

ORDINANCE #1-1993

AN ORDINANCE PERTAINING TO TREES IN THE TOWN OF FLEMING, COLORADO, THEIR CARE AND PROTECTION, AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.

BE IT ORDAINED BY THE TOWN COUNCIL OF FLEMING, COLORADO:

1. PURPOSE: It is the purpose of this ordinance to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the Town of Fleming.
2. AUTHORITY AND POWER: The Fleming Town Council has the authority to promulgate rules, regulations and specifications concerning the trimming, spraying, removing, planting, pruning, and protecting of trees, shrubs, vines, hedges, and other plants upon the public right-of-way of any street, alley, sidewalk, or other public place in the town. The provisions of this ordinance may be enforced by an Enforcement Officer, Law Enforcement Officer, or such other persons as are designated by the Mayor or Town Council.
3. APPLICABILITY: This ordinance provides full power and authority over all trees, plants and shrubs located within street, alley, or sidewalk rights-of-way, parks and public places of the town; and to trees, plants and shrubs located on private property that constitute a hazard or threat as described herein.
4. DEFINITIONS: For the purpose of this ordinance, the following definitions are given:

Shrub: A low-growing tree or plant, less than four feet in height.

Clear View: A clear view is defined as one hundred fifty feet in both directions of the intersecting road from a point of ten feet from the beginning of the intersection.

5. TREE PLANTING AND MAINTENANCE:

A. TREES AND PLANTINGS ON PUBLIC PROPERTY:

Trees and plantings in any parks or public places of the town are under the direct supervision of the Town Council or its appointed officer. No person shall plant, remove or otherwise disturb any tree or plant without the approval of the Town Council or its appointed officer.

Unless authorized by the Town Council, No trees or shrubs will be permitted within three feet of any right-of-way of any street, alley, or sidewalk. The Town Council, or its appointed officer shall have the power to remove any tree or shrub so planted in any such right-of-way.

Small plants or flowers are allowed; however, it shall be the duty of the owner of property abutting the right-of-way of any street, alley, or sidewalk to maintain and care for all plants on such abutting right-of-way. The town shall have the power to require any such property owner to perform such maintenance or removal of any plant on the right-of-way abutting such owner's property as may be necessary. The town shall further have the power to require any property owner to trim or remove any plant on such owner's property which may project beyond the property line into or over the right-of-

way abutting the same. Cause for trimming or removing such plants may include but is not limited to: Obstruction of clear view at any intersection, interference with town utility lines, interference with traffic-control signs and devices, or interference with pedestrian traffic.

B. TREES AND PLANTINGS ON PRIVATE PROPERTY:

The Town Council encourages good tree care and management that results in safe, healthy trees and shrubs that contribute to a quality environment. A list of desirable trees, together with size and spacing recommendations, has been developed and is available at the Town Hall.

6. LANDSCAPING: In new subdivisions or when the development of commercial property occurs, the Town Council, or its appointed officer, will have the option to review any landscaping plans and may require street trees, shrubs or plantings in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided.

7. REMOVAL OF DEAD OR DANGEROUS TREES, SHRUBS, AND ROOTS: It shall be the duty of the owner of any property abutting the right-of-way of any street, alley, sidewalk or other public place to remove any dead or dying trees or shrubs, or limbs or roots that are heaving sidewalks that are dangerous to life, limb or property located upon the premises of such owner or upon the right-of-way of any street, alley, sidewalk or other public place abutting the property of such owner of property. All newly cut trees or branches shall be removed from town limits until the bark is loosened or completely removed from such tree or branch. No wood shall be brought into the town limits unless the bark is loosened or completely removed from the wood.

When trees or shrubs are removed as called for in this Ordinance, they shall not be dragged on any street, alley or right-of-way of the Town of Fleming.

An exception to this Section 7, may be made in the event the Town Council declares an emergency and deems it necessary to drag and/or pile trees or branches at designated sites within the town for burning or other disposal purposes.

8. TREE PROTECTION: Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth, health, life or well being of trees, shrubs, or plants or wood piles in the town, or which is capable of causing an epidemic spread of communicable disease or insect infestation such as Dutch Elm Disease, the town shall at once cause written notice to be served upon the owner of the property upon which such diseased tree, shrub or plant is situated or property abutting the right-of-way of any street, alley, sidewalk or other public place upon which such diseased tree, shrub or plant is situated, which notice shall require such property owner to eradicate, remove or otherwise control such condition within a reasonable time to be specified in such notice.

9. RIGHT OF ENTRY: In order to accomplish the purpose of this ordinance, the Town's appointed officer has the authority to enter onto private property whereon there is located a tree, shrub or plant that is suspected to be a public nuisance.

10. ENFORCEMENT: Violation of any section of this Ordinance will result in a notice being served upon the owner of the

property on which the violation occurs, or upon the owner of property abutting the right-of-way of any street, alley, sidewalk or other public place on which the violation occurs. Such notice shall state the violation, the work required to remedy the violation, the reasonable time within which to do the work required to remedy the violation, and state that if the work required is not done within the time specified, the Town will cause the same to be done at the expense of the property owner. Such notice may be served by delivering a copy of such notice at such owner's usual place of abode with some member of his family over the age of eighteen years. In case there is more than one owner of a property, service upon any owner shall be adequate serve upon all co-owners. If the owner of any property cannot be found in the town, service may be made by mailing a copy thereof to such owner, postage prepaid, certified mail, addressed to his last known address, and by posting a copy of such notice in a conspicuous place on the premises involved. Service by mail shall be completed five days after the date the notice is deposited in the mail and posted on the premises.

11. COMPLIANCE WITH NOTICES: It shall be unlawful for any person to fail to comply with the requirements of any notice given pursuant to this ordinance within the time specified in such notice.

12. APPEAL: Any notice given by the Town pursuant to this ordinance, shall allow at least thirty days to the property owner to perform the work required after the time the notice is served on the property owner unless an extension is granted. During such period, the property owner shall have the right to appeal the order of the Town by filing with the Town Clerk a notice that the property owner desires to appeal from such order. Such appeal shall be submitted in writing to the Town Clerk within five days from the date of service of the order. If any property owner files a notice of appeal with the Town Clerk, the Town Council shall schedule a hearing to consider such appeal within ten days. Until a final determination is made by the Town Council, the work required shall not be required, and if the Town Council sustains all or any part of the order, it shall set the time within which the work required to be done shall be done. In hearing any appeal, the Town Council may, on its own motion, and shall, if so requested by the property owner, augment, at property owner's expense, its membership by not more than two additional licensed arborists or foresters, who shall have voting privileges at the hearing.

13. FAILURE OF PROPERTY OWNER TO DO REQUIRED WORK: If any work required is not accomplished within the time specified in the notice, the Town Council or its appointed officer shall cause the work to be done and the cost of the same shall be collected from the property owner. If the Town causes the work to be done, it shall submit the cost thereof to the Town Clerk, who shall send a statement in such amount to the property owner at his last known address. Any such statement shall be paid by the property owner within thirty days and any unpaid amount shall bear interest at the legal rate. If any property owner is unable to pay the cost of such work within thirty days, he may enter into an agreement for the payment of the same in monthly installments over a period of time to be agreed upon by Town Council and property owner; and the unpaid cost shall, by such agreement, be made a lien on the lands of such property owner. Any unpaid balance due under such agreement shall bear interest at the legal rate. The agreement shall be filed in the office of the County Clerk and Recorder of

Logan County.

14. ASSESSMENT OF DELINQUENT COSTS: The Town Clerk shall not later than the first day of July of each year, report to the Town Council as to any costs for work done by the town under this provisions of this ordinance which have not been paid by the property owner or made the subject of an agreement with the property owner. Notice shall be mailed by the Town Clerk to each property owner, which notice shall state the amount claimed to be due from such property owner, the date, place and time that the report will be made to the Town Council, the description of the property to be assessed, a description of the work performed, and that the Town Council will be asked to assess the costs of the work, together with an amount to cover interest, advertising fees and cost of collection against the property of such owner. Such notice shall be mailed at least ten days, and not more than forty-five days, before the date the report will be made to the Town Council. Such assessment shall be certified by the Town Clerk to the County Treasurer and shall be on a parity with the tax lien for general state, county, city, town or school taxes. Such assessment shall become delinquent on the first day of September, after the date of assessment; and after the same becomes delinquent, shall be advertised and sold by the county treasurer at the same time or times, and in the same manner and under all the same conditions, penalties and with the same effect as prescribed by the general laws of the state for the sale of real estate in default of payment of general taxes.

15. PENALTIES, CLAIMS AND APPEALS: Any person who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to provisions of the ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed \$500 for each separate offense. Each day during which any violation of the provision of this ordinance shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub or other plant located on town-owner property is caused, the cost of repair or replacement of such tree, shrub or other plant shall be borne by the party in violation.

16. EXCLUSIONS: If any part of any section of this ordinance is found to be unconstitutional it shall not invalidate any other portion of this ordinance.

17. ENACTMENT: The proceeding sections of the above ordinance of the Town of Fleming, Colorado, are enacted in accordance with the Constitution of the State of Colorado. The Town Council of the Town of Fleming, Colorado, have determined that these matters are matters of local and municipal concern, and the provisions of this ordinance shall be effective upon second reading and adoption.

INTRODUCED, READ AND ORDERED POSTED IN THE FOLLOWING THREE PLACES BY RESOLUTION ADOPTED UPON FIRST READING THIS 2nd DAY OF MARCH, 1993.

1. Fleming Town Hall
2. Fleming Post Office
3. First National Bank of Fleming

POSTED THIS 15th DAY OF MARCH, 1993.

SECOND READING AND ADOPTED THIS 6th DAY OF APRIL, 1993.

ATTEST:

Susan J. Einspahr
Town Clerk

Larry W. Wadsworth
Mayor