

Tree maintenance: are you exposed?

By Reed Hardesty

A member City operates the electric power utility for its citizen customers. In its usual practice it maintains its power lines and mitigates risk by addressing landscaping that interferes or may interfere with power lines. The City's municipal code contains clear language that describes safe distance requirements for vegetation from City-owned meters, lines and pedestals.

City crews were performing regular maintenance and pruned four trees that were under the service line to a residence. The trees were in the citizen's backyard and not associated with the residential street. The citizen filed a Claim For Damages seeking damages to the landscaping.

The municipal code described a three-foot clear zone which the City workers thought was violated or could be violated if the trees kept growing. City staff felt the code language created a maintenance easement that allowed them to prune the trees without notification to the citizen; however, there was no easement across the property recorded on the property title. Though the easement argument was not legally reviewed, the claimant could have brought a claim under the timber trespass statute [RCW 64.12.030](#) which may allow treble damages and attorney fee shifting to a plaintiff that loses trees/timber to an intentional act. The RCW demonstrates that the Evergreen State shows its roots as a timber producing region and if someone messes with the timber, they can get extra penalties. Maybe livestock states have special penalties for cattle thieves.

The claimant worked with an area nursery and we were able to pay for four similar trees that would likely not grow to interfere with the power line and secure a liability release for the City.

City staff acknowledged they never talked with the citizen and never notified them about their tree height concerns or that they were going to top the trees. In hindsight, without an easement right to protect their maintenance decisions, the City was exposed to enhanced damages. Though the municipal code likely covered the reason for the pruning needs, the City workers did not have a legal right to go on the private land and cut the trees. A code enforcement/discussion is a better risk management approach to handle tree maintenance concerns rather than unilateral field decisions exerted over private property. It may cause a delay in the immediate handling/remediation of tree concerns, but it will keep you out of keeping company with cattle rustlers.