

TITLE 6

PUBLIC WAYS AND PROPERTY

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CHAPTER 1

STREETS AND SIDEWALKS

SECTION:

- 6-1-1: Enforcement and Supervision
- 6-1-2: Street Excavations, Obstructions
- 6-1-3: Construction of Curbs and Sidewalks
- 6-1-4: Existing Curb Cuts Decreased
- 6-1-5: Repair of Sidewalks and Curbs
- 6-1-6: Removal of Snow and Ice

6-1-1: **ENFORCEMENT AND SUPERVISION:** The Town Administrator shall, subject to the control of the Board of Trustees, have the charge and control of the construction and inspection thereof, maintenance and repair of the streets, alleys and sidewalks within the Town. The Town Administrator may appoint a qualified person to inspect such construction for compliance with all applicable codes. (1969 Code, sec. 16.1; amd. 1985 Code)

6-1-2: **STREET EXCAVATIONS, OBSTRUCTIONS:**

(A) Permit Required:

- (1) Excavations: It shall be unlawful for any person, other than an officer or employee of the Town in the course of his employment, to make or cause or permit to be made any excavation or opening in or under the surface of any street, alley, sidewalk or other public place, without first obtaining a permit therefor, or to make any such excavation in any manner which does not comply with the permit issued therefor. (1969 Code, sec. 16.2)
- (2) Obstructions: It shall be unlawful for any person other than an officer or employee of the Town in the course of his employment, to obstruct any street or sidewalk without first obtaining a written permit therefor. (1969 Code, sec. 16.3)

(B) Application for Permit: Any person desiring a permit to excavate in or obstruct any street, alley or sidewalk area shall make application therefor to the Town Clerk stating in such application the purpose for the excavation or obstruction, its size, and the limit of time for which the permit is requested. No such permit shall be issued until it has been approved by the Building Inspector, and a curb cut permit fee paid as established by resolution of the Board of Trustees. (1969 Code, sec. 16.4; amd. 1985 Code)

(C) Other Obstructions Prohibited: Except by permit issued as set forth in subsection (A)(2) hereof, no person shall in any manner obstruct any street, alley or sidewalk within the Town in any manner whatsoever, but shall at all times keep such streets, alleys and sidewalks free for the passage of vehicular and foot travel; and the installation of or projection of any signs, posts, merchandise, merchandise display

racks, merchandising machines or scales, on, across or above any such street, sidewalk or alley, which in any manner obstructs the same for its normal usage is hereby prohibited, except such supports as are now in existence for the support of buildings already erected, and if and when such buildings are remodelled or materially altered, such obstructions shall be removed and no longer maintained, and once removed shall not be replaced. (1969 Code, sec. 16.5)

- (D) Permits shall be required under this Section even if the street, alley, sidewalk or other public place has not been accepted by the Town and is still under construction or warranty by any person or other legal entity. The recipient of the permit shall abide by and be subject to the construction design standards adopted by the Town and shall become an additional warrantor to the Town for that portion of the street, alley, sidewalk or other public place for which the permit was granted. (Ord. 478, 11-16-87)

6-1-3: CONSTRUCTION OF CURBS AND SIDEWALKS:

- (A) Permit Required: No sidewalk or curb shall be constructed or reconstructed, and no openings, driveways or cuts of any kind shall be made or enlarged in any curb which is heretofore or hereafter constructed without first obtaining a permit from the Town Building Inspector. (1969 Code, sec. 16.7)
- (B) Grade and Specifications: All sidewalks and curbs shall be constructed on a grade, line and location established by the Building Inspector and specified in the permit. Every permit for openings, driveways or cuts in any curb shall specify the width and location of such openings, driveways or curbs, and no such permit shall be issued without first being approved by the Board. (1969 Code, sec. 16.8)
- (C) Construction Standards: All construction of streets, alleys, sidewalks and curbs, or other public improvements shall be constructed pursuant to the engineering standards set forth in subsection 10-1-4(C) of this Code. (1985 Code)

6-1-4: EXISTING CURB CUTS DECREASED: The Board of Trustees may by resolution determine that any existing driveways or passageways, where the same enter the street line, are so large or of such a nature that the same interfere with the proper use of the street, and may order such driveway or passageway to be removed, altered or decreased in size where the same enters the street line, and if curbing exists along said street line, require the property owner to install such additional curbing as may be necessary to comply with the Board's resolution. A copy of such resolution shall be served upon the property owner by registered mail, addressed to the property owner at his last known address. If the property owner fails to comply with the said resolution within thirty (30) days after the mailing of said resolution, the Town shall proceed with the necessary work and construction to conform with the terms of said resolution, and the cost thereof shall be a charge against the property and may be certified to the County Treasurer for collection, or the Town may proceed with legal action to enforce the collection thereof. (1969 Code, sec. 16.9)

6-1-5: REPAIR OF SIDEWALKS AND CURBS:

- (A) Maintenance Required: All sidewalks, curbs and gutters shall be maintained with an even surface in good repair and in conformity with the established grade of the streets along which they are constructed. (1969 Code, sec. 16.11)
- (B) Notice to Repair, Collection of Costs: Whenever the Board of Trustees, by resolution, shall determine that the construction of any sidewalk, curb or curb and gutter, or the repair thereof, is necessary for the public safety, it shall be the duty of the owner of the property adjacent to or upon which the improvement is to be constructed or repaired to construct or repair the same in accordance with the specifications of the Building Inspector. Upon the passage of such a resolution, the Building Inspector shall cause notice in writing to be served upon the owner or agent in charge of such premises to construct or repair such sidewalk, curb or curb and gutter within thirty (30) days after the receipt of said notice. Said notice shall be served upon the owner or agent in charge of the premises if found within the Town, and if not, the notice may be served by registered or certified United States mail addressed to the owner with return receipt requested, addressed to such owner at his last known address; or in lieu of service by mail, said notice may be served by publication in two (2) issues of some daily or weekly newspaper published in the Town; or if there is no newspaper published within or which has a general circulation within the limits of the corporation, then, upon a resolution being passed by such Board of Trustees to that effect, such notice may be published by posting copies thereof in three (3) public places to be designated by the governing body within the limits of the corporation. (1969 Code, sec. 16.11-1)

6-1-6: REMOVAL OF SNOW AND ICE: It shall be unlawful for any owner or occupation of any lot, block or parcel of ground within the Town, or for any agent in charge of such property, to allow any snow or ice to accumulate or remain upon any sidewalk alongside such property longer than twenty four (24) hours from the time of the last accretion of such snow or ice. (1969 Code, sec. 16.12)

CHAPTER 2

MOVING BUILDINGS

SECTION:

- 6-2-1: Permit Required, Conditions
- 6-2-2: Permit Fees
- 6-2-3: Inspection
- 6-2-4: Route of Travel
- 6-2-5: Indemnity and Bond

6-2-1: PERMIT REQUIRED, CONDITIONS: It shall be unlawful for any person to use or occupy any street, alley or public ground for the purpose of moving a building across or thereon without first having obtained a permit therefor from the Town Building Inspector. Said permit shall be issued only upon a written application therefor by the person so desiring to use or occupy the street, alley or public ground for moving purposes, and upon a form to be prescribed by the Town. Said permit must be issued by the Town Building Inspector forty- eight (48) hours or more prior to the time when the moving of said building across or on any street, alley or public ground is to begin. Any permit which may be issued under the provisions of this Chapter shall provide that the persons to whom it is issued expressly agreed to save the Town harmless on account of any damage or injury to the street, alley or public ground so used, and on account of any damage or injury that may be sustained by any person or persons by reason of the use and occupancy of the street by the person so obtaining a permit. (1969 Code, sec. 16.10)

6-2-2: PERMIT FEES: Before a permit shall be issued under this Chapter, a fee as established by resolution of the Board of Trustees, shall be paid to the Town Building Inspector, together with the estimated costs which the Town will incur for the safety of persons and the preservation of property and for any services required by the Town in connection with said permit. (1969 Code, sec. 16.10-1; amd. 1985 Code)

6-2-3: INSPECTION: Prior to the issuance of any permit authorized hereunder, the Town Building Inspector shall first inspect the building as to its condition for moving through the Town. The condition of the building to be moved must be such that it can be moved safely upon any street, alley or public ground within the Town. (1969 Code, sec. 16.10-2)

6-2-4: ROUTE OF TRAVEL: Prior to the issuance of a permit hereunder, a detailed route of travel of the building to be moved through the Town must be submitted to the Electrical Department of the Town¹, which Department must inspect and approve the proposed route and furnish to the Building Inspector an estimate of the expense to be incurred by the Electrical Department for its supervision relating to utilities during the move of said building. Representatives of the Electrical Department must accompany the building to be moved during its entire movement within the Town. (1969 Code, sec. 16.10-3)

¹See. Section 7-1-1 of this Code.

6-2-5: **INDEMNITY AND BOND:** A surety bond in an amount to be determined by the Building Inspector shall be required before any permit is issued hereunder, when in the discretion of the Town Building Inspector the building to be moved is of such size or condition that the movement thereof might result in damage to property of the Town or to the property of any other person, and a certificate of insurance must be furnished to the Town Building Inspector in the amount of one million dollars (\$1,000,000.00) public liability for bodily injury per person, one million five hundred thousand dollars (\$1,500,000.00) per accident and one hundred thousand dollars (\$100,000.00) property damage per occurrence. (1969 Code, sec. 16.10-4; amd. 1985 Code)

CHAPTER 3

(Reserved)

CHAPTER 4
TOWN PARKS

SECTION:

- 6-4-1: Daily Park Hours
- 6-4-2: Destruction of Park Property
- 6-4-3: Tents, Buildings, Campers or Trailers
- 6-4-4: Fires Prohibited
- 6-4-5: Camping in Parks
- 6-4-6: Limitation of Parking in Meadow Park
- 6-4-7: Concessions
- 6-4-8: Park Rules and User Fees

6-4-1: DAILY PARK HOURS. The parks within the Town shall be opened daily to the public from five o'clock (5:00) A.M. until ten o'clock (10:00) P.M., and no persons other than those authorized by the Board of Trustees of the Town shall remain in said park at any other time; provided, however, that the Board of Trustees may, by permit first having been obtained, extend or limit the time herein specified.

6-4-2: DESTRUCTION OF PARK PROPERTY.¹ It shall be unlawful to cut, mark, remove, break or climb upon, or in any way injure, damage or deface the trees, shrubs, plants, turf or any of the buildings, fences, bridges or other structures or property within or upon park premises; or in any other way injure or impair the natural beauty or usefulness of any park or recreation area.

6-4-3: TENTS, BUILDINGS, CAMPERS OR TRAILERS. It shall be unlawful to build or place any tent, building, booth, stand, trailer, camper, vehicle or other structure in or upon any of the parks or parkways without first having obtained a permit to do so from the Board of Trustees.

6-4-4: FIRES PROHIBITED. It shall be unlawful to light, make or use any fire except as hereinafter stated within the parks, parkways or other recreational facilities owned or operated by the Town; provided however, that this Section shall not apply to authorized Town employees. Charcoal or propane fires may only be built in fireplaces or on grills brought into the park by members of the public or as constructed by the Town for that purpose in such areas and under such rules and regulations as may be prescribed by the Board of Trustees.

6-4-5: CAMPING IN PARKS. It shall be unlawful to camp, remain or sleep in any of the parks or roads therein after the hour of ten o'clock (10:00) P.M. and before the hour of

¹See also Section 4-8-1 of this Code.

five o'clock (5:00) A.M., unless prior permission has been obtained by permit from the Board of Trustees.

6-4-6: LIMITATION OF PARKING IN MEADOW PARK. It shall be unlawful to park any motor vehicle including motorcycles in Meadow Park from twelve o'clock (12:00) noon on Friday until five o'clock (5:00) A.M. on Monday, except in parking areas designated from time to time by the Board of Trustees.

6-4-7: CONCESSIONS. It shall be unlawful for any person to sell any food or drink in parks and upon property owned by the Town without first obtaining a concessionaire's permit from the Board of Trustees. Such concessionaire's permit shall be issued pursuant to regulations adopted from time to time by the Board of Trustees. (Ord. 450, 7-15-85)

6-4-8: PARK RULES AND USER FEES.²

- (A) The Town Administrator shall be authorized to act on behalf of the Board of Trustees in the administration of the Board's authority granted by this Chapter 4 and in the day-to-day operations and use of all public parks, park facilities, and open space. In the administration of the day-to-day operations and use of public parks, park facilities, and open space, the Town Administrator may assign or delegate such duties to appropriate Town staff and volunteers.
- (B) The Town Administrator may establish written programs, procedures, and rules governing the public use of any public park, park facility, or open space. By way of example and not limitation, the Town Administrator may establish and administer a procedure for the reservation and scheduling of park, facility, and open space use, issue permits for camping, tents, and concessions in public parks, park facilities, and open space.
- (C) The Town Administrator is authorized to establish reasonable damage deposit(s) and user fee(s) for the use of any public park, facility, or open space provided that no such deposit or fee shall be effective unless and until such deposit or fee is first presented to and approved by the Board of Trustees by motion or resolution. Damage deposits and user fees shall be reasonably approximate in amount to cover the estimated cost generally or typically associated with the administration, operation, management, care, repair, and maintenance of the public parks, park facilities, and open space resulting from the use of such property proposed by the user.
- (D) Any administrative programs, procedures, rules, deposits, and fees established by the Town Administrator shall be made in writing, presented to and approved by the Board of Trustees, and posted or otherwise made readily available for public inspection at the Town Hall. In no event may any administratively established rule,

²Added by Ord. 710, 07-16-01.

damage deposit, or user fee conflict with a fee or regulation established by the Lyons Municipal Code.

- (E) It shall be unlawful for any person to violate any procedure or rule issued by the Town Administrator under this section. (Ord. 714, 09-04-01)
- (F) The Town Administrator or designee may post rules issued under this section at the place where they are to be enforced. If the rule is not so posted, it may still be enforced if the person had actual knowledge of the rule, was given a copy of the rule upon applying for or receiving a permit or license, was advised of the rule by a town employee or peace officer, or was ordered by a peace officer to cease conduct violative of the rule. (Ord. 714, 09-04-01)
- (G) Any person who fails to comply with any rule issued under this section may be ordered by the Town Administrator or a peace officer to leave the park, park facility, or open space, and not return thereto for a period of forty-eight (48) hours. It shall be unlawful to fail to comply with any such order to leave and not return to the park. (Ord. 714, 09-04-01)

CHAPTER 5¹
TREES AND SHRUBS

SECTION:

- 6-5-1: Definitions
- 6-5-2: Purpose
- 6-5-3: Creation of a Town Tree Board
- 6-5-4: Approved Tree Species
- 6-5-5: Spacing Requirements
- 6-5-6: Maintenance and Care of Trees
- 6-5-7: Tree Topping
- 6-5-8: Pruning, Corner Clearance, and Utilities
- 6-5-9: Dead or Diseased Tree Removal
- 6-5-10: Arborist's License and Insurance
- 6-5-11: Penalty

6-5-1: DEFINITIONS.

For the purposes of this chapter, the following words, terms, and phrases shall have the meaning ascribed to them, except where the context clearly indicates a different meaning is intended:

Large Tree:	A tree that, under normal circumstances and growth conditions, will exceed a height of forty (40) feet at maturity.
Medium Tree:	A tree that, under normal circumstances and growth conditions, will grow to a height at maturity of not less than twenty (20) feet and not more than forty (40) feet.
Small Tree:	A tree that, under normal circumstances and growth conditions, will not exceed a height of twenty (20) feet at maturity.
Street Trees:	All trees, shrubs, bushes, or other woody vegetation located on land lying on public property or rights-of-way on either side of any public street, avenue, boulevard, alley, and other public ways within the Town.

¹Entire Chapter 5 of Title 6 repealed and reenacted Ord. 681, 7-1999.

Park Trees: All trees, shrubs, bushes, or other woody vegetation located in a public park, and all other areas owned or controlled by the Town to which the public has access as a public park or recreation area.

Public Right-of Way: Any highway, street, road, boulevard, thoroughfare, alley or other public way.

6-5-2: PURPOSE. It is the purpose of this Chapter 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, bushes, and other woody vegetation within the Town.

6-5-3: CREATION OF A TOWN TREE BOARD.

- (A) Creation: There is hereby created and established a Town Tree Board for the Town of Lyons, Colorado. The Tree Board shall be an advisory body to the Board of Trustees and shall exercise only such power and authority described in this Chapter. The Tree Board shall consist of seven (7) members and at least four (4) members shall be residents of the Town of Lyons. The Mayor shall appoint the members of the Tree Board. Members of the Tree Board shall serve without compensation.
- (B) Term of Office: Unless otherwise provided by the Mayor or Board of Trustees upon appointment, members of the Tree Board shall be appointed to serve a three (3) year term of office. There shall be no limitation on the number of terms any one member may serve on the Tree Board. The Board of Trustees may remove any appointed member of the Tree Board at any time for any reason. Upon resignation of any member, the Mayor shall appoint a new member, subject to the approval of the Board of Trustees, to serve any remaining term of a resigning member.
- (C) Duties and Responsibilities: The Tree Board shall have the following duties and responsibilities:
 - (1) The Tree Board shall study, investigate, advise and develop and/or update annually a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees, shrubs, bushes or other woody vegetation in parks, along streets and in other public areas. Such written plan shall be presented annually to the Board of Trustees and, upon the Board of Trustees' acceptance and approval, the plan shall constitute the official comprehensive tree plan for the Town.
 - (2) The Tree Board may inform and advise the Board of Trustees concerning the presence of any diseased, dying, or hazardous tree condition within the Town; provided that the Tree Board shall not enter upon private property for the purpose of exercising any power or authority or for the purpose of inspection.

- (3) Upon request by the Board of Trustees, the Tree Board shall consider, investigate, make findings, report, and make recommendations upon any special matter or concern.
 - (4) If required or requested, the Tree Board shall review and comment upon landscaping plans or proposals submitted to the Town as part of any development plan or subdivision plat.
 - (5) The Tree Board shall advise, assist, and consult with the Parks and Recreation Director and the Public Works Director as requested.
 - (6) With the assistance and direction of the Parks and Recreation Director or Public Works Director, the Tree Board may conduct or assist in the conduct of fundraising activities, tree preservation programs, or public or private workshops or classes pertaining to any aspect of tree, shrub, and bush care.
 - (7) The Tree Board shall not have the authority to expend funds, enter into contracts, or hire employees, contractors, or agents without the prior written approval of the Board of Trustees.
- (D) Operation: The Tree Board shall elect its own officers, may adopt its own rules of procedure to govern the conduct of meetings, and shall maintain written minutes of any meeting or proceeding. Written minutes of each meeting shall be transmitted to the Board of Trustees for informational purposes. A majority of the members shall constitute a quorum for any meeting of the Tree Board.
- (E) Interference with the Town Tree Board: It shall be unlawful for any person to prevent, delay, or interfere with the Tree Board, its officers, or its agents while engaging in planting, cultivation, mulching, pruning, spraying, or removal activities.
- (F) Review by the Town Board of Trustees: Any person aggrieved by an administrative act or order of the Tree Board may appeal to the Board of Trustees by the filing a written notice of appeal with the Town Clerk. A notice for appeal shall specify in detail the reasons for the appeal and shall identify the relief sought by the appealing party. A request for appeal shall be filed no later than ten (10) days from the date of the Tree Board act or order. Any appeal before the Board of Trustees shall be conducted as an administrative matter and notice shall be provided only to the Tree Board and, if requested in the notice of appeal, to the appealing party. Following consideration of an appeal or upon the Board of Trustees' own initiative, the Board of Trustees may remand, reverse, amend, or affirm any action or order of the Tree Board.

6-5-4: APPROVED TREE SPECIES.

- (A) It shall be unlawful within the Town of Lyons to plant, or cause or permit the planting of, any species of tree on public property other than those included in the following subsections without written authorization from the Tree Board as provided in this Chapter.

- (1) Small Tree Category (Generally species less than twenty (20) feet mature height).

- *American Plum (*Prunus americana*)
- Redbud
- Golden Rain Tree
- Staghorn Sumac
- Flowering Crab (*Malus pumila* var)
- Pussywillow
- *Smooth Sumac
- *Bluestem Willow
- Wayfaring Tree (*Viburnum lantana*)
- Kashgar Tamarish (*Tamarix hispida*)
- Amur Maple (*Acer ginnala*)
- Flowering Dogwood
- *Mountain Maple
- Witch Hazel
- Ironwood
- *Thinleaf Alder (*Alnus tenuifolia*)
- Chokecherry
- Nanking Cherry
- *Gambel Oak (*Quercus gambeli*)
- Mugho Pine (*Pinus mugno*)
- Tamy Juniper (*Juniperus horizontalis*)
- Oregon Hollygrape (*Mahonia aquifolium*)
- Domestic Fruits: Apple, Cherry, Pear, Peach, Apricot, Plum

- (B) Medium Tree Category (Generally twenty (20) to forty (40) feet mature height).

- * Quaking Aspen (*Populus tremuloides*)
- European Mountain Ash (*Sorbus aucuparia*)
- Black Locust
- Red Maple (*Acer rubrum*)
- European Weeping Birch
- Mulberry
- Tree of Heaven (*Ailanthus altissima*)
- Bigtooth Maple (*Acer Grandidentatum*)
- Scarlet Oak (*Quercus coccinea*)
- Sugar Maple (*Acer saccharum*)
- Pecan

Osage Orange (male, thornless)
 Sassafras
 River Birch
 Blackgum
 Austrian Pine (Pinus nigra)
 *Rocky Mountain Juniper (Juniperus scopulorum)
 *Bristlecone Pine (Pinus aristata)
 *Pinon Pine (Pinus cembroides)
 Scotts Pine (Pinus sylvestris)
 Eastern Red Cedar
 Virginia Pine
 *Limber Pine (Pinus flexilis)

(C) Large Tree Category (Generally will exceed forty (40) feet mature height).

Green Ash (Fraxinum Pennsylvania and varieties)
 Ohio Buckeye
 White Ash and varieties
 Catalpa (Catalpa speciosa)
 Kentucky Coffeetree
 *Plains Cottonwood (Populus sargentii, cottonless variety)
 Peach Leaf Willow
 Chinese Elm
 American Elm (Ulmus americans)
 English Elm
 *Hackberry (Celtis occidentalis)
 Honeylocust (Gleditsia triancanthos varieties)
 American Linden (Tilia americans)
 Littleleaf Linden (Tilia cordata)
 Norway Maple (Acer platanoides varieties)
 Silver Maple (Acer saccharinum)
 Bur Oak (Quercus macrocarpa)
 Northern Red Oak (Quercus rubra)
 Swamp White Oak (Quercus bicolor)
 Tulip Popular (liriodendron tulipifera)
 Black Walnut (Juglans nigra)
 Sycamore
 Weeping Willow
 Horse Chestnut
 Sweetgum (Liquidambar styraciflua)
 *Douglas Fir (Psuedotsuga taxifolia)
 *White Fir (Abies concolor)
 *Subalpine Fir
 *Colorado Blue Spruce (Picea pungens)
 *Engelman Spruce
 *Lodgepole Pine
 *Ponderosa Pine

Eastern White Pine
Western White Pine
Larch
(* Designates Native Colorado Vegetation.)

(D) Non-Desirable Trees for Streets

Cottonwood
Boxelder
Elm (Chinese, Siberian)
Poplars
Russian Olive
Silver Maple
Tree of Heaven
Willow
Evergreens that create sight obstructions
Clump form or multi-stem species

6-5-5: SPACING REQUIREMENTS.

- (A) Minimum Spacing Requirements: Any street tree planted or installed within the Town following the effective date of this section (July, 19, 1999) shall conform to the following minimum spacing requirements.

<u>Between the Following Tree Types</u>	<u>Minimum Required Spacing</u>
Small Tree -- Small Tree	20 feet
Small Tree -- Medium Tree	25 feet
Medium Tree -- Medium Tree	30 feet
Medium Tree -- Large Tree	35 feet
Large Tree -- Large Tree	40 feet

- (B) Distance from Curb and Sidewalk: No tree shall be planted or otherwise installed closer to a curb or sidewalk than the following requirements: small trees shall be planted at least two (2) feet from any curb or sidewalk; medium trees shall be planted at least three (3) feet from any curb or sidewalk; and large trees shall be planted at least four (4) feet from any curb or sidewalk. Notwithstanding the foregoing, no evergreen tree shall be planted less than ten (10) feet from any sidewalk or curb.

- (C) Distance from Street Corners and Fire Hydrants: No tree shall be planted closer than thirty-five (35) feet of any point of intersection between the edges or boundaries of two public rights-of-way. No tree shall be planted closer than ten (10) feet of any fire hydrant or valve available for emergency use or fire suppression.
- (D) Utilities: No trees, except those species listed as small trees in section 6-5-4(A) of this Chapter, shall be planted under or within ten (10) lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground water line, sewer line, transmission line or other utility.
- (E) Exceptions: The Tree Board may grant a waiver or variance from the requirements of this section where the Tree Board, following consideration of a request presented during a regular meeting of the Tree Board, finds that the proposed waiver or variance will not create a hazardous condition or impede or limit the proper operation and maintenance of any public right-of-way. In approving any waiver or variance, the Tree Board may impose reasonable conditions upon the future maintenance or removal of any tree or shrub to ensure that the tree or shrub does not adversely affect the health, safety, or welfare of the public.

6-5-6: MAINTENANCE AND CARE OF TREES. The Town shall have the right to plant, prune, maintain and remove trees, plants, shrubs, bushes and all other woody vegetation within all public rights-of-way including all public streets, alleys, avenues, boulevards, lanes, squares and public grounds as may be deemed necessary by the Town to insure public health, safety and general welfare, or to preserve or enhance the symmetry and beauty of such public grounds. The Town shall have the right to prune, maintain and remove trees, plants, shrubs, bushes and all other woody vegetation lying within public utility easements where necessary or desirable to permit the efficient use of the easement. The Tree Board may advise the Town or its employees concerning the removal of any tree or part thereof which creates an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest.

6-5-7: ACTS HARMFUL TO TREES. It shall be unlawful for any person to top any street tree, park tree, or other tree located on public property. For the purposes of this subsection, topping shall be defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree to remove the normal canopy and disfigure the tree. Trees severely damaged by storms, disease, or other natural causes, or trees under utility wires or other obstructions where other pruning practice would prove to be impractical, may be exempted from the provisions of this Chapter upon the written approval of the Tree Board.

No person shall abuse, mutilate, or otherwise damage any tree located on public property, including those located in the public right-of-way. However, nothing in this section shall be construed to prevent reasonable and proper trimming of trees located on public or private property by authorized persons in accordance with accepted horticultural practices.

No person shall attach any sign, notice, placard, electrical wire, or other injurious device to any tree located on public property or within the public right-of-way, nor shall any person cause any substance harmful to trees to come in contact with them, or prevent water and oxygen from reaching their roots.

6-5-8: PRUNING, CORNER CLEARANCE, AND UTILITIES. Every owner of a tree overhanging any street or right-of-way within the Town shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight (8) feet above the surface of the sidewalk or fourteen (14) feet above the surface of the street. Pruning shall be conducted in accordance with *ANSI A300-1995 Tree, Shrub and Other Woody Plant Maintenance-Standard Practice*, a manual published by the American National Standards Institute, Inc., copies of which are available for review at the Town Hall. Owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs, that constitute a hazard to the safety of the public. The Town shall have the right to prune, or cause to be pruned, any tree, shrub or bush on private property when it interferes with street lighting, the visibility of any intersection, traffic control device or sign, or the operation, maintenance or repair of water, sewer or electric utilities.

6-5-9: DEAD OR DISEASED TREE REMOVAL. The Town shall have the right to cause the removal of dead and diseased trees on private property when such dead or diseased trees constitute a hazard to the public health, safety and general welfare or constitute a potential threat to other trees within the Town because of insects or disease. The Town Tree Board will notify in writing the owners of such trees. The owners of such trees shall remove the trees at their own expense within sixty (60) days after the date of service of notice. In the event of failure of owners to comply with such provisions, the Town shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

6-5-10: ARBORIST'S LICENSE AND INSURANCE. It shall be unlawful for any person to engage in the business or occupation of pruning, servicing, treating, or removing any tree within the Town without first applying for and obtaining a business license as may be required by the Lyons Municipal Code. No business license shall be issued or become effective until the applicant files evidence of liability insurance in the minimum amounts of five hundred thousand dollars (\$500,000.00) for bodily injury and six hundred thousand dollars (\$600,000.00) for property damage. Such liability insurance shall indemnify the Town and any person or property injured for damage resulting from any work or activity conducted by such license

6-5-11: PENALTY. Any person violating any provision of this Chapter shall be, upon conviction or a plea of guilty or no contest, liable for any damages caused to any tree, shrub, bush, or other woody vegetation and shall be subject to penalty as provided by section 1-4-1 of the Lyons Municipal Code.

- (A) Mitigation. If desirable street trees are removed, damaged, or destroyed by an owner, developer or contractor, the loss shall be mitigated as defined below. If the removal, damage, or destruction was not in accordance with an approved landscape plan, the owner, developer, or contractor shall also, in addition to any other penalties as may be prescribed by law, provide mitigation as approved by the Tree Board. The Tree Board shall determine the degree of damage and whether the tree(s) can be restored or must be replaced.

The owner, developer or contractor may achieve mitigation by any one of the following:

- (i) transplant a tree onto public right-of-way if available space exists without exceeding the planting standards.
 - (ii) plant an approved tree of at least equal value.
 - (iii) plant two (2) or more approved trees where the combined value equals that of the tree removed. Note: where an owner, developer, or contractor is required to plant trees to meet street tree requirements, these trees cannot be counted toward any required mitigation.
- (B) Mitigation shall occur on the right-of-way adjacent to the site, or elsewhere as directed by the Tree Board.

If all of the required mitigation cannot be accomplished as provided for herein, the owner, developer or contractor shall pay the City for the unmitigated value lost. Trees shall be valued according to the most recent edition of the *Valuation of Landscape Trees, Shrubs, and Other Plants*, published by the International Society of Arboriculture.