

# Enforcement of Landscaping Requirements in Tollgate Crossing community

The following information documents excerpts from the Tollgate Crossing HOA CCRs (covenants) and a portion of the City Code of the City of Aurora (vol I); Part I, Aurora Charter, Chapter 142 (vegetation). The municipal code can be accessed via the web at: <[https://www.municode.com/library/co/aurora/codes/code\\_of\\_ordinances?nodeld=PTIICOOR\\_CH142VE](https://www.municode.com/library/co/aurora/codes/code_of_ordinances?nodeld=PTIICOOR_CH142VE)>.

This part of the municipal code applies to all residents of Aurora (including Tollgate Crossing). Residents are required to provide and maintain landscaping, including the trees in their yard. Reference section 142-75 (Duty to provide and maintain landscaping), paragraph e.

Master plans for our community are held by the city of Aurora. These master plans can be obtained from the city's planning department. I have a copy of the master plan for Tollgate Crossing filing III, and the other master plans are similar. The master plan indicates the types of plants/vegetation planted in our community (in private plots, community property and open spaces), the spacing between trees, and various landscaping details for our community.

This document is meant to provide residents of Tollgate Crossing with some reference and details regarding the HOAs efforts to maintain the appearance and standards of our community by enforcing the removal of dead trees and re-planting of new trees in accordance with Aurora ordinances. Below is the pertinent city ordinance that the HOA uses as the basis of its enforcement efforts.

Ref: CCRs of Tollgate Crossing: < [http://www.tollgatecrossing.org/Info\\_files/TollgateCCRs.pdf](http://www.tollgatecrossing.org/Info_files/TollgateCCRs.pdf)>. Section 15.7:

*Section 15.7 Violations of Law. Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation pertaining to the ownership, occupation, or use of any property within the Community is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.*

See also; Section 6.15 "Correction of Noncompliance" and section 10.11 "Power to Enforce Governing Documents". The HOA may levy and collect reimbursement assessments, file liens on properties, and apply fines and penalties in order to enforce the CCRs (which includes any violation of city ordinances (see section 15.7).

*According to an Arborist with the city of Aurora: Property owners are responsible for the tree(s) in the 'Tree Lawn' area (between sidewalk and curb); they are also bound to the approved site plan on record with the city's Planning Department. The site plan includes the approved landscape plan, and each of those trees are shown on the landscape plan. As a property owner, it is your responsibility per these documents (City ordinance and approved Site Plan) to have a tree planted where shown on the plan.*

Document last updated: 05 Sep, 2015

## Chapter 142 - VEGETATION<sup>[1]</sup>

Footnotes:

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**Cross reference**— Tree trimmers, § 26-526 et seq.

### ARTICLE I. - IN GENERAL

Secs. 142-1—142-25. - Reserved.

### ARTICLE II. - TREES AND SHRUBS

Sec. 142-26. - 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:

Owner includes the legal owner of real property fronting any highway or street of the city and any lessee of such owner.

Park includes all public parks having individual names.

Public places includes all grounds owned by the city.

Street or highway includes all lands lying between the property lines on either side of all public streets, roads, boulevards and alleys or parts thereof.

Trees and shrubs includes all woody vegetation growing on any public street or highway or public place.

(Code 1979, § 29-33)

**Cross reference**— Definitions generally, § 1-2.

Sec. 142-27. - Purpose.

It is for the best interest of the city and of the citizens and public thereof that a comprehensive master plan for platting and maintenance of trees in public streets within the city should be developed and established, and this article is adopted, therefore, for the purpose of establishing rules and regulations relating to the planting, care and maintenance of such trees.

(Code 1979, § 29-32)

Sec. 142-28. - Enforcing authority.

The city manager, through the director of parks and open space or duly authorized representative, shall have full power, authority, jurisdiction and control of the planting, location and replacement of all trees in the public streets and areas of the city and shall likewise have supervision, direction and control of the care, trimming, removal, relocation and replacement thereof and shall be charged with the enforcement of this article.

(Code 1979, § 29-34; Ord. No. 95-53, exhibit A (§ 29-34), 9-11-95)

Sec. 142-29. - Street tree plan.

The director of parks and open space shall prepare a street tree plan for all residential rights-of-way or other publicly owned places in the city so as to have a master plan showing tree species and locations within the city. This plan shall be kept up to date in accordance with current knowledge about plant materials and their ability to survive under the conditions we have in the city. It shall be unlawful to plant any trees or shrubs in any residential public right-of-way or publicly owned place which is not in conformity with the street tree plan.

(Code 1979, § 29-35; Ord. No. 95-53, exhibit A (§ 29-35), 9-11-95)

Sec. 142-30. - Permission to plant trees.

No trees or shrubs shall be planted in or removed from any street, residential public right-of-way or other public place in the city without written permission from the director of parks and open space.

(Code 1979, § 29-36; Ord. No. 95-53, exhibit A (§ 29-36), 9-11-95)

Sec. 142-31. - Planting fee.

(a) There is established a tree planting fee, which fee shall be established by the director of parks and open space in accordance with the provisions of section 2-587 of this Code. The city shall plant a tree approximately every 45 feet on all single-family detached residentially zoned premises abutting, fronting, backing or siding upon a publicly dedicated street. For all other premises abutting, fronting, backing or siding upon a publicly dedicated street not a principal arterial, trees shall be planted within street rights-of-way within the city. The placement of trees funded from other than single-family detached residentially zoned premises will be at the direction of the director of parks and open space. The trees are not required to be planted within the right-of-way adjoining the premises for which fees were collected. Upon receipt, the fees shall be expended solely for trees to be planted and capital equipment necessary for the planting and maintenance of trees and for the salary of a tree technician. Such technician is to be assigned to the director of parks and open space.

(b) In residential planned unit developments, no front-footage fee shall be charged on residential frontages abutting upon private drives.

(Code 1979, § 29-37; Ord. No. 95-53, exhibit A (§ 29-37), 9-11-95; Ord. No. 2005-92, § 27, 12-5-2005; Ord. No. 2010-57, § 7, 12-20-2010)

Sec. 142-32. - Limitations on planting.

For a corner lot, existing hedges, shrubs or any other plant material within 30 feet of the street intersection shall be trimmed and maintained so as not to stand more than 26 inches above the level of the sidewalk. On corners where existing embankments, retaining walls or other objects are placed, no plant materials shall be planted unless by permit from the director of parks and open space.

(Code 1979, § 29-38; Ord. No. 95-53, exhibit A (§ 29-38), 9-11-95)

Sec. 142-33. - Care, planting, removing and replacement.

(a) It shall be unlawful and is prohibited for any person other than the director of parks and open space or duly authorized agent or deputy to cut, trim, prune, spray, brace, plant, move or replace any tree in any public street or other public place within the city or to cause such to be done, unless and until written permit to do so shall have first been obtained from the director. Any such permit may be declared void by the director if its terms are violated. Nothing in this section shall be construed so as to apply to the removal, under the direction of the public works department, of any root, tree, shrub or plant or parts thereof when such removal shall be necessary for the construction of any sidewalks, sewer or public improvement, after having first notified the director of parks and open space.

(b) In the event that a tree or shrub on city property or in a city right-of-way is unlawfully removed, damaged, or otherwise destroyed by any person, that person shall be liable to the city for the appraised value of the tree or shrub based upon International Society of Arboriculture Appraisal Standards. All monies received in restitution for damage to a public tree shall be deposited into the forestry restitution fund.

(Code 1979, § 29-39; Ord. No. 95-53, exhibit A (§ 29-39), 9-11-95; Ord. No. 2009-22, § 2, 6-8-2009)

Sec. 142-34. - Public utility and owners.

No person other than an owner or public utility may do any act for which a permit is required under section 142-33, except a person whose principal business is tree care, trimming or maintenance and who, in the opinion of the director of parks and open space, is qualified for such business or who has obtained a permit and paid the required license fee to carry on such business in the city.

(Code 1979, § 29-40; Ord. No. 95-53, exhibit A (§ 29-40), 9-11-95)

Sec. 142-35. - Removal or treatment when infected or infested.

The director of parks and open space may inspect all trees, shrubs and logs upon any property within the city limits. Upon discovering any such plant materials to be infested with any serious disease or insects detrimental to the growth, health and life of such plants or adjoining plants, the director shall at once notify in writing the owner, agent or occupant of the premises whereon such is located of the condition thereof and shall direct such person to eradicate, remove and destroy these plant materials. If the owner, agent or occupant fails to comply within the time specified by the director, he or she shall correct such conditions and the cost assessed to such owner, agent or occupant.

(Code 1979, § 29-41; Ord. No. 95-53, exhibit A (§ 29-41), 9-11-95)

Sec. 142-36. - Protection.

Except to abate a nuisance, it shall be a violation of this article to:

- (1) Fasten any sign, card, poster, wire, rope or other material to or around or through any public tree or shrub or its guard in the city without a written permit of the director of parks and open space, except in emergencies such as storms or accidents.
- (2) Deposit, place, store or maintain upon any public area of the city 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 shrub growing therein.
- (3) Break, injure, mutilate, kill or destroy any tree or shrub or permit any fire to burn where such fire will injure any portion of any tree or shrub in any public area. No person shall permit any toxic chemical to seep, drain or be emptied on or about any public tree or shrub. No person shall knowingly permit electric wires to come in contact with any public trees or shrubs unless protected by approved methods, and no person shall attach any electrical insulation to any public tree or shall excavate any ditches, tunnels or trenches or lay any drive within a radius of ten feet from any public tree or shrub without first obtaining permission from the director of parks and open space. During building operations, the builder shall erect suitable protective barriers around public trees or shrubs apt to be injured.
- (4) Permit any leaks to exist in any gas pipes or mains laid beneath the surface of any street, alley or public place in the city by any person owning, maintaining or operating such gas pipes or mains or to permit any leaks to exist within 40 feet of any tree growing in any street or public place in the city. If leaks exist or occur in such pipes or mains, it shall be the duty of the person owning or operating such defective pipes or mains to repair such immediately and stop such leak in a manner so as to prevent a recurrence of leak, upon receiving written notice from the director of parks and open space calling the attention of such person to such leak.

(Code 1979, § 29-42; Ord. No. 95-53, exhibit A (§ 29-42), 9-11-95)

Sec. 142-37. - Permits to public utilities.

Upon application to the director of parks and open space by a telephone, telegraph, electric power or public service corporation or utility to trim trees or perform other operations affecting public trees or shrubs, including the activities otherwise prescribed in section 142-34, or upon application of qualified contractors who have entered into contracts with a telephone, telegraph, electric power or other public service corporation or utility to trim trees or perform other operations affecting public trees or shrubs, the director shall grant a blanket permit, good until revoked for cause, covering all tree trimming and other operations affecting public trees or shrubs by such telephone, telegraph, electric power or other public service corporation or utility or qualified contractor. The director shall be notified of when and where such operations will take place. The amount of such trimming or extent of the other operations shall be done in a neat, workmanlike manner, and according to generally accepted practices. If necessary, the director may assign an inspector to supervise the provisions of the permit and the cost of such service shall be charged to the public service corporation or utility or contractor at cost.

(Code 1979, § 29-43; Ord. No. 95-53, exhibit A (§ 29-43), 9-11-95)

Sec. 142-38. - Permits.

Every permit granted by the manager under this article or his or her authorized agent, shall specifically describe the work to be done under it and shall expire at the end of not exceeding 60 days from the date of its issuance, except for those permits issued under section 142-37. No charge shall be made for any permit.

(Code 1979, § 29-44)

Sec. 142-39. - Interference with enforcement.

No person shall prevent, delay or interfere with the director of parks and open space or any of his or her assistants in the execution or of this article; provided, however, that nothing in this section shall be construed as an attempt to prohibit a public hearing or to prohibit any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the city.

(Code 1979, § 29-45; Ord. No. 95-53, exhibit A (§ 29-45), 9-11-95)

Sec. 142-40. - Appeals.

Appeals from orders made under this article may be made by filing written notice thereof with the city manager within ten days after such is received. The city manager thereupon shall review the decision of the parks and open space director and provide the applicant an opportunity to be heard. The decision of the city manager shall be final. A written copy of such decision shall be made available to the applicant.

(Code 1979, § 29-46; Ord. No. 95-53, exhibit A (§ 29-46), 9-11-95; Ord. No. 2009-22, § 3, 6-8-2009)

Secs. 142-41—142-70. - Reserved.

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 reference**— 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.
- (g) In the event that algae or any vegetation that creates a slick surface for pedestrians grows on the surface of the sidewalk abutting the owner's property, it shall be the duty of the owner or occupant to maintain the sidewalk so that it is free from such hazard, but does not negatively impact the storm drainage system. nothing in this subsection is either intended or should be construed as imposing any duty or obligation on the part of the adjacent property owner to perform any repairs or reconstruction to a sidewalk beyond what is required to eliminate the hazard caused by ice, algae or other vegetation creating a slick surface.

(Code 1979, § 40-54; [Ord. No. 2013-54, § 3, 11-25-13](#))

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 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 the extended payment plan described herein to pay the costs and fees associated with the removal of such trees from their property.

Extended payment plan. To assist with the financial burden associated with the removal of trees, 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; Ord. No. 2009-22, § 4, 6-8-2009)

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)