



ORDINANCE 2011-002

AN ORDINANCE AMENDING TITLE 12.12 and 12.20 OF THE MUNICIPAL CODE RELATING TO TREES ON OTHER PUBLIC PROPERTY AND HOMEOWNER'S ASSOCIATION AUTHORIZATION TO REVIEW TREE REMOVAL

WHEREAS, the City adopted section 12.12 into Municipal Code in 1974 via Ordinance 653 § 1-24, which established Chapter 12.12 Parks and Other Public Areas; and

WHEREAS, the Zoning and Community Development Code language addressing "trees on other public property" was adopted by Ordinance 91-922 § 3 as a part of a periodic review; and

WHEREAS, the "trees on other public property" regulations were removed from Chapter 16.142.050 by Ordinance 2011-001 to make it clear that the Parks Advisory Boards decision to remove trees on other public property is not a land use decision; and

WHEREAS, The Parks Advisory Board and the city want to retain the process to review "trees on other public property"; therefore the removed code language should be inserted into Chapter 12.12 Parks and Other Public Areas; and

WHEREAS, Ordinance 2011-001 also established a process to authorize homeowner's associations to review street trees in their neighborhoods which also requires code requirements that describe the responsibilities and appeal process; and

WHEREAS, once authorization is granted to an HOA through a land use action the subsequent HOA decisions are not land use actions; and

WHEREAS, the proposed Homeowner's Association authorization standards should be added to the municipal code as chapter 12.20;

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration of the evidence presented, the Council finds that the text of the Sherwood Municipal Code shall be amended to include chapter 12.12.190 "Trees on Other Public Property (not street trees)" and the addition of chapter 12.20 "Homeowner's Association Authorization"; therefore, the Council adopts the amendments contained in Exhibit 1.

Section 2. Approval. The proposed amendment for the Municipal Code Amendment identified in Exhibit 1, is hereby **APPROVED**.

Section 3. Manager Authorized. The City Manager is hereby directed and authorized to take such action as may be necessary to document this amendment, including necessary updates to Chapter 12 of the municipal code in accordance with applicable City ordinances and regulations.

Section 4. Effective Date. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 15th day of February 2011.



Keith S. Mays, Mayor

Attest:



Sylvia Murphy, CMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Luman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Langer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Butterfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Folsom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Grant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mays	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapters:

- 12.02 Right-of-Way Permits
 - 12.04 Street Construction Specifications
 - 12.08 Sidewalks Construction and Repair
 - 12.12 Parks and Other Public Areas
 - 12.16 Utility Facilities in Public Right-of-Way
 - 12.20 Street Tree – Homeowner’s Association Authorization
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Chapter 12.12 PARKS AND OTHER PUBLIC AREAS

Sections:

- 12.12.010 Policy of city council.
- 12.12.020 Delegation of authority.
- 12.12.030 Regulations prescribed by council.
- 12.12.040 City employees not affected.
- 12.12.050 Closures.
- 12.12.060 Damage--Payment for restoration.
- 12.12.070 Parks--Sales and services for hire restricted.
- 12.12.080 Parks--Advertising and decorative devices forbidden.
- 12.12.090 Parks--Intoxicating liquor prohibited.
- 12.12.100 Parks--Rubbish accumulation prohibited.
- 12.12.110 Parks--Vandalism prohibited.
- 12.12.120 Parks--Firearms or fireworks prohibited.
- 12.12.130 Parks--Molesting animals, birds and fish prohibited.
- 12.12.140 Parks--Fishing and bathing restrictions.
- 12.12.150 Parks--Notice mutilation prohibited.
- 12.12.160 Parks--Animals running at large prohibited.
- 12.12.170 Parks--Use of established entrance required.
- 12.12.180 Parks--"No admittance" areas.
- 12.12.190 Parks -- Trees on Other Public Property (not street trees)
- 12.12.190-200 Permit for large groups required.
- 12.12.200-210 Permit--Exhibition required.
- 12.12.210-220 Permit--Subject to ordinances and regulations.
- 12.12.220-230 Public convenience stations.
- 12.12.230-240 Traffic regulations.
- 12.12.240-250 Violation--Penalty.

12.12.010 Policy of city council.

The city council, except as otherwise expressly provided, declares its intention to exercise general supervision, management and control of all public parks, public parkways, public squares, public grounds, including but not restricted to streets, boulevards, paths, sidewalks, greenways, rest areas, playgrounds and other areas, hereinafter collectively referred to as "public areas," whether publicly or privately owned, dedicated, leased or otherwise set aside for public use and not under the supervision or control of any other public agency; and the council declares its intention to prescribe rules and regulations as herein set forth or from time to time as necessary, with respect to such public areas.

All public areas as herein designated for general public use shall be kept and maintained for the use and benefit of the public, subject to such reasonable and necessary rules and regulations as herein prescribed or as may be from time to time adopted to protect and preserve the enjoyment, convenience and safety of the general public in the use thereof.

(Ord. 653 § 1, 1974)

12.12.020 Delegation of authority.

The city administrator is authorized to make such reasonable rules and regulations and to establish permit fees and permit deposits not inconsistent with this and other city ordinances and the policies of the council as herein enunciated, as may be necessary for the control and management of the public areas hereinabove designated. All such rules and regulations shall be set forth in writing, be reviewed and approved by the city park commission to the extent deemed necessary by the city administrator, shall be posted in conspicuous places in the areas affected thereby, for the guidance of the general public and individual users. When adopted, one copy of each rule and regulation shall be kept and maintained in a file for that purpose in the office of the city recorder with the approval of the park commission endorsed thereon.

If any person feels aggrieved by any such rule or regulation, he or she may appeal to the council by filing with the city recorder a remonstrance against such rule or regulation, which shall be placed on the agenda of the council at its next regular meeting; and until amended or repealed by the council, such rule or regulation shall remain in full force and effect.

(Ord. 653 § 2, 1974)

12.12.030 Regulations prescribed by council.

The council finds that it is in the public interest and necessary for the peace, health and safety of the general public that the rules and regulations set forth in this chapter be enforced, and for the purposes herein set forth are adopted.

(Ord. 653 § 3, 1974)

12.12.040 City employees not affected.

Nothing contained herein shall prevent the performance of any act or duty by city employees which has been duly authorized by the park commission, city administrator or public works director or police department.

(Ord. 653 § 4, 1974)

12.12.050 Closures.

No person shall ride, drive or walk on such parts or portions of the parks or pavements as may be closed to public travel, or interfere with barriers erected against the public.

(Ord. 653 § 5, 1974)

12.12.060 Damage--Payment for restoration.

A. Owners or persons in control of, or persons who permit the entry of, any dog, horse or other animal into any public area under the control of the city, in addition to any penalties imposed by this chapter for violation hereof, shall be held liable for, and shall pay to the city, the full value of repair or restoration of any public property damaged or destroyed; and if not paid upon demand by the city, recovery of same may be sought by action brought in the name of the city in any court of competent jurisdiction.

B. Any person who shall utilize the public areas herein described and who shall damage or destroy any public property under the control of the city, in addition to any penalties imposed by this chapter for violations hereof, shall be held liable for, and shall pay to the city, the full value of repair or restoration of any public property damaged or destroyed, and if not paid upon demand by the city, recovery of same may be sought by action brought in the name of the city in any court of competent jurisdiction.

(Ord. 653 § 6, 1974)

12.12.070 Parks--Sales and services for hire restricted.

It is unlawful for any person to sell or offer for sale an article or perform or offer to perform any service for hire in any of the parks without a written permit for such concession properly and regularly granted by the city administrator with concurrence and approval by the park commission.

(Ord. 653 § 7, 1974)

12.12.080 Parks--Advertising and decorative devices forbidden.

It is unlawful for any person to place or carry any structure, sign, bulletin board or advertising device of any kind whatever, or erect any post or pole or the attachment of any notice, bill, poster, sign wire, rod or cord to any tree, shrub, fence, railing, fountain, wall, post or structure, or place any advertising, decorative or other device of any kind whatever, on any of the bases, statues, bridges or monuments in any park; provided, that the park commission may by a written permit, allow the erection of temporary decoration on occasions of public celebration or holidays.

(Ord. 653 § 8, 1974)

12.12.090 Parks--Intoxicating liquor prohibited.

It is unlawful for any person to take into or upon any park any intoxicating liquor, for other than his or her own use. No intoxicated person shall enter or remain in any of the parks. The sale or dispensing of malt beverages containing not more than four percent of alcohol by weight, shall be allowed only after obtaining a permit to do so from the city park commission, subject to approval of the city council and the Oregon Liquor Control Commission.

(Ord. 653 § 9, 1974)

12.12.100 Parks--Rubbish accumulation prohibited.

It is unlawful for any person to obstruct the free use and enjoyment of any park by misuse of refuse containers or by placing any straw, dirt, chips, paper, shavings, shells, ashes, swill or garbage, or other rubbish, or refuse or debris, in or upon any park, or to distribute any circulars, cards or other written or printed matter in any park.

(Ord. 653 § 10, 1974)

12.12.110 Parks--Vandalism prohibited.

It is unlawful for any person to remove, destroy, break, injure, mutilate or deface in any way any structure, monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, tree, shrub, fern, plant, flower or other property in any park.

(Ord. 653 § 11, 1974)

12.12.120 Parks--Firearms or fireworks prohibited.

It is unlawful for any person to use firearms, firecrackers, fireworks, torpedoes or explosives of any kind in any park.
(Ord. 653 § 12, 1974)

12.12.130 Parks--Molesting animals, birds and fish prohibited.

It is unlawful for any person to use any weapon, stick, stone or missile of any kind to the destruction, injury, disturbance or molestation of any wild or domestic animal, fowl or fish within the park limits.
(Ord. 653 § 13, 1974)

12.12.140 Parks--Fishing and bathing restrictions.

It is unlawful for any person to fish, wade, swim or bathe in any of the parks except in the places designated by regulation for such purposes. The park commission shall have authority to allow fishing in the waters of any park of the city by posting adjacent to such waters a sign or signs stating that such fishing is authorized, and by posting age limits, such fishing may be restricted to juveniles or other persons under the age as designated by the sign; and it is unlawful for any person over the age limit as posted to fish in any such waters of a city park.
(Ord. 653 § 14, 1974)

12.12.150 Parks--Notice mutilation prohibited.

It is unlawful for any person to injure, deface or destroy any notice of the rules and regulations for the government of the parks which shall have been posted or permanently fixed by order or permission of the park commission.
(Ord. 653 § 15, 1974)

12.12.160 Parks--Animals running at large prohibited.

It is unlawful for the owner, possessor or keeper of any animal to permit such animal to roam at large in any park, and, if such animal is found in any park, it may be impounded.
(Ord. 653 § 16, 1974)

12.12.170 Parks--Use of established entrance required.

No one shall enter or leave the parks except at an established entrance, and no one shall enter or remain in the parks after the hours fixed by regulation.
(Ord. 653 § 17, 1974)

12.12.180 Parks--"No admittance" areas.

No person shall enter any building, enclosure, or place within any of the parks upon which the words, "no admittance" shall be displayed or posted by sign, placard or otherwise.
(Ord. 653 § 18, 1974)

12.12.190 Parks -- Trees on Other Public Property (not street trees)

Trees and woodlands on public property shall be preserved to provide clean air and a natural environment for the community.

A. The Parks Advisory Board may authorize or require the removal of any tree on public property, excluding a street tree, that is:

1. Dying, becoming severely diseased, or infested or diseased so as to threaten the health of other trees;

2. Obstructing public ways or sight distance so as to cause a safety hazard;
3. Interfering with or damaging public or private utilities;
4. A nuisance under City nuisance abatement ordinances; or
5. Otherwise constitutes a hazard to life or property, in the City's determination.

B. The City Manager or Manager's designee may order the removal of a tree on public property in an emergency situation without Parks Advisory Board approval when the tree poses an immediate threat to life, property or utilities. A decision to remove a tree on public property under this section is subject to review only as provided in ORS 34.100.

C. A tree that is removed under this section must be replaced unless it is determined by a certified arborist that it cannot be replaced without additional or continued damage to public or private utilities that cannot be prevented through reasonable maintenance.

12.12.190-200 Permit for large groups required.

Use of the public areas herein described for organized group picnics, political or religious gatherings, or groups consisting of more than one hundred fifty (150) persons in attendance at any one time, is unlawful unless a written permit has been issued with the approval of the park commission or designated agent thereof.

(Ord. 653 § 19, 1974)

12.12.200-210 Permit--Exhibition required.

Any person claiming to have a permit from the city shall produce and exhibit such permit upon request of the park commissioner or the police department.

(Ord. 653 § 20, 1974)

12.12.210-220 Permit--Subject to ordinances and regulations.

All permits issued by the city shall be subject to the city's ordinances. The persons to whom such permits are issued shall be bound by the rules, regulations and ordinances as fully as though the same were inserted in such permits. Any person or persons to whom such permits shall be issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall be issued, as well as for any breach of such rules, regulations and ordinances, to the person or persons so suffering damages or injury.

(Ord. 653 § 21, 1974)

12.12.220-230 Public convenience stations.

A. It is unlawful for any person to blow, spread or place any nasal or other bodily discharge, or spit, urinate or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public convenience station or in any place in such station, excepting directly into the particular fixture provided for that purpose. Nor shall any person place any bottle, can, cloth, rag, or metal, wood or stone substance in any of the plumbing fixtures in any such station.

B. It is unlawful for any person to stand or climb on any closet, closet seat, basin, partition or other furniture or fitting, or to loiter about or push, crowd or otherwise act in a disorderly manner, or to interfere with any attendant in the discharge of his or her duties, or whistle, dance, sing, skate, swear, or use obscene, loud or boisterous language within any public convenience station, or at or near the entrance thereof.

C. It is unlawful for any person to cut, deface, mar, destroy, break, remove or write on or scratch any wall, floor, ceiling, partition, fixture or furniture; or use towels in any improper

manner, or waste soap, toilet paper, or any of the facilities provided in any public convenience station.

(Ord. 653 § 22, 1974)

12.12.~~230-240~~ Traffic regulations.

Except as may be otherwise specifically prescribed by this chapter or other city ordinances, the motor vehicle code of the city regulating street traffic shall be in full force and effect in all public areas described in this chapter.

The following regulations are made applicable to public areas within the city and subject to the city's control:

A. No one shall ride or drive any bicycle, motorcycle, motor vehicle, truck, wagon, horse, or any vehicle or animal in any part of the parks, except on the regular drives designated therefor; provided, that baby carriages and such vehicles as are used in the park service are not included in the foregoing prohibition.

B. No one shall drive any moving van, dray, truck, heavy-laden vehicle, or vehicle carrying or ordinarily used in carrying merchandise, goods, tools, materials or rubbish, except such as are used in the park service, over any drive or boulevard in any of the parks; provided, however, the city park commission in its discretion may grant permission in writing for vehicles to carry materials over park drives or boulevards to buildings abutting on parks when no other road, street or way is accessible or passable.

C. No one shall hitch horses or other animals to any tree, shrub, fence, railing or other structure, except such as are provided for such purpose, or allow horses or other animals to stand unhitched while the rider or attendant is beyond reach of such horse or other animal.

D. It is unlawful for any person to park any motor vehicle on any park or playground area in the city, except in regularly designated parking areas. The police department shall have and exercise authority to tow any vehicle found parked in a park or playground area not designated for parking purposes, and to impound such vehicle and to impose and collect the fees for towing and storage.

E. It is unlawful for any person to store, park or leave standing unattended for a continuous period of more than twenty-four (24) hours, any motor vehicle, boat, trailer, conveyance or other personal property within any public area under the city's control.

(Ord. 653 § 23, 1974)

12.12.~~240-250~~ Violation--Penalty.

Any person violating any provision of this chapter or any rule or regulation adopted pursuant hereto, upon conviction, shall be punishable by a fine of not more than five hundred dollars (\$500.00).

(Ord. § 98-1049 § 7: Ord. 653 § 24, 1974)

12.20 Street Tree – Homeowner’s Association Authorization:

12.20.010 Purpose

The purpose of this section is to allow an active homeowners association to regulate the assessment, removal and replacement of street trees within the boundaries of the association in a

less regulatory manner than required under the Sherwood Development Code (SZCDC 16.142). It is intended by the city that a homeowners association that is delegated authority under this section will adopt, administer and enforce a system of regulations for the evaluation and, if necessary, removal and replacement of street trees in the public right-of-way that is substantially similar to the system of regulations set forth in the city development code. It is further intended that a street tree program administered by the HOA will allow greater flexibility to assess and craft solutions for the management of street trees within the boundaries of the HOA and at less cost to the property owner and the community.

12.20.020 Authority of Homeowners Association to Adopt and Administer Program

A. A homeowners' association (HOA) may apply to the city under SZCDC 16.142 for authority to adopt, administer and enforce a program for regulating the assessment, removal and replacement of street trees within the boundaries of the association. An HOA with an approved street tree program shall administer and enforce the program as approved by the city.

B. For purposes of this section 12.20, a "street tree" is a tree that is planted within the planter strip along a street. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or required by the City.

12.20.030 Adoption into Bylaws

An HOA that is approved to administer a program for street tree removal and replacement shall incorporate the program standards and procedures into its bylaws. A copy of the amended bylaws must be submitted to the City Planning Department on the January 1 immediately following adoption. In the event the provisions in the bylaws concerning the street tree program are amended, the HOA shall submit a copy of the amendments to the City Planning Department within 90 days of the amendment.

12.20.040 Final Decision by HOA; Appeal

A. An HOA with an approved street tree program shall include in the program an opportunity to appeal a decision by the HOA. If the decision is made by a person or committee that is subordinate to the HOA Board, the program shall allow for an appeal to the Board. A final decision by the HOA Board must be in writing and must set forth the basis for the decision. A copy of the written decision must be provided to the affected property owner and to the person who filed the appeal, if different, within five business days of the date the decision.

B. A final decision by the HOA Board may be appealed to the city manager within 14 days of the date of the final decision. The appeal shall be in writing and shall include a description of the error alleged in the board's decision.

1. Upon receipt of an appeal, the city manager shall set a date for the matter to be heard by the city manager in the regular course of business. The person filing the appeal, the affected property owner, and the HOA Board may appear and submit written and verbal testimony and evidence. The person filing the appeal has the burden of proving by substantial evidence that the Board made a legal or factual error in its decision.
2. The City manager may request testimony or evaluation of the evidence by the city planning manager for the purpose of substantiating the claims made by the parties. The person filing the appeal shall have an opportunity to rebut any evidence submitted by the planning manager.
3. The city manager shall determine whether the HOA Board made a decision that is in substantial compliance with the street tree program as approved by the City. The city manager may make an independent assessment of substantial compliance with the applicable standards and procedures and is not limited to the record that was before the HOA Board.
4. The city manager shall issue a written decision within 30 days of the date of the hearing. The decision shall set forth the basis for the decision and the evidence relied upon. The city manager's decision is final, subject to review only as provided in ORS 34.010 to 34.100.