

CHAPTER 2

TREES

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7-2-1: **TITLE:** This chapter shall be known as the *DRIGGS TREE ORDINANCE*. (1985 Code § 12.12.010)

7-2-2: **DEFINITIONS:** For the purposes of this chapter, the following words and phrases shall have the following meanings:

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.

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

ALTERNATE HOST PLANT:	One of two (2) kinds of plants on which a pest must develop to complete its life cycle.
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 Driggs, Idaho.
CITY TREE COMMISSION:	The tree commission established by the city of Driggs, or the city tree commission's designee.
CRITICAL ROOT ZONE:	The area under a tree extending from the base of a tree in all directions to an imaginary line ten feet (10') outside of the drip line or as determined at a preliminary site inspection by the city tree commission.
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 NUISANCE:	Any tree or part thereof (public or private) which, by reason of location or condition, constitutes a hazard to public safety.
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 publicly 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 and sewer easements 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 wholly, 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 fifteen feet (15') 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. (1985 Code § 12.12.020)

7-2-3: **FINDINGS:** Whereas the city finds trees are important elements of the environment which promote and protect the 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. (1985 Code § 12.12.030)

7-2-4: **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 chapter 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 section 7-2-3 of this chapter.
- B. Preserve and enhance the city's environmental, economic and social character with mature trees.
- C. Protect public safety, health and 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, nonhazardous 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 public trees are to be planted, pruned and removed.
- H. Implement the goals and objectives of the city comprehensive plan. (1985 Code § 12.12.040)

7-2-5: **JURISDICTION:**

- A. **Public Property:** The city tree commission shall manage and regulate the planting, maintenance, protection, removal and replacement of all public trees within the city limits; thus exercising the city authority to do so granted pursuant to the provisions of Idaho Code sections 50-312, improvements of streets; 50-317, removal of snow, ice, rubbish and weeds; and 40-1415(7), responsibilities of single county wide highway districts within cities – final decision on urban renewal projects – settlement of questions.
- B. **Private Property:** The city tree commission shall have jurisdiction over trees located on private property which are found to be public nuisances as defined in subsection 7-2-10A of this chapter 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 in Idaho Code section 50-317. The assessment shall be collected as provided in Idaho Code section 50-1008. (1985 Code § 12.12.050)

7-2-6: **TREE COMMISSION:** The mayor, with the assistance of the city council, shall designate not less than five (5) nor more than fifteen (15) individuals as the city tree commission and authorize such persons to perform the duties imposed and exercise the powers granted by this chapter. For the purposes identified in section 7-2-4 of this chapter, the city tree commission, subject to the provisions of this chapter and available resources, is authorized to carry out the following duties:

- A. **Administrative/Management Duties:**
 - 1. Develop, administer and maintain a community forestry management plan.

2. Administer a program of public outreach and education relating to community forestry and the planting and care of trees.
3. Maintain a licensing program as set forth in section 7-2-11 of this chapter.
4. Administer and maintain a permitting procedure for all planting, pruning, protection and removal of public trees as set forth in section 7-2-8 of this chapter.
5. Establish and maintain an inventory of all public trees.
6. Maintain a community forestry budget to be contained within the budget of the city. 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.
7. Oversee and require compliance with pest management programs as may be adopted by the city.
8. To facilitate the proper selection, planting and maintenance of public trees in residential, commercial and industrial developments within city limits and the area of city impact, the city tree commission shall review and provide comment on development applications when such applications are submitted to the city planning and zoning department.
9. Establish policies to carry out the provisions of this chapter.
10. Perform all necessary acts to ensure that all public trees conform with the community forestry management plan and this chapter.
11. Annually provide public notification of the requirements of this chapter.

B. Tree Planting Duties:

1. Establish and maintain specifications for tree planting on public property.
2. May establish and maintain a nursery for the growing of the species of trees permitted on public property.

C. Tree Maintenance Duties:

1. Order the pruning or removal of public trees to ensure the public health, safety and welfare while considering the health of the tree and other elements of the infrastructure.

2. Declare trees as public nuisances as defined in subsection 7-2-10A of this chapter. Abatement of public nuisances shall be completed as identified in subsection 7-2-10B of this chapter.

D. Tree Removal Duties:

1. Order the removal of trees located on public rights of way which have been declared to be a public nuisance as defined in subsection 7-2-10A of this chapter.

2. 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 thirty (30) days prior to the scheduled removal date unless determined by the city tree commission to be an emergency or immediate hazard to public safety.

E. Tree Protection Duties: To avoid creating public nuisances or damaging public trees, the city tree commission is authorized to require the protection of all public trees and their critical root zones from construction or other harmful practices. (1985 Code § 12.12.060)

7-2-7: **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:

A. Responsibilities For Public Trees:

1. Obtain Permits:

a. 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 section 7-2-8 of this chapter.

b. 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 section 7-2-8 of this chapter.

c. Meet all requirements and obtain all permits necessary for any tree planting on public property as required in section 7-2-8 of this chapter.

2. Routine Tree Maintenance:

a. Prune trees located on public rights of way adjacent to the owner's private real property.

(1) Prune and maintain such public trees according to ANSI A300, except sections 5.5 and 5.6, which are deleted.

(2) Topping, heading, shearing and rounding over are not acceptable forms of tree pruning and are not allowed on public trees unless first approved by the city tree commission.

(3) Except as otherwise determined by the city tree commission, 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.

(4) Trees shall be pruned to remove dead limbs or other limbs that are considered a public nuisance as defined in subsection 7-2-10A of this chapter.

b. Control pests on trees located on public rights of way adjacent to the owner's private real property.

c. 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.

3. Protection/Preservation:

a. Obtain a permit from the city tree commission before performing any activity which may harm any part of a public tree (inclusive of the critical root zone).

b. Notify the city tree commission when any part of a public tree is damaged or destroyed. (1985 Code § 12.12.080)

B. Responsibilities For Private Trees:

1. Routine Tree Maintenance:

a. Removal or pruning of trees located on the owner's private real property that are considered a public nuisance as defined in subsection 7-2-10A of this chapter. 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. (1985 Code § 12.12.080; amd. 2010 Code)

b. Control of pests on trees located on the owner's private real property which may, upon determination by the city tree commission, pose a threat to public trees.

c. Removal of all debris (wood, branches and leaves) from public property by sunset of the day on which any tree work is done.

C. Responsibilities For Alley Trees: Prune, remove or otherwise abate public nuisances as defined in subsection 7-2-10A of this chapter. (1985 Code § 12.12.080)

7-2-8: **PERMIT REQUIREMENTS:**

A. Permit Required: No person may perform any of the following acts without first obtaining a permit for which no fee shall be charged, and nothing in this section shall be construed to exempt any person from the requirement 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).

4. Dig, trench, excavate or pile soil or any other materials within the critical root zone of any public tree(s).

B. Application Procedure:

1. Contact the city tree commission via mail, phone, fax or email prior to commencement of the proposed work.
2. Upon inspection, the city tree commission may issue a permit to perform any of the acts specified in subsection A of this section.
3. The city tree commission may condition the approval of any permit.

C. Requirements:

1. Planting Permit:

a. Each application for a planting permit shall designate the species and variety of public tree proposed. The city tree commission shall designate the location of the planting.

b. Approval of public tree species, spacing, placement and minimum tree well sizes shall be obtained from the city tree commission prior to issuance of a permit.

c. Whenever any public tree is planted or set out in conflict with the provisions of this chapter, it is lawful for the city tree commission to remove or cause removal of the same. The cost of removal of such tree may be charged to the person responsible for the planting thereof.

2. Pruning/Removal Permit:

a. Prior to pruning or removal of any public tree, application for permit must be made by the property owner or private tree firm currently licensed by the city.

b. Whenever a tree on the 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 tree commission for good cause shown. Conditions may include a requirement for compensatory payments as set forth in subsection 7-2-9B of this chapter. (1985 Code § 12.12.090)

7-2-9: DAMAGING OR DESTROYING PUBLIC TREES:**A. Prohibitions: It is unlawful for any person to:**

1. Damage, mutilate or destroy any public tree.
2. Attach any device or structure (i.e., tree houses, lights) to or on public trees unless otherwise authorized by the city tree commission.
3. 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.
4. Damage public trees through construction activities in violation of the conditions of a permit issued under this chapter. Such activities include, but are not limited to:
 - a. Making excavations or cuts within the critical root zone of public trees unless otherwise approved by the city tree commission.
 - b. Damage roots of a public tree by compacting or placing fill within the critical root zone of a tree.
 - c. 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 tree commission. (1985 Code § 12.12.100)

B. Replacement Or Payment In Lieu:

1. 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 tree commission. The value of a tree shall be determined by the city tree commission in accordance with accepted plant appraisal methods as set forth in the eighth edition of "The Guide For Plant Appraisal", published by the International Society of Arboriculture, or the same as amended from time to time.
2. 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 equal to the difference in value between the tree removed and any replacement tree(s).

3. Any public tree that is determined by the city tree commission 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.

4. Compensatory payments shall be paid into a fund established for that purpose and restricted to use for community forestry programs. Nothing in this chapter shall prohibit the city from negotiating agreements with other governmental entities regarding penalties and compensatory payment for removal, damage or destruction of public trees. (1985 Code § 12.12.110)

7-2-10: **NUISANCE TREES:**

A. Nuisances Declared: The following are declared public nuisances under this chapter:

1. 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 tree commission.

2. 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.

3. 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. (1985 Code § 12.12.130)

B. Abatement Procedures: The following are the prescribed means of abating public nuisances under this chapter:

1. Any tree or alternate host plant, or part thereof (public or private), declared to be a public nuisance as set forth in subsection A of this section 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.

2. The city tree commission may cause a written notice to be personally served or sent by mail to the owner of the particular property.

3. In the event the nuisance is not abated by the date specified in the notice, the city tree commission is authorized to cause the abatement of such 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 provided 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 this code, or the Idaho Code for maintaining a public nuisance. Nothing in this subsection B3 shall be construed to exempt any person from the requirement of obtaining permits under section 7-2-8 of this chapter.

4. The city tree commission is empowered to cause the immediate abatement of any nuisance if it is determined by said commission to be an emergency or immediate hazard to public safety.

5. If the city tree commission 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 tree commission. All costs associated with the disposal of material from private trees shall be the responsibility of the property owner. (1985 Code § 12.12.140)

7-2-11: PRIVATE TREE SERVICE LICENSE REQUIREMENTS:

- A. License Required: It is 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 tree commission.
- B. Application For License: Each applicant for a license or renewal thereof shall make application to the city tree commission 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 tree commission. 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 tree commission.

3. Demonstration that arboricultural work is in accordance with ANSI A300 may be required prior to approval of a 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 five hundred thousand dollars (\$500,000.00) or the amount currently required by Idaho Code title 6.

- C. Approval Or Denial Of License; Fee And Term: The city tree commission 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 city clerk for the calendar year, or balance of the calendar year only.
- D. Suspension Or Revocation Of License: The city tree commission 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. (1985 Code § 12.12.150)

7-2-12: **APPEALS:**

- A. Any person affected by an order, grant, denial or revocation of a license or permit by the city tree commission may appeal such order, grant, denial or revocation to the city council.
- B. Such appeal shall be filed in writing and submitted to the city clerk within ten (10) days of the date of notification of the decision of the city tree commission.
- C. The appeal shall be heard by the city council. Action by the city tree commission and the appellant shall be delayed until the decision of the city council is rendered. (1985 Code § 12.12.160)
- D. 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 license or permit and the decision of the city tree commission. The decision of the city council shall be final. (1985 Code § 12.12.160; amd. 2010 Code)

7-2-13: **INTERFERENCE WITH ENFORCEMENT OFFICIALS PROHIBITED:** It is unlawful and shall be a misdemeanor to interfere with the city tree commission, any law enforcement officer, city staff or any county highway district personnel in the performance of their duties connected with the enforcement of this chapter. (1985 Code § 12.12.070)

7-2-14: **VIOLATION; PENALTIES:**

- A. Misdemeanor Violation; Criminal Penalties: Any person who violates any provision of this chapter or who fails to comply with a lawful order of the city tree commission shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter may be punishable as provided in subsection 1-4A-1A of this code. (1985 Code § 12.12.120; amd. 2010 Code)
- B. Civil Penalties: 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 subsection 7-2-9B of this chapter. (1985 Code § 12.12.120)

