



## DEPARTMENT OF PARKS & RECREATION

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CONSERVATION LANDS MANAGEMENT

PARK MAINTENANCE

URBAN FORESTRY

# Memorandum

Date: June 5, 2017

To: Missoula Park Board

From: Chris Boza, City Forester

CC: Donna Gaukler, Park Director  
Betsy Willett, Administrative Manager

Re: Tree Board Appeal Policy

## Background

Throughout the course of managing the urban forest, trees must be periodically removed when they become a risk for failure. The City Forester is assigned the task of determining which trees have become a risk and meet the criteria for removal. In general terms, a tree must be dead, dying, diseased or structurally unsound, and pose a risk to warrant removal.

Based upon the removal criteria, the City Forester will make a determination to remove or not to remove a tree. The property owner abutting the tree or citizens in general may not agree with that determination. For this reason, the Missoula Municipal Code provides an avenue for individuals to appeal the decision of the City Forester.

## Analysis

There are several Code Sections to consider when

Authority for the Tree Board is found in the Missoula Municipal Code under Section 12.32.020, The City Tree Board, which states:

**12.32.020 The City Tree Board.** *The City Tree Board shall serve as the appellate body for property owner appeals to City Park and Recreation Department decisions pertaining to woody vegetation located in any public right of way, as well as an advisory body to the City Council and shall perform any functions, responsibilities or duties established herein. (Ord. 3043, 1997; Ord. 3034, 1997; Ord. 2807 §2, 1992).*

The criteria for removal of public trees are also defined in the Missoula Municipal Code under Section 12.32.150, Declaration of a hazard, shown below. Trees that are dead, dying, diseased or structurally unsound fit under the definition of a hazard.

**12.32.150 Declaration of hazard.**

*A. Any woody vegetation, whether on public or private property, of whatever nature, which is endangering or which in any way may endanger the public health, safety, security or usefulness of any public street, public utility line or sidewalk is hereby*

*declared to be a public hazard and may be treated by the City Parks and Recreation Departments. If the City Parks and Recreation Department determines with reasonable certainty, upon inspection, that any woody vegetation or any part thereof, located on private property that encroaches into the public right-of-way or renders it dangerous for passage, it shall notify in writing the owner or tenant in charge of the premises. If the owner or tenant in charge of the premise where the hazard is located, is unable to comply with the terms of the written notice, the City Parks and Recreation Department will work with the property owner where the hazard is located to cause the treatment or removal of the hazard woody vegetation. The private property owner shall be responsible for any liability arising out of injury, damage, or death caused by the dangerous condition existing on the private property. The city shall not be liable for any injury, damage, or death caused by the said hazard or dangerous condition on private property. (Ord. 3043, 1997; Ord. 2807 §15, 1992).*

The appeal process is defined in the Missoula Municipal Code under Section 12.32.180, 12.32.180 Appeal from order of city parks and recreation department, which states:

***12.32.180 Appeal from order of city parks and recreation department. Any decision of the City Parks and Recreation Department must be appealed within fifteen (15) calendar days after notice is given to the property owner (Ord. 3043, 1997; Ord. 3034, 1997; Ord. 2807 §18, 1992).***

The Code does not define the actual appeal process. According to the City Clerk, the city does not have a unified appeals process. It is up to each individual department to define their appeals process. Missoula Parks and Recreation does not have a formalized appeals process. Only the Development Services Department has an appeal process and it is written into the Missoula Municipal Code under the Missoula Zoning Ordinance.

#### Discussion

To address this omission, I have developed the attached appeal policy. The Tree Board appeal policy is patterned after the Board of Adjustments appeal process defined in the Missoula Zoning Ordinance.

#### Recommendation

Staff recommends the Park Board approve the attached Tree Board appeal policy.

Chris Boza  
City Forester



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# Missoula Parks and Recreation Policy

## Appeals of City Forester Decisions

Decision of the City Forester may be appealed to the Missoula City Tree Board. Authority for the Tree Board is found in the Missoula Municipal Code under Section 12.32.020, The City Tree Board, which states:

**12.32.020 The City Tree Board.** *The City Tree Board shall serve as the appellate body for property owner appeals to City Park and Recreation Department decisions pertaining to woody vegetation located in any public right of way, as well as an advisory body to the City Council and shall perform any functions, responsibilities or duties established herein. (Ord. 3043, 1997; Ord. 3034, 1997; Ord. 2807 §2, 1992).*

To ensure an orderly application of the appeals process, the Missoula Park Board has established the following policy for the conducting tree appeals.

### A. Applicability; Authorized Appeals

The City Tree Board is authorized to hear and decide appeals where it is alleged there has been an error in any order, requirement, decision or determination made by the city forester in the administration, interpretation or enforcement of the city's Comprehensive Tree and Shrub Planting, Pruning And Maintenance Regulations.

### B. Right to Appeal

Appeals of administrative decisions may be filed by any person aggrieved by the city forester's decision or action. The City Tree Board is authorized to make determinations about whether individuals filing appeals are "aggrieved by the decision or action."

### C. Application Filing

1. Complete applications for appeals of administrative decisions must be filed with appropriate personnel in Missoula Parks and Recreation.
2. Per the Code, appeals of administrative decisions must be filed within 15 days of the date of the decision being appealed.

### D. Effect of Filing

The filing of a complete notice of appeal stays all proceedings or maintenance activities in furtherance of the action appealed, unless the city forester certifies to the Tree Board, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property.

### E. Scheduling of Hearing

Upon receipt of the appeal application, a meeting of the Tree Board to hear the appeal will be set when a quorum of the Tree Board can be assembled, but no sooner than 10 days from the receipt of the appeal application.

1. Appellant Notice

The appellant will be notified of the hearing at 7 days prior to the hearing. Notification of the scheduled hearing may occur by mail or by email.

## **2. Posting Agenda**

Agenda for the hearing of an appeal of urban forester decisions will be posted at least 48 hours before the appeal hearing.

## **F. Hearing and Decision**

1. The Tree Board will hold a hearing on the appeal.
2. Following the close of the hearing, at the same or subsequent meeting, the Tree Board take action on the appeal.
3. In acting on the appeal the Tree Board must look at all information presented prior to rendering a decision.
4. In exercising the appeal power, the Tree Board has all the authority of the city forester from whom the appeal is taken, and the Tree Board may:
  - a. Deny the appeal
  - b. Affirm the appeal, in whole or in part
  - c. Apply conditions to an appeal affirmation
  - d. Modify the decision being appealed
  - e. Forward the appeal to the full Park Board for consideration.

## **G. Review Criteria**

An appeal may be sustained if the Tree Board, after reviewing all information, finds that the city forester erred in the original decision.

## **I. Rehearing by the Tree Board**

The Tree Board may grant a rehearing on any appeal of city forester decision if the rehearing request includes new evidence to be presented that was not available at the time of the original hearing or when the Tree Board determines that good cause has been shown for a rehearing. The request for a rehearing must be made within 15 days after the Tree Board's decision.

## **J. Appeals**

Any person aggrieved by a decision of the Tree Board may appeal the Board's decision to the City Council. The appeal must be made to the City Council within 15 days after the Tree Board's decision.