

Item # 7D
Date: 10/23/23

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COUNCIL ACTION FORM

AGENDA ITEM: TREES IN RIGHT OF WAY (ROW)

HISTORY:

I would like to address council regarding the planting of trees in the streets/parking, also referred to as the ROW. In the past it has always been accepted. Today there are a lot of utilities being put in our ROW. The City of Nevada typically spends the entire amount of funds budgeted in removal of dead trees, and upkeep of trees - approximately \$50,000/year. The city does have an ordinance 151.03 (attached) referencing tree trimming by the property owner. The city spends a lot of time and resources trimming trees, marking trees for removal, picking up branches and more. Trees in the ROW are also affecting people on sidewalks, bikers, school buses, semis, and agriculture equipment; I'm sure there are more. Public Works is not taking a stance on trees in the ROW, rather asking for clarification in regards to who's responsibility it is for the trees currently in the ROW, and if trees should be allowed to be planted in the ROW moving forward.

Iowa SUDAS chapter 10A states, "With narrower ROW and increasing underground utilities, the available space within the ROW is diminishing." (Attached code). This makes it difficult to plant a tree or trees in the ROW and not expect it to have some type of impact on what's located in the ground underneath it.

Furthermore, Director of Fire & EMS Reynolds has been working with Story County EMA to put together a Disaster Mitigation Plan. As part of this plan, one area of concern was planting of trees in the right of way. During the Derecho, the most expense and time came from responding to trees in the right of way and power lines. It was recommended that in the future, trees should not be planted in the right of way.

Even if utilities are on one side of the street, it is common when putting in new lines to place them on the opposite side to avoid the current line.

When replacing utility lines, it is common place to move them to the opposite side of the street during reconstruction. This makes for a "cleaner" install and alleviates running into any pre-existing lines during the process.

I would like council to take a look at our current ordinance and get their feedback. Some key points to consider:

- If property owner fails to keep trees trimmed, do we send out notices, is a fee assessed?
- Does the city trim trees in the ROW and invoice the property owner?
- Should trees/shrubs be allowed to be planted in the ROW?
- If trees/shrubs are permitted in the ROW, should a fee be assessed on every utility bill, to cover the cost of maintenance?

Additionally, at this time most of the ashes trees in town are taken down. My next concern is the other failing trees, which seems to be maples and oaks.

It is my recommendation that moving forward, no trees, shrubs, vegetation be planted in the ROW. This would save time and money as well as ensure our water/sewer lines or anything else underground is not affected, broken, or damaged by trees/roots. It would also alleviate a lot of the large overhanging branches covering our streets and sidewalks.

Joe Mousel
City of Nevada Street Supervisor

OPTIONS:

1. Amend the code to not allow the plantings of trees, shrubs, vegetation, etc. and create a policy for current plantings in the ROW.
2. Allow trees in ROW with restrictions and approval by the Street Supervisor. Do nothing at this time.
3. Do nothing at this time.

STAFF'S RECOMMENDED ACTION:

Therefore, it is the recommendation of the City Administrator that Council approves Option 1

CHAPTER 151

TREES, WEEDS AND OFFENSIVE VEGETATION

151.01 Definitions	151.07 Growth of Offensive Vegetation Prohibited
151.02 Planting Restrictions	151.08 Duty to Remove Offensive Vegetation
151.03 Duty to Trim Trees	151.09 Notice to Owner, Agent or Occupant
151.04 Trimming Trees to be Supervised	151.10 Removal by City; Assessment
151.05 Disease Control	151.11 Duty to Pay
151.06 Inspection and Removal	151.12 Alternative Remedy

151.01 DEFINITIONS.

For use in this chapter, the following terms are defined:

1. "Offensive vegetation" includes all noxious weeds as defined in Chapter 317 of the Code of Iowa and all other weeds which are not otherwise included in the definition contained in Chapter 317 but which are commonly held to be offensive to sight or smell. The term further includes all grasses not otherwise offensive which have reached a height of twelve inches or more, unless otherwise excluded by the following provisions of this subsection. The term further includes all dead trees on public or private property. Offensive vegetation does not include shrubbery, trees, flowers and other vegetation designed for aesthetic landscaping purposes, nor does the term include garden vegetables customarily grown for home use in a garden, provided the garden is regularly maintained and otherwise free from the type of offensive vegetation that this section seeks to eliminate.

2. "Parking" means that part of the street, avenue or highway in the City not covered by sidewalk and lying between the lot line and the curb line; or, on unpaved streets, that part of the street, avenue or highway lying between the lot line and that portion of the street usually traveled by vehicular traffic.

151.02 PLANTING RESTRICTIONS.

No tree shall be planted in any parking or street except in accordance with the Statewide Urban Design and Specifications.

151.03 DUTY TO TRIM TREES.

The owner or agent of the abutting property shall keep the trees on, or overhanging the street, trimmed so that all branches will be at least fifteen (15) feet above the surface of the street and eight (8) feet above the sidewalks. If the abutting property owner fails to trim the trees, the City may serve notice on the abutting property owner requiring that such action be taken within five (5) days. If such action is not taken within that time, the City may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2c, d & e])

151.04 TRIMMING TREES TO BE SUPERVISED.

Except as allowed in Section 151.03, it is unlawful for any person to trim or cut any tree in a street or public place unless the work is done under the supervision of the City.

151.05 DISEASE CONTROL.

Any dead, diseased or damaged tree or shrub which may harbor serious insect or disease pests or disease injurious to other trees is hereby declared to be a nuisance.

151.06 INSPECTION AND REMOVAL.

The Council shall inspect or cause to be inspected any trees or shrubs in the City reported or suspected to be dead, diseased or damaged, and such trees and shrubs shall be subject to the following:

1. City Property. If it is determined that any such condition exists on any public property, including the strip between the curb and the lot line of private property, the Council may cause such condition to be corrected

by treatment or removal. The Council may also order the removal of any trees on the streets of the City which interfere with the making of improvements or with travel thereon.

2. Private Property. If it is determined with reasonable certainty that any such condition exists on private property and that danger to other trees or to adjoining property or passing motorists or pedestrians is imminent, the Council shall notify by certified mail the owner, occupant or person in charge of such property to correct such condition by treatment or removal within fourteen (14) days of said notification. If such owner, occupant or person in charge of said property fails to comply within 14 days of receipt of notice, the Council may cause the condition to be corrected and the cost assessed against the property.

(Code of Iowa, Sec. 364.12[3b & h])

151.07 GROWTH OF OFFENSIVE VEGETATION PROHIBITED.

The dense growth of offensive vegetation within the City is prohibited. This section does not apply to any lot or parcel of ground where cultivated, agricultural commodities are planted and harvested within the City, provided the lot or parcel is regularly maintained and otherwise free from the type of offensive vegetation that this section seeks to eliminate.

151.08 DUTY TO REMOVE OFFENSIVE VEGETATION.

The owners, agents or occupants of all lots and parcels of ground within the City limits shall cut or cause to be cut all offensive vegetation on their respective lots or parcels of ground not later than May 15, July 1 and August 15 of each year. In any case where the offensive vegetation is not cut within five (5) days after any date fixed above, it shall be the duty of the Zoning Enforcing Officer to enforce the provisions of this chapter. The provisions of this section also apply to all lands and lots abutting on any street or public way, to that portion of the property that lies between the property line of the property and the curb line, but only where curb and gutter have been installed.

151.09 NOTICE TO OWNER, AGENT OR OCCUPANT.

If the Zoning Enforcing Officer determines that Section 151.08 has been violated, the officer shall serve a written notice upon the owner, agent or occupant of the property, notifying the owner, agent or occupant that there exists a violation of this chapter and that unless the offensive vegetation is removed within five (5) days after the date of service of the notice, the City will proceed to remove the offensive vegetation and assess the costs against the owner. Notice is served by personally delivering the notice to the owner, agent or occupant, by leaving the notice with any adult resident at the location where the offense exists, or by mailing the notice to the owner, agent or occupant by certified mail, return receipt.

151.10 REMOVAL BY CITY; ASSESSMENT.

If the notice provided in Section 151.09 is not complied with, it shall be the duty of the Zoning Enforcing Officer to cause the offensive vegetation to be cut or otherwise destroyed. The Zoning Enforcing Officer shall make an itemized report to the Council of all work done, which report shall state the amount of expense incurred for each lot or parcel of ground; the number and description of each lot or parcel of ground upon which work has been done and the name of the owner, agent or occupant, if known, of each such parcel of land. The report shall be considered and acted upon as similar reports are acted upon when special assessments are to be made.

151.11 DUTY TO PAY.

It shall be the duty of the person against whose lot or parcel of land such assessment is made to pay to the City Clerk the amount of each assessment with ten percent (10%) interest thereon from date of the levy of the assessment, and in case such assessment or assessments remain unpaid by November 1 of each year, they shall be certified by the Clerk to the County Treasurer, and shall be paid to and collected by the County Treasurer as ordinary taxes.

151.12 ALTERNATIVE REMEDY.

In addition to or in lieu of the remedy provided by this chapter, the Zoning Enforcement Officer may enforce these provisions by issuing the offender a municipal infraction.



General Information

A. Concept

Trees along our streets, in our parks, in other public spaces, and on private property provide a wide range of benefits. They improve the air we breathe, beautify the environment, reduce energy consumption, and make communities more pleasant places to live and work. A street tree is any tree with a trunk located 50% or more within the land lying between property lines on either side of public streets, boulevards, and alleys, including public easements. With narrower rights-of-way and the increasing use of underground utilities, the available space within a public right-of-way to plant trees is diminishing. Consideration should be given to placement of trees outside of the public right-of-way on private property, which will still maintain the aesthetic and environmental advantages of trees. In addition, the placement outside of the public right-of-way will prevent future complications of sight distance, utility conflicts, and construction conflicts.

If trees are placed in the public right-of-way, the principal considerations in design of the placement of street trees are their relation to horizontal and vertical clear zones. No street tree should be placed in the horizontal clear zone or triangular sight distance as described in [Chapter 5](#). The minimum vertical clearance for mature trees should be 14 feet above the street grade, 10 feet above recreational trails, and 8 feet above sidewalks. Special considerations must be given to clearances to overhead utility lines, driveways, traffic signs, and underground utilities. Permits may be required prior to planting.

B. Conditions

1. Design Standards:

- a. SUDAS Design Manual
- b. Recognized design publications for street trees
- c. In case of a conflict between the above design standards, the Jurisdictional Engineer should be contacted for clarification

2. **Construction Standards:** Use the most recent edition of the SUDAS Standard Specifications together with the latest contract supplementary information.

3. **Project Submittals:** If street trees are allowed by the Jurisdiction and if project submittals are required, a street tree planting layout showing the quantity, species/cultivar, and location of all trees must be submitted for review. This plan is to be approved by the Jurisdiction prior to the tree planting and a permit issued if the proposed trees are within the public right-of-way.

- 4. Ownership:** If the tree is located in the public right-of-way or publicly owned property, Section 364.12 of the Iowa Code requires the Jurisdiction to remove deadwood or diseased trees. If the street tree(s) are located outside of public property or right-of-way, the responsibility and ownership is that of the landowner.

- 5. Establishment and Warranty Periods:** The establishment period is 1 year after the installation has been accepted by the Engineer. Care and maintenance of all plants will be the responsibility of the Contractor during that time. The Engineer has the option to include an additional year, which is called the warranty period. If specified, the warranty period begins immediately after the establishment period and continues for another year. Check with the Jurisdiction for their requirements.