

CHAPTER XV: HENDERSON TREE ORDINANCE

PART I. PURPOSE.

It is the purpose of this ordinance to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the city limits of Henderson on public property.

1501.01. **AUTHORITY AND POWER:** There is hereby created and established a City Tree Board (Board) for the City of Henderson, which shall consist of five members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the city council. Members of the Board shall serve without compensation except for reimbursable expenses as allowed by the Henderson City Code.

1501.02. **TERMS OF OFFICE:** The term of the five persons to be appointed by the mayor shall be three years, except that the term of two of the members of the first Board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

1501.03. **APPLICABILITY:** This ordinance provides full power and authority over all trees, plants, shrubs and the first foot of soil within in the drip line of each tree located within street right-of-way, parks and public places of the city; and to trees, plants and shrubs located on private property that constitute a hazard or threat as described herein.

1501.04. **DEFINITIONS:**

1. **RIGHT OF WAY:** Public land used or to be used as a street or highway including alleys and boulevards.
2. **EASEMENT:** A granting of land by an owner, for a specific use by persons other than the owner.

1501.05. **WRITTEN APPROVAL:** It shall be unlawful for any person to engage in the business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating public trees, shrubs or vines within the City without receiving written approval from the Board. Consideration for approval will be contingent on provision of evidence of insurance and bonding as described below.

A. **PURPOSES:** For the purposes of this ordinance, the following are excluded from this requirement:

1. City employees, while engaged in their duties as city employees.
2. Persons engaged in trimming or cutting of public trees, shrubs, or vines which are less than 10 feet in height, who have received permission from the City.

1501.06. **INSURANCE:** Before written approval shall be granted, each applicant shall first file evidence of possession of worker compensation and liability insurance in the minimum amounts as required by the Henderson City Code for bodily injury or death and property damage coverage indemnifying the city or any person either injured or damaged resulting from the pursuit of such endeavor as herein described. Other indemnification means may be substituted for the above if the Board feels it meets the indemnification requirements of the Henderson City Code.

1501.07. **LANDSCAPING:** In new subdivisions or when the development of commercial property occurs, the Board will review landscaping plans and may recommend trees and/or specifications to be used for

planting and landscaping in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided.

1501.08. TREE PLANTING, MAINTENANCE, AND REMOVAL:

A. Tree Species- the Board shall develop and maintain a list of desirable trees for planting along streets, in three size classes: small, medium, and large. A list of trees not suitable for planting will also be created and enforced by the Board.

B. Spacing- the spacing of street trees will be in accordance with the tree species size classes listed in this ordinance, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by a landscape architect.

C. Utilities- No street trees other than those species listed herein as small. Trees may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 3 lateral feet of any underground waterline, sewer line, transmission line, or other utility.

D. Distance from Curb and Sidewalk- The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the tree species sized classes listed in Section 2 of this ordinance, and no trees may be planted closer to any curb or sidewalk than the following: small trees, 2 feet; medium trees, 3 feet; and large trees, 4 feet.

E. Topping- It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to shrubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Board.

1501.09. ADJACENT LANDOWNER RESPONSIBILITY: No person shall plant or remove any tree on any street, park or other public place without first making request of the Board. The person making the request shall abide by the standards set forth in this ordinance.

1501.10. TREE PROTECTION: Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease insect infestations, the Board shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice shall require such property owner to eradicate, remove or otherwise control such condition within reasonable time to be specified in such notice.

1501.11. PRIVATE TREES: Subdivision 1. The Board or its official designee has the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part that is suspected to be a public nuisance and to order its removal if necessary.

Subd. 2. DEFINITIONS: Public Nuisance - Any tree with an infectious disease or insect problem. Dead or dying trees, a tree or limb that obstructs street lights, traffic signs, the free passage of pedestrians or vehicles or a tree that poses a threat to safety.

1501.12. ENFORCEMENT: The Board shall have the power to promulgate and enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the city.

1501.13. PENALTIES, CLAIMS AND APPEALS: Subdivision 1. Violations- any person who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to provision of the ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed \$700 for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this ordinance, 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 such tree, shrub, or other plant shall be borne by the party in violation. The value of trees and 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.

Subd. 2. Assessment of Claim-In the event that a nuisance is not abated by the date specified in the notice, the Board is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.