

ARTICLE 12: POLLEN CONTROL

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§ 9-12-1 SHORT TITLE.

This article may be cited as the “Albuquerque Pollen Control Ordinance.”
(Ord. 34-1994)

§ 9-12-2 LEGISLATIVE FINDINGS.

(A) The Council finds that there is sufficient information to believe that certain trees and shrubs produce allergens that adversely impact the health and well-being of many of its residents, and that actions to reduce the production of these harmful allergens are therefore appropriate.

(B) The Council further finds that many residents desire to reduce their consumption of water for landscaping, and that all trees and shrubs should also be labeled as to the approximate level of water requirements.

(C) The Council further finds that there is sufficient clinical and statistical evidence that the Albuquerque regional area has serious health problems from

allergies due to airborne tree pollens which affect a substantial proportion of the population; and that many people in all age groups regardless of their health condition may be at considerable risk of developing such allergies from airborne tree pollens as their concentrations increase in our environmental conditions; and that therefore actions to reduce the production of these pollens which cause the greatest health problems are essential.

(D) The Council further finds that it is essential to provide the city with adequate pollen counting and measurement for various facilities and sites as identified by the Mayor, and issue periodic health advisories.

(Ord. 34-1994; Am. Ord. 45-1996)

§ 9-12-3 INTENT.

(A) This article is intended to require labeling information that will enable residents to make knowledgeable and informed decisions about planting certain trees and shrubs insofar as their potential for allergen production and water requirements. This should assist in accomplishing the further intent of this article of discouraging the planting of those trees and shrubs which create the greatest pollen health problems and which excessively consume scarce city water.

(B) It is further intended that adequate sampling and measuring of the pollen content of the air within the city shall occur on an appropriate periodic basis utilizing state-of-the-art measuring equipment.

(C) It is further intended that the sale and purchase of those wind-pollinated trees of certain genera, species or cultivars/varieties, known to produce aeroallergens at serious public health levels shall be prohibited.

(D) It is further intended that the city utilize appropriate resources to provide public education that promotes community awareness on the issue of tree pollen.

(E) It is further intended that the city shall determine the relative numbers of wind pollinated trees of selected genera by means of inventory and survey of public and private landscaping within the city, excluding the bosque, as follows:

(1) *Public Property.* Trees on public property shall be inventoried by the City Forester.

(2) *Private Property.* Tree numbers on private property shall be determined by means of a scientifically designed and statistically valid survey managed by the city.

Results of the inventory and survey shall be provided by the Mayor and Council every five years.

(Ord. 34-1994; Am. Ord. 45-1996; Am. Ord. 40-2004)

§ 9-12-4 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AEROALLERGENS. Airborne or air transported particles or agents which induce allergic reactions or responses.

ALLERGIC REACTION. Altered body reaction or response to an antigen, production of antibody.

CITY. Areas within the city limits of Albuquerque presently or which are annexed in the future.

COMMERCIAL GROWER. Person or business which cultivates plants for wholesale or retail sale.

COMMERCIAL GROWING. Growing or propagation of plants for wholesale or retail sale.

COTTONLESS. Male sex of a variety, species or cultivar of the genus *Populus* which does not produce seed covered with hairs or cotton.

DIOECIOUS. Having male and female reproductive structures on separate plants.

DIRECTOR. The Director of the Environmental Health Department.

FRUITLESS. Male sex of a variety species or cultivar which does not produce seeds or fruit.

MALE. Male or pollen producing member of a species either naturally unisexual or horticulturally developed or propagated.

MAYOR. Mayor, or Chief Administrative Officer of the City of Albuquerque.

MONOECIOUS. Having male and female reproductive structures on the same plant.

PERSON. Any individual, company, firm, corporation, association, group, political subdivision or their agents, legal representatives or assigns.

PLANTING. Placing or putting a plant in the ground for growth.

POLLEN. Male reproductive cell produced by the anther of the flowering structure of higher plants whether monoecious or dioecious.

REGULATED CULTIVAR. Species or variety developed and maintained under cultivation and for which planting, growing or sale is restricted.

REGULATED GENERA. Genus of plants which one or more of its species having restriction on planting, growing or sale.

TREES AND SHRUBS. Single- or multi-stemmed woody plants of indeterminate height.

(Ord. 34-1994; Am. Ord. 45-1996)

§ 9-12-5 REGULATED TREES.

(A) Regulated genera, species, cultivars or varieties for which growing, sale, importation or planting is prohibited include the following:

- (1) Genus Cupressus—Cypress—all members.
- (2) Genus Juniperus—"Juniper" a/k/a "Cedar".
 - (a) Male members of the species, cultivars or varieties.

- (3) Genus Morus—"Mulberry"—all.

- (4) Genus Populus—Cottonwoods and poplars—All species, varieties or cultivars of the genus excepting *P. fremontii* var. *Wizlizenii* "Rio Grande" Cottonwood and *P. tremuloides* "Quaking Aspen," and *P. acuminata*, "Lance leaf or Mountain Cottonwood" providing that each of the named species of tree sold is labeled as high pollen/high allergen potential.

(5) Genus Ulmus – "Elm" – all members except those listed in divisions (B) and (C).

(B) The following genera and species of wind pollinated trees may be sold and planted in the city provided that they are identified as high pollen/high allergen potential by means of individual labels.

(1) Platanus—"Sycamore"—London Plane Tree.

(2) Fraxinus—"Ash".

(3) Chinese elm - ulmus parvifolia.

(C) The following species of non-flowering and non-pollen producing trees may be sold and planted in the city:

(a) ulmus Americana – ascendens;

(b) ulmus glabra – horizontals;

(c) ulmus minor – gracilis; and

(d) any other non-flowering trees.

(Ord. 34-1994; Am. Ord. 45-1996; Am. Ord. 40-2004; Am. Ord. 56-2004)

§ 9-12-6 PROCESS.

All suppliers and sellers, both retail and/or wholesale, are prohibited from selling the trees listed in § [9-12-5](#) above.

(Ord. 34-1994; Am. Ord. 45-1996)

§ 9-12-7 PROHIBITED ACTIVITIES.

(A) *Growing prohibited.* After the effective date of this article commercial growing of regulated tree genera, species, cultivars or varieties within the city is prohibited.

(B) *Importation prohibited.* After the effective date of this article importation of regulated tree genera, species, cultivars or varieties into the city for growing, sale or planting is prohibited.

(C) *Sale prohibited.* After the effective date of this article wholesale or retail sale of regulated tree genera, species, cultivars or varieties within the city is prohibited.

(D) *Planting prohibited.* After the effective date of this article the planting of regulated genera, cultivars or varieties within the city is prohibited.

(Ord. 45-1996)

§ 9-12-8 ADMINISTRATION.

(A) The Mayor shall be responsible for the enforcement of this article and may prescribe possible procedures or regulations to carry out the intent and purposes of this article.

(B) The Mayor may grant a variance to provisions of this article according to the criteria listed herein. Any request for variance shall name the genus, species and/or variety, number of plants, location(s), the scientific, historical, cultural or architectural purpose that would be served.

(Ord. 34-1994; Am. Ord. 45-1996; Am. Ord. 40-2004)

§ 9-12-9 COMPLIANCE/ENFORCEMENT.

(A) The Mayor or the City Forester is authorized to make such inspections as may be necessary to enforce this article, and no person shall impede or interfere with inspections made hereunder. The Mayor or the City Forester, after proper identification, shall be permitted to enter, at any reasonable time, business premises where trees covered by this article are sold within the city for the purpose of making inspections to determine compliance with this article.

(B) Upon notification of violation by the City Forester, the offender shall have seven calendar days to remove or legally dispose of the trees found in violation. Failure to comply after seven days will result in further enforcement action.

(Ord. 34-1994; Am. Ord. 45-1996; Am. Ord. 40-2004)

§ 9-12-99 PENALTY.

Any person who violates any of the provisions of this article shall be deemed guilty of a petty misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.

(Ord. 34-1994; Am. Ord. 45-1996)