

City of Rome

Floyd County

Rome MSA

2003 Population Estimate 35,303; +0.5% change from 2000 Census.

Tree City USA for 16 years.

No tree board established by ordinance.

Chapter 20 STREETS AND SIDEWALKS

ARTICLE II. HAZARDOUS TREES

Year first adopted or last revised unknown.

Addresses public property.

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Chapter 20 STREETS AND SIDEWALKS*

***Charter references:** Regulation of streets, §§ 2-10, 2-14; public improvements, § 2-15; extraterritorial condemnation, § 2-16; franchises, art. XVI.

Cross references: Administration, ch. 2; city divisions and departments, § 2-2; standing committees of city commission, § 2-51; buildings, ch. 5; moving structures on public streets, § 5-4; easements in cemeteries, § 6-11; use of proceeds of license tax on attorneys, § 8-167; objectives of flood damage prevention, § 10-3; advertising on sidewalks, § 11-90; peddlers, § 11-196 et seq.; public demonstrations, parades, races, § 11-476 et seq.; pickets and demonstrations, § 11-501 et seq.; parades, § 11-531 et seq.; disorderly conduct, § 14-2; conditions constituting nuisances, § 14-51; planning and development, ch. 16; enforcement of solid waste chapter, § 19-2; littering streets and sidewalks, § 19-52; subdivisions, ch. 21; streets in subdivisions, § 21-92; streets and sidewalks in subdivisions, § 21-131 et seq.; street name signs, § 21-134; utilities, ch. 22; purposes of zoning chapter, § 23-3; procedures for approval of private subdivision developments, § 23-104; mobile home park permit, § 23-136; standards for mobile home parks, § 23-139.

State constitution references: Outdoor advertising devices near certain highways, art. III, § VI, par. II(a)(6).

State law references: Obstruction of streets, sidewalks, etc., O.C.G.A. §§ 16-11-43, 32-6-1, 36-30-10; eminent domain, O.C.G.A. tit. 22; highways, bridges and ferries, O.C.G.A. tit. 32; municipal street systems, O.C.G.A. § 32-4-90 et seq.; subdivisions abutting on state highways, O.C.G.A. § 32-6-150 et seq.; streets and sidewalks generally, O.C.G.A. § 36-34-3; street improvements, O.C.G.A. § 36-39-1 et seq.; grants for public purposes, O.C.G.A. § 36-40-20 et seq.

Article I. In General

- Sec. 20-1. Obstructions prohibited; offensive deposits or discharges prohibited.
- Sec. 20-2. Obstructing to vend or advertise merchandise prohibited.
- Sec. 20-3. Placing goods on sidewalk prohibited; exception.
- Sec. 20-4. Encroachments upon sidewalks.
- Sec. 20-5. Utility poles.
- Sec. 20-6. Dirt, gravel, rocks, etc.; digging or carrying away prohibited.
- Sec. 20-7. Obstructing drainage or flow of water.
- Sec. 20-8. Shrubbery and trees--Planting in rights-of-way prohibited.
- Sec. 20-9. Same--Authority to permit.
- Sec. 20-10. Same--Violations; penalties therefor.
- Sec. 20-11. Excavations; permission required; refilling.
- Sec. 20-12. House numbering required; proper numbering information; numbers on houses; failure to number; penalty.
- Sec. 20-13. Driveways and private ways--New curb, guttering, and sidewalk required.
- Sec. 20-14. Same--Material for new curb, guttering, sidewalk; thickness of sidewalk.
- Sec. 20-15. Same--Radius of curb returns on new sidewalks.
- Sec. 20-16. Grade of driveways and private ways.
- Sec. 20-17. Construction of driveways; inspection, approval of building inspector required.
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Article II. Hazardous Trees

- Sec. 20-31. Hazardous tree ordinance.
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ARTICLE II. HAZARDOUS TREES*

***Editor's note:** Ord. No. 01-4-2, § I, adopted April 16, 2001, did not specifically amend this Code. Hence inclusion of said ordinance provisions as §§ 20-31--20-41 was at the discretion of the editor to read as herein set out. See the Code Comparative Table.

Sec. 20-31. Hazardous tree ordinance.

The purpose of this article is to exercise the police power in relation to public nuisances and abatement of such nuisances, to protect the public health, safety and welfare. In particular, it is the purpose of this article to prevent and prohibit those conditions which create and constitute safety hazards in the form of trees or other horticultural growth, and generally create a menace to the health and welfare of the public and public rights-of-way. It is necessary to regulate, prevent and prohibit hazardous trees which may constitute unsafe conditions or hazards which are potentially dangerous and injurious to the health, safety and welfare of the public.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-32. Hazardous tree nuisance.

The growing, maintaining, permitting or allowing the presence of a hazardous tree on any premises owned, occupied or in control of the responsible person or persons is declared to constitute a public nuisance and is unlawful, and whenever it is determined that such a condition exists upon any premises, the city may require or provide for the abatement thereof pursuant to this Code section.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-33. Definitions.

The following definitions shall apply in the enforcement and application of this article:

County means Floyd County, Georgia.

Governing body means the City Commission of the City of Rome, Georgia.

City means the City of Rome, Georgia.

City arborist means the public officer appointed by the City Manager of the City of Rome in charge of investigating issues concerning the existence and abatement of hazardous trees as public nuisances.

Hazardous tree means: a) Any tree, weed, undergrowth, vegetable or horticultural growth which obstructs, overhangs, encroaches upon or in any manner interferes with the full and free use by the public of any street, sidewalk, sidewalk area or other public ways; or b) any tree, weed, undergrowth, vegetable or horticultural growth which has died or grown in any

manner which would constitute a hazard to the public health, safety or welfare within the City.

Municipal court means the Municipal Court of the City of Rome, Georgia.

Municipal judge means the judge who presides over the Municipal Court of the City of Rome, Georgia.

Owner means the holder of the title in fee simple and every mortgage of record of a particular piece of real property.

Parties in interest means persons in possession of real property and all individuals, associations and corporations who have interest of record in said property in the Floyd County including executors, administrators, guardians, and trustees.

Public officers means those officers and employees of the city, county or State of Georgia whose duties include code enforcement, inspections and the preservation of public safety within the city, including, without limitation, the city manager, the assistant city manager, the city arborist, the city arborist staff, the fire chief of the City of Rome, the Floyd County Health Inspector, and the state fire marshal.

Resident means any person residing in the City of Rome on or before the date on which the alleged nuisance arose.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-34. Jurisdiction.

The city shall have jurisdiction to try issues concerning the existence and abatement of public nuisances in the form of hazardous trees within the geographical limits of the city in accordance with the provisions of O.C.G.A., chapter 2 of title 41.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-35. Appointment of city arborist; duties.

(a) The city manager shall appoint a person to be known as the city arborist to investigate and abate cases concerning the existence of public nuisances in the form of hazardous trees.

(b) The city arborist shall have the following powers and duties:

(1) To investigate the conditions existing on any private property within the city to determine if a hazardous tree exists;

(2) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(3) To administer oaths and affirmations, to examine witnesses and to receive evidence;

(4) To represent the city in any proceeding before the municipal court to abate a hazardous tree;

(5) To employ such assistance and, consistent with the procedures set forth in this Code section, adopt such means as may be necessary to effect the entire abatement of a condition determined to constitute a hazardous tree. It shall be the duty of the city arborist to proceed with due care and without unnecessary

destruction of property.

(Ord. No. 01-4-2, § 1, 4-16-01)

Sec. 20-36. Procedure for abatement of nuisances; service.

(a) A proceeding to abate a hazardous tree may be commenced under this Code section by filing a complaint in the name of the city against the respondent with the city arborist, specifically setting forth therein the facts of the alleged nuisance. Except when brought in the name of the city by the city arborist or other public officer, private citizens may not have a public nuisance abated unless special injury can be shown. For purposes of this Code section, special injury shall include any condition which is potentially dangerous and injurious to health, safety. Upon the written petition of a resident of the city, which specifically sets forth the special injuries alleged, the city arborist or his designee may cause a complaint to be filed, identifying therein the petitioner and injuries alleged. Where the alleged public nuisance involves a condition existing upon private property, the respondent shall be the owner(s) of such property, each person in lawful possession if not the owner, and any parties in interest.

(b) Complaints or orders issued under this Code section shall be served upon each named respondent, and a return of service signed by the serving agent shall be filed with the city arborist reciting that a copy of such complaint or order was served upon such respondent personally or by leaving such copy at the respondent's place of residence, or if a corporation, at its place of business. Service on each named respondent may be perfected by any police officer or any public officer.

(c) If a respondent resides outside the city but within the State of Georgia, service shall be perfected by causing a copy of such complaint or orders to be served by the sheriff or any lawful deputy of the county of residence of such party. Nonresidents of this state shall be served by posting a copy of the complaint or orders in a conspicuous place on the premises affected by the complaint or orders. Where the address of such out-of-state nonresident is known, a copy of such complaint or orders shall be mailed to the nonresident by registered or certified mail.

(d) In the event the respondent is a minor, an estate or incompetent person, the guardian or other personal representative shall be served in the manner hereinabove provided; however, if such party has no guardian or personal representative, service shall be perfected by serving the Probate Judge of Floyd County, Georgia, who shall stand in the place of and protect the rights of such person or appoint a guardian ad litem for such person.

(e) In the event the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the petitioners in the exercise of reasonable diligence, the petitioner shall make an affidavit to that effect and such service as described in subsection (c) of this section, shall be sufficient. Where known, any person, firm or corporation holding itself out as an agent for the property involved shall be served in the manner provided herein.

(f) At the time of filing a complaint or orders with the municipal court, a copy thereof may also be filed in the Office of the Clerk of Superior Court of Floyd County, Georgia, on the lis pendens docket, and such filing shall have the same force and effect as other lis pendens notices provided by law; provided, that any such complaint shall contain a statement to the effect that a lien may arise against the described property and that an itemized statement of such lien is maintained in the office of the city clerk of the city.

(Ord. No. 01-4-2, § 1, 4-16-01)

Sec. 20-37. Procedure for hearings; findings by city arborist; abatement.

(a) Whenever a public officer issues a citation to a property owner as provided in this Code section, and the property owner fails to respond by taking the necessary action to correct the condition within 15 days of the service of citation, the public officer shall file a complaint in the name of the city seeking to abate the conditions on grounds it constitutes a public nuisance. The complaint shall state all charges giving rise to such action, including a reference to this Code section and those facts known in support of the complaint. If the complaint is based upon the petition of a resident of the city, it shall identify the petitioner and the specific injury alleged. The complaint shall be served upon the responding parties in the manner set forth herein, and shall be accompanied by a notice of the date of hearing before the municipal court which date shall not be less than ten days nor more than 30 days after the date service is perfected. Continuances will only be granted by the municipal judge for good cause shown.

(b) At the hearing, the burden shall be upon the city to prove its complaint by competent evidence. The responding party(s) shall have the right to file an answer to the complaint and to appear in person or by counsel, to present evidence and to cross-examine the city's witnesses. The rules of evidence prevailing in courts of law or equity shall not be controlling at the hearing.

(c) If, after hearing, the municipal judge determines that a hazardous tree exists, he shall make his findings and conclusions of law in writing and impose such order as required to assure its abatement; provided, however, the responding party shall be afforded a reasonable time in which to comply with the order of abatement. Costs may be imposed upon the respondent, which costs must be paid as a condition for the issuance of any permit or license necessary to abate the nuisance, in addition to regular permit fees, if any.

(d) If the municipal judge determines that a hazardous tree exists, he shall cause to be served upon the owner and parties in interest an order requiring the owner or parties in interest, within the time specified in the order, to remove such tree or other horticultural growth.

(e) If the owner or parties in interest fail to comply with an order to remove such tree or other horticultural growth within the time specified therein, the city arborist, the city manager or his designee, may cause the tree or other horticultural growth to be removed.

(f) The cost of bringing a complaint pursuant to this chapter, together with any costs reasonably incurred by the city in abatement of a public nuisance after determination thereof by the municipal judge, shall be in a lien against the real property upon which such cost was incurred. Such lien shall attach to the real property upon the filing of a statement of the total sum of the costs by the city arborist, city manager or his designee, in the office of the city clerk of the city on a lien docket maintained for such purposes and, if desired, in the deed records of the Clerk of the Superior Court of Floyd County.

(g) The city may enforce its lien in the following manner:

(1) The owner or parties in interest shall be allowed to satisfy the amount due on such lien by paying to the city, within 30 days after the perfection of such lien, a sum of money equal to 25 percent of the total amount due and by further paying the remaining balance due on such lien, together with interest at the rate of seven percent per annum, in three equal annual installments, each of which shall become due and payable on the anniversary date of the initial payment;

(2) Should the property upon which such lien is perfected be sold, transferred

or conveyed by the owner or parties in interest at any time prior to the termination of the three-year period, then the entire balance due on such lien shall be immediately due and payable to the city; and

(3) Should the amount due on such lien, or any portion thereof, not be paid as herein provided or be unpaid after the passage of the three-year period, the city may enforce the collection of the full amount due in the same manner as provided in O.C.G.A. § 48-5-358 and other applicable tax statutes; provided, however, this procedure shall be subject to the right of redemption by any person having any right, title or interest in or lien upon the property, all as provided by O.C.G.A. title 48, article 3, chapter 4.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-38. Temporary injunction restraining public officer from carrying out provisions.

As authorized by O.C.G.A. § 41-2-13, any person affected by an order issued by the public officer may petition to the Superior Court of Floyd County for an injunction restraining the city from carrying out the provisions of the order, and the superior court may, upon such petition, issue a temporary injunction restraining the city, pending the final disposition of the matter; provided, however, that such person shall present such petition to the court within 15 days of the service of the order of the municipal judge. De novo hearings shall be had by the superior court on petitions within 20 days of the filing thereof. The superior court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require; provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction pursuant to this section.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-39. Eminent domain.

Nothing in this article shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of such property by the power of eminent domain under the laws of this state, nor as permitting any property to be destroyed except in accordance with the police power of this state.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-40. Use of revenues, grants and donations.

The city commission is authorized to make such appropriations from its revenues as it may deem necessary or appropriate and may accept and apply for and utilize grants or donations to assist it in carrying out the provisions of this article.

(Ord. No. 01-4-2, § I, 4-16-01)

Sec. 20-41. Applicability of Code section.

The powers and authority granted hereunder shall be in addition to and supplemental of any other powers and authority granted to the governing body of the city and its agents by any state statute or ordinance of the city.

(Ord. No. 01-4-2, § I, 4-16-01)