

## City of Walker – Tree Ordinance

### Chapter 90 VEGETATION\*

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\***Cross references:** Vegetation reclamation at mineral mining sites, § 34-303; parks and recreation, ch. 54; planning, ch. 58; visibility at intersections in residential and agricultural districts, § 94-336; fences, walls and hedges, § 94-337.

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[Sec. 90-1. Damaging gardens or orchards.](#)

[Sec. 90-2. Malicious destruction of trees, shrubs, grass, turf, plants, crops or soil.](#)

[Sec. 90-3. Noxious weeds and other prohibited vegetation.](#)

Sec. 90-1. Damaging gardens or orchards.

It shall be unlawful for any person to enter any premises located within the city without the consent of the owner or tenant or his agent and there cut down, damage, destroy, eat or carry away any portion of a garden or orchard, including any growing thing, crop, tree, timber, grass, seed, soil, fertilizer, water supply, tool, implement, fence or any other protective device, or any other thing used for the development, cultivation, maintenance and use of such garden or orchard.

(Code 1976, § 10-23)

Sec. 90-2. Malicious destruction of trees, shrubs, grass, turf, plants, crops or soil.

(a) A person who wilfully and maliciously or wantonly and without cause cuts down, destroys or injures any tree, shrub, grass, turf, plants, crops or soil of another that is standing, growing or located on the land of another within the city is guilty of a misdemeanor. A person convicted under this section may be required to make restitution for any damage done.

(b) A person convicted under subsection (a) who committed the offense with a vehicle (as defined by the uniform traffic code for the city) may have his license to operate a vehicle in the state suspended for up to one year in addition to a penalty imposed under subsection (a).

(Code 1976, § 10-23.1)

**Cross references:** Soil redistribution, § 34-181 et seq.; erosion and sedimentation prevention, § 34-206; traffic and vehicles, ch. 82.

Sec. 90-3. Noxious weeds and other prohibited vegetation.

(a) *Definitions.* The following words and phrases are defined as follows for purposes of this section:

*Dwelling* means a single-family, two-family, or mobile home dwelling, as defined by section 94-5 of the Code of Ordinances, whether or not actually occupied.

*Lot* means a "lot" as defined by section 94-5 of the Code of Ordinances.

*Nonplatted residential lot* means a lot which is used or intended for use for residential dwelling purposes, whether or not a dwelling is located on the lot, but which is not a platted lot or a lot located within a residential subdivision or a residential site condominium project.

*Nonresidential lot* means any lot other than: (i) a "platted residential lot" or (ii) a "nonplatted residential lot."

*Noxious weeds* includes Canada thistle (*Cirsium arvense*), doddars (any species of *Cuscuta*), mustards (charlock, black mustard and Indian mustard, species of *Brassica* or *Sinapis*), wild carrot (*Daucus carota*), bindweed (*Convolvulus arvensis*), perennial sowthistle (*Sonchus arvensis*), hoary alyssum (*Berteroa incana*), ragweed (ambrosial elatior 1.) and poison ivy (*Rhus toxicodendron*), poison sumac (*Toxicodendron vernix*), or other similar plants which are determined by the city commission to be a detriment to the public health, safety or general welfare.

*Platted residential lot* means a lot which is used or intended for use for residential dwelling purposes, whether or not a dwelling is located on the lot, and which is a platted lot or a lot located within a residential subdivision or a residential site condominium project.

(b) *Noxious weeds*. No person shall maintain or allow to be maintained the growth of noxious weeds upon any lot within the city which is owned, leased, rented or occupied or possessed by the person.

(c) *Prohibited vegetation (other than noxious weeds)*. No person shall maintain or allow to be maintained the growth of grasses, weeds, brush, underbrush, or other vegetation, to height more than 12 inches (or the accumulation of dead grasses, weeds, brush, underbrush, or other vegetation to a height of more than twelve 12 inches) upon any lot within the city which is owned, leased, rented or occupied or possessed by the person, in any of the following locations:

(1) On a platted residential lot (as defined by section 90-3(a)(5)):

a. If a dwelling is located on the lot, then the prohibition of this section applies to any area of the lot within 75 feet in any direction from any part of the dwelling; and between any part of the dwelling and the front lot line and/or any public right-of-way, even if greater than 75 feet from the dwelling.

b. If a dwelling is not located on the lot, but dwellings are located on at least 60 percent of the lots in the plat, subdivision, or project, then the prohibition of this section applies to any areas of the lot within 75 feet from any public right-of-way and/or within 75 feet from any part of a dwelling on any adjacent lot.

(2) On a nonresidential lot (as defined by section 90-3(a)(3)):

a. If a structure is located on the lot, then the prohibition of this section applies to any area of the lot within 200 feet in any direction from any part of the structure; and between any part of the structure and the front lot line and/or any public right-of-way, even if greater than 200 feet from the structure.

b. If a structure is not located on the lot, but the lot is a platted lot or a lot within a nonresidential subdivision or nonresidential site condominium project, and structures are located on at least 60 percent of the lots in the plat, subdivision, or project, then the prohibition of this section applies to any areas of the lot within 200 feet from any public right-of-way and/or within 200 feet of a structure on any adjacent lot.

(3) The prohibitions of subsections 90-3(c)(1) and (2) shall not apply to:

a. Trees and wooded areas; flower gardens; vegetation in vegetable gardens; vegetation planted for ornamental purposes; or vegetation in fields devoted to permitted agricultural purposes.

b. Areas of a lot which are not visible from any public right-of-way (including, without limitation, the right-of-way of U.S. 131 and I-96 within the city) or any adjacent dwelling or structure because of intervening structures, trees, topography, distance, or a combination of those factors, as determined sufficient by the building official.

(d) *Notice of violation and order to abate.* Any person determined by the building official to be in violation of section 90-3(b) or (c) shall be served with a written notice of violation and order to abate as provided by this section.

(1) *Service.* The notice and order shall be served by personal delivery or certified mail (return receipt requested), addressed to the owner of the property at the last known address as shown by the city tax records. The notice and order shall also be served to any persons other than the property owner (such as occupants) who the building official believes to be responsible for the violation. A person served with a notice and order shall sign and date the notice and order and return the signed original copy to the building official. The failure to sign or return the notice and order shall not affect a person's obligation to comply with the requirements of the notice and order or this section.

(2) *Contents.* To the extent known by the building official, and as applicable under the circumstances, a notice and order shall include:

a. The date and time the notice and order was served.

b. The name and address of the person (or persons) responsible for the violation.

c. A description of the nature and location of the violation, and the provisions of this section violated.

d. The minimum corrective actions required to abate the violation.

e. The date by which the violation must be abated. The date specified shall not be less than seven days nor more than 14 days from the date the notice and order is served.

f. An order to abate the violation by the date specified in the notice and order.

g. The applicable fines or other consequences for failure to abate the violation by the date specified in the notice and order.

h. A statement indicating that if the violation is not abated as ordered, then the city may unilaterally act to abate the violation; that the costs to the city of any action by the city to abate the violation, plus an administrative fee and any applicable fines, shall be a personal debt of the person to the city which may be assessed by the city as a lien against the property until paid; and that the refusal to allow the city to abate an uncorrected violation shall constitute a separate and additional violation of this section.

(3) *Abatement required.* Any person served with a notice and order as provided by this section shall abate the violation as specified by the order.

(e) *Noncompliance with order; abatement by city.*

(1) *Abatement by city.* If a person served with a notice and order fails or refuses to abate the violation as required by the order, the city or its authorized representatives may enter the property and take any reasonable actions necessary to abate the violation.

(2) *Costs of abatement; delinquent payments; lien.* The costs, including an administrative fee of \$25.00, as incurred by the city in abating the violation shall be immediately due and payable to the city by the owner of the property where the violation occurred. The city shall notify the property owner that the costs are due and owing by certified mail (return receipt requested), addressed to the property owner's last known address as shown by the city tax records. If the costs are not paid in full within 30 days of mailing of notification, they shall be delinquent. The amount of the costs plus any administrative fee shall be certified by the treasurer to the assessor for inclusion upon the next city tax roll, and the assessor shall include the same in the city tax roll. The amount included in the city tax roll shall be a lien against the property which may be enforced and discharged by the city in the same manner as a tax lien. The costs of abatement, if any, recovered by the city shall be in addition to any civil fines, damages, expenses or costs payable to the city as a result of a violation.

(3) *Abatement by city not defense to violation.* The abatement by the city of a violation of this section and subsequent recovery of abatement costs incurred by the city shall not be a defense to any action by the city against any person for the violation, including, without limitation, any action by the city to collect civil fines, damages, expenses or costs as authorized by law.

(f) *Municipal civil infraction.* A person who violates any provision of this section, including, without limitation, the failure or refusal to abate a violation following service of a notice and order, is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$50.00 or more than \$500.00, plus costs and other sanctions, for each infraction. Repeat offenses shall be subject to increased fines as provided by section 1-11(c)(2) of this Code. The building official is hereby designated as the authorized city official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the City of Walker Municipal Ordinance Violations Bureau) for violations under this section as provided by this Code.

(g) *Nuisance per se; injunctive relief.* A violation of this section is deemed to be a nuisance per se. In addition to any other remedy available at law, the city may bring an action for an injunction or other process against a person, to restrain, prevent or abate any violation of this section.

(Code 1976, § 10-8; Ord. No. 94-436, § 1, 5-10)