

ORDINANCE NO. 277

AN ORDINANCE TO ADOPT REGULATIONS AND PROCEDURES FOR THE PLANTING, CARE AND REMOVAL OF TREES ON PUBLIC AND PRIVATE PROPERTY, CREATING A TREE BOARD, AND PROVIDING PENALTIES FOR VIOLATIONS, AND TO AMEND THE EVART CITY CODE BY ADDING A NEW CHAPTER TO TITLE III OF THE EVART CITY CODE WHICH SHALL BE DESIGNATED AS CHAPTER 34, AND SHALL BE ENTITLED "TREE REGULATION AND PRESERVATION"

THE CITY OF EVART ORDAINS:

Section 1. Definitions:

- (a) Department shall mean the Department of Public Works of the City.
- (b) Director when used herein shall mean the Director of the Public Works of the City or his representative designated for the purposes of direction, regulation, control and enforcement of this Chapter.
- (c) Park shall include all public parks having individual names within and without the City of Evart and which are owned by the City.
- (d) Person as used in this Chapter shall include all individuals, firms, associations, corporations, and persons connected with such firms, associations and corporations.
- (e) Public Places shall include all other grounds or property owned by the City or under its control or supervision whether owned, leased, or under contract of the City.
- (f) Street Rights-of Way shall mean all land
 - (i) dedicated to the public as a street, road, walkway or alley in a platted subdivision;
 - (ii) lying within 33 feet of each side of the physical centerline of public roads by us or;
 - (iii) conveyed to the City or other government agency in fee simple or by grant of easement or right-of-way for street, road or trail purposes.

- (g) Street Trees: "Street Trees" are herein defined as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or right-of-way within the City.
- (h) Park Trees: "Park Trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks, on public property and on all areas owned by the City or to which the public has free access as a park.

Section 2. Permits Required. It shall be unlawful to plant trees or shrubs in any street right-of-way or property owned by the City without first filing an application for and receiving a permit from the Director of the Department or his designated agent. It shall be unlawful to cut trees or any part of a tree which is located on or overhangs a street right-of-way or property owned by the City without first filing an application for and receiving a permit from the Director of the Department or his designated agent.

Section 3. Non-Compliance with Department Orders. It shall be unlawful for a person to fail to comply with an Order issued under authority of and in compliance with the Ordinances included in this Chapter.

Section 4. Protection of Trees and Shrubs. Except to abate a public nuisance, as determined by the Director, it shall be unlawful for any person to:

- (a) Intentionally injure, mutilate, kill or destroy any street tree or park tree or permit any fire to burn where such fire will injure any portion of any tree or shrub.
- (b) Permit any toxic chemical or material to seep, drain or be emptied on or within 10 feet of the crown of the Street Tree or Park Tree.
- (c) Deposit, store, place or maintain, any brick, sand, stone, concrete or other material which may impede free passage of water, air, fertilizer to the roots of any street tree or park tree.
- (d) Fail to erect a suitable barrier around Street Trees or Park Trees apt to be injured during any building operations.

Section 5. Removal of Stumps. All stumps of Street Trees and Park Trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

Section 6. Planting, Restrictions, Permits Required. No tree or shrub shall be planted in any of the street right-of-ways, parks or public places of the City until the Director shall have first approved the kind, size and variety of same, designated the location therefor and granted a permit for the planting of the same.

Section 7. Recovery of Value of Lost Street Trees or Park Trees. Whenever the Department shall determine that any Street Tree or Park Tree has been impaired, damaged or broken in a manner which will cause immediate or future removal of the tree and that such removal is deemed premature and untimely based on the condition, vigor, location, kind and age of the tree and the Department shall have a reasonable belief as to the identity of the person causing said damage, then the Department shall assess against the responsible person the value of the tree as determined by use of the Michigan Forestry and Parks Association Shade Tree Evaluation Chart, by appraisal or by the actual cost of obtaining and planting a comparable replacement tree.

Section 8. Inspection Interference. No person shall prevent, delay or interfere with the Director or Department in the execution or enforcement of this Chapter; provided, however, that nothing herein shall be construed as an attempt to prohibit a public hearing or taking of any legal remedy in any court of competent jurisdiction for the protection of property rights by the owner of any property within the City of Evart.

Section 9. Appeal to City Council. Any person may appeal from a decision, determination or order of the Director or the Department to the City Council, who shall hear the matter and affirm, reverse or amend the decision.

Section 10. Violations: Penalty.

- (a) Any person violating or failing to comply with any of the provisions of this Chapter or the rules and regulations lawfully promulgated under authority of the provisions of the Chapter shall be guilty of a civil infraction and, upon a finding of responsibility, shall be subject to a fine not exceeding one hundred dollars (\$100.00), plus costs of prosecution and costs of abating or removing any nuisances.
- (b) Two violations within twelve (12) months shall be a misdemeanor punishable by a fine not exceeding two hundred dollars (\$200.00) and/or a jail sentence not exceeding thirty (30) days, plus costs of prosecution and costs of abating or removing any nuisances.
- (c) Three violations within twelve (12) months shall be a misdemeanor by a fine not exceeding five hundred dollars (\$500.00) and/or a jail sentence not exceeding ninety (90) days, plus costs of prosecution and costs of abating or removing nuisances.

Section 11. Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall be affected thereby.

Section 12. Effective Date. This Ordinance shall take effect thirty days after adoption.

Duly adopted by the City of Ewart at the December 21, 1994 City Council meeting.

Published: January 25, 1995

Roger Elkins
Roger Elkins, Mayor

Attest:

Diane M. Faber
Diane M. Faber, Clerk