

AN ORDINANCE TO AMEND CHAPTER 78 "VEGETATION" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Parks and Recreation Director of the City of New Bern, with input and approval from the Appearance Commission, recommends that certain amendments be made to Chapter 78 "Vegetation" of the Code of Ordinances of the City of New Bern; and

WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect said revisions to Chapter 78 "Vegetation" of the Code of Ordinances of the City of New Bern.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

SECTION 1. That Chapter 78 "Vegetation" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting Chapter 78 in its entirety and inserting in its stead the following:

"CHAPTER 78 - VEGETATION

ARTICLE I. IN GENERAL

Sec. 78-1. Purpose and intent.

The purpose of this chapter is to regulate and control the planting of trees and vegetation, to encourage the protection of existing trees and vegetation on the streets and public grounds within the city, to establish the standard arboricultural specifications and practices for existing and future trees and vegetation in the city and on city-owned property outside the corporate limits, and to express the city's intent to use trees to create a more natural and amenable human environment.

Sec. 78-2. 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:

City-owned property means property owned or leased by the city; or for which the city has a vegetation easement or planting contract; or upon which the city has an easement for street, sidewalk, greenway, park, alley, or other public purpose, and specifically excludes city-owned utility easements, ditches, and drainage areas.

Emergency tree removal means an event to alleviate an imminent hazard to the health, safety, and welfare of the city and its citizens.

Public trees means trees, shrubs, bushes, and all other woody vegetation located on city-owned property.

Right-of-way means a strip of land upon which the city has the right to construct a street, sidewalk, or bicycle path.

Topping means severe cutting or pruning of limbs or trunk of a tree down to stubs larger than three (3) inches in diameter within the tree crown to the extent of removing the normal canopy and disfiguring the tree.

Sec. 78-3. Staff responsibilities.

(a) It shall be the policy of the city through designated staff to maintain and protect public trees.

(b) It shall be the responsibility of the director of the parks and recreation department, or his designee, to study, investigate, counsel, develop and update annually a written plan for the care, preservation, pruning, planting, replacing, removal or disposition of public trees.

(c) Such plan will be presented annually to the board of aldermen, and upon its acceptance and approval shall constitute the official comprehensive city tree plan for the city.

(d) The director of the parks and recreation department, or his designee, when requested by the city manager, shall consider, investigate, make findings, report and recommend upon any special matter coming within the scope of this work.

(e) The director of the parks and recreation department, or his designee shall be charged with the enforcement of this chapter.

ARTICLE II. PUBLIC TREES

Sec. 78-4. Public tree planting standards.

(a) Public trees shall be planted in accordance with the most recent version of the "City of New Bern Appearance Commission Tree Guide and Recommendations," adopted by the board of alderman, a copy of which is available in the office of the city's parks and recreation department. Any citizen desiring to plant a public tree must apply for and obtain a written permit from the parks and recreation director, or his designee.

(b) No public trees shall be planted nearer than thirty-five (35) feet from any street corner, which distance shall be measured from the nearest curb line of the street intersecting the street right-of-way within which the public tree is being planted. No public tree shall be planted nearer than ten (10) feet to any fireplug.

(c) No public trees, other than those species listed as small trees identified in the City of New Bern Appearance Commission Tree Guide and Recommendations may be planted under

or within ten (10) lateral feet of any overhead utility line, or over or within five (5) lateral feet of any underground water line, sewer line, transmission line, or other underground utility.

Sec. 78-5. Public tree care.

(a) The city shall have the unilateral right to plant, prune, and maintain public trees on city-owned property as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(b) The city or any public or private utility company with which the city has a maintenance agreement shall utilize the Shigo method of pruning which is currently the most widely accepted method of pruning. The city may recommend other pruning techniques based upon specific needs and/or the development of improved methods.

Sec. 78-6. Public nuisance on right-of-way.

(a) Trees, plants, shrubs or vegetation which so overhang any sidewalk or public street, or which are growing thereon, or adjacent thereto, in such a manner as to obstruct or impair the free and full use of the right-of-way by the public, either directly or by obstructing traffic vision, are hereby declared to be public nuisances.

(b) It shall be the duty of the owner of the property wherein or whereupon any such nuisances exist to abate the nuisance by destroying or removing or trimming the growth. Trees on private property whose roots may damage sidewalks, curbs, or public streets, by causing them to buckle or break or whose roots may enter into public sewers or water mains shall also be public nuisances and may be trimmed or removed as deemed necessary by the parks and recreation director.

(c) If the owner or occupant of the property does not keep this growth from projecting into or on public ground, then the chief building inspector shall have the authority to order its removal pursuant to the procedures set forth in Chapter 26. The cost of such action may be charged against the property owner pursuant to the procedures set forth in Chapter 26.

(d) Where the roots of a public tree or shrub constitute a nuisance to private property, the parks and recreation director may cause the offending roots to be pruned or cut at the property line, provided the action will not create an unsafe condition.

(e) Where the growth and limbs of public trees constitute a hazard to private property, the city, upon notice, shall correct the condition.

Sec. 78-7. Topping of public trees; abuse or mutilation of trees.

(a) Topping of public trees shall be avoided whenever reasonably possible. Trees severely damaged by storms or other causes, or trees which interfere with or are an imminent threat to public utilities may be topped if other pruning practices are impractical, but such

topping must be conducted under the supervision of a city employee who has attended an instruction workshop provided by personnel of the state forestry service.

(b) Except as otherwise permitted in this chapter, it shall be a violation of this chapter to willfully injure, prune, damage, destroy, mutilate or remove any public tree, or to attach or place any rope or wire (other than one used to support a young or broken tree), sign, poster, handbill or any other thing to or on any tree, or cause or permit any wire charged with electricity to come in contact with any such tree.

Sec. 78-8. Removal of public trees.

(a) The city shall have the unilateral right to remove public trees that are not located in rights-of-way. Unless otherwise provided in this chapter, public trees located in rights-of-way shall not be removed without a tree removal permit issued by the parks and recreation director or his duly authorized representative, and may only be removed by the city when they are dead, dying, seriously diseased or unsightly. In determining whether a tree removal permit shall be issued, the following factors shall be considered when relevant:

- (i) Life expectancy of the tree;
- (ii) Desirability of the tree species;
- (iii) Amount of space allowed for tree and root growth;
- (iv) Overall quality and structural integrity of the tree;
- (v) Persistent and uncontrollable insect, disease or fruiting problems;
- (vi) Frequency and extensiveness of the tree's maintenance requirements;
- (vii) Feasibility and timeliness in which a replacement tree will be planted;
- (viii) Proximity and quality of trees near to the one considered for removal;
- (ix) Quality and extent of past pruning and other tree maintenance practices the tree has undergone;
- (x) Extent and frequency of damage the tree is causing to surrounding infrastructure such as sidewalks, streets, and utilities; and
- (xi) Location of the tree with regard to streetlights, traffic control devices, intersection sight lines and the tree's requirements related to growing space.

(b) The city retains the right to remove any public tree on any right-of-way without a tree removal permit when it is necessary to permit the proper maintenance or improvement of rights-of-way and utilities.

(c) Removal of public trees and shrubs is permitted in connection with the city's extension of utility service without the necessity of a tree removal permit.

(d) The parks and recreation director, or his designee may order the removal of any public tree that constitutes a public nuisance, or the removal of any emergency tree in his or her sole discretion without a tree removal permit.

(e) Once a public tree is removed, it shall be replaced unless conditions prevailing in the area are adverse to the health of such new plantings.

(f) All stumps remaining from the removal of public trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

Sec. 78-9. Permit for tree removal; appeals.

(a) Requests for a permit to remove a tree located in a right-of-way by the city or any citizen shall be made in writing to the parks and recreation department on the tree removal request form supplied by the parks and recreation department.

(b) The parks and recreation director shall designate a qualified city employee to evaluate the written request using a standardized evaluation form. Such qualified city employee shall complete the written evaluation and provide same, along with supporting photographs, to the parks and recreation director within ten (10) days of the city's receipt of the original tree removal request.

(c) The parks and recreation director shall immediately forward a copy of the written evaluation, along with supporting photographs to the public works director, public works street division supervisor, land and community development coordinator, and chairman of the appearance commission, who shall provide the parks and recreation director with any comments within ten (10) days of delivery of the written evaluation.

(d) The parks and recreation director shall review the written evaluation, photographs, and any submitted comments and make a final decision on the tree removal request within three (3) days of delivery of any submitted comments.

(e) Should the parks and recreation director issue the tree removal permit, a notice shall be posted on the subject tree for ten (10) business days. The notice shall advise of the tree's removal, provide a brief description of the appeal process, and state that any appeal must be received by the city by 5:00 p.m. on the last day of the ten (10) day posting period.

(f) Any person directly affected by the issuance of a tree removal permit who desires to appeal the issuance of the tree removal permit shall file an appeal using a form provided by the parks and recreation department to the parks and recreation director. The written appeal must be received by the city by 5:00 p.m. on the last day of the ten (10) day posting period set forth in subsection (e). Upon receipt of an appeal, the parks and recreation director shall obtain a written evaluation from a qualified expert who is not a city employee. Such written evaluation shall be provided to the appearance commission and the appealing party within twenty (20) days of receipt of any appeal. The appearance commission shall notify the appealing party of the time and place at which he or she will be heard, at which time he or she may appear with or without legal counsel and present any evidence relevant to such appeal. The appearance commission may affirm, reverse, or modify the decision of the parks and recreation director.

Sec. 78-10. Interference with appearance committee.

It shall be unlawful for any person to prevent, delay or interfere with any city employee, any member of the appearance committee, or any of their agents while engaging in or about the planting, cultivation, mulching, pruning, spraying, or evaluation of any public tree."

SECTION 2. This ordinance shall be effective from and after the date of its adoption.

ADOPTED THIS 27th DAY OF OCTOBER, 2015.


MAYOR


DEPUTY CITY CLERK