

Chapter 9-16

BOISE TREE ORDINANCE

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Section 9-16-01 TITLE

This Chapter shall be known as the Boise Tree Ordinance.
(5958, Amended, 12/21/1999)

Section 9-16-02 DEFINITIONS

For the purposes of this Chapter, the following words and phrases shall have the following meanings:

ADJACENT PROPERTY OWNER: Any person owning property adjacent to public rights-of-way.

ALTERNATE HOST PLANT: One of two kinds of plants on which a pest must develop to complete its life cycle.

ANSI A300: The American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices. This is a document offering basic performance standards for tree pruning, published in 1995 by the American National Standards Institute (ANSI) or the same as amended from time to time.

ARBORICULTURE: The cultivation of trees, including planting, pruning, removal or any other action which affects the growth and maintenance of trees.

CITY: The City of Boise City, Idaho.

CITY FORESTER: The City Forester or the City Forester's designee.

CRITICAL ROOT ZONE: The area under a tree extending from the base of a tree in all directions to an imaginary line 10 feet outside of the dripline or as determined at a preliminary site inspection by the City Forester.

DUTCH ELM DISEASE: A disease condition in elm trees caused by fungal organisms known by the scientific names *Ophiostoma ulmi* or *Ophiostoma novo-ulmi*.

ELM TREE: Any species of the genus *Ulmus*.

HAZARD: Any tree, public or private, with visibly defined structural defects likely to cause failure of all or part of the tree, and be a danger to public safety.

PERMIT: Written approval issued by the City and required for any activity on public trees or within the critical root zone of public trees.

PERSON: Any individual, firm, partnership, corporation, association, company or organization of any kind.

PEST: Any insect, disease or other organism harmful to trees.

PRUNING: The practice of cutting tree limbs according to standards contained in ANSI A300.

PUBLIC PROPERTY: Any property owned by, dedicated to, or deeded to, the public or for the public's use. City parks, public rights-of-way and other publically owned, controlled, leased or managed properties are included in this definition. This definition excludes any federal or state owned properties except where otherwise provided by contract or law.

PUBLIC RIGHTS-OF-WAY: Improved or unimproved public property owned by, dedicated to, or deeded to the public or for the public's use, for the purpose of providing vehicular, pedestrian and other public use. Such public property provides circulation and travel to abutting properties and includes, but is not limited to, streets, sidewalks, landscaping, provisions for public utilities, cut and fill slopes, and open public space. For the purposes of this Chapter, alleys are excluded from this definition.

PUBLIC SAFETY: The condition of being safe from bodily harm and/or property damage resulting from tree conditions and/or failures while using public property.

PUBLIC TREES: Any tree (inclusive of roots within the critical root zone) whose trunk is located, partly or in whole, on public property.

TOPPING: "Rounding" or "heading back" or any other term that can be described as severe cutting back of limbs within a tree crown to buds, stubs, or laterals not large enough to assume a terminal role or as defined in ANSI A300.

TREE: Any woody plant, which is 15 feet or more in height at maturity, with a single or multiple trunk, often unbranched for several feet above the ground and having a definite crown.

(5958, Amended, 12/21/1999)

Section 9-16-03 FINDINGS

Whereas the City finds trees are important elements of the environment which promote and protect public health, safety, and general welfare of the community by providing:

- A. A vital contribution to the aesthetic character of the community and the region's natural beauty;
- B. Cost-effective protection against severe weather conditions with cooling effects in the summer months and insulating effects in winter;
- C. Economic support of local property values;
- D. Improved air and water quality with the absorption of pollutants, assimilation of carbon dioxide and generation of oxygen, and the reduction of excessive noise and adverse impacts caused by noise pollution;
- E. A reduction of the adverse impacts of land disturbing activities such as runoff from impervious surfaces, soil erosion, land instability, and sedimentation pollution; and
- F. Habitat, cover, food supply and corridors for a diversity of wildlife.
(5958, Amended, 12/21/1999)

Section 9-16-04 STATEMENT OF PURPOSE

This Chapter establishes regulations and standards necessary to ensure that the City continues to realize the benefits provided by the Community Forest. It is not intended to resolve or regulate disputes over trees on private property that do not affect general public safety. This ordinance is enacted to:

- A. Promote the general welfare of the City by establishing and maintaining the maximum amount of canopy coverage provided by trees for their functions as identified in 09-16-03;
- B. Preserve and enhance the City's environmental, economic and social character with mature trees;
- C. Protect public safety, health & welfare;
- D. Encourage site and utility planning, building, and development practices to prevent indiscriminate removal or destruction of trees and avoid unnecessary disturbance to trees within the City and its Area of Impact;
- E. Maintain trees in a healthy, non-hazardous condition through application of tree care standards contained in ANSI A300;
- F. Establish and maintain appropriate species diversity and age classes in order to provide a stable and sustainable community forest;

G. Establish a process by which trees are to be planted, pruned and removed;

H. Implement the goals and objectives of the City's Comprehensive Plan.
(5958, Amended, 12/21/1999)

Section 9-16-05 JURISDICTION

09-16-05.01 Public Property The City Forester shall manage and regulate the planting, maintenance, protection, removal and replacement of all public trees within the City limits, thus exercising the City's authority to do so granted pursuant to the provisions of Idaho Code 50-312 - Improvement of Streets, Idaho Code 50-317 - Removal of snow, ice rubbish and weeds, Idaho Code 1415 (7) Responsibilities of single county-wide highway districts within cities--Final decision on urban renewal projects--Settlement of questions.

09-16-05.02 Private Property The City Forester shall have jurisdiction over trees located on private property which are found to be public nuisances as defined in 09-16-13 and may cut and remove those trees from all private property within the city and the public rights of way abutting the same and may assess the cost thereof against the property so cleared, and against the property abutting public rights of way so cleared, as provided for in Idaho Code 50-317. The assessment shall be collected as provided for in Idaho Code 50-1008.

(Ord. 5975, Amended, 03/23/2000; 5958, Amended, 12/21/1999)

Section 9-16-06 ESTABLISHMENT AND DUTIES OF THE CITY FORESTER

The Director of the Parks & Recreation Department shall designate an individual as the City Forester and authorize such person to perform the duties imposed and exercise the powers granted by this chapter. For the purposes identified in 09-16-04, the City Forester, subject to the provisions of this Chapter and available resources, is hereby authorized to carry out the following duties:

09-16-06.01 Administrative/Management Duties:

- A. Develop, administer and maintain a Community Forestry Management Plan;
- B. Administer a program of public outreach and education relating to Community Forestry and the planting and care of trees;
- C. Maintain a licensing program as set forth in 09-16-15;
- D. Administer and maintain a permitting procedure for all planting, pruning, protection and removal of trees as set forth in 09-16-09;
- E. Establish and maintain an inventory of all public trees;
- F. Maintain a Community Forestry budget to be contained within, but as a separate division of, the budget of the Boise Parks & Recreation Department. The City may expend funds to plant, maintain or remove trees in accordance with the provisions of this Chapter, the Community Forestry Management Plan and existing policies;
- G. Oversee and require compliance with the Dutch Elm Disease (DED) management program as required by this Chapter, and other pest management programs as may be

adopted by the Board of Parks & Recreation Commissioners;

- H. To facilitate the proper selection, planting and maintenance of trees in residential, commercial and industrial developments within City limits and the Boise City Area of City Impact, the City Forester shall review and provide comment on development applications when such applications are submitted to the City Planning & Development Services Department;
- I. Establish policies to carry out the provisions of this Chapter;
- J. Perform all necessary acts to ensure that all public trees conform with the Community Forestry Management Plan and this Chapter;
- K. Annually provide public notification of the requirements of this Chapter.

09-16-06.02 Tree Planting Duties:

- A. Establish and maintain specifications for tree planting on public property;
- B. Maintain a nursery for the growing of the species of trees permitted on public property, and to sell and plant the same, upon the payment of established fees.

09-16-06.03 Tree Maintenance Duties:

- A. Order the pruning or removal of public trees to ensure public health, safety and welfare while considering the health of the tree and other elements of the infrastructure;
- B. Declare trees as public nuisances as defined in 09-16-13. Abatement of public nuisances shall be completed as identified in 09-16-14;

09-16-06.04 Tree Removal Duties

- A. Remove trees located on public rights-of-way which have been declared to be a public nuisance as defined in 09-16-13;
- B. Any trees on public rights-of-way scheduled for removal shall be affixed with a public notice stating the reason for removal. Such notice shall be posted not less than 30 days prior to scheduled removal date unless determined by the City Forester to be an emergency or immediate hazard to public safety.

09-16-06.05 Tree Protection Duties:

- A. To avoid creating public nuisances or damaging public trees, the City Forester is authorized to require their protection (including the critical root zone) from construction or other harmful practices.

(5958, Amended, 12/21/1999)

Section 9-16-07 INTERFERENCE WITH THE CITY FORESTER UNLAWFUL

It shall be unlawful and shall be a misdemeanor to interfere with the City Forester, any Boise City Police Officer, Boise City Code Enforcement Officer or any Ada County Highway District

personnel in the performance of their duties connected with the enforcement of this Chapter.
(5958, Amended, 12/21/1999)

Section 9-16-08 RESPONSIBILITIES OF ADJACENT PROPERTY OWNERS

Any person in possession of private property shall maintain trees upon adjacent public rights of way and any trees upon private property which may affect public property, in a safe, healthy condition in compliance with the provisions of this Chapter. Adjacent property owners have the following responsibilities:

09-16-08.01 Responsibilities for public trees

A. Obtain Permits

1. Meet all requirements and obtain all permits necessary for work done (including, but not limited to, pruning and removal) on any public trees as required in 09-16-09;
2. Meet all requirements and obtain all permits necessary prior to commencing repair of damage done to public streets or sidewalks adjacent to any public trees as required in 09-16-09;
3. Meet all requirements and obtain all permits necessary for any tree planting on public property as required in 09-16-09;

B. Routine Tree Maintenance

1. Pruning of trees located on public rights-of-way adjacent to the owner's private real property.
 - a. Prune and maintain such trees according to ANSI A300, except sections 5.5 and 5.6, which are deleted;
 - b. Topping, heading, shearing or rounding over are not acceptable forms of tree pruning and are not allowed on public trees unless first approved by the City Forester;
 - c. Except as otherwise determined by the City Forester, branches that overhang sidewalks or streets shall be pruned to provide sufficient vertical clearance over the sidewalk and street so as not to interfere with public travel;
 - d. Trees shall be pruned to remove dead limbs or other limbs that are considered a public nuisance as defined in 09-16-13;
2. Control pests on trees located on public rights-of-way adjacent to the owner's private real property;
3. Provide water sufficient to keep trees located on public rights-of-way adjacent to the owner's private real property in a healthy, growing condition.

C. Protection/Preservation

1. Obtain a permit from the City Forester before performing any activity which may harm any part of a public tree (inclusive of the critical root zone);
2. Notify the City Forester when any part of a public tree is damaged or destroyed.

09-16-08.02 Responsibilities for private trees

A. Routine Tree Maintenance

1. Removal or pruning of trees located on the owner's private real property that are considered a public nuisance as defined in 09-16-13;
2. Pruning of trees located on the owner's private real property that are considered a public nuisance as defined in 09-16-13. Branches that overhang sidewalks or streets shall be pruned to provide sufficient vertical clearance over the sidewalk and street so as not to interfere with public travel;
3. Control of pests on trees located on the owner's private real property which may, upon determination by the City Forester, pose a threat to public trees;
4. Removal of all debris (wood, branches & leaves) from public property by sunset of the day on which any tree work is done.

09-16-08.03 Responsibilities for Alley Trees

1. Prune, remove or otherwise abate public nuisances as defined in 09-16-13.
(5958, Amended, 12/21/1999)

Section 9-16-09 PERMITS

- A. No person may perform any of the following acts without first obtaining from the City Forester a permit for which no fee shall be charged, and nothing in this section shall be construed to exempt any person from the requirements of obtaining any additional permits as required by law:
1. Plant trees on public rights-of-way or in any public places,

2. Prune, cut, remove or otherwise disturb any public tree. This provision shall not be construed to prohibit owners of property adjacent to public rights-of-way from watering or fertilizing such trees;
3. Attach any object to public tree(s) except as may be authorized by the City Forester pursuant to a duly promulgated rule or regulation;
4. Dig, trench, excavate or pile soil or any other materials within the critical root zone of any public tree(s);
5. Prune or remove any elm tree on or within public or private property.

B. Permit Application Procedures

Except as otherwise provided pursuant to a duly promulgated rule or regulation, any person who seeks to perform any of the acts in A. above shall:

1. Contact the City Forester via mail, phone, fax or email prior to commencement of the proposed work requesting that the City Forester inspect the proposed work and issue the required permit;
2. Upon inspection, the City Forester may issue a permit, if required, to perform any of the acts specified in subsection A of this section;
3. The City Forester may impose such terms and conditions on the issuance of a permit as may be appropriate and necessary under the specific circumstances of the proposed work.

C. Requirements: Tree Planting Permits.

1. Each application for a planting permit shall designate the species and variety of public tree proposed. The City Forester shall designate the location of the planting;
2. Approval of tree species, spacing, placement and minimum tree well sizes shall be obtained from the City Forester prior to issuance of a permit;
3. Whenever any tree is planted or set out in conflict with the provisions of this Chapter, it shall be lawful for the City Forester to remove or cause removal of the same. The cost of removal of such tree may be charged to person responsible for the planting thereof.

D. Requirements: Tree Pruning/Removal Permits.

1. Prior to pruning or removal of any public tree or any elm tree on private property, application for permit must be made by the property owner or private tree firm currently licensed by the City;
2. Whenever a tree on public rights-of-way is removed, the applicant shall replace the tree removed as a condition of issuance of a permit for removal, unless such requirement is waived by the City Forester for good cause shown. Conditions may include a requirement for compensatory payments as set forth in 9-16-11.

(6751, Amended, 09/15/2009; 5958, Amended, 12/21/1999)

Section 9-16-10 DAMAGING, DESTROYING OR MUTILATING PUBLIC TREES

It shall be unlawful for any person to:

- A. Damage, mutilate or destroy any public tree;
- B. Attach any device or structure (i.e. tree houses, lights) to or on public trees except as may be authorized by the City Forester by duly promulgated rule or regulation;
- C. Store, spill or dump substances, whether liquid or solid, which may be harmful to trees, on any part of a public tree or within the critical root zone of a public tree;
- D. Damage public trees through construction activities in violation of the conditions of a permit issued pursuant to this chapter. Such activities include, but are not limited to:
 - 1. Making excavations or cuts in the soil near roots of public trees unless otherwise approved by the City Forester;
 - 2. Damage roots of a public tree by compacting or placing fill within the critical root zone of a tree;
 - 3. Engage in any pruning activity on public trees not in accordance with ANSI A300, including, but not limited to: topping, heading, rounding or shearing unless otherwise approved by the City Forester.

(6751, Amended, 09/15/2009; 5958, Amended, 12/21/1999)

Section 9-16-11 COMPENSATORY PAYMENTS

In the event any person removes, destroys or damages any public tree except as otherwise required by law, that person shall be required to replace such tree with a tree(s) of equivalent dollar value on public property, unless otherwise determined by the City Forester. The value of a tree shall be determined by the City Forester in accordance with accepted plant appraisal methods as set forth in the 8th edition of The Guide for Plant Appraisal, published by the International Society of Arboriculture or the same as amended from time to time. If no suitable location exists in the vicinity of the tree removed or if the replacement tree(s) is of lesser value, the person causing the tree to be removed shall make a compensatory payment to the City of Boise equal to the difference in value between the tree removed and any replacement tree(s). Any public tree that is determined by the City Forester to be damaged, but not sufficiently to justify its removal, shall be considered to be devalued. The amount of devaluation shall be paid to the City by the person causing the damage. Compensatory payments shall be paid into a fund established for that purpose and restricted to use for community forestry programs. Nothing in this Ordinance shall prohibit Boise City from negotiating agreements with other governmental entities regarding penalties and compensatory payment for removal, damage or destruction of public trees.

(5958, Amended, 12/21/1999)

Section 9-16-12 PENALTIES FOR VIOLATION

- A. Any person who violates any provision of this Chapter or who fails to comply with a lawful order of the City Forester shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Chapter may be punished by a fine not to exceed \$300 or be

imprisoned in the Ada County Jail for a period not to exceed 6 months or by both such fine and imprisonment.

- B. In addition to any criminal penalties that may be imposed, the City may pursue civil penalties and restitution for actual damages as set forth in 09-16-11.

(5958, Amended, 12/21/1999)

Section 9-16-13 PUBLIC NUISANCES

The following are hereby declared public nuisances under this Chapter:

- A. any tree or part thereof (public or private) which, by reason of location or condition, constitutes a hazard to public safety as determined by the City Forester;
- B. any tree or part thereof (on public or private property) which obstructs the free passage of pedestrian or vehicular traffic or which obstructs public street lighting;
- C. any tree or alternate host plant or part thereof (on public or private property) which harbors pests which reasonably may be expected to injure or harm public trees. This includes any standing elm tree infected to any degree with Dutch Elm Disease or which harbors elm bark beetles, and any dead elm tree or part thereof, including logs, stumps, or other elm material from which the bark has not been removed;

(5958, Amended, 12/21/1999)

Section 9-16-14 ABATEMENT OF PUBLIC NUISANCES

The following are the prescribed means of abating public nuisances under this Chapter:

- A. Any tree or alternate host plant or part thereof (public or private) declared to be a public nuisance as set forth in 09-16-13 shall be pruned, removed or otherwise treated in accordance with the requirements of this Chapter. Except for removal of trees from public rights-of-way, all costs for nuisance abatement are the responsibility of the adjacent property owner;
- B. The City Forester may cause a written notice to be personally served or sent by mail to the owner of the particular property;
- C. In the event the nuisance is not abated by the date specified in the notice, the City Forester is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement may be charged to the subject property owner. Monies which have not been recovered through the City bill-collection procedures may result in a lien against the property or assessed on taxes as provide for in Idaho Code Title 50. In addition, the owner of the property upon which the nuisance is located may be subject to prosecution under this Chapter, or any other Chapter of the City Code or the Idaho Code for maintaining a public nuisance. Nothing in this provision shall be construed to exempt any person from the requirement of obtaining permits under 09-16-09.
- D. The City Forester is empowered to cause the immediate abatement of any nuisance if it is determined by the City Forester to be an emergency or immediate hazard to public safety;
- E. If the City Forester determines that disposal of the wood, branches and soil from removal or pruning of a nuisance tree is required to complete abatement, such disposal shall be done as

required by the City Forester. All costs associated with the disposal of material from private trees shall be the responsibility of the property owner.
(5958, Amended, 12/21/1999)

Section 9-16-15 LICENSING OF PRIVATE TREE SERVICES

It shall be unlawful for any person to engage in the trade or commercial business of pruning or removing trees located on public property, without first procuring a license from the City Forester.

- A. Each applicant for a license or renewal thereof shall make application to the City Forester on a form to be furnished by the City. The form shall be signed by the applicant and shall show such information as may be required by the City Forester. Information shall include, but is not limited to:
1. In what name the business is to be conducted as well as the name, business address, home address and telephone number of the company president or owner(s).
 2. proof of current arborist certification with the International Society of Arboriculture by at least one individual on staff of the business in a supervisory position and approved by the City Forester;
 3. demonstration that arboricultural work is in accordance with ANSI A300 may be required prior to approval of license;
 4. a certificate of liability and property damage insurance executed by an insurer authorized to transact business within the State, such policy of insurance to provide not less than \$500,000 or the amount currently required by Idaho Code Title 6.
- B. The City Forester shall, after examining the applicant's qualifications, either approve or disapprove the application. If the application is approved, the applicant shall file the application with the City Clerk together with the annual license fee of fifty dollars (\$50.00). This license shall be issued by the Boise City Clerk for the calendar year, or balance of the calendar year only.
- C. The City Forester is authorized to suspend or revoke the tree care license of any person that performs work which does not comply with the provisions of this chapter. Failure to maintain arborist certification or required insurance shall also result in suspension or revocation.

(Ord. 5975, Amended, 03/23/2000; 5958, Amended, 12/21/1999)

Section 9-16-16 APPEALS

- A. Any person affected by an order, grant, denial, or revocation of a license or permit by the City Forester may appeal such order, grant, denial or revocation to the Board of Parks & Recreation Commissioners.
- B. Such appeal shall be filed in writing with a twenty-five dollar (\$25.00) fee and submitted to the Director of the Boise Parks & Recreation Department within 10 days of the date of notification of the City Forester's ruling.
- C. The appeal shall be heard by the Board of Parks & Recreation Commissioners. Action by the City

Forester and the appellant shall be delayed until the decision of the Board of Parks & Recreation Commissioners is rendered.

- D. The Board of Parks & Recreation Commissioners may in conformity with the provisions of this chapter reverse or affirm or modify wholly or partly, the order, grant, denial or revocation of any license or permit.
- E. Any person affected by the decision of the Board of Parks & Recreation Commissioners may appeal the decision to the City Council.
- F. Such appeal shall be filed in writing with a fifty dollar (\$50.00) fee and submitted to the City Clerk within 10 days of the date of notification of the decision of the Board of Parks & Recreation Commissioners.
- G. The appeal shall be heard by the City Council. Action by the City Forester and the appellant shall be delayed until the decision of the City Council is rendered.
- H. The City Council may in conformity with the provisions of this Chapter reverse or affirm or modify wholly or partly, the order, grant, denial or revocation of any permit and the decision of the Park Board of Commissioners.
- I. The decision of the City Council shall be final.
(Ord. 5975, Amended, 03/23/2000; 5958, Amended, 12/21/1999)

Section 9-16-17 SEVERABILITY

The provisions of this Chapter shall be deemed severable and a finding by a court of law that a provision of this Chapter is unlawful shall have no effect on the remaining provisions.
(5958, Amended, 12/21/1999)