

ORDINANCE NO. 852

AN ORDINANCE REGULATING THE PLACEMENT, REMOVAL AND MAINTENANCE OF ALL STREET TREES AND RECOMMENDING GUIDELINES FOR THE PLACEMENT REMOVAL AND MAINTENANCE OF TREES ON PRIVATE PROPERTY; REPEALING MUNICIPAL CODE SECTION 12.20 AND DECLARING AN EMERGENCY

THE CITY OF CANBY ORDAINS AS FOLLOWS:

PART I

Section 1. Definitions.

- A. "City" means the City of Canby, Oregon.
- B. "City Forester" means the Director of Public Works of the City of Canby, Oregon, or his/her authorized agent.
- C. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- D. "Tree" means a woody perennial plant having a single elongated main stem generally with few or no branches on its lower part.
- E. "Shrub" means a low growing usually several-stemmed woody plant.
- F. "Bush" means a low growing and densely branched woody plant.
- G. "Park Tree" means a tree, shrub or bush located in public parks or other area owned by the City having an individual name, and all other areas owned by the City, or to which the public has free access as a park.
- H. "Private Tree" means a tree, shrub or bush located on private property other than a dedicated right-of-way, utility easement or public parks and grounds.
- I. "Street Tree" means a tree, shrub or bush on land lying within a dedicated right-of-way along either side of a street, avenue, or otherwise within a dedicated utility easement.
- J. "Noxious Specie" means one that is physically harmful or destructive to living beings or public utilities and public investments.
- K. "Immediate Danger" means a situation that represents a hazard to life or property without interval of time.
- L. "Public Places" means a location owned by the public, a dedicated right-of-way or public way and easement generally dedicated for utilities.
- M. "Public Improvement" means a change made with public money or by public employees. It can also happen with private money or private employees then be dedicated for public ownership or use.

N. "Utility" means a service such as sewer, electricity, water, storm drainage, gas, telephone or television provided by either a publicly owned company or privately owned company. If publicly owned, it is a public utility and if privately owned, it is a private utility.

PART II

Section 2. City Forester.

- A. Establish. There is established in the department of Public Works of the City, the office of City Forester. The Director of Public Works, or his/her authorized agent shall serve as City Forester in the administration and enforcement of this ordinance.
- B. Scope. The City Forester shall have exclusive jurisdiction and supervision over all trees and other plants planted or growing in public places and authority over all trees and other plants planted or growing in private places as hereinafter set forth.
- C. Preserve or Remove. The City Forester shall have the authority to oversee the planting, trimming, spraying with general notice, preservation and removal of trees and other plants in public places to ensure safety or preserve the symmetry and beauty of such public places.
- D. Order to Preserve or Remove. The City Forester shall have the authority to order the spraying with general notice, trimming, preservation or removal of trees or other plants upon private property when it is found that such action is necessary to protect the public safety or to prevent the spread of disease or insects to public trees and places.
- E. Supervision. The City forester shall have the authority to supervise all work done under the terms of this ordinance.

Section 3. Creation of a Tree Committee.

- A. Establish. There is hereby established a Tree Committee and it is the same as the Site and Design Review Board established by Ordinance No. 848.
- B. Scope. The committee shall study, investigate, and develop, and/or update annually, and administer a written plan for the care, preservation, pruning, replanting, removal or disposition of street trees and park trees. The plan shall be presented to the City Council, and upon their acceptance and approval, shall constitute the official Comprehensive City Tree Program of the City of Canby, Oregon. The committee, when requested by the City Council or the City Forester shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.
- C. Tree List. The Official Canby Tree List of acceptable species of trees, shrubs and bushes shall be maintained by the committee and made available to the public as set forth by resolution. No person, without the written permission of the City, shall plant a street tree of a species other than those included on the list or approved by the City Forester. As much as possible, street tree plantings for any one street will be restricted to a single species.

PART III

Section 4. Removal of Trees.

A. **Permission.** No person shall remove trees from public places without first obtaining written permission from the City Forester. Permission to remove trees from private property is not required unless otherwise provided in the Canby Municipal Code. It is, however, advisable and prudent in many cases.

B. **Approval.** The City Forester shall issue written permission provided he/she finds that the desired action or treatment is necessary and that the proposed method and workmanship is satisfactory.

C. **Stumps.** All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground. The costs of removing stumps shall be borne by the abutting property owner, and the costs shall be a lien against the abutting property. In the event the City or utility removes the tree, the City or utility will also be responsible for removing the stump.

D. **Dangerous or Nuisance Trees.**

1. The City or utility may prune a private tree when it interferes with the proper spread of light along the street from a street light, interferes with the visibility of any traffic control device or sign, or interferes with the safe and continued function of overhead and underground utilities.

2. The City or utility may cause the removal of all, or part of any dead, dangerous or diseased park, private or street tree when the tree constitutes a hazard to life, property, or harbors insects or disease which constitutes a potential threat to other trees within the City.

3. The City or utility may remove or trim a tree described in this section or may require the property owner to remove or trim any such tree on private property, or in a dedicated right-of-way or utility easement abutting upon the owner's property. Failure of the property owner to remove or trim the tree within thirty (30) days after receiving notice by the City Forester is a violation of this ordinance, and the City or utility may then remove or trim the tree and assess the costs as a lien against the property.

Section 5. Planting of Trees.

A. **Replacement.** The City may require the replacement by the abutting land owner, at the land owner's expense, of a new tree after permission has been granted for the removal of an existing street tree.

B. **Permission.**

1. No person shall plant or set out any tree in a public place without first obtaining written permission from the City Forester.

2. Before permission is granted to plant, the applicant shall state the number of trees to be planted or set out; the location, grade, and variety of each tree; 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 permission should be granted.

C. Spacing. The spacing of street trees shall be in accordance with the species, size, classes listed in the Official Canby Street Tree List of this ordinance, and no trees shall be planted closer together than the following: small trees, thirty (30) feet; medium trees, forty (40) feet; large trees, fifty (50) feet measured trunk to trunk, except in special plantings approved by the City Forester.

D. Distance from Curb and Sidewalk. The distance the trees may be planted from curbs, or curb lines and sidewalks shall be in accordance with the Official Canby Street Tree List.

E. Distance from Corners, Fireplugs, and Street Lights. No street trees shall be planted closer than thirty (30) feet from any street corner, measured back from the point of the intersecting curbs or curb lines. No street trees shall be planted closer than ten (10) feet to any fireplug or thirty (30) feet to any street light measured from the base of the street light. Vision clearance shall be provided as described in Canby's Land Development and Planning Ordinance.

F. Distance from Utilities. No street trees other than those species listed as small trees in the list of acceptable species may be planted under or within ten (10) lateral feet of any overhead utility wire, and no street tree may be planted over or within six (6) lateral feet of any underground water line, sewer line, transmission line or other private utility. All digging, even for planting trees, must be preceded by underground locates.

G. Soil. 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 thirty-six (36) inches and replaces the material removed with suitable loam or soil.

H. Noxious Specie. In no case shall any tree which is deemed to be a noxious specie be permitted to be planted anywhere in the City or grow in a manner which damages utilities or creates any hazard to life or property.

Section 6. Care of Trees.

A. Authority. The City may plant, prune, maintain and remove park and street trees, as may be necessary to insure public safety, or to preserve or enhance the appearance of public lands. The City may remove, or cause to be removed, at the expense of the abutting land owner, a tree or part of a tree which is in an unsafe condition, which by reason of its nature is injurious to public improvements, or is affected with any injurious fungus, insect, or pest. This section does not prohibit the planting of street trees by abutting property owners, providing that the selection, location, and planting of such trees is in accordance with the list of acceptable species and the other sections of this ordinance.

B. Topping. Except as provided by this section, it shall be unlawful as a normal practice of any person, firm or City Department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs or stubs larger than three (3) inches in diameter within the tree crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or obstructions where other pruning practices are impractical may be exempted from this ordinance by the determination of the City.

C. Clearance. The property owner adjacent to a tree overhanging a street right-of-way within the City shall prune the branches so that the branches do not obstruct

the light from a street lamp or constrict the view of any street intersection. The owner shall maintain a clear space of twelve (12) feet above the surface of the street, and ten (10) feet above the surface of any sidewalk. The owner shall remove all dead, diseased, or dangerous, or broken or decayed limbs which constitute a threat to the public safety.

D. Cuts. All cuts above one (1) inch in diameter must be waterproofed if current arborist practice calls for it to protect the viability of the particular tree.

E. Disturbance. It is a violation of this ordinance to dig in or otherwise injure or impair the natural beauty or usefulness of any public area.

F. Abuse. It is a violation of this ordinance to damage, cut, carve, injure the bark, transplant or remove any tree or plants in any public place unless otherwise allowed in this ordinance.

G. Mutilation. No person shall abuse, destroy, or mutilate any street tree, in a dedicated public right-of-way, or any other public place, or attach or place any rope or wire (other than one used to support the tree itself), sign, poster, handbill, or other thing to, or on any tree growing in a public place, or to allow any gaseous liquid, or solid substance which is harmful to such trees to come into contact with their roots or leaves unless otherwise allowed in this ordinance.

H. Arborist. No person, or firm shall engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first applying for, and procuring permission from the City. Before permission is granted, an arboriculturist shall file evidence of possession of liability insurance in the minimum amounts of \$100,000 for bodily injury and \$300,000 property damage indemnifying the City or any person injured or damaged resulting from the pursuit of the endeavors as described in this section. Bonding and insurance are not required of City employees or utility employees in pursuit of similar services requested of them as employees of the City or the utility.

PART IV

Section 7. Duties of Private Property Owners. In consideration of the value and benefits derived from the beauty and enjoyment of the street trees, the property owners abutting dedicated rights-of-way and utility easements, shall have the responsibility, control, and shall bear the cost of maintenance and care of the street trees abutting their property, and shall regularly inspect and remove defective conditions as necessary. For example, it shall be their duty to:

A. Trim and maintain the trees consistent with this ordinance.

B. Treat any trees or plant so diseased or insect ridden as to constitute a hazard to other trees or plant materials.

C. Refrain from planting or be compelled to remove, any kind or type of street trees or plants which do not appear on the Official Street Tree List.

Section 8. Interference with the City. No person shall prevent, delay, or interfere with the City, a utility or any of their agents, while engaging in the planting, cultivating, mulching, pruning, spraying, or removal of any street trees, park trees, or private trees as authorized by this ordinance.

Section 9. Service of Orders.

A. When the City Forester shall find it necessary to order the spraying with general notice, trimming, preservation or removal of trees or plants upon private property, as authorized in this ordinance, he/she shall serve a written order to the owner, operator, occupant, or other person responsible for its existence to correct the dangerous condition.

B. Method of Service. The order required in this section shall be served in one of the following ways:

1. By making personal delivery of the order to the person responsible;
2. By leaving the order with some persons of suitable age and discretion upon the premises;
3. By affixing a copy of the order to the door of the entrance of the premises in violation;
4. By mailing a copy of the order to the last known address of the owner of the premises by certified mail; or
5. By publishing a copy of the order in the Canby Herald once a week for two successive weeks.

Section 10. Compliance. The order required in this ordinance shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In case of immediate danger to persons or public property, the City Forester shall have the authority to require compliance upon service of the order.

Section 11. Appeal. A person to whom an order under this ordinance is directed shall have the right within fourteen (14) days 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. No person to whom an order is directed shall fail to comply with such order within thirty (30) days after an appeal shall have been determined.

Section 12. 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 under this ordinance shall be authorized to enter premises for that purpose.

Section 13. Special Assessment. If the cost of remedying a condition is not paid within ninety (90) days after receipt of a statement therefore from the City Recorder, such costs shall be levied against the property upon which the hazard exists as a special assessment. The levying of such assessment shall not affect the liability of the person to whom the order is directed to fine and imprisonment as provided in this ordinance. Such special assessment shall be certified by the City Forester to the City Recorder, and shall thereupon become and be a lien upon such property, and shall be recorded in the City Lien Docket by the City Recorder.

Section 14. Penalty. Any person convicted of violating any provision of this ordinance shall be punished by a fine of not more than two hundred fifty dollars (\$250), or


by imprisonment in the county jail for not more than thirty (30) days, or both.

Section 15. Severability. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or validity of any portion of this ordinance shall not invalidate the remainder of the ordinance.


Section 16. Repeal. City of Canby Municipal Code Section 12.20 is hereby repealed.

Section 17. Emergency. In view of the necessity for an improved tree ordinance to better promote safety, health and welfare of the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon final reading and passage by the Canby City Council.

SUBMITTED to the City Council and read the first time at a regular meeting thereof on the 16th day of January, 1991, ordered posted in three (3) public and conspicuous places in the City for a period of five (5) days as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a regular meeting thereof on the 6th day of February, 1991, commencing after the hour of 7:30 p.m., at the Council's regular meeting chambers at the Canby City Hall.


Marilyn K. Perkett, City Recorder

PASSED on final reading by the Canby City Council at a regular meeting thereof on February 6, 1991, by the following vote: YEAS 5 NAYS 0


Shawn P. Carroll, Mayor

ATTEST:


Marilyn K. Perkett, City Recorder