

## ARTICLE III. WEEDS AND OFFENDING VEGETATION

### Sec. 142-71. 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:

*Lot* includes any real property in single or joint ownership whose boundaries encompass less than five acres.

*Offending landscaping* includes any plants, shrubs, turf, and other landscaping on city rights-of-way which violate any of the provisions of this article.

*Offending vegetation* includes any trees, weeds and other vegetation which violate any of the provisions of this article.

*Open area* means any real property in single or joint ownership of a total area of five acres or more.

*Owner or occupant* includes any person who alone, jointly or severally with others:

- (1) Has a legal or equitable interest in, or possession or control of, a dwelling unit, lot, open area, or any real property, with or without accompanying actual possession thereof;
- (2) Acts as the agent of a person having a legal or equitable interest in a lot, open area, or any real property, dwelling or dwelling unit thereof; or
- (3) Is the general representative or fiduciary of an estate through which a legal or equitable interest in a lot, open area, any real property or dwelling unit is administered.

*Ownership* means the interest of an owner or occupant in a lot, open area or any real property and shall be deemed to extend from the centerline of any abutting alley, street, greenbelt or other property line to and including the curb and gutter area of any abutting street of any such lot or tract of land.

*Unsafe trees* includes those trees or their parts within the boundaries of any lot or open area which may be considered troublesome, diseased, defective, or hazardous or which in any way endanger the security or usefulness of any public street, highway, alley, sidewalk, or city-owned utility facility.

*Weed* means any plant which is not intentionally cultivated or is unsightly and economically useless or any undesirable or noxious plant as those terms are defined in C.R.S. tit. 35, art. 5.5(C.R.S. § 35-5.5-101 et seq.).

(Code 1979, § 40-53)

**Cross references:** Definitions generally, § 1-2.

### Sec. 142-72. Notice of violation.

- (a) Whenever the city manager or the manager's designee determines that there is probable cause to believe a violation of any provision of this article has occurred, the manager or designee may, in his or her discretion, issue to the owner or occupant of the subject lot or open area either a summons or complaint or a notice which lists each alleged violation. Such notice, if issued, shall:

- (1) Be in writing;
  - (2) Include a statement of the reason for its issuance;
  - (3) Provide a date certain by which the violation shall be corrected; and
  - (4) Be served upon the owner or occupant; provided that:
    - a. If the owner or occupant is unable to be personally served, service of the notice shall be deemed complete when a copy thereof is sent by accountable mail to the last known address of the last known owner of the subject lot or open area, such address and owner being those which appear on the most recent general property tax assessment for such property levied by the appropriate county; or
    - b. If the owner or occupant is unable to be personally served and the address of such owner or occupant cannot be found after diligent efforts are made to do so, service of the notice shall be deemed complete upon posting such notice in a conspicuous place on or about the subject lot or open area, in which event, a record shall be made as to the reason such posting is necessary.
- (b) Before the city abates any violation of this article, a notice shall be issued to the owner or occupant of the subject lot or open area. Such notice shall comply with each of the requirements set forth in subsection (a) of this section and shall further indicate that:
- (1) If the city abates the violation, the costs and expenses incurred by the city as a result of such abatement will be assessed against the owner or occupant with notice of the amount of such assessment being mailed to the owner or occupant upon the completion of such abatement; and
  - (2) A lien for such costs and expenses shall attach if no payment thereof is received by the city within 30 days after the mailing of the assessment notice, with the attachment of such lien creating such additional costs and expenses as enumerated in the notice.

(Code 1979, § 40-53.1; Ord. No. 2005-93, § 7, 12-5-2005)

### **Sec. 142-73. Duty to remove weeds.**

- (a) It shall be the duty of every owner or occupant of any developed and utilized lot or open area to keep the weeds on such developed and utilized lot or open area cut to a height of not more than eight inches.
- (b) It shall be the duty of every owner or occupant of any undeveloped lot or open area to keep the weeds on that portion of such undeveloped lot or open area property located within 200 feet of any developed area, dedicated street, or existing thoroughfare cut to a height of not more than 12 inches.
- (c) It shall be the duty of every owner or occupant of any lot or open area to keep the weeds on any portion of the city's right-of-way located between the property line of such lot or open area and the curb face, flow line, or edge of the pavement of any public street to a height of not more than those limitations imposed by this section.
- (d) Where weeds exceed the height limitations imposed by this section, the owner or occupant responsible for cutting such weeds shall cut them to a height of six inches or less.
- (e) The requirements of subsection (c) of this section shall not apply where the city manager or the manager's designee has notified the owner or occupant in writing that the city has assumed responsibility for maintaining the city's right-of-way.
- (f) For purposes of this section, the term "developed and utilized" shall refer to any lot or open

area where there is any type of structure, excluding signs, whether partial or complete, or any preliminary grading or excavation. A lot/open area shall not be considered developed and utilized solely because of the preparation, approval, and recordation of a plat; the installation of streets; or the installation of utility lines.

(Code 1979, § 40-54)

#### **Sec. 142-74. Duty to remove unsafe trees.**

(a) It shall be the duty of every owner or occupant of a lot or open area to keep all trees upon such lot or open area trimmed to a clear height of 13 feet six inches above the surface of any public street, alley or highway, and eight feet above any public sidewalk.

(b) It shall be the duty of every owner or occupant of a lot or open area to correct or remove any tree upon such lot or open area, the roots of which interfere with any public sidewalk or city-owned utility facility.

(c) It shall be the duty of every owner or occupant of a lot or open area to correct or remove any unsafe tree upon such lot or open area.

(d) All city-installed trees on the city's right-of-way shall be maintained by the city in accordance with this section.

(Code 1979, § 40-54.1)

#### **Sec. 142-75. Duty to provide and maintain landscaping.**

(a) It shall be the duty of the owner or occupant of a lot or open area to maintain, in a healthy condition, all plants, shrubs, turf, and other landscaping, excluding city-installed trees, on the city right-of-way within or adjacent to such lot or open area. If any such landscaping should become diseased, hazardous, or otherwise defective, it shall be the duty of the owner or occupant to remove and replace such landscaping in accordance with applicable city landscaping standards.

(b) The requirements of subsection (a) of this section shall not apply where the city manager or manager's designee has notified the owner or occupant in writing that the city has assumed responsibility for maintaining the city's right-of-way.

(c) On corner lots, no fence, retaining wall, shrub, tree, hedge or similar obstruction shall be erected, planted or maintained within the triangular area formed by the intersecting street lines and a straight line adjoining the street lines at points which are at a distance of 30 feet from the point of intersection along such street lines, provided that fences more than 75 percent open may be constructed at not more than 42 inches in height above the sidewalk grade. Fences less than 75 percent open, hedges, shrubs and retaining walls may be planted or constructed and maintained at not more than 26 inches in height above the adjoining sidewalk grade. When sidewalks do not exist, such grade shall be established by the city manager or the manager's designee.

(d) It shall be the duty of the owner or occupant of a developed lot or developed open area, which lot or open area is situated within any type of zoned district other than an R-A, open, natural area, agricultural district or residential lot greater than one-half acre, and which front and side yards of a lot or open area is adjacent to or visible from any street, to install or otherwise provide landscaping in accordance with applicable city landscaping standards. For the purposes of this section, the term "landscaping" shall be construed broadly to include turf, plants, shrubs and/or trees, as well as the alternative landscaping style or styles commonly known as xeriscaping; however, the term "landscaping" shall not include weeds, as defined in section 142-

71, and shall not include barren patches of soil or dirt.

(e) It shall be the duty of the owner or occupant of a developed lot or developed open area to maintain, in a healthy condition, all plants, shrubs, turf, and other landscaping, excluding city-installed trees, on all such property, front and side yards, adjacent to or visible from any street. In the event that any such landscaping should become diseased, hazardous, deteriorated, desiccated, withered, or otherwise defective, including but not limited to withering or desiccation resulting from the lack of sufficient water, it shall be the duty of the owner or occupant to remove, revive, restore or replace such landscaping in accordance with applicable city landscaping standards. If an existing landscaped property, which has less than 50 percent long-lived organic materials, is cited for a lack of maintenance of landscaping, then the owner shall improve his or her landscaping to comply with the minimum 50 percent long-lived organic material requirement, per subsection (g).

(f) For the purposes of this section, front yard shall mean the open space on the same site with the building between every point on the front of such building and the front lot line of the site, and extending the full width of the site. Side yard shall mean the open space on the same site with the building between the side of the building and the side lot line and extending from the front yard to the rear yard.

(g) Subject to the provisions contained in section 138-191 of this Code, any and all landscaping required to be installed or otherwise provided by this section shall consist of not less than 50 percent of long-lived organic materials such as sod, turf, shrubs, trees, and other similar material.

(Code 1979, § 40-54.2; Ord. No. 97-15, § 1, 4-28-97)

### **Sec. 142-76. Natural areas.**

The following areas within the city are deemed to be natural areas. These areas shall receive limited maintenance. The maximum height limitation contained within this article shall not be applicable to these areas:

- (1) Sand Creek Park.
- (2) Springhill Park.
- (3) Cherry Creek Spillway/Tollgate Creek to city limits.
- (4) Sand Creek and attendant overflow drainageways.
- (5) Tollgate Creek, East and West Tollgate Creeks and attendant overflow drainageways.
- (6) Meadowwood Creek.
- (7) Highline Canal--Havana Street to Tower Road.
- (8) Quincy Reservoir and attendant overflow drainageways.
- (9) Unnamed creek.
- (10) Columbia Creek.
- (11) Granby Ditch.
- (12) Westerly Creek.
- (13) Sable Ditch.
- (14) Side Creek and attendant overflow.
- (15) Drainageway--Alameda Avenue to Mississippi Avenue (city center area).

(Code 1979, § 40-55)

### **Sec. 142-77. Notice to cut weeds.**

In addition to any other violation or penalty provided for in this article, the city manager or the manager's designee is authorized to give notice to the owner or occupant of a lot or open area, in accordance with subsection 142-72(a), ordering the cutting of any weeds which are in violation of section 142-73 to a height of no more than six inches. The notice shall indicate that the owner or occupant has seven days from the transmission of such notice to bring such lot or open area into compliance with this article.

(Code 1979, § 40-56)

### **Sec. 142-78. Notice to cut or remove trees.**

The city manager or the manager's designee is authorized to give notice to the owner or occupant of a lot or open area, in accordance with subsection 142-72(a), ordering the cutting, trimming, and removal of trees which are in violation of section 142-74. The notice shall indicate that the owner or occupant has seven days from the transmission of such notice to bring such lot or open area into compliance with this article. This requirement, however, does not apply to city-installed trees on the city's right-of-way.

(Code 1979, § 40-56.1)

### **Sec. 142-79. Notice to maintain landscaping.**

The city manager or the manager's designee is authorized to give notice to the owner or occupant of a lot or open area, in accordance with subsection 142-72(a), ordering that landscaping on the city's right-of-way be maintained in accordance with section 142-75. The notice shall indicate that the owner or occupant has seven days from the transmission of such notice to bring such right-of-way into compliance with this article.

(Code 1979, § 40-56.2)

### **Sec. 142-80. Noncompliance with notice.**

(a) *Action by city.* If notice has been given to an owner or occupant pursuant to the terms of sections 142-77, 142-78 or 142-79 and the violation continues to exist after seven days, the city manager or the manager's designee shall be authorized to direct the appropriate city personnel to enter upon the owner or occupant's lot or open area and correct, cut or remove offending vegetation or landscaping.

(b) *Employment of private individuals; compensation.* If city personnel is unavailable to carry out this function, the city manager is authorized to employ private individuals to carry out the task of removing, correcting or cutting such offending vegetation. If the city is required to employ private individuals to engage in this activity, the city shall forthwith compensate such private individuals for their services.

(c) *Costs.* The cost for correcting such violations and any administrative costs in conjunction therewith, through either the services of city personnel or private individuals, shall be recovered against the owner in accordance with section 142-81.

(d) *Removal of obstructions.* If it is necessary to remove obstructions in order to effect the

correction of such violation, both city personnel and private individuals responsible for correction of such violations under this article shall be empowered to take reasonable steps to remove such obstruction so as to permit the correcting, cutting or removing of such offending vegetation. The cost for removing such obstruction shall also be recoverable in accordance with section 142-81.

(Code 1979, § 40-57)

### **Sec. 142-81. Recovery of costs and creation of lien.**

(a) *Notification of costs.* The city manager or the manager's designee shall notify, in accordance with subsection 142-72(b), the owner or occupant of a lot or open area of the cost for cutting, trimming, or removing offending vegetation or landscaping if it is necessary for the city or its contractors to take such action. The notice shall inform such owner or occupant that administrative fees shall also be assessed. Such fees shall be promulgated by the city manager or the manager's designee in accordance with the procedures established by subsection 2-3(d) of this Code.

(b) *Failure to pay.* If the owner or occupant of a lot or open area shall fail, within 30 days after the date that notification, to pay the costs of cutting, trimming, or removing offending vegetation or landscaping and any administrative fees assessed in connection therewith, such costs and fees shall become a lien against such lot or open area. The director of finance shall certify to the treasurer of the appropriate county the legal description of the real property subject to the lien and the amount of costs and fees assessable to such property, plus 15 percent, for collection in the same manner as general property taxes are authorized to be collected by such treasurer.

(c) *Superiority of lien.* The lien created by this section shall be a first lien upon the subject property and shall be superior to all other liens or claims against such property of whatever kind or nature regardless of date, except any lien for general property taxes or special improvement district assessments.

(d) *Exception for tree removal costs.* The city council declares that assisting low and moderate income homeowners with the financial burden of removing trees which are in violation of section 142-74 serves the public purpose of maintaining the integrity and economic viability of city neighborhoods. Therefore, notwithstanding any section of this article to the contrary, the city manager or the manager's designee, in his or her sole discretion, may allow eligible homeowners to use either of the methods identified in this subsection to pay the costs and fees associated with the removal of such trees from their property. For purposes of this subsection, eligibility as a low or moderate income homeowner shall be determined in accordance with the income guidelines used by the city's housing rehabilitation loan program, as established from time to time by the United States Department of Housing and Urban Development.

(1) *Loan program.* An eligible low or moderate income homeowner may apply to the city for a loan of all or part of the costs and fees associated with the removal of trees from his or her property. For a homeowner with income at 50 percent or less of median, no interest shall be charged on such loans, with repayment thereof to occur at such time as title to the property is transferred. For a homeowner with income at 80 percent or less of median, but more than 50 percent of median, interest shall be charged on such loan at five percent, with repayment thereof to occur in installments over such term as may be authorized by the city manager or the manager's designee. Such loans shall be originated out of moneys appropriated from the abatement fund for such purpose and shall be made upon such terms and conditions as may be authorized by the city manager or the manager's designee. Any failure of a homeowner to make payments in accordance with the terms and conditions of such loan shall result in the immediate imposition of a lien on such property and certification of all unpaid costs and fees to the county treasurer for collection as provided in subsection (b) of this section.

(2) *Extended payment plan.* For a low or moderate income homeowner with income at 120 percent or less of median, but more than 80 percent of median, or who is otherwise eligible but is unable to obtain a loan pursuant to subsection (d)(1) of this section, the city manager or the manager's designee may extend the date upon which such homeowner is required to pay the cost and fees associated with the removal of trees from his or her property. Such extensions shall be made upon such terms and conditions as may be authorized by the manager or designee, provided that any schedule for the payment of such costs and fees shall not exceed two years from the date upon which such payment is originally due. Any failure of a homeowner to make payments in accordance with this schedule shall result in the immediate imposition of a lien on such property and certification of all unpaid costs and fees to the county treasurer for collection as provided in subsection (b) of this section.

(Code 1979, § 40-58)

### **Sec. 142-82. Collection of costs.**

Upon receipt of the assessment roll for removal of offending vegetation pursuant to subsection 142-81, the county treasurer of the proper county shall proceed to collect the amounts so assessed and certified against the property affected thereby in the same manner as the collection of general property taxes and the redemption thereof.

(Code 1979, § 40-59)