the public right of way shall be properly pruned by the abutting property owner and trees or shrubs on private property shall be properly pruned by the property owner for the purpose of preventing the following potentially hazardous situations: the obstruction of traffic signs; the obstruction of a clear view of street and alley intersections; the obstruction of the proper lighting of public streets and places; and the obstruction of public walks, ~~pathways (bike)~~ trails, or streets. The minimum vertical clearance of trees and shrubs shall ~~have~~ be fourteen feet (14') between the surface of a street and the lowest branch. ~~Branches~~ The minimum vertical clearance shall ~~have~~ be ~~a minimum of~~ eight feet (8') between the surface of a sidewalk, trail, or other pedestrian way and the lowest branch. All pruning shall be done in accordance with the "City Forestry Standards of Practice and Specifications". The City may perform pruning of public trees or shrubs at the discretion of the City Forester.

~~B. Maintenance: Public trees or shrubs shall be maintained by the owners of abutting property in accordance with this section and the "City Forestry Standards Of Practice And Specifications". Maintenance shall include watering, fertilizing, insect and disease control, and pruning.~~

C. Avoid Damage or Nuisance: The planting of trees, shrubs, gardens, or other vegetative growth, or the installation of landscaping, structures, or other objects on private property which would cause a public danger or nuisance shall be prohibited.

D. Street or Alley Intersection: The planting of trees, shrubs, gardens, or other vegetative growth, or the installation of landscaping, structures, or other objects on corner lots or lots adjacent to an alley within the area bounded by street or alley lines of such lots and a line joining points along said street or alley lines twenty five feet (25') from the point of intersection of the public right of way lines, defined in this code as the "vision triangle", shall be limited to trees, shrubs, gardens, and other vegetative growth, and landscaping, structures, and other objects located within this area that shall not exceed two feet (2') in height, and the lowest branches of any trees planted outside of this area, but the branches of such trees that extend within this area, must be a minimum of ten feet (10') in height. Height shall be measured from the curb elevation and trees, shrubs, gardens, and other vegetative growth must be pruned or maintained to comply with these height restrictions to create an unobstructed view of the intersection between heights of two feet (2') and ten feet (10') above the curb elevation. Notwithstanding these height restrictions, no trees, shrubs, gardens, or other vegetative growth shall be planted within the vision triangle that create or constitute a vision obstruction to vehicular, bicycle, or pedestrian traffic. Similarly, no landscaping, structures, or other objects shall be placed within the vision triangle that create or constitute a vision obstruction to vehicular, bicycle, or pedestrian traffic. The city shall have sole discretion to determine whether a vision obstruction exists for vehicular, bicycle, and pedestrian traffic. There shall be no compensation by the city to the affected property owner for any damage to or removal of any trees, shrubs, gardens, or other vegetative growth, or any damage to or removal of landscaping, structures, or other objects, encroaching upon the public right of way or that interferes with the "vision triangle" as defined in this code.

E. Dead, ~~Or~~ Diseased, or Insect Ridden Trees or Shrubs: Dead, ~~or~~ diseased, or insect ridden trees or shrubs shall be subject to the following conditions:

1. Public Trees or Shrubs: The Ceity Fforester shall coordinate treatment or removal of any public tree or shrub which is so hazardous, diseased or insect ridden as to be deemed a nuisance and constitutes a hazard to other trees or shrubs or the public safety. Public trees that are at risk of becoming diseased or insect ridden may be treated or pre-emptively removed by the City as part of a management plan approved by the City Council. Trees in the public right of way not identified for treatment by the City and not deemed a nuisance or a hazard may be treated by the abutting property owner with an approved permit.

2. Trees or Shrubs Located within Private Property: The ~~city forester~~ Code Enforcement Officer shall provide written notice to be served on a property owner by personal service, or by certified mail with return receipt requested and regular mail, requiring the treatment or removal within fourteen (14) calendar days of notification of any trees or shrubs located within private property which are ~~either~~ dead, diseased or insect ridden so as to be deemed a nuisance and constitute a hazard to public trees or shrubs, other trees or shrubs on private property, or public safety. Such removal, pruning, or treatment as required by provisions of this section shall be subject to the applicable "City Forestry Standards of Practice and Specifications".

F. Prohibited Trees: Trees prohibited from being planted within public property shall be identified by the City Forester and included on an official list. Copies of this list shall be made available at City offices and on the City website. ~~The following trees shall be prohibited within a public right of way: black locust, box elder, Bradford pear, catalpa, cottonwood, cotton bearing poplars, Lombardy poplar, mulberry, Siberian elm, silver maple, tree of heaven, weeping birch, white poplar, willows, conifers, or thorn trees.~~

G. Appropriate Trees: Trees appropriate to be planted within the public right of way ~~or other public places~~ are those listed in the ~~latest~~ most recent edition of Iowa State University's extension bulletin Pm-1429e "Street Trees" and Pm-1429d "Low-Growing Trees for Urban and Rural Iowa". Copies of these lists are available at Ceity offices and through the Polk County extension office. Other trees or shrubs not listed within these publications, but not prohibited, may be reviewed and approved at the discretion of the Ceity Fforester.

**7-10-~~7~~ 8: UNAUTHORIZED INTERFERENCE WITH PUBLIC TREES~~/~~ AND SHRUBS:**

~~Authorization must be obtained from the city forester before any of~~ T~~t~~he following actions ~~may be performed~~ are prohibited on public trees~~/~~ and shrubs unless authorized by the City Forester:

A. Damage: Damageing, cutting, carveing, transplanting, or removeing any ~~such~~ public tree~~/~~ or shrub.

B. Attachments: Attaching any rope, wire, nails, or other contrivance to any ~~such~~ public tree or ~~/~~shrub.

C. Electric Wire: Causeing or permitting any wire charged with electricity to come in contact with any ~~such~~ public tree~~/~~ or shrub.

D. Harmful Substance: Allowing any gaseous, liquid, or solid substance which is harmful to any public tree~~/~~ or shrub to come in contact with it ~~them~~ or the soil supporting the sustenance of any ~~such~~ public tree~~/~~ or shrub.

E. Fire: Setting fire or permitting any fire to burn when such fire or the heat thereof will injure any portion of any ~~such~~ public tree~~/~~ or shrub.

F. Exception: Fastening holiday or ornamental lighting from November 1 to January 15 is allowed.

**7-10-~~8~~ 9: INSURANCE AND BOND ~~AND LICENSE~~ FOR BUSINESSES ENGAGED IN WORKING WITH ~~TRIMMING~~ TREES~~/~~ AND SHRUBS:**

~~A. License: It is unlawful for any such person to engage in the business of trimming, pruning, spraying, or otherwise treating trees or shrubs on public or private property within the city without first securing a license from the city.~~

~~B.~~ A. Insurance: ~~The contractor~~ Any person or entity engaging in the business of trimming, pruning, spraying, or otherwise treating trees or shrubs on private property within the City shall be sufficiently insured and bonded at all times the person or entity performs these services. Any person or entity engaging in the business of trimming, pruning, spraying, or otherwise treating trees or shrubs on public property within the City shall acquire, and continuously maintain during the period in which the ~~contractor~~ person or entity is performing services, and shall provide the Ceity with acceptable proof of ~~the following types and amounts of~~ liability insurance coverage that satisfies the City's requirements.~~:~~

~~1. Workers' Compensation Insurance: Consisting of statutory compensation benefits and one hundred thousand dollars ($100,000.00) of employer liability.~~

~~2. Comprehensive General Liability Insurance: With separate limits of not less than five hundred thousand dollars ($500,000.00) per accident for bodily injury and five hundred thousand dollars ($500,000.00) per accident for property damage of not less than one million dollars ($1,000,000.00) per occurrence. This coverage shall include a contractual liability endorsement.~~

~~3. Comprehensive Owned And Nonowned Automobile Liability Insurance: With the same minimum limits of coverage as that required for the comprehensive general liability insurance.~~

~~4. Professional Liability Insurance: Coverage with an annual aggregate limit of not less than one million dollars ($1,000,000.00).~~

For the trimming, pruning, spraying, or otherwise treating trees or shrubs on public property by others, t~~T~~he Ceity shall be named as an additional insured by endorsement to the ~~comprehensive general~~ liability insurance policy. Certificates of insurance evidencing that the ~~contractor~~ person or entity has secured ~~all of~~ the required ~~foregoing~~ liability insurance must be provided to the

Ceity prior to the commencement of any work. A minimum of thirty (30) calendar days' notice to the Ceity prior to the cancellation of or change in any such insurance shall be endorsed on each policy and noted on each certificate.

~~C~~. B. Bond: A bond or cash deposit in the amount of five thousand dollars ($5,000.00) shall be deposited with the City ~~city forester~~ to assure adequate cleanup of activities.

**7-10-~~9~~ 10: VIOLATION NOTICE AND ASSESSMENT:**

If ~~the abutting~~ a person or property owner is in violation of any regulations of this Chapter, ~~fails to prune or treat trees as required,~~ the ~~city~~ Code Enforcement Officer or City Forester may serve written notice on the responsible person by personal service, or by certified mail with return receipt requested and regular mail; or if the certified mail is returned undelivered, then by posting a copy of said notice at the address of the responsible person. The notice shall include a sufficiently detailed description of the violation and shall allow a reasonable time for the performance of any required remedial actions or order to cease and desist all work regulated by this Chapter ~~requiring them to do so within thirty (30) days~~. If ~~said~~ the responsible person or property owner fails to ~~prune or treat said trees~~ undertake the remedial actions specified in the notice within the allowable ~~such~~ time, the Code Enforcement Officer or Ceity F~~f~~orester may take steps to effect compliance with the violation, to revoke any applicable permit, to perform the required action, and to assess the reasonable costs ~~against~~ to the responsible person or property owner and against the private property for collection in the same manner as property tax.

**7-10-~~10~~ 11: APPEAL:**

A. Any appeal of a decision of the Code Enforcement Officer or Ceity F~~f~~orester shall be submitted in writing to the Code Enforcement Officer or Ceity F~~f~~orester within ten (10) calendar days of the date the City personally served or mailed the notice. Fees for appeal shall be established by resolution of the Ceity Ceouncil. The subject matter of an appeal may be the issuance of permits under this Chapter, the concurrence of the City Forester in permits required under other ordinances or policies, violation notices issued by the Code Enforcement Officer or City Forester, or other relevant matters involving the interpretation and enforcement of this Chapter.

B. The appeal shall be considered ~~heard~~ by the ~~shade tree commission~~ City Manager or designee within thirty (30) calendar days of receiving the appeal. Action by the Code Enforcement Officer or Ceity F~~f~~orester shall be stayed until the decision of the ~~commission~~ City Manager or designee is rendered, unless the Code Enforcement Officer or Ceity F~~f~~orester certifies to the ~~commission~~ City Manager or designee, after notice of appeal shall have been filed with him~~/~~ or her, that by reason of the facts stated in the petition, a stay would, in his~~/~~ or her opinion, cause imminent peril to life or property. In such a case, proceedings shall not be stayed unless ~~otherwise than by~~ an injunction ~~restraining order~~ has been obtained ~~which may be granted by the commission or by~~ from a court of record ~~on application on notice to the city forester and on due cause shown~~.

C. The ~~commission~~ City Manager or designee may reverse, affirm, modify, or waive, wholly or partially, any decision of the Code Enforcement Officer or C~~c~~ity F~~f~~orester, or the ~~commission~~ City Manager or designee may grant, deny, or revoke any permit or license. The decision of the ~~commission~~ City Manager or designee shall be final.

**7-10-~~11~~ 12: PROTECTION OF TREES:**

All public trees~~/~~ and shrubs deemed to be saved during construction or reconstruction activities shall be protected by the developer~~/~~ or property owner from damages or disturbances, including their root systems. Protective fences shall be placed and maintained at or beyond the drip line of public trees~~/~~ and shrubs that are unaffected by approved excavation or construction activities, but are subject to damage during said activities. Any disturbance of any kind within the fenced area shall be prohibited. Cutting, boring, and filling soil within the drip line of a public tree~~/~~ or shrub to be preserved shall be prohibited unless otherwise approved by the C~~c~~ity F~~f~~orester. Soil compaction caused by any type of equipment shall not be allowed to occur over the protected area of the root zone of any public tree~~/~~ or shrub unless approved by the C~~c~~ity F~~f~~orester.

**7-10-~~12~~ 13: INTERFERENCE WITH THE CITY FORESTER, CODE ENFORCEMENT OFFICER, OR CITY EMPLOYEES ENFORCING THIS CHAPTER:**

It is unlawful for any person or property owner to hinder, obstruct, or otherwise interfere with the C~~c~~ity F~~f~~orester, Code Enforcement Officer, or employees of the C~~c~~ity while engaged in carrying out the provisions of this chapter.

~~**7-10-13: VIOLATION NOTICE:**~~

~~A notice of violation of any provision of this chapter shall:~~

~~A. Be in writing;~~

~~B. Include a sufficiently detailed description of the violation;~~

~~C. Allow a reasonable time for the performance of any required remedial actions or order to cease and desist all work regulated by this chapter;~~

~~D. Be served personally, or by certified mail with return receipt requested; or if the certified letter with receipt is returned undelivered, then by posting a copy of said notice at the address of the responsible person.~~

~~If the responsible person fails to undertake the remedial actions specified in the notice within the allowable time, the city forester may take steps to effect compliance with the violation, to revoke any applicable permit, and assess reasonable costs to the responsible person.~~

**7-10-14: PENALTIES:**

The following penalties shall be imposed upon any person or property owner who violates any provision of this chapter:

A. Any person or property owner who violates the provisions of this chapter, upon conviction, shall be punished as set forth in Title 1, Chapter 4 of this code.

B. In addition to the penalties provided above, a~~A~~ny person or property owner found guilty of violating the provisions of this chapter ~~shall~~ may be required to pay the cost of repair or replacement of such public tree~~/~~ or shrub. The replacement costs shall be determined in accordance with the latest version of "A Guide for Plant Appraisal" as published by the International Society of Arboriculture and authored by the Council of Tree and Landscape Appraisers.

C. The C~~c~~ity reserves the right to collect costs in addition to penalties. The imposition of any penalty of a violation of this chapter shall not be construed as a waiver of the right of the C~~c~~ity to collect the costs of removal or treatment of any tree or shrub in accordance with the provisions of this Chapter ~~section~~.

D. Public utilities ~~shall~~ may be held responsible for the replacement of any public tree~~/~~ or shrub which has been severely damaged or died in the opinion of the C~~c~~ity F~~f~~orester as a result of the ~~normal~~ maintenance ~~and/~~or new installation of utilities. The C~~c~~ity F~~f~~orester shall coordinate with the public utility appropriate and reasonable replacement of said severely damaged or dead public tree~~/~~ or shrub in accordance with the "City Forestry Standards of Practice and Specifications".

E. ~~Public utilities shall be exempt from paying the cost of repair or replacement of any public tree/shrub which has not been severely damaged or died in the opinion of the city forester as a result of normal maintenance and/or new installation of public utilities.~~ Property owners abutting the area on which ~~adjoining~~ the public tree~~/~~ or shrub is located shall be notified by the utility company forty eight (48) hours prior to the commencement of any utility repair, maintenance, or replacement activities which will affect or harm the public trees~~/~~ or shrubs. In cases of emergency repair, the C~~c~~ity F~~f~~orester ~~will~~ shall have the option to waive ~~of a waiver for~~ said notification ~~actions~~.

**SECTION 2. REPEALER.** All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

**SECTION 3. SAVINGS CLAUSE.** If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase, or part hereof not adjudged invalid or unconstitutional.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law.

**PASSED AND APPROVED** this _____ day of _____, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson,
City Clerk