

TOWN OF WINTER PARK  
ORDINANCE NO.467  
SERIES OF 2013

AN ORDINANCE AMENDING CHAPTER 12 OF TITLE 4 OF THE WINTER PARK  
TOWN CODE

WHEREAS, C.R.S § 31-15-401(1)(c) authorizes the Town to declare what is a nuisance and abate the same;

WHEREAS, the Town Code currently addresses nuisance trees but additional clarification is necessary; and

WHEREAS, the Town Council further finds and determines that the following amendments to Chapter 12 of Title 4 are in compliance with C.R.S. § 31-15-401(1)(c).

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF WINTER PARK, COLORADO, THAT:

Section 1. Section 4-12-2 of the Winter Park Municipal Code is hereby amended as follows:

**4-12-2: DEFINITIONS:**

\* \* \*

~~INFECTED DANGEROUS TREE:~~

- ~~A.~~ *A dead or dying tree that either has no leaves or needles on it, or has leaves or needles that are dry, wilted, browning or falling off the tree;*
- ~~AB.~~ A tree, alive or dead, which is, or has been, infested with a tree pest (beetle or insect);
- ~~BC.~~ Any tree infested with a parasitic plant (i.e. mistletoe) that can affect the growth and vigor of the tree and expose it to attacks by diseases and insects;
- ~~CD.~~ A tree that has blown down or is leaning precariously toward a structure;
- ~~DE.~~ Timber fuels that have accumulated on the urban forest floor as a result of dead or diseased trees which may present a fire hazard to the community (with exceptions for firewood piles and other appropriate tree piles); and
- ~~EF.~~ Any tree stumps or root balls that are severely damaged or exposed more than fifty percent (50%) due to falling trees.

Section 2. Section 4-12-5 of the Winter Park Municipal Code is hereby amended as follows:

**4-12-5: NUISANCES DECLARED:**

The following activities and uses are declared to be nuisances:

\* \* \*

M. ~~Infected Dangerous Trees. Trees dead, dying or diseased or are in the process of dying as a result of being blown over or leaning precariously toward a structure. Any tree that constitutes a dangerous tree pursuant to Section 4-12-2.~~

Section 3. Section 4-12-7 of the Winter Park Municipal Code is hereby amended as follows:

**4-12-7: ANNUAL TREE INSPECTION AND REMOVAL:**

- A. An owner shall annually inspect its property to determine if there are any ~~infected dangerous~~ trees on the property.
- B. Not later than July 15 of each year, the owner shall remove all ~~infected dangerous~~ trees from the property; provided that, upon request made prior to July 15 of any year, and for good cause shown, the town manager may extend the deadline for a specific property by a maximum of one year.
- C. The owner of the property may submit *to the town manager* an acceptable plan and schedule for removal of the ~~infected dangerous~~ trees if the trees ~~can not~~ *cannot* reasonably be removed prior to the July 15 deadline.
- D. The town manager may also extend the July 15 deadline on a ~~townwide~~ *town-wide* or ~~areawide~~ *area-wide* basis if the town manager determines that such an extension is required due to weather or other unanticipated conditions or circumstances that make compliance with the July 15 deadline unreasonable.

Section 4. Section 4-12-8 of the Winter Parker Municipal Code is hereby amended to read as follows:

**4-12-8: INSPECTIONS; RIGHT OF ENTRY; EMERGENCIES:**

- A. When necessary to make an inspection to enforce this chapter, or when an authorized representative of the town has reasonable cause to believe that there exists upon any premises any condition which constitutes a nuisance under this chapter, the town manager or designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on any of them. If such building or premises is occupied, such person shall first present proper credentials and ~~demand~~ *request* entry; and if such building or premises is unoccupied, such person shall first locate the owner, occupant or other person in control of the

premises and, upon locating said owner, occupant or person in control, shall present proper credentials and request entry.

If entry is refused, such person shall give the owner, occupant or person in control (or, if said owner or occupant cannot be located after a reasonable effort, leave at the building or premises) a twenty four (24) hour written notice of intention to inspect. The notice given shall state that the property owner, occupant or person in control has the right to refuse entry, and that in the event that such entry is refused, inspection may be made only upon issuance of a search warrant by a judge of a court having jurisdiction. When any of the persons enumerated in this subsection A has reasonable cause to believe that a motor vehicle is an inoperable vehicle, such person may, upon the presentation of proper credentials, lawfully request the owner or person having control of such vehicle to demonstrate if the vehicle is capable of moving under its own power. The owner or person having control of such vehicle may lawfully refuse the request. If the request is refused, the person making the request shall give the owner or person having control of the vehicle a twenty four (24) hours notice of intention to inspect in accordance with this subsection A.

- B. After the expiration of said twenty four (24) hour period from the giving or leaving of the notice, the town manager or designee may appear before the municipal judge and, upon a showing of probable cause, obtain a search warrant entitling such person to enter the premises or motor vehicle. Upon presentation of the search warrant and proper credentials, or possession of the same in the case of an unoccupied building or premises, said person may enter said premises or motor vehicle using such reasonable force as may be necessary to gain entry. If the search warrant authorizes the entry into a motor vehicle for the purpose of determining whether it is an inoperable vehicle, the person executing such warrant may lawfully inspect the vehicle to determine if it is capable of being operated under its own power.
- C. For purposes of subsection B of this section, a determination of probable cause shall be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises in issue in order to obtain a search warrant.
- D. When an emergency exists, the town manager or designee upon presentation of proper credentials in the case of an occupied building or premises, or possession of said credentials in the case of an unoccupied building or premises, may enter into any building or go upon any premises within the jurisdiction of the town. In an emergency, such persons may use such reasonable force as may be necessary to gain entry into said premises.
- E. It is unlawful for any owner, occupant or person in charge or control of said building or premises to resist reasonable force used by the town manager or designee.
- F. An owner or occupant whose property may have located on it one or more ~~infected~~ *dangerous* trees shall grant permission to the town manager to enter such property for

the purpose of immediate inspection of the trees located on such property when at least one of the following events has occurred, provided that if the owner or occupant refuses to grant such permission, the town manager shall not enter the property without a valid warrant, except in emergencies as set forth in subsection D hereof:

1. The owner or occupant has requested the inspection;
2. A neighboring landowner or occupant has reported a suspected ~~infected~~ *dangerous* tree(s) and requested an inspection; or
3. The town manager has made a visual observation from other property or a public right-of-way and has reason to believe that *a* ~~infected dangerous trees~~ *tree(s)* exists on the property.

Section 5. Section 4-12-9 of the Winter Parker Municipal Code is hereby amended as follows:

**4-12-9: ABATEMENT OF NUISANCES; FAILURE TO COMPLY:**

\* \* \*

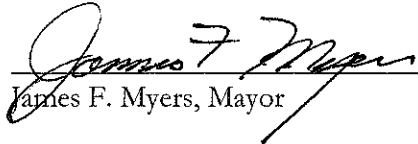
- C. In the case of any nuisance not requiring summary abatement, the town manager or designee may cause a notice to be served upon the person responsible under this chapter for any nuisance.
  1. The notice shall be in writing, signed by the town official issuing the same, and shall be personally served upon the owner, occupant or person in charge or control of the premises upon which said nuisance exists or, if not occupied, then by posting the same prominently at some place on the premises upon which said nuisance exists. If service is by posting, *the property upon which the nuisance exists shall be posted for a minimum of fourteen (14) days, and then* a copy of the notice shall ~~also~~ be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Grand County, Colorado, at the address of such owner as therein shown. The notice shall specifically describe the property where the nuisance is alleged to exist and shall state that if the nuisance is not abated within the time stated in the notice, the costs of abatement may be assessed as a lien against the property, with an additional fifteen percent (15%) assessment for administrative costs and the reasonable attorney fees incurred by the town in abating the nuisance, and that such sums may be collected in the same manner as property taxes. If the owner of the property is not personally served with a copy of such notice, then a true copy of such notice shall be mailed by registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Grand County, Colorado, at the address of such owner as therein shown.
  2. The reasonable time for abatement shall not exceed fourteen (14) days, unless: 1) it appears from the facts and circumstances that compliance could

not reasonably be made within fourteen (14) days; or 2) the nuisance involves an inoperable vehicle which is dismantled or partially dismantled for maintenance or repairs; or 3) the nuisance involves ~~a dead or diseased~~ *dangerous trees tree(s)*.

3. In the case of a nuisance involving an inoperable vehicle which is dismantled or partially dismantled for maintenance or repairs, the reasonable time for abatement shall not exceed thirty (30) days.
4. In the case of a nuisance involving ~~a dead or diseased~~ *dangerous trees tree(s)*, the reasonable time for abatement shall be extended to September 15 of the year in which the notice is given, or if the notice is issued after August 15, to September 15 of the following year. The notice for ~~the abatement of dead or disease~~ *dangerous tree trees abatement* shall include town approved methods for the removal and destruction of ~~the dangerous trees~~. If the owner disputes that the property contains one or more *dangerous trees that are infected*, the landowner shall notify the *town* manager of such dispute within ten (10) days of receipt of the *town* manager's notice. If a timely notice of dispute is given, the town shall not proceed with the procedures in subsection D hereof until the town manager has met with the owner in an effort to resolve the dispute. If the dispute cannot be resolved at such meeting, or if the owner fails to appear at such meeting, the town may proceed with the procedures in subsection D hereof.

INTRODUCED, APPROVED ON FIRST READING, AND ORDERED PUBLISHED IN SUMMARY this 7<sup>th</sup> day of May, 2013. A public hearing shall be held at the regular meeting of the Winter Park Council on the 21<sup>st</sup> day of May, 2013 at 8:00 am., or as soon thereafter as possible, at the Winter Park Town Hall.

TOWN OF WINTER PARK

  
James F. Myers, Mayor

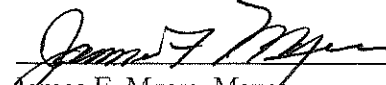
ATTEST:

  
Katie Buss, Town Clerk



READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a  
vote of 6 to 0 on the 21<sup>st</sup> day of May, 2013.

TOWN OF WINTER PARK

  
James F. Myers, Mayor

ATTEST:

  
Katie Buss, Town Clerk

