

SUBJECT

First Reading of Ordinance No. 005, 2012, Amending Chapter 27 of the City Code to Modify the Requirements for Arborist Licenses, Designate Additional Violations of Chapter 27 as Civil Infractions, and Make Updates.

EXECUTIVE SUMMARY

Section 27-34 of the City Code requires businesses that wish to apply pesticides to trees for commercial gain or profit to have a City arborist license. The Colorado Department of Agriculture has conducted a review of the City Code provisions and Forestry policies related to the regulation of pesticides and pesticide application and notified the City Forester of its conclusion that this requirement conflicts with state statutes regarding the regulation of pesticide applicators. The proposed change to Chapter 27 would remove this conflict.

The other proposed changes to Chapter 27 are: (1) decriminalizing most violations of Chapter 27 by making every violation of Chapter 27 a civil infraction instead of a misdemeanor with the exception of those pertaining to arborist licenses; and (2) updating a position title and cross references, and removing unnecessary detail regarding department structure.

BACKGROUND / DISCUSSION

The Colorado Department of Agriculture has the authority to regulate commercial pesticide application in Colorado. The Pesticide Program Manager with Colorado Department of Agriculture has conducted an evaluation of the City's requirement to license businesses that apply pesticides to trees. A letter was sent by the Colorado Department of Agriculture to the City Manager on September 29, 2011 and included the following.

“Sections 35-10-112(3) and 35-10-112.5, C.R.S., prohibit local governments from adopting or continuing in effect any ordinance regarding the use of any pesticide by commercial pesticide applicators regulated by the Pesticide Applicators' Act. The Department's purpose in reviewing such ordinances is to identify any inconsistencies with these state laws and suggest changes, if necessary, to avoid conflict or confusion.

Any person acting as a commercial applicator must possess a valid commercial applicator business license issued by the commissioner in accordance with this article and any rule and regulations adopted pursuant thereto.

The additional city licensure requirement in section 27-34, therefore, conflicts with and is thus preempted by section 35-10-112.5(2), C.R. S.”

The Colorado Commercial Applicators Act requires a commercial pesticide applicator license for businesses that apply pesticides in Colorado. To obtain the state license, one must pass the general exam and at least one category exams. There is also an insurance requirement. The state has a northern area inspector to provide review and enforcement.

The City has required an arborist license for businesses that apply pesticides to trees since 1971. Currently, an arborist license is also required for businesses that prune or remove trees when cuts for pruning or removal work are made 10 feet or greater above the ground. Revisions to Chapter 27 made in 2005 included the requirement for an arborist license for businesses that make applications of pesticides to trees and for those that perform pruning and removal work over 10 feet in height.

The recommended change to Chapter 27 would remove the Arborist License requirement for pesticide application to trees, but retain the license requirement for tree pruning and removal work. This change will remove the conflict with the state Pesticide Applicators Act.

Section 27-62 of the City Code specifies that violation of several sections of Chapter 27 will be handled as a civil infraction. Violations of the remaining provisions are misdemeanor offenses. After reviewing Chapter 27, Forestry staff has concluded that most violations of Chapter 27 could be properly handled as civil infractions, with the exception of violations of the provisions related to arborist licenses. Staff also wished to update position titles and department and division names, and it was determined that two such references in Section 27-17 were unnecessary and could simply be eliminated. In addition, two incorrect cross-references to other sections of the City Code are being updated.

ENVIRONMENTAL IMPACTS

Commercial pesticide applicators will still be regulated even without a local licensing requirement. The Colorado Department of Agriculture requires a license for all commercial pesticide applicators in Colorado. The State has a northern area inspector, based out of Fort Collins, to provide review and enforcement. The Forestry Department has depended on the State office to investigate complaints and issues about commercial pesticide application to trees in Fort Collins.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

ORDINANCE NO. 005, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 27 OF THE CODE OF THE CITY OF FORT COLLINS
TO MODIFY THE REQUIREMENTS FOR ARBORIST LICENSES, DESIGNATE
ADDITIONAL VIOLATIONS OF CHAPTER 27 AS CIVIL INFRACTIONS,
AND MAKE UPDATES

WHEREAS, Section 27-34 of the City Code requires businesses to have a City arborist license if they wish to do work within the City that involves applying pesticides to trees, or pruning or removing trees, for commercial gain or profit; and

WHEREAS, the Colorado Department of Agriculture (CDA) regulates commercial pesticide application in Colorado; and

WHEREAS, the CDA recently reviewed the City's Forestry Code provisions and regulations and concluded that the City's arborist license requirement for pesticide applicators was in conflict with and preempted by Section 35-10-112.5 of the Colorado Revised Statutes, which declares pesticide regulation to be a matter of statewide concern, and prohibits local governments from adopting or continuing in effect any ordinance, rule, resolution, charter provision or statutes regarding the use of any pesticide by pesticide applicators regulated under state law; and

WHEREAS, the City's licensing requirements predate the state statutes cited by the CDA, and City staff was not previously aware of the apparent conflict; and

WHEREAS, in order to resolve any conflict between the City Code provisions on arborist licensing and the state laws on pesticide regulation, City Forestry staff is recommending that Section 27-34 of the City Code be amended to remove the licensing requirement for commercial pesticide application; and

WHEREAS, on December 19, 2006, the City Council adopted Ordinance No. 198, 2006, which decriminalized certain Code provisions, including several provisions of Chapter 27 related to vegetation, and designated them as civil infractions in order to encourage compliance with Code requirements pertaining to property nuisances; and

WHEREAS, on further review of Chapter 27, Forestry staff has determined that, in the interests of fairness and consistency, all violations of Chapter 27 could properly be handled as civil infractions with the exception of violations related to arborist licenses, and staff is recommending that provisions of the City Code related to enforcement of and penalties for violations of Chapter 27 be amended accordingly; and

WHEREAS, staff is also recommending that outdated department names and titles in Chapter 27 be updated or removed and incorrect cross-references be corrected at the same time as the other proposed amendments to Chapter 27.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 27-1 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 27-1. Definitions.

As used herein, the term *Director* refers to the Director of ~~Cultural, Library and Recreation Services~~ **Community Services**.

Section 2. That Section 27-17 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 27-17. Powers and Duties of City Forester.

~~The City Forester shall be the supervisor of the Forestry and Horticulture Division of the Parks and Recreation Department. The City Forester shall be responsible to the Director in carrying out his or her duties.~~ The City Forester shall have the power to establish and enforce rules, regulations, standards and specifications concerning the cutting, trimming, spraying, removing, planting, pruning and other treatment of trees and shrubs upon the right-of-way of any street, alley, sidewalk or other City-owned property in the City, and concerning the performance of such work on public or private property within the City by licensees under this Article. Such rules, regulations, standards and specifications shall be in writing and shall not be effective until approved by the City Manager. Copies of such rules, regulations, standards and specifications shall be available to the public through the office of the City Forester.

Section 3. That Section 27-34 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 27-34. Arborist license required for tree services.

(a) It shall be unlawful for any business to engage in the following activities within the City for commercial gain or profit without first procuring an arborist license from the City Forester in accordance with the provisions of this Division: ~~(1) Cutting, trimming, pruning or removing of trees when the cuts necessary for such cutting, trimming, pruning or removal are made at a height of ten (10) feet or greater above the ground;~~

~~(2) The application of pesticides to trees of any size.~~

(b) Any licensee under this Article must perform all cutting, trimming, ~~spraying, removing, pruning,~~ **removing** or other treating of trees on public or private property within the City in accordance with the rules, regulations, standards and

specifications established by the City Forester and approved by the City Manager, as provided for in § 27-17 of this Article. Any licensee not complying with this requirement may have its license suspended or revoked pursuant to the provisions of this Article.

(c) The provisions of this Section shall not apply to the production and maintenance of trees in a nursery setting.

Section 4. That Section 27-56 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 27-56. Right of entry.

In order to accomplish the purposes of this Division, the City Forester, officers as defined in § 19-66~~3~~ or a contractor hired by the City Forester ~~is~~ **are** hereby authorized to go upon any public or private property within the City for the purpose of inspecting trees or shrubs. Subject to the notice and hearing requirements of this Division, the City Forester or a contractor hired by the City Forester is also authorized to go upon any public or private property in the City for the purpose of cutting, trimming, pruning and/or removing trees or shrubs that the City Forester has determined present a danger to persons using, or property located upon, the public rights-of-way or other City-owned property within the City, or in order to treat or eliminate a destructive or communicable disease or insect infestation.

Section 5. That Section 27-59 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 27-59. Notice of violation; removal authority and procedure lien on property.

(a) The City Forester ~~or officers as defined in § 19-63 may~~ **is** ~~authorized and directed to give notice to any property owner or occupant who is in violation of any provision of this Article. In addition, officers as defined in § 19-66 are authorized and directed to give notice to any owner or occupant who is in violation of §§ 27-18, 27-57(a)(1-4) or 27-58.~~ Such notice shall be personally served upon such person or, if not personally served, conspicuously posted upon the property and also deposited in the United States mail, addressed to the owner of record at the address on the assessment roll of the County Assessor or at such other, more recent address as may be available to the City. With respect to occupants, notice may be mailed to the address of the property so occupied.

...

Section 6. That Section 27-62 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 27-62. Violations and Penalties.

Any person who violates ~~§ 27-18, Paragraphs 27-18(a)(1-4) or § 27-58~~ any provision of this Article except §§ 27-34 to 27-40 regarding arborist licensing commits a civil infraction and is subject to the penalty provisions of Subsection 1-15(f).

Introduced, considered favorably on first reading, and ordered published this 17th day of January, A.D. 2012, and to be presented for final passage on the 7th day of February, A.D. 2012.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 7th day of February, A.D. 2012.

Mayor

ATTEST:

City Clerk