

## **Complaint of Violation of Chapter 92 Street Trees Ordinance**

### **Submitted to Town Council for March 2, 2023 Meeting**

**92.02 STREET TREE.** Any tree planted within the town right-of-way on either side of all streets, lanes, trails or ways within the town.

**92.02 TREE TRIMMING.** The removal of plant parts to control growth and enhance performance or function in the landscape by developing and preserving tree structure and health. The removal of water sprouts, sucker growth and hanging limbs is not considered **TREE TRIMMING** according to the provisions of this chapter.

During the the week of January 8-13<sup>th</sup>, it was brought to the attention of the Tree Board that a crew, A-OK Tree Service, was trimming trees along the Boulder Road. The trimming was extensive and beyond the definition of “hanging limbs” (see definition of Tree Trimming from ordinance). On January 11<sup>th</sup>, Constance Lynn, Tree Board President, sent an email to Judy Drain and Tree Board members asking that all trimming should be ceased until we all had a chance to meet. On that same day, Mayor Drain responded to say that there had been a discussion about the dumpster tree and she requested meeting with someone from the Tree Board at the tree. Constance agreed to meet.

On January 12<sup>th</sup>, Tree Board members Constance Lynn, Dan Pence and Steve Cox met with the A-OK crew foreman and informed him of the Boulder Street Trees Ordinance and its provisions. They informed him that any trimming of street trees needed to be approved by the Tree Board and Town Council. He advised us that Councilman Catmull, in conjunction with Garfield County, had authorized the trimming. Councilman Catmull had stated in the January 2023 Town Council meeting that he was aware of the ordinance and had read it. His Town Council assignments do not include duties under Section 92.04 Ordinance Administration. That is Mayor Drain’s assignment.

#### **92.04 ORDINANCE ADMINISTRATION.**

(A) *Authority.* The Council member responsible for administering and enforcing this chapter will be appointed by the Mayor. He or she shall:

(1) Have supervision of all trees planted or growing in public rights-of-way or town-owned places within the town;

(2) Supervise the planting, trimming, spraying, preservation and removal of street trees and other plants in public streets, in town cemeteries and in town parks to promote safety, protect town utilities and preserve the beauty of such public places; and

(3) Supervise the maintenance of street trees and park trees.

On January 12<sup>th</sup>, Steve Cox sent an email to Mayor Drain informing her of the ordinance violation and suggested that all trimming cease until the Tree Board could be consulted. Subsequent to that request, the Tree Board approved the removal of a few limbs remaining to be trimmed at the end of the Lower Boulder Road.

On January 23<sup>rd</sup>, Steve Cox contacted Garfield County Engineer, David Dodds, to inform him of the ordinance. Mr Dodds apologized for not knowing such an ordinance existed and he also

stated he did not know that the Lower Boulder Road was within the boundaries of Boulder Town. He stated that there were no future plans for the County to fund any further trimming.

At the February 2<sup>nd</sup> Town Council meeting, Constance Lynn and Tina Karlsson of the Tree Board, gave a presentation about the Tree Board and the Street Tree Ordinance. At the conclusion of their presentation, it was agreed that **ONLY** the most severely damaged tree by the town dumpsters should be removed.

#### **§ 92.06 STREET TREE MAINTENANCE AND CARE BY CITIZENS.**

(E) *Town authority.* The town may condemn and remove, or order to be removed, any tree or tree stump upon any of the public owned property within this town where the same is dead, diseased or for any reason whatsoever deemed undesirable or unsafe by the Tree Board.

On February 6<sup>th</sup>, The one severely damaged tree, approved for removal, was removed but in addition another heritage cottonwood tree was removed and excessive trimming was done on a third tree next it. According to A-OK Owner, Councilman Catmull gave full approval to complete the work (see attached Bid A) even though he has no authority to do so. The bid itself violates Article 3, Section A of the Purchasing Policy of Boulder Town and should have never been approved by the Town Council. In authorizing the work and going beyond the motion voted on by the Town Council, he has willingly violated the Street Tree ordinance and is therefore subject to penalties under section 10.99 of the Town Code.

#### **§ 92.06 STREET TREE MAINTENANCE AND CARE BY CITIZENS.**

(D) *Removing stumps.* Any tree that shall be removed from any of the public streets or places within the town shall be removed below the surface of the ground so that the top of the stump shall not project above the level of the ground, unless permission to leave a projecting stump is granted by the Tree Board.

(E) *Approval required.* Any person, firm, partnership, corporation or organization of any kind must obtain approval from the Tree Board prior to removing any tree found upon any public street or on any town-owned property within the town.

#### **10.99 GENERAL PENALTY.**

(A) Any person, firm or corporation who violates any provision of this code for which another penalty is not specifically provided shall, upon conviction, be subject to the following:

(1) A fine not exceeding \$2,500 for the first violation; and

(2) A fine not exceeding \$7,500 for second and subsequent violations, except for violations of ordinances regulating traffic and parking.

(B) A separate violation shall be deemed committed upon each day during which a violation occurs or continues.

During the February 2<sup>nd</sup> meeting there was an agreement that the Tree Board would do an assessment of all street trees and a recommendation for future work be given to the TC. Subsequent to that agreement, the Town Council approved the expenditure of \$3800 for work on trees along the Burr Trail. The bid for this work (attached – Bid B) involved trees mostly on

private property and possibly a few street trees. Again this bid was in violation of Article 3, Section A of the Purchasing Policy and no approval by the Tree Board was sought or given for this additional work on street trees.

Trees on private property are covered under Section 92.06 (C). As stated in Section 92.06, “adjacent property owners maintain trees on their property” and “at their expense”. To approve funds for work on private property is a misappropriation of town funds. The A-OK Tree Service Company was told by Councilman Catmull that he had obtained approval to trim trees on Catherine Smith’s property. He later admitted he had no permission and Ms. Smith verified that no conversation about trimming had occurred. This is a serious breach of ethics which the Town Council should address.

One tree was removed near the Burr Trail junction “because it was growing over a main water line owned by Boulder Farmstead Water Company” as stated by Councilman Catmull. This removal was not approved by the Tree Board and using funds to remove a tree for a private company is a Conflict of Interest since Councilman Catmull works for that company.

#### **§ 92.06 STREET TREE MAINTENANCE AND CARE BY CITIZENS.**

(C) *Adjacent property owners to maintain trees on their property.* Trees and other plantings on adjacent property shall not inappropriately overhang or encroach upon sidewalks, streets, public rights-of-way or other designated pedestrian ways, nor obstruct the view of traffic signs or any street intersection. Trees and other plantings that project over any street or access road that may be used for emergency purposes shall be trimmed to a safe height and shape. Adjacent property owners shall remove all dead, diseased or dangerous trees; or broken or decayed limbs which constitute a menace to public safety, at their expense; or prune to eliminate encroachment on sidewalks and streets.

In conclusion, The Tree Board asks the Town Council to;

- 1) Appoint a Purchasing Agent in accordance with the Boulder Town Purchasing Policy.
- 2) Follow all rules put forth in the Purchasing Policy in the future.
- 3) Hold Councilman Catmull accountable for willfully violating the Street Tree Ordinance, Sections 92.04, 92.06(B), (C) and (E) and impose the proper penalties under Section 10.99.
- 4) Make it clear that Councilman Catmull has no authority to administer any part of the Street Tree Ordinance in the future.
- 5) Take action to address ethics and conflict of interest violations by Councilman Catmull.
- 6) Rescind the vote to use town funds to remove or trim any trees on private property.
- 7) Coordinate all trimming and removal activities with the Tree Board and follow the requirements of the Street Trees Ordinance in any future decisions.

Attachments

- A) Bid for Dumpster Trees Work 1/17/2023
- B) Bid for Burr Trail Work 1/4/2023
- C) Revised Bid (after work was stopped) for Burr Trail Work 2/17/2023