



# CITY OF RAPID CITY

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## MEMORANDUM

**To:** Legal and Finance Committee

**From:** Jess Rogers, Assistant City Attorney

**Date:** April 8, 2016

**Subject:** Tree abatement: 719 12<sup>th</sup> Street

On September 30, 2015, Clayton McClain (Code Enforcement) inspected the property at 719 12<sup>th</sup> Street, and found it to be in violation of § 12.32.100 of the RCMC. A written notice was mailed to the property owner (see attached) giving him until November 2, 2015 to correct the violation. In the "Additional Comments" section of the notice, the owner was instructed to remove the dead tree in the back yard.

Mr. Jensen did not contact the City or appeal Code Enforcement's determination, either within the 7 day appeal period or at any time thereafter. As you can see from the photos, the dead trees were of a substantial size and one was already entwined with the power lines, thus posing a clear danger.

On February 25, 2016, ArborPro Tree Service found and removed two dead trees on the property. It is standard procedure for Code Enforcement to send notice for any visible violations, along with notice of when the City will abate. When the abatement occurs, the City will abate any violations present for which the owner has received notice on the date of abatement. Often, between notice and abatement, additional violations will occur. As long as the homeowner has been notified of the ordinance's requirements, the City will abate any violation visible at the time of abatement. In this case, the property owner was notified that the property was in violation of § 12.32.100, which states "the city shall have the right to inspect and cause the removal of any dead or diseased trees on private property within the city if such trees constitute a hazard to life or property or harbor pests which constitute a threat to other trees within the city." This ordinance also grants the City the power to remove any dead trees and to charge the cost to the owner if they fail to correct the violation. The

cost for the removal was \$1292, which includes a \$42 administrative fee (billing statement attached).

Once the invoice for the removal was mailed, Mr. Jensen contacted the City for the first time. He visited the Code Enforcement offices, complaining to Clayton McClain that he had only been notified once of the possible abatement. He felt he should have received a second notice before the tree was actually removed. At this time, he acknowledged that the trees were dead, and that he had been working on trimming them. He stated that he was having difficulty because the branches were so entwined with the power lines. He felt strongly that because he had attempted to address the issue, he should have been given a second notice. At this time he requested the ordinance that specifies the City's notice requirements prior to abatement. Clayton provided him with the ordinance.

After Mr. Jensen's visit, Clayton contacted Andy Bernard, Urban Forester, to verify that the trees were dead and that removal was required. His email is attached.

Mr. Jensen then came to the City Attorney's office to discuss the matter with me. He again complained of receiving only one notice, although he now acknowledged that that was all that is required under the ordinance. He also stated that he felt that he had corrected the violation by trimming some of the lower branches. As you can see from the attached pictures, which were taken February 19 by Code Enforcement, there were still dead branches in the power lines a week before the abatement. I explained to Mr. Jensen that if he had called Code Enforcement at any time after receiving the notice we would have worked with him if he needed more time, or inspected the work he had done to see if he was now in compliance. But with no response from him, we assumed he agreed that the trees were dead and was not going to remove them himself. I explained that we simply do not have the manpower to make multiple attempts to contact homeowners who do not respond to our notices. I also explained that trimming dead trees does not satisfy the requirements of the ordinance, as they clearly still pose a significant danger. I also pointed out that Code Enforcement's phone number is located on the notice, as is the time period and procedure for appealing any part of the notice.

Mr. Jensen's final argument was that the notice asked him to remove one tree from his backyard, but the City in fact removed two. I explained that we routinely abate any existing violations for which the owner has received notice. He had received notice about dead trees and our ability to remove them. He then asked that I forgive half the total bill, since we had removed two trees instead of one. I refused and explained that he was free to take the issue to City Council.

It should be noted that the time spent removing the larger tree embedded in the power lines was much greater than that in removing the second tree. Splitting the bill in half would not accurately reflect the cost of removing one tree rather than two.