



City of Hamilton

223 South Second Street
Hamilton, MT 59840

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January 17, 2017

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Ravalli County Commissioners
215 S. 4th Street, Suite A
Hamilton, MT 59840

Ravalli County Commissioners

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Dear Commissioners:

It was brought to my attention that five trees in the public right of way in front of the Ravalli County Courthouse were removed without authorization from the City of Hamilton. Although Ravalli County is responsible for the maintenance of the trees, removal needs to be approved by the City of Hamilton.

Ravalli County needs to secure and plant five replacement trees. The Hamilton Farmers Market Cooperative has offered to pay for the purchase and replacement of at least two of the trees that were removed. The county will be responsible for watering and maintaining the trees.

A copy of Chapter 12.16 of the Hamilton Municipal Code is enclosed for reference. Please feel free to contact me if you have any questions or would like to discuss this matter. I can be reached at 406-363-2101 ext. 213 or mayor@cityofhamilton.net.

Sincerely,

Jerry E. Steele
Mayor

Chapter 12.16

TREES AND PARKWAYS*

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12.16.010 Purpose.

A. The purpose of this chapter is to provide regulations to help ensure a healthy and beneficial environment of parkways, trees and other vegetation in the City of Hamilton. These regulations help protect the health, safety and welfare of both the public citizenry and the trees and vegetation in the City of Hamilton, guarding against dangerous conditions which may result in injury of persons using the public areas of the city.

B. The city council recognizes trees are desirable for the following reasons and the protection of trees within the City of Hamilton is not only beneficial, but essential to the present and future health, safety and general welfare of all the citizens of the City of Hamilton for the following:

1. Trees are proven producers of oxygen, a necessary element for survival of mankind.

2. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide content of air and play a vital role in purifying the air.

3. Trees play an important role in the hydrologic cycle, transpiring considerable amounts of water daily, thereby precipitating dust and other particulate airborne pollutants from the air.

4. Trees play an integral role in neutralizing wastewater which passes from the surface to lower ground water aquifers.

5. Trees, through their root systems, stabilize the soil and play an important and effective part in city-wide soil conservation, erosion control and flood control.

*Editor's note—Ord. No. 338, passed January 19, 2010, repealed the former Ch. 12.16, §§ 12.16.010—12.16.200, and enacted a new Ch. 12.16 as set out herein. The former Ch. 12.16 pertained to parkways and trees and derived from Ord. 195 (part), 2002; Ord. No. 298, 1-8-08; Ord. No. 320, 11-18-08.

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6. Trees provide wildlife habitat and provide other important ecological benefits.

7. Trees are an essential and invaluable physical and psychological addition to the city, making life more comfortable by providing shade and cooling both air and land, reducing noise levels and glare, and breaking the visual monotony of development.

8. Some tree species are more beneficial than others as necessary contributors to the city's environment and it is not necessary to protect each and every tree in order to attain the public benefit of a tree protection and replacement ordinance.

(Ord. No. 338, 1-19-10)

12.16.020 Definitions.

For the purpose of this chapter, the following words shall have the meaning ascribed to them in this section:

"Abutting owner" means an owner whose real property lies adjoining or contiguous to a public right-of-way.

"Arboricultural treatment" means all services, treatments or operations involving trimming, pruning, spraying, injecting, fertilizing, cabling, surgery work, removal of/and cutting above or below ground level of a tree.

"Board" means the City of Hamilton Parks Board.

"City" means the City of Hamilton, acting by and through its authorized representatives.

"Committee" means City of Hamilton Public Works Committee and/or City of Hamilton Parks, Recreations and Trails Committee.

"Council" means the City Council of the City of Hamilton.

"Clear View Triangle" means "clear view area" as defined in Section 17.104.050 and Chapter 17.140 (Zoning).

"Damage" means any action which may cause death, destruction or injury to any tree or vegetation, or which places any tree or vegetation in a hazardous condition or in

an irreversible state of decline, including but not limited to, topping, girdling or poisoning.

"Department" means the City of Hamilton Public Works Department, Parks Department, or such branch of city government designated by the city council.

"Director" means the Director of the City of Hamilton Public Works and (or) Parks or his/her designee, or such employee of city government designated by the city council.

"Emergency" means an immediate threat to public health or safety as declared by the mayor.

"License" means any professional tree trimming company must obtain a city business license before beginning any type of tree work on any trees located in public right-of-way or on city owned property.

"Owner" means the owner of real property as shown in the records of the Ravalli County Clerk and Recorder.

"Permit" means that any person or professional tree company that will prune, trim or complete major work involving more than twenty-five (25) percent of the tree shall obtain a permit from the public works department before any tree work is completed within public right-of-way or on city-owned property.

"Person" means any public or private individual, firm, business, partnership, association, utility, corporation, legal entity and/or agent, employee or representative thereof.

"Property" means all real property within the boundaries of the City of Hamilton.

"Public area" means all public rights-of-way, public parks, cemetery, and other lands owned or leased by the City of Hamilton, unless the context of a specific provision expressly applies to other public lands as well.

"Public right-of-way" means the entire width between the dedicated boundaries of all public streets, roads, boulevards, alleys and includes all sidewalks and public park-

ing strips located within any such boundaries. The City of Hamilton is the owner of all property in the public right-of-way.

"Tree" means any perennial plant or grove of plants having a self-supporting woody main stem or trunk usually characterized by the ability to grow to considerable height and size and the development of woody branches at some distance above the ground.

"Tree topping" is defined as the severe cutting back of limbs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

"Utility" means a public or private utility and includes any pipeline company, gas company, electrical company, telephone or other communications company, water, sewer or heat company the services of which are performed for, or the commodity delivered to, the general public or any portion thereof.

"Vegetation" means any type of weeds, grass, shrubs, plants and any other vegetation with a woody stem.

(Ord. No. 338, 1-19-10)

12.16.030 Severability.

If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance codified in this chapter. The council hereby declares that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one of more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason the ordinance codified in this chapter should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

(Ord. No. 338, 1-19-10)

12.16.040 Board and committee powers and duties.

The parks board shall make recommendations to the parks, recreations and trails committee concerning city trees and vegetation.

The public works committee and the parks, recreation and trails committee shall make recommendations to the Hamilton City Council concerning policies, programs and decisions relating to city trees and vegetation.

(Ord. No. 338, 1-19-10)

12.16.050 Director of public works and director of parks powers and duties.

The director(s) shall have the following powers and duties.

A. The director of public works shall be responsible for the administering and enforcing this chapter pertaining to all sections as outlined in this chapter for public rights-of-way.

B. The director of parks shall be responsible for the administering and enforcing this chapter pertaining to all sections as outlined in this chapter within city parks.

C. The director(s) shall make recommendations to the appropriate committee of the city council pertaining to the management of city trees and vegetation.

D. The director(s) shall determine mitigation requirements for approved and unapproved alterations, damage or removals of trees and vegetation subject to the jurisdictional limitations in this and other city ordinances.

E. The director(s) shall obtain expert opinions and arboreal services as necessary when required by the city council.

F. The director(s) shall notify owners of property abutting a public right-of-way of the intention of the city to prune, alter or remove a tree or vegetation within the right-of-way. Notice shall be provided not

less than one week prior to the commencement of the work affecting a tree or vegetation in the public right-of-way.

G. The directors of public works and parks shall maintain a list of professional tree service companies qualified to service trees located in public areas or public rights-of-way.

(Ord. No. 338, 1-19-10)

12.16.060 Emergencies.

In the event of an emergency, a tree or vegetation may be pruned, altered or removed by order of the mayor or his designee. The mayor shall file a comprehensive report thereafter and will forward a copy of the report to the city council.

(Ord. No. 338, 1-19-10)

12.16.070 Responsibility for maintenance of trees and vegetation in the public right-of-way.

The owner of property abutting a public right-of-way shall be responsible for normal lawn care including mowing of grassy areas and removing debris or substances that could harm trees and/or vegetation, and the regular watering of trees and vegetation growing in the street boulevard. The city is responsible for all safety related tree pruning and removal in the street boulevard or alley within a public right-of-way abutting the owner's property.

The owner of property abutting a public right-of-way may choose to prune trees in the street boulevard at their own expense as long as such pruning does not affect more than twenty-five (25) percent of the tree. Pruning that requires more than twenty-five (25) percent must be completed by a licensed trees arborist or professional tree trimming company that holds a city business license and has obtained a permit from public works department. Tree topping is not allowed as described under

Sections 12.16.020 and 12.16.170, and trees are not planted, maintained or removed contrary to 12.16.150.

(Ord. No. 338, 1-19-10)

12.16.080 Property owner hardship.

If an abutting property owner is unable to meet the requirements of Section 12.16.070, before any tree work begins the owner may request assistance from the city. Application for assistance shall be made to the city and include proof of financial or other hardship. The application shall be considered by the parks, recreation and trails committee and approved by the city council. Assistance, if granted, shall not be more than the cost of the responsibilities in Section 12.16.070.

(Ord. No. 338, 1-19-10)

12.16.090 Reserved.

12.16.095 Projection, obstruction, and clear view triangle.

A. The outermost portion of an overhanging device shall be at least two feet behind the edge of an established public right-of-way, and the lowest portion of an overhanging device should be at least 7.5 feet in height above city sidewalks, 13.5 feet above city streets.

B. Any vegetation which overhangs a public right-of-way shall be maintained at a minimum height of 7.5 feet in height above city sidewalks, 13.5 feet above city streets as measured at the center line of the adjacent public right-of-way.

C. Vegetation within the clear view triangle area of rights-of-way at street intersections, alley intersections and driveways shall be maintained with a clear view triangle with no tree limb(s) hanging below 7.5 feet for city sidewalks or area within the triangle, no tree limb(s) hanging outside the triangle below 13.5 feet over city streets; no bushes, plants, or other vegeta-

tion being higher than 2.5 feet within the triangle as measured at the center line of the adjacent public right-of-way.

D. Obstruction prohibited. No person shall place or maintain any tree(s), plants, bushes or any other type of landscaping, or any other objects that obstruct or obscure clear view triangle distance visibility. Trees may be planted if they meet the requirements in Section 12.16.160 and Chapter 17.140.

(Ord. No. 338, 1-19-10)

12.16.100 Use of hazardous chemicals or materials.

Neither the city nor abutting property owners may use any hazardous chemicals or materials in the public right-of-way or on any public land unless the use of such chemicals or materials is authorized by city council after recommendation by the parks, recreation and trails committee.

(Ord. No. 338, 1-19-10)

12.16.110 Appeals.

Any decision by the director or other city official regarding trees or vegetation may be appealed to the city council. Appeals are first heard by the parks, recreation and trails committee or the public works committee depending on the circumstance of the appeal, then forwarded to the city council with recommendation for final decision.

(Ord. No. 338, 1-19-10)

12.16.115 Permit requirement.

To protect trees, assure proper growth and health and avoid death of the tree(s), no person shall engage in any arboricultural treatment such as pruning, trimming or any major work which removes more than twenty-five (25) percent of the live tissue from any trees within city owned property. This work must be completed by a qualified professional tree service company holding a city license and a city permit. Only those professional tree service companies identi-

fied pursuant to Section 12.16.050 E. shall be allowed to provide arboricultural services in a public right-of-way or public area or on city-owned property. The permit is to be obtained from the director of public works before any tree work can begin. A permit is not required if this work has been ordered by the City of Hamilton Public Works Department. A permit is also required prior to planting and tree, shrub or other vegetation within a public right-of-way. A fee of ten dollars (\$10.00) will be charged for each permit issued.

(Ord. No. 338, 1-19-10)

12.16.120 Landscaping required for new development.

Trees and vegetation included in the landscaping for all residential developments and new commercial developments shall be consistent with city zoning ordinances. The public works department shall review all landscaping plans.

(Ord. No. 338, 1-19-10)

12.16.130 Providing barriers during construction.

Adequate barriers will be placed around trees growing in any public right-of-way to protect the trunk and limbs from damage during construction or excavation work. The director will inspect all such construction and excavations to ensure minimum damage to trees and vegetation. When trees are damaged severely, as determined by the director, due to excavation or construction, the abutting property owner shall be responsible for planting a new tree pursuant to specifications of this chapter, except where contractor negligence damaged the tree in which case the contractor shall be responsible for repairing or replacement of the tree.

(Ord. No. 338, 1-19-10)

12.16.140 Attaching ropes, wires or handbills to trees in public area.

It shall be a violation of this chapter to attach or place any rope, cable or wire

(other than one used to support a young or broken tree or to support a weak crotch within the tree), nail or otherwise place any sign, poster, handbill or other items that may harm any tree growing in a public area, except in emergencies.

(Ord. No. 338, 1-19-10)

12.16.150 Tree planting, maintenance and removal.

All trees and vegetation in any public area shall be planted, removed, maintained and protected in a safe and healthy condition, and in accordance with regulations and guidelines adopted by the city council regarding tree planting, landscaping, ecological health, and city beautification.

Only small trees which have a mature height of twenty (20) feet or less may be planted under or within ten lateral feet of any utility line or within five feet of underground gas, sewer, or power line on public land, right-of-way or private property. No tree or vegetation in a public right-of-way area shall obstruct public passage. No tree or vegetation shall have an overhang lower than 13.5 feet for streets, or lower than 7.5 feet for sidewalks. Any hedge and/or vegetation shall not exceed 2.5 feet in height in rights-of-way.

Property owner shall maintain all trees and vegetation on their private property, so that no part of the tree or vegetation shall obstruct any part of a public sidewalk, alley or street. Any tree or vegetation on private property with an overhang lower than 13.5 feet for streets, or any tree or vegetation with an overhang lower than 7.5 feet for sidewalks shall be corrected by the owner.

(Ord. No. 338, 1-19-10)

12.16.160 New and replacement trees.

The following species are the recommended trees for replacement and new landscaping in public rights-of-way. These

are the best species for this area, causing the least damage to streets, sidewalks, and underground utilities.

Large trees: Silver Maple, Hackberry, Ponderosa Pine, Red Oak, Pin Oak, White Oak, White Ash, Spruce, Grand Fir, Douglas Fir, Green Ash, Western Larch, Engelmann Spruce.

Medium trees: Linden, White Oak, Burr Oak, Honey Locust, Birch, Quaking Aspen.

Small trees: Amur Maple, Chokecherry, Crabapple, Red Osier Dogwood, Mountain Ash, Rocky Mountain Juniper, Native American Plum, Ginkgo, Rocky Mountain Maple, Thin leaved Alder, Black Hawthorn, Serviceberry, Syringe. Other tree species may be recommended by the city if appropriate.

(Ord. No. 338, 1-19-10)

12.16.170 Tree topping.

It is unlawful for any person, tree service business, city department or any other public entity to top any tree located in a public area, except when trees are damaged by storms or other obstructions and other pruning practices are impractical. If topping is the only method available due to damage to limbs or root system, the public works department needs to be notified before work begins. Pruning for such trees should be done as outlined by Tree City USA Bulletin Number 8 entitled, "Don't Top Trees", available from The National Arbor Day Foundation. Before and after photos must be taken and provided to the public works department. If possible, branches should be removed back to their point of origin. If a branch must be shortened, it should be cut back to a lateral that is large enough to assume the terminal role. Rule of thumb—Cut back to a lateral that is at least one-third the diameter of the limb being removed.

(Ord. No. 338, 1-19-10)

12.16.180 Vandalism or damage to trees and vegetation.

It is unlawful for any person or animal under any person's control to abuse, injure,

mutilate, destroy or kill any tree or vegetation in the public area. Unlawful conduct shall include but not be limited to permitting any fire to injure any portion of any tree; permitting any toxic chemical to seep, drain, or be emptied on or around any tree or vegetation; permitting the storage of any stone, brick, sand, concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree or vegetation located within any public area or any general destruction or mutilation of any tree or vegetation by whatever means. The party responsible for any such act shall bear the cost of repairing or replacing the tree or vegetation pursuant to the determination of the director, who will then present the issue to parks, recreation and trail committee, who will then make a recommendation to the city council regarding restitution.

(Ord. No. 338, 1-19-10)

12.16.190 Declaration of hazard.

Any tree or vegetation, whether on public or private property, of whatever nature, which in any way may endanger the public health, safety, security or usefulness of any public street, public utility line or sidewalk, can be declared to be a public hazard by the city council. If the city council determines with reasonable certainty, upon inspection, that any tree or vegetation or any part thereof, located on private property, encroaches into the public area and renders it dangerous or in violation of Section 12.16.150, the owner of the premises shall be notified. Removal and/or mitigation of a public hazard on private property are the responsibility of the private property owner. Citizens, for whom the removal of a tree would cause a hardship, may request assistance from the city council to remove the public hazard.

(Ord. No. 338, 1-19-10)

12.16.200 Penalties.

Any person who removes damages or destroys a tree or vegetation located on a

public right-of-way in violation of the provisions of the ordinance codified in this chapter shall pay a sum of money equal to either the cost of its replacement or the diminishment in its value. The replacement value of trees and vegetation shall be determined in accordance with the latest revision of "A Guide for Plant Appraisal", as published by the International Society of Arboriculture. Any professional tree company found to be in violation of this chapter shall be subject to the same penalties and may have their city license revoked.

Other fines will be set in accordance to severity of the situation under guidelines of Hamilton Municipal Code, Chapter 1.28 - General Penalty.

(Ord. No. 338, 1-19-10)