



Item: Ordinance 3118, Amending Title 8, Chapter 52, Sections 040 and 050, of the Official Code of the City of Great Falls (OCCGF) pertaining to Abatement of Diseased Vegetation

From: Park and Recreation Department

Initiated By: Park and Recreation Department, Natural Resources Division

Presented By: Marty Basta, Park and Recreation Director

Action Requested: Conduct a public hearing and consider adoption of Ordinance 3118.

Public Hearing:

1. Mayor conducts public hearing, calling three times each for proponents and opponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motion:

1. Commissioner moves:

“I move the City Commission (adopt/deny) Ordinance 3118.”

2. Mayor calls for a second, discussion, and calls the vote.
-

Staff Recommendation: Staff recommends that the City Commission conduct a public hearing and adopt Ordinance 3118, amending Title 8, Chapter 52, Sections 040 and 050, of the Official Code of the City of Great Falls (OCCGF).

Background: On February 18, 2014, the City Commission approved on first reading Ordinance 3118 and set it for public hearing on March 4, 2014. The OCCGF, Title 8, Chapter 52, Section 040 directs that the Park Superintendent shall cause infected trees or wood on public property to be removed or treated. Questions as to the application of this ordinance have arisen, as it is inconsistent with the terms of other parts of the OCCGF, particularly 12.4.010 and 17.44.2.040, which indicate that it is the adjoining property owners’ responsibility to maintain the boulevard section or landscaping adjoining their premises, instead of the Park Superintendent. Moreover, the City no longer has a Park Superintendent on staff, and those duties are performed by the City Forester.

In light of the inconsistencies, the City has paid for the cost for the removal or treatment of diseased or infested trees on City rights-of-way outside of the General Boulevard Maintenance District area of the City of Great Falls. The proposed ordinance amendments exclude the properties within the General Boulevard Maintenance District from application.

Adoption of Ordinance 3118 will clarify that the adjoining property owners are responsible for the treatment and/or removal of nuisance vegetation, by having the language which is consistent with OCCGF 17.44.2.040 and 12.4.010, and properly identifying the Forestry Division of the Park and Recreation Department.

Fiscal Impact: If Ordinance 3118 is adopted it will clarify that the removal and treatment costs of diseased nuisance vegetation shall be borne by the property owners, versus the City, resulting in reduced expenses incurred by the Forestry Division.

Alternatives: Rejecting Ordinance 3118 will leave an inconsistency in the OCCGF, and the City could bear the expense of nuisance vegetation in public streets, alleys, boulevards and rights-of-way, which are the adjoining property owners' responsibility.

Attachments/Exhibits:

Ordinance 3118

Exhibit A

OCCGF 17.44.2.040

OCCGF 12.4.010

ORDINANCE 3118

AN ORDINANCE AMENDING TITLE 8, CHAPTER 52 OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS (OCCGF) PERTAINING TO ABATEMENT OF DISEASED VEGETATION

* * * * *

WHEREAS, the City of Great Falls endeavors to ensure that trees and other vegetation within its boundaries are free from disease, fungus or harmful insects; and

WHEREAS, the City of Great Falls endeavors to ensure that diseased vegetation is properly removed or treated by owners of the property where diseased vegetation exists; and

WHEREAS, the City of Great Falls intends to remove inconsistencies in the OCCGF as to the responsibilities for the removal or treatment of diseased vegetation by amending the OCCGF in pertinent part.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

- Section 1. That Title 8, Chapter 52 of the OCCGF be amended as depicted in Exhibit "A" attached hereto, which removes any language indicated by a strike-out and adds language which is bolded;
- Section 2. This ordinance shall be in full force and effect thirty (30) days after second reading and final adoption by the City Commission.

APPROVED by the City Commission on first reading February 18, 2014.

ADOPTED by the City Commission of the City of Great Falls, Montana on second reading March 4, 2014.

Michael J. Winters, Mayor

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that I did post, as required by law and as prescribed and directed by the City Commission, Ordinance 3118 in three places within the limits of said City to-wit:

- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library

(Seal of the City)

Lisa Kunz, City Clerk

EXHIBIT "A"

Title 8 - HEALTH AND SAFETY

Chapter 52 - ABATEMENT OF DISEASED TREESVEGETATION

Chapter 52 - ABATEMENT OF DISEASED TREESVEGETATION

Sections:

~~8.52.040 - Abatement of nuisances on public property.~~

~~8.52.0540 - Abatement of nuisances.~~

~~8.52.050 - Exception.~~

~~8.52.040 - Abatement of nuisances on public property.~~

~~In abating the nuisance of public streets, alleys, boulevards or public ways as defined in [Section 8.52.010](#) hereof, the Park Superintendent shall cause the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible any tree disease, fungus or harmful insect.~~

~~(Ord. 3118, 2014; Ord. 2491 §2(Exh. B(part)), 1988).~~

~~8.52.0540 - Abatement of nuisances. of private or governmental property.~~

~~Whenever the Park Superintendent **City Forester** or such other person as may be designated by the City Manager finds with reasonable certainty that any ~~tree~~**nuisance** disease, fungus or harmful insect exists in any tree, shrub, or wood **or other vegetation** located on private property outside any public way within the City limits, or upon property owned and controlled by a governmental unit other than the City, the owner or person in control of such property shall be notified in writing by certified mail, or by personal delivery, of the existence of the nuisance and direct that the nuisance be removed, burned, buried or otherwise effectively treated in the approved manner within twenty (20) days after mailing of such notice. The notice shall state that if such nuisance shall not be abated by the owner within the time provided, the Park and Recreation Department shall proceed to have such nuisance properly abated or eliminated. The notice shall further contain:~~

- ~~A. The address or other description sufficient to identify the premises where such nuisance is located;~~
- ~~B. A statement that certain vegetation or other property has been found to be a nuisance as herein defined and a description of the conditions constituting such nuisance;~~
- ~~C. A statement of the action to be taken as determined by the ~~Park Superintendent~~ **City Forester**;~~
- ~~D. The office, address, phone number of an authorized representative of the City empowered to review the ~~order~~ **notice** of the ~~Park Superintendent~~ **City Forester** and the days and hours the same may be contacted:~~
 - ~~1. Such requests for review must be made within ten (10) days of the date of notice or further review will thereafter be barred;~~
- ~~E. A statement that if the owner does not ~~effect~~ **comply with** the ~~order~~ **notice** of the ~~Park Superintendent~~ within twenty (20) days of the date of such notice, the Park and Recreation Department shall have the nuisance abated and the costs shall be levied as a special assessment lien ofn the premises.~~

~~(Ord. 3118, 2014; Ord. 3057, § 1, 2010; Ord. 2491 §2(Exh. B(part)), 1988).~~

EXHIBIT "A"

Title 8 - HEALTH AND SAFETY

Chapter 52 - ABATEMENT OF DISEASED TREES ~~TREES~~ **VEGETATION**

8.52.050 – Exception

Section 8.52.040 shall not apply to maintaining boulevards within the General Boulevard Maintenance District as previously established and defined by City Resolution.

(Ord. 3118, 2014)

17.44.2.040 - Landscaping for boulevard areas.

- A. **Responsibility.** The property owner shall maintain landscaping within the boulevard area not occupied by roadways, curb and gutter, driveways, sidewalks, or crosswalks according to the standards in this article.
- B. **Boulevards in residential areas.** Boulevards in residential areas shall conform to the following standards:

1. Boulevards shall contain grass and trees (with organic mulched reservoirs) and may include shrubs, flowers and/or ornamental plants (with organic mulched reservoirs).
2. At least one (1) canopy type tree shall be planted and maintained in a boulevard section for each thirty-five (35) lineal feet of street and avenue frontage or portion thereof, not covered by driveway, sidewalks, or other approved hard surface.

(Ord. 2950, 2007)

3. Trees shall be spaced more or less evenly along the length of the boulevard area, taking into account the location of light poles, fire hydrants, and the like and the mature canopy width of existing trees and those being planted.
 4. No shrub shall be planted within five (5) feet of a fire hydrant or within a clear visibility triangle (as defined in Chapter 32, [Section 17.32.160](#) of this Title) if its mature height will exceed two and one-half (2½) feet. The height shall be measured from the adjoining street centerline surface elevation.
 5. Landscaping shall be maintained, and those plantings which fail to survive shall be replaced with approved plantings within three (3) months.
 6. Materials and vegetation prohibited in a residential boulevard include, but are not limited to, the following:
 - a. Artificial vegetation including, but not limited to, trees, shrubs, vines, bushes, flowers, and grass.
 - b. All non-living material except as specifically allowed by this chapter.
 - c. Fences/walls (unless approved via a Boulevard Encroachment Permit by the City Engineer).
 - d. Gravel/decomposed granite/cobble.
 - e. Sand.
- C. **Boulevards in non-residential areas.** Boulevards in non-residential areas shall conform to the following standards:
1. Boulevards shall contain grass and trees, and may contain shrubs, flowers, and/or ornamental plants.
 2. Limited amounts of non-living materials (mulches) are permitted when used in conjunction with shrub and tree plantings. Acceptable mulches include organic materials (wood chips and shredded bark), and inert inorganic materials (decomposed granite, cobble and gravel). Where mulch is used, a suitable landscape fabric shall be placed between the soil and mulch material to impede weed growth. However, the use of these substitute materials must be specifically approved by the City as part of a landscape plan.
 3. In no case shall the boulevard area include more than twenty-five (25) percent non-living material, excluding driveways.
 4. At least one (1) canopy type tree shall be planted and maintained in the boulevard section for each thirty-five (35) lineal feet of street and avenue frontage or portion thereof.

5. Trees shall be spaced more or less evenly along the length of the boulevard area, taking into account the location of light poles, fire hydrants, and the like and the mature canopy width of existing trees and those being planted.
6. No shrub shall be planted within five (5) feet of a fire hydrant or within a clear visibility triangle (as defined in Chapter 32, [Section 17.32.160](#) of this Title) if its mature height will exceed two and one-half (2½) feet. The height shall be measured from the adjoining street centerline surface elevation.
7. Any landscaping in the boulevard area that impedes pedestrian travel or is deemed detrimental to public safety shall be removed immediately by the property owner, tenant, or agency upon written notification of the City.
8. Landscaping shall be maintained and those plantings which fail to survive shall be replaced with approved plantings within three (3) months.
9. An automatic irrigation system shall be required of all commercial projects and multi-family projects with four (4) or more dwelling units.
10. All non-living material must be contained and shall not spill into the street and/or onto the sidewalk. Owners are required to remove any spillage.
11. Materials and vegetation prohibited in a non-residential boulevard include, but are not limited to, the following:
 - a. Artificial vegetation including, but not limited to, trees, shrubs, vines, bushes, flowers, and grass.
 - b. Fences/walls (unless approved via a Boulevard Encroachment Permit by the City Engineer).
 - c. Sand.

12.4.010 - Definitions and responsibility.

A. Definitions.

"Boulevard" within the City is that area within any street, avenue or highway right-of-way not occupied by street paving, curb and gutter, and sidewalks. An "inside boulevard" is the boulevard area on the property line side of the sidewalk. An "outside boulevard" is the boulevard area on the street side of the sidewalk. Except as permitted under [Section 12.4.040](#), no boulevard area may be encumbered by any obstacle whatsoever.

"Obstacle" means any strung wire or netting, any fence or railing, or any barrier or structure of any kind whatsoever, but does not include trees, ornamental lamp-posts, telephone or electric light poles, United States government mailboxes, signage for structures on the National Historical Register provided by the Montana Historical Society, or other structures erected by permit to aid owners in caring for the boulevards adjoining their property. The Director of Public Works may grant a special permit for a temporary barrier to protect newly sown grass on boulevard areas if such barrier will not endanger passers-by.

(Ord. 2785, 2000)

B. Adjoining Owners Responsibility.

It shall be the duty of the owners and tenants of any premises within the limits of the City to maintain the boulevard section in front of and adjoining their premises in safe and substantial condition. Any portion of the right-of-way which is not occupied by roadway section, curb and gutter, driveway, sidewalk or crosswalk shall be maintained as required by Section 17.44 Landscaping. It is also the responsibility of corner lot owners/tenants to maintain the clear vision triangle as described in [Section 12.4.020](#).

(Ord. 2549 § 1(part), 1989).

(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)