

CHAPTER 152

TREES

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152.01 DEFINITION. For use in this chapter, the following terms are defined:

1. “City Arboricultural Specifications and Standards of Practice” means the document containing the detailed performance standards and specifications to be used in carrying out the provisions of this chapter.
2. “Contractor” means any person, business or organization who receives compensation for the performance of work done.
3. “Park” means all public parks having individual names and maintained by the City.
4. “Parking” means that part of the right-of-way in the City not covered by sidewalk, between the lot line and the curb line. On unpaved streets, it is that portion between the lot line and portion usually traveled by vehicular traffic.
5. “Private tree” means any and all trees growing on private property.
6. “Property owner” means a person owning private property in the City, as shown by the County Auditor’s Plat of the City.
7. “Public property” means any and all property located within the confines of the City and owned by the City or held in the name of the City by any of the departments, commissions or agencies within the City government.
8. “Public tree” means any and all trees growing on public property including but not limited to street right-of-ways.
9. “Right-of-way” means a parcel of land intended to be occupied for streets, sidewalks, utilities and other public purposes.
10. “Shrubs” means woody vegetation usually growing with multiple stems and a height less than ten (10) feet.

11. "Street trees" means any and all trees growing on the parking including but not limited to street right-of-ways.

(Ord. 08-06 – Aug. 08 Supp.)

12. "Topping" means heading, stubbing, rounding, tipping, or "dehorning," which means the drastic removal of large branches, severely cutting back limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

13. "Trees" mean woody vegetation usually growing with a single stem and a height over 10 feet.

14. "Tree Board" means the duly established board responsible to study, investigate, counsel and develop a written plan for the care, preservation, trimming, planting, replanting, removal or disposition of trees and shrubs within the City.

152.02 TREE BOARD.

1. Establishment. There is established a seven member Tree Board. The Board shall be appointed by the Mayor and confirmed by the City Council. The Mayor in appointing the initial Board shall appoint four members to four year terms and three members to three year terms. After the initial appointments, all subsequent appointments shall be for four years. The Board shall determine its officers, bylaws and meeting schedule.

(Ord. 08-06 – Aug. 08 Supp.)

2. Duties. The Tree Board shall have the following duties:

A. Study, investigate, counsel, develop, update annually and administer a written plan for carrying out the purposes of this chapter.

B. Present their plan to the Council. Upon the Council's acceptance and approval of the plan, the plan shall constitute the official tree plan for the City.

C. The Tree Board may draft and recommend to the Council amendments to the Zoning Ordinance, Subdivision Ordinance and other chapters of this Code of Ordinances, so as to require additional planting of street trees and/or privately owned trees, or both, in association with property development or redevelopment in the City.

D. The Tree Board may draft and recommend to the City Manager changes to staff procedures, so as to make them consistent with the intent of this chapter. These procedures may

include, but are not limited to, tree trimming and excavation procedures of the City.

E. The Tree Board shall act as the final step in an appeals process regarding disputes between the City Forester and citizens.

3. Responsibilities. The Tree Board shall:

A. File with the Clerk for public inspection copies of the minutes and other action taken by the Tree Board within fourteen (14) days of the date on which the action was taken.

(Ord. 08-06 – Aug. 08 Supp.)

B. Utilize the central staff and auxiliary services of the City administration and refrain from duplicating them or from establishing incompatible procedures.

152.03 CITY FORESTER.

1. Establishment. There is established the position of City Forester, who shall be the Director of the Marion Parks and Recreation Department. The City Forester shall serve as an ex-officio member of the Tree Board.

(Ord. 08-06 – Aug. 08 Supp.)

2. Authority. The City Forester shall have the authority and jurisdiction of regulating and planting, maintenance and removal of trees on publicly owned property to ensure safety or preserve or enhance the aesthetics of these public sites. The City Forester shall have the authority to supervise, inspect, or both, all work done under a permit issued in accordance with terms of this chapter. The City Forester shall have the authority to formulate and publish a master tree plan with the advice, hearing and approval of the Tree Board. The City Forester has the general authority to do all of the following:

A. Direct, manage, supervise and control the planting, removal, maintenance and protection of all trees and shrubs on public areas;

B. Guard all trees and shrubs within the City to prevent the spread of disease or pests;

C. Eliminate dangerous tree and shrub conditions within the City that may affect the life, health or safety of persons or property.

152.04 ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE.

1. Establishment. There is hereby established an Arboricultural Specifications and Standards of Practice document of and for the City. This document shall include but shall not be limited to: species of street trees allowed and banned; the spacing between street trees and distances from fixed objects; proximity of street trees to utility lines; and topping.
2. Authority. The performance standards and specifications contained within the City Arboricultural Specifications and Standards of Practice shall be considered a part of this chapter and made subject to all its provisions.

152.05 TREES ON PUBLIC PROPERTY.

1. Conditions Under Which Trees Allowed. From and after July 1, 2010, no person, except City personnel, agents for City purposes, or authorized tree permit holders shall plant any tree or shrub upon any City owned property, including property dedicated or used for right-of-way purposes. Only trees from the City of Marion Approved Street Trees List may be planted in the public right-of-way. *(Ord. 10-15 – Aug. 10 Supp.)*
2. Insurance. The City Forester shall have the authority to require any permit holder to show adequate insurance coverage to cover potential damages that occur during the execution of the work. In the case of the property owner doing the work, proof of homeowner personal liability insurance may be required. If the property owner has hired another person or contractor to do the work, the contractor shall provide the City with a certificate of insurance. The certificates shall show the following minimum required limits of coverage of Commercial General Liability Insurance with limits of not less than \$500,000 per occurrence and Worker's Compensation insurance coverage at statutory limits on any and all employees.
3. Public Utilities. A public utility may be issued a permit to treat, trim or remove any tree or shrub on any street or other public place. The work shall be limited to the actual necessities of the service of the company in the area specified on the permit. This work shall be done in accordance with the Arboricultural Specifications and Standards of Practice as established for the City. The City Forester may assign an inspector to supervise the provisions of the permit. The cost of the service shall be charged to the public utility. In the event severe weather has caused a tree to damage utility lines, the utility company, the City, or their agents may trim or remove trees necessary to repair the damaged

utility lines without first obtaining a permit. A permit should be obtained before any additional trimming not required for repair of the utility line is done.

4. Maintenance. The maintenance of all street trees or shrubs shall be the responsibility of the City Forester. Street trees may be trimmed and maintained to allow free passage of pedestrians and vehicular travel and so they will not obstruct or shade street lights, traffic lights, signs or any traffic control devices or the view of any street intersection. Such detailed information is contained in the City's Arboricultural Specifications and Standards of Practice. If in the opinion of the City Forester trimming of a street tree is necessary, the adjacent property owner shall be notified and in the event the adjacent property owner disagrees with the Forester's decision, an appeal may be filed. Whenever the City Forester is notified or becomes aware of a dead or broken branch or limb in any street tree or a dead street tree which is in imminent danger of falling and thereby injuring any individual or causing property damage, the offending branch, limb or tree shall be considered a hazard and may be removed. Subsequent trimming of the tree which contained the dead or broken branch or limb should occur after notification of the adjacent property owner.

5. Removal. If in the opinion of the City Forester removal of a street tree becomes necessary, the adjacent property owner shall be notified. In the event the adjacent property owner requests the removal of a street tree or shrub and the City Forester does not consider the removal necessary, the property owner may appeal the City Forester's decision to the Tree Board.

6. Traffic Control. In the event the planting, maintenance or removal of any tree requires equipment or material to be located on or fall onto the street right-of-way, the permit holder shall provide for traffic control. All traffic control shall conform to the requirements and specifications of the current edition the Manual of Uniform Traffic Control Devices (MUTCD). In all cases the disruption of smooth traffic flow shall be kept to a minimum. Additional warning devices or precautionary measures may be necessary to control pedestrian traffic.

7. Protection. No person shall intentionally damage, cut, carve, attach any rope, wire, nails, advertising posters or other contrivance to any street tree; allow any gaseous, liquid, chemical or solid substance harmful to such trees to come in contact with them, or set fire or permit fire to burn when such fire or the heat will injure any portion of any tree.

8. Permit. No person except the City or person hired by the City shall spray, fertilize, preserve, prune, remove, cut above or below ground or otherwise disturb any tree on City property without first filing an application and obtaining a permit from the City Forester. The person receiving the permit shall abide by the Arboricultural Specifications and Standards of Practice as adopted by the City.

9. Permits. The Tree Board may issue a permit for the planting of a tree in the public right-of-way when: (1) The proper permit fee has been paid in full to the City; (2) The proposed site has been reviewed and approved by the City Forester; and (3) Species and planting technique have been reviewed and found to meet City standards.

(Ord. 10-15 – Aug. 10 Supp.)

10. Establishment of Fees. The City Council shall adopt by resolution a permit fee for the issuance of a tree permit. Said fees may be amended by resolution at the discretion of the City Council.

11. The Tree Board of the City shall adopt a City of Marion Approved Street Trees List by 7/1/2010.

(Ord. 10-15 – Aug. 10 Supp.)

12. Establishment of Urban Forest Utility. An urban forest utility is hereby established to provide for the collection and use of public tree management fees, tree permit fees and other fees as applicable for use to maintain trees on City owned property and provide for the disposal or re-use of tree-related materials.

13. Public Tree Management Fees. The City Council shall, by resolution, set fees for the management of trees on City owned property. This includes the initial establishment of fees and subsequent changes to the fees as deemed necessary by the City Council.

(Ord. 10-16 – Aug. 10 Supp.)

152.06 TREES ON PRIVATE PROPERTY.

1. Maintenance. The property owner is responsible for the maintenance and care of any tree located on private property. Certain regulations apply to trees whose branches, limbs, roots or other parts extend into or over the street right-of-way. The property owner is responsible for ensuring private trees are trimmed to sufficient height to allow free passage of pedestrians and vehicular travel and so they will not obstruct or shade street lights, traffic lights, signs or any traffic control devices or the view of any street intersection. Detailed information is contained in the City's Arboricultural Specifications and Standards of Practice. If it becomes necessary to trim trees or shrubs on

private property to comply with this chapter, the City Forester shall declare the tree or shrub a nuisance. Whenever the City Forester is notified or becomes aware of a dead or diseased tree or broken or dead branch or limb in any private tree which is in imminent danger of falling and thereby injuring any individual or causing property damage to adjacent property, the City Forester may declare the tree, branch or limb a hazard and order the property owner to remove the hazard in an expedient manner. If the property owner fails to remove the hazard, the City Forester may cause the hazard to be removed. For purposes of removing the hazard, City crews or City agents shall be allowed on private property. Attempts should be made to notify the property owner before entering onto private property. (Ord. 08-06 – Aug. 08 Supp.)

2. Traffic Control. In the event the planting, maintenance or removal of any private tree requires equipment or material to be located on or fall onto the street right-of-way, the homeowner or the homeowner's agent shall provide for traffic control. All traffic control shall conform to the requirements and specifications of the current edition of the Manual of Uniform Traffic Control Devices (MUTCD). In all cases the disruption of smooth traffic flow shall be kept to a minimum. Additional warning devices or precautionary measures may be necessary to control pedestrian traffic.

152.07 ENFORCEMENT.

1. Appeals. Any person who receives an order from the City Forester and objects to all or part of the order may, within ten (10) days of the receipt of the order, notify the City Forester and City Tree Board in writing of the nature of the objection and request a hearing on the order thereon. The hearing shall be held within thirty (30) days of notice to the appellant. Within ten (10) days the Chair of the Tree Board shall notify the appellant and City Forester of the final decision.

2. Interference. No person shall hinder, prevent, delay or otherwise interfere with the City Forester or any assistants in the execution or enforcement of this chapter.

3. Violation. If, as a result of a violation of any provision of this chapter, the injury, mutilation or death of a tree, shrub or other plant located on City-owned property is caused, the cost of repair or replacement of the tree, shrub or other plant shall be borne by the party in violation. The value of shrubs shall be determined in accordance with the latest revision of *A Guide to the Professional Evaluation of*

Landscape Trees, Specimen Shrubs and Evergreens as published by the International Society of Arboriculture.