

ORDINANCE NO. 710

AN ORDINANCE REGULATING THE PLANTING AND MAINTENANCE OF STREET TREES, ESTABLISHING THE OFFICE OF CITY FORESTER AND PRESCRIBING HIS AUTHORITY; REQUIRING PERMITS FOR PLANTING, PRESERVATION, AND REMOVAL IN PUBLIC PLACES; PROHIBITING THE PLANTING OF NOXIOUS SPECIES, PLACING DUTIES ON THE OWNERS OF PRIVATE PROPERTY IN ORDER TO PROTECT GROWTH IN PUBLIC PLACES AND PREVENT VISION CLEARANCE OBSTRUCTIONS; PROVIDING FOR ABATEMENT OF HAZARDOUS CONDITIONS BY THE CITY; PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS; AND REPEALING ORDINANCE NO. 512.

The City of Canby ordains as follows:

Section 1. Short Title. This ordinance shall be known and be cited as the "City Forester's ordinance of the City of Canby."

Section 2. Definitions. For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural in number include the singular in number, and words in the singular number include the plural in number. The word "shall" is always mandatory and not merely directory.

(a) "City" is the City of Canby, Oregon.

(b) "City Forester" is the Superintendent of Public Works of the City of Canby, Oregon, or his authorized assistant.

(c) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(d) "Street tree" or "tree" is a tree, shrub, or bush in a public place, except where otherwise indicated.

Section 3. City Forester. There is hereby established in the department of Public Works of the City of Canby, the office of City Forester. The Superintendent of Public Works, or his authorized agent, shall serve as City Forester in the administration and enforcement of this ordinance.

Section 4. Authority of City Forester. The City Forester shall have exclusive jurisdiction and supervision over all trees, other plants and grassy areas planted or growing in public places and trees or plants upon private property which threaten public safety.

(a) Preserve or remove. The City Forester shall have the authority, and it shall be his duty, to oversee the planting, trimming, spraying, preservation and removal of trees, other plants and grassy areas in public places to ensure safety or preserve the symmetry and beauty of such public places.

(b) Order to preserve or remove. The City Forester shall have the authority and it shall be his duty, to order the trimming, preservation, spraying, or removal of trees or plants upon private property when he shall find such action necessary to public safety or to prevent the spread of disease or insects to public trees and places.

(c) Supervision. The City Forester shall have the authority, and it shall be his duty, to supervise all work done under a permit issued in accordance with the terms of this ordinance.

(d) Issue conditional permit. The City Forester shall have the authority to affix reasonable conditions to the granting of a permit hereunder.

Section 5. Permits Required.

(a) Preserve or remove. No person shall trim, spray, preserve or remove trees, other plants and grassy areas in public places without first filing an application and procuring a permit from the City Forester.

(i) Application data. The application required herein shall state the number and kind of trees to be trimmed, sprayed, preserved or removed; the kind of treatment to be administered; the kind and condition of nearest trees upon the adjoining property; and such other information as the City Forester shall find reasonably necessary to a fair determination of whether a permit shall be issued hereunder.

(ii) Standards for issuance. The City Forester shall issue the permit provided for herein when he finds that the desired action or treatment is necessary and that the proposed method and workmanship are satisfactory.

(b) Plant. No person shall plant or set out any tree or plant in a public place without first filing an application and procuring a permit from the City Forester.

(i) Application data. The application required herein shall state the number of trees or plants to be planted or set out; the location, grade, and variety of each tree or plant; the method of planting, including the supplying of suitable soil; and such other information as the City Forester shall find reasonably necessary to a fair determination of whether a permit should be issued hereunder.

(ii) Standards for issuance. The City Forester shall issue the permit provided for herein when he finds that the proposed plantings will conform with an adopted tree planting program or plan which has been approved by the City Council or meets all requirements of this ordinance.

(c) Large-scale planting procedure. Upon receipt of an application for a permit to plant or set out in excess of two trees or plants, the City Forester shall have the authority to require from the applicant a detailed declaration of intentions, either in the form of a planting plan or written statement in duplicate. All planting plans shall be drawn in ink. One copy of each plan or statement of intention shall, when approved by the City Forester, be returned to the applicant; and the other copy shall be kept on file by the City Forester. All statements filed in lieu of a planting plan shall contain the same information as required on the plan. All planting plans shall accurately show:

(i) The proposed street including right-of-way, pavement, curb, gutter, parking strip and sidewalk areas to a definite indicated scale.

(ii) The variety of each and every tree proposed to be planted and of those already existing within the proposed street lines, either indicated on the plans or referenced with a number of key list.

(iii) The proposed location of each and every proposed tree together with the location of each existing tree within the proposed street line in scaled relation to the other features of the plan.

(iv) The distance between trees in any one row in feet.

(v) The nature of the soil in the planting space to a depth of three feet, and all existing and proposed surface or subsoil drainage system.

(vi) The watering system, if any, to be used.

(d) Regulations for planting in a public place. Work done under a permit issued hereunder shall be performed in strict accordance with the terms thereof and with the following regulations established for the planting, trimming and care of trees in public places:

(i) Trees must be not less than one inch in diameter of trunk one foot above the ground.

(ii) All trees from one to three inches in diameter of trunk one foot above the ground must be protected and supported by tree guards.

(iii) No tree shall be placed so as, in the opinion of the City Forester, to cause a traffic hazard. In no case shall trees, shrubs or bushes be permitted in violation of the vision clearance area regulations of City Zoning.

(iv) In felling trees, the same must be removed with the root stump grubbed out when so required by the City Forester.

(v) All cuts above one inch in diameter must be water-proofed.

(vi) Trees shall be planted at least 30 feet apart, except where a special permit is obtained from the City Forester.

(vii) No tree shall be planted where the clear space between the curb and the sidewalk is less than five feet.

(viii) No tree shall be planted where the soil is too poor to insure the growth of such tree unless the owner excavates a suitable hole of not less than 36 inches and replaces the material removed with suitable soil.

(ix) No tree shall be planted nearer than two feet from the curblineline or outer line of the sidewalk, unless a special permit is granted by the City Forester.

(x) No tree shall be planted on any street except of the variety selected by the City Forester for that street. In no case shall any poplar, willow, cottonwood or other tree which, in the opinion of the City Forester, is deemed to be a noxious specie be permitted to be planted anywhere in the City or permitted to grow in a manner which damages sewer or water lines or creates any hazard to life or property.

(xi) No tree shall be planted within ten (10) feet of a sewer pipeline or side lateral.

Section 6. Duties of Private Owners. It shall be the duty of the owner of property which abuts a public right-of-way to properly maintain trees within the right-of-way and to:

(a) Trim the trees so as not to cause a hazard in public places or interfere with the proper lighting of public highways by the street lights, and so that minimum clearance of any overhanging portion thereof shall be nine feet.

(b) Treat or remove any tree or plant so diseased or insect-ridden as to constitute a hazard to trees or plants in public places.

(c) Prohibited species. To remove or refrain from planting any kind or type of trees or plants which the City Forester hereafter determines to be objectionable type specie.

(d) Assure that no trees, shrubs, or bushes are planted, set out, or permitted to grow in violation of the vision clearance area requirements of City zoning regulations.

Section 7. Procedure upon Order to Preserve or Remove. When the City Forester shall find it necessary to order the trimming, preservation or removal of trees or plants upon private property, as authorized in Section 4(b) and Section 6(d) herein, he shall serve a written order to correct the dangerous condition upon the owner, operator, occupant or other person responsible for its existence.

(a) Method of service. The order required herein shall be served in one of the following ways:

(i) By making personal delivery of the order to the person responsible or a member of his family over the age of 18 years.

(ii) By affixing a copy of the order to the door of the entrance of the premises in violation.

(iii) By mailing a copy of the order to the last known address of the owner of the premises by certified mail.

(iv) By publishing a copy of the order in the Canby Herald once a week for three successive weeks.

(b) Time for compliance. The order required herein shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In cases of extreme danger to persons or public property, the City Forester shall have the authority to require compliance immediately upon service of the order.

(c) Appeal from order. A person to whom an order hereunder is directed shall have the right within 72 hours of the service of such

order to appeal to the City Council, which shall review such order at its next regular meeting or special meeting called for such purpose. Unless the order is revoked or modified by the City Council, it shall remain in full force and be obeyed by the person to whom directed.

(d) Failure to comply. When a person to whom an order is directed fails to comply within the specified time, the City Forester shall remedy the condition or contract with others for such purpose and charge the cost thereof to the person to whom the order is directed. The person remedying the condition under a contract made hereunder shall be authorized to enter premises for that purpose.

(e) Special assessment. The City Recorder, by regular mail, postage pre-paid, shall forward to the owner or person in charge of the property a notice stating:

(i) The total cost of remedying the condition plus a charge of 20% of the expense for administrative overhead.

(ii) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(iii) That if the owner or person in charge of the property objects to the cost of remedying the condition as indicated, he may file a notice of objection within the City Recorder not more than ten (10) days from the date of the notice.

Upon the expiration of ten days after the date of notice, the Council, in their regular course of business shall hear and determine the objection to the cost to be assessed. If the cost of remedying the condition is not paid within 30 days from the date of notice, an

assessment of the cost as stated or as determined by the Counsel shall be made by resolution and shall thereupon be entered in the docket of City liens, and upon such entry being made shall constitute a lien upon the property from which the condition was remedied. The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the legal rate of interest. Such interest shall commence to run from the date of the entry of the lien in the lien docket.

Section 8. Abuse or Mutilation of Trees. No person shall:

(a) Damage, cut, carve, injure the bark, transplant or remove any tree or plants in any public place.

(b) Pick the flowers or seeds of any tree or plant in any public place.

(c) Attach any rope, wire or other contrivance to any tree or plant in any public place.

(d) Dig in or otherwise disturb grass areas or in any other way injure or impair the natural beauty or usefulness of any public area.

(e) Cause or permit any wire charged with electricity to come in contact with any tree or plant in any public place, or allow any gaseous, liquid or solid substance which is harmful to such trees or plants to come in contact with them.

Section 9. Penalties and Enforcement. Any person convicted of violating any provisions of this ordinance shall be punished by a fine of not more than \$250.00, or by imprisonment in the county jail for not more than 30 days, or both. The Canby Police Department may be called upon by the City Forester to issue citations for the violation of any provision of this ordinance.

Section 10. Civil Remedies. Whenever public cost such as attorney fees, staff or consultant expenses are accrued in the enforcement of this ordinance, then the City may institute appropriate civil action to recoup such costs from the violators. The City shall also be entitled to their reasonable attorney fees and the collection of these costs.

Section 11. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 12. Ordinance No. 512, enacted January 15, 1968, is hereby repealed.

Submitted to the Council and read the first time at a regular meeting thereof on Wednesday, October 7, 1981; ordered posted as provided by the Canby City Charter and scheduled for second reading and action of the Canby City Council at a regular meeting on November 4, 1981, commencing at the hour of 7:30 o'clock p.m., at the Council meeting chambers at the Canby City Hall in Canby, Oregon.

Harold A. Wyman, City Recorder

ENACTED by the Canby City Council at a regular meeting thereof on the 4th day of November, 1981 by the following vote; YEAS___ NAYS___.

Robert A. Swayze, Mayor

ATTEST:

Harold A. Wyman, City Recorder

Action

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*Voided by Council
Nov. 17, 1985
Marilyn A. Rebert*