

ORDINANCE NO. 527

AN ORDINANCE REGULATING THE PLANTING, MAINTENANCE, PROTECTION, CONTROL, AND REMOVAL OF TREES AND OTHER VEGETATION IN AND UPON PUBLIC AREAS WITHIN THE LIMITS OF MADRAS, JEFFERSON COUNTY, OREGON AND ESTABLISHING A TREE COMMISSION.

The City of Madras ordains as follows:

ARTICLE I
INTRODUCTORY PROVISIONS

SECTION 1.1 TITLE

This ordinance shall be known as the City of Madras Urban Forestry Ordinance.

SECTION 1.2 PURPOSE

The City Council and Mayor of the City of Madras recognize the importance of the urban forest to the quality of life within the city and do hereby declare it to be a policy of the city that:

- 1) City property be landscaped to enhance the natural beauty of the city;
- 2) The responsibilities of city departments be coordinated to encourage quality landscaping;
- 3) Landscaped city property be effectively managed;
- 4) The street environment be made hospitable through landscaping; and
- 5) That residents of the city be encouraged to participate in beautification efforts through installing and maintaining quality landscaping on private property.

To fulfill this policy, this ordinance is enacted and intended to establish a Madras Urban Forestry Ordinance.

SECTION 1.3 INTENT

It is the intent of the City Council that the terms of this ordinance shall be construed as to promote:

- 1) The planting, maintenance, restoration, and survival of desirable trees and shrubs within the city;
- 2) The protection of community residents from personal injury and property damage; and
- 3) The protection of the city from property damage caused or threatened by the improper planting, maintenance, or removal of trees and shrubs located in and upon public areas and rights-of-way within the city.

SECTION 1.4 DEFINITIONS

For the purpose of this ordinance the following terms, phrases, words, and their derivations shall have the meaning given in this section:

MAY is discretionary.

PARKING/PLANTING STRIP. The area between the curb and sidewalk and the area between the sidewalk and private property line that is city-owned property; unpaved streetside city property; or an area inside the private property line where an easement is given to the city for the purpose of planting trees.

PRIVATE TREES. Any and all trees growing on private property within the city limits as of or after the effective date of the ordinance from which this section or successor sections derives and which are not defined or designated in this ordinance as street trees, park trees or public trees.

PUBLIC RIGHT-OF-WAY. A portion of property reserved for public use and accepted for such use by the city to provide circulation and travel to abutting properties, including, but not limited to, streets, alleys, sidewalks, provisions for public utilities, cut and fill slopes, and open public spaces.

PUBLIC TREES. All trees growing on any street, park, or any public place owned and/or managed by the City of Madras as of or after the effective date of this ordinance or its successor ordinances.

PUBLIC UTILITY. Any public, private or cooperatively owned line, facility or system for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil products, water, waste or storm water, which directly or indirectly serves the public or any part thereof within the corporate limits of the city.

SHALL is mandatory.

TREE TOPPING. The specific reduction in the overall size of a tree and/or the severe cutting back of branches or limbs to such a degree so as to remove the normal canopy and disfigure the tree.

URBAN FORESTRY PROGRAM. The program which is a part of the Public Works Department and which is responsible for the care and maintenance of the urban forest resources located on city property.

URBAN FORESTRY. The cultivation and management of trees and related plants for their present and potential contribution to the physiological, sociological, and economic well-being of urban society. Inherent in this function is a comprehensive program designed to educate the urban populace on the role of trees and related plants in the urban environment. In its broadest sense, urban forestry is one essential component of a multi-managerial system that includes watersheds within the City, wildlife habitats, outdoor recreation opportunities, landscape design, recycling of municipal vegetative wastes and tree care in general.

ARTICLE II **TREE COMMISSION FORMATION AND REQUIREMENTS**

SECTION 2.1 **CREATION OF COMMISSION**

There is created the City Urban Forestry Commission, hereinafter referred to as the "Commission".

SECTION 2.2 **ELIGIBILITY OF MEMBERSHIP**

A person appointed as a member of the Commission shall be a resident of the city, except that three (3) such members may be from the area within the City Urban Growth Boundary or within the boundaries of Jefferson County. Commission members shall be individuals who are actively interested in the improvement of the city's urban forest. [Section 2.2 Amended by Ordinance No. 531, February 8, 1994 and by Ordinance No. 813, January 27, 2009]

SECTION 2.3 APPOINTMENTS

The Commission shall consist of seven (7) voting members to be appointed by the Mayor in the following manner:

- 1) Of the members first appointed, the Mayor shall designate three (3) to serve for a term of three (3) years, three (3) to serve for a term of two (2) years, and one (1) to serve for a term of one (1) year. Thereafter, as terms expire, all appointments shall be for terms of three (3) years.

[Section 2.3, Subsection 1), Amended by Ordinance No. 531, February 8, 1994.]

- 2) The Public Works Director or designee and Planning Director shall serve as ex officio members of the Commission.
- 3) The Public Works Department shall serve as administrative staff to the Commission.

SECTION 2.4 VACANCIES

Vacancies occurring in the membership of the Commission shall be filled in a manner preserving the designated representation by mayoral appointment for the unexpired term.

SECTION 2.5 REMOVAL FROM OFFICE

The Mayor shall be authorized to remove any member of the Commission, for good reason, prior to the normal expiration of the term for which such member was appointed.

SECTION 2.6 MEETINGS

- 1) The Commission shall meet at least quarterly and shall hold its meetings in compliance with the State Open and Public Meetings Act.
- 2) Special meetings may be called by a majority of the Commission members, the Chairperson, or the Mayor. The notice for such special meeting must be given not less than three (3) hours prior to the meeting. The notice shall be served personally or left at the member's residence or business office.

- 3) Four (4) members of the Commission shall constitute a quorum for the transaction of business. The Commission may act officially by an affirmative vote of any four (4) members.
- 4) Meetings shall be held at a public place as designated by the Commission.
- 5) The Commission shall cause minutes of its proceedings to be kept which shall be available for public inspection in the office of the City Administrator. The Commission shall record the yea and nay votes on any action taken by it.

SECTION 2.7 ELECTION OF COMMISSION OFFICERS

Each year the Commission, at its first regular meeting after January 1st, shall select one (1) of its members as Chairperson, another of its members as Vice-Chairperson, who shall perform the duties of the Chairperson during the absence or disability of the Chairperson, and one (1) of its members as Secretary.

SECTION 2.8 COMMITTEES

The Commission may appoint non-members to subcommittees as it deems appropriate and advisable to study, analyze, and make recommendations on matters which are presented for consideration.

SECTION 2.9 ATTORNEY DUTIES

The City Attorney shall be the attorney for the Commission.

SECTION 2.10 POWERS AND DUTIES

The Commission shall have the following powers and duties to:

- 1) Determine and establish such rules and regulations for the conduct of the Commission as the members shall deem advisable; provided, however, that such rules and regulations shall not be in conflict with this ordinance or any other city, state or federal law;

- 2) Recommend the adoption and alteration of all rules, regulations, and ordinances which it shall, from time to time, deem in the public interest and most likely enhance and beautify the urban forest, as well as for the purposes of carrying out this ordinance;
- 3) Recommend the broad matters of policy regarding the planting, maintenance, and removal of trees and other vegetation on city property;
- 4) Recommend policies for the review and approval of projects on private property where open space and/or landscaping is required as a condition for the development, as well as to recommend policies for the enforcement of approved plans;
- 5) Encourage landscaping installation and maintenance on private property by providing information on the value of landscaping and on the proper planting and care of trees and other vegetation;
- 6) Identify landscaping projects that will enhance the urban forest and advocate incorporation of the projects into the capital planning process;
- 7) Recommend policies and procedures to identify, mark, publicize, and preserve historic and notable trees on both public and private property;
- 8) Promote appreciation of trees and the urban forest through annual Arbor Day observances and other activities;
- 9) Review those portions of the city budget allocated for the planting and care of trees and other vegetation, and advise the Mayor on the appropriateness of the funding levels, as well as to explore other sources of funding for the planting and care of trees and other vegetation;
- 10) Encourage improvement of the urban forest through planning and policy development;
- 11) Assist city departments in every way possible to enhance the urban forest in the city; and
- 12) In all instances, to serve as an advocate of the City's urban forest.

SECTION 2.11 URBAN FORESTRY MASTER PLAN

The Urban Forestry Commission shall review, maintain, and update a comprehensive urban forestry plan for the planting, maintenance and replacement of trees in parks, along streets or in other public areas.

Any changes of such plan shall be submitted to the City Council for adoption prior to implementation. The Public Works Director shall seek the advice of any bureau which will be affected by the Plan and/or Plan revisions.

All tree planting, maintenance, and removal shall comply with and conform to the Plan or such portion thereof as shall have been adopted at the time of the planting, maintenance or removal.

ARTICLE III
URBAN FORESTRY PROGRAM SUPERVISION**SECTION 3.1 POWERS AND DUTIES OF PUBLIC WORKS DIRECTOR**

The Public Works Director or his designee shall:

- 1) Supervise the Urban Forestry Program and enforce the provisions of this ordinance.
- 2) Assist the Commission in maintaining a Comprehensive Urban Forest Management Plan.
- 3) Maintain a list of approved varieties of trees that may be planted on any street or in any park or public area, consistent with the provisions of the Plan.

SECTION 3.2 RULES AND REGULATIONS

The Public Works Director may recommend, and the Council may adopt, additional regulations to be known as the Urban Forestry Standards and Specifications proper and necessary to effectuate the Urban Forest Management Plan within the city providing reasonable guidance for planting and maintaining public trees. Such rules and regulations shall not be in conflict with any other law or ordinance.

ARTICLE IV
STREET TREE RESPONSIBILITIES

SECTION 4.1 **STREET TREES -- PRIVATE PROPERTY**
 OWNER RESPONSIBILITY

Any owner of private property, abutting city parking/planting strips upon which street trees are located, may have the following responsibilities:

- 1) Periodic watering and fertilization of street trees when necessary to maintain good health and vigor.
- 2) Protection of street trees against damage caused by lawnmowers, weed trimmers, snow blowers, and similar equipment operated by the owner of adjacent private property.

ARTICLE V
PERMIT REQUIREMENTS

SECTION 5.1 **LANDSCAPE PERMIT FOR PUBLIC RIGHT-OF-WAY**

It is unlawful for any person to plant, prune or remove any public tree, without first obtaining a permit from the city. Said permit shall not relieve the applicant of any other legal requirement, including but not limited to, city business license, insurance, or state certification.

Permits shall not be required for work performed by city personnel.

1) **Planting and Maintaining Public Trees**

The Madras Urban Forestry Standards and Specifications shall be used as a guideline for the planting and pruning of public trees.

2) **Removal of Trees**

The Public Works Director must approve any permit for the removal of public trees and as a condition, the permittee may be required to compensate the city for the value of the tree(s) removed either by replacement thereof or by monetary assessment.

ARTICLE VI
PUBLIC NUISANCE
NOTIFICATION AND ABATEMENT REQUIREMENTS

SECTION 6.1 PUBLIC NUISANCE DEFINED AND DESIGNATED

The following are defined and declared to be public nuisances under this ordinance:

- 1) Any tree or shrub located on private property having a destructive or communicable disease or other pestilence which endangers the growth, health, life or well-being of trees, shrubs, or plants in the city;
- 2) The roots of any tree or shrub, located on private property, which cause the surface of the public street, curb or sidewalk to be upheaved or otherwise disturbed;
- 3) Any tree, shrub or portion thereof located on private property which, by reason of location or condition, constitutes an imminent danger to the healthy, safety or well-being of the general public; or
- 4) Any tree, shrub, or portion thereof located on private property that obstructs street lights, traffic signs, and the free passage of pedestrians or vehicles.

SECTION 6.2 RESPONSIBILITY FOR REMEDY OF PUBLIC NUISANCE

The owner of property upon which the nuisance is determined to exist shall be responsible for such nuisance and shall be responsible for its abatement.

SECTION 6.3 NUISANCE CREATION AND MAINTENANCE

It is unlawful for any person, either as owner, agent or occupant, to create or aid in creating or contributing to or to maintain a public nuisance.

SECTION 6.4 NUISANCE ABATEMENT

The city may determine when a public nuisance exists and may cause all nuisances declared to be such by this ordinance to be abated.

SECTION 6.5 NOTICE TO ABATE

The city may serve a notice in writing upon the owner, occupant or agent of any lot, building or premises informing them of the nuisance and requiring that the nuisance be abated. The owner shall have thirty (30) days from the date of the notice to abate said nuisance.

Failure to give a notice as provided herein shall not relieve the individual creating the nuisance from the obligation to abate such nuisance, or from the penalty provided for maintenance thereof.

Notice of appeal may be filed with the city within fourteen (14) days of service of notice. The appeal shall be decided by the City Council as to whether or not a nuisance exists.

SECTION 6.6 EXPENSE OF ABATEMENT RESPONSIBILITY OF OFFENDER

In case of neglect or refusal of any person(s) to abate any nuisance as defined by this ordinance, after written notification has been served, and within the time specified in the notice, the city may abate or procure the abatement thereof. The expense of such abatement shall be collected from the person(s) so offending as provided by law in the case of public nuisance abatements.

**ARTICLE VII
PUBLIC TREE DESTRUCTION****SECTION 7.1 ABUSE OR MUTILATION OF PUBLIC TREES**

- 1) Unless specifically authorized in writing by the Public Works Director, or his esignee, no person shall intentionally damage, cut, carve, transplant, or remove any public tree, attach any rope, wire, nails, advertising posters, or other contrivance; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any such tree.

- 2) It shall be unlawful for any person, firm, or city department to top any public tree.

Trees damaged by storms or other natural causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this ordinance at the determination of the Public Works Director, or his designee.

ARTICLE VIII
CONSTRUCTION/EXCAVATION REQUIREMENTS

SECTION 8.1 **PROTECTION OF PUBLIC TREES NEAR**
CONSTRUCTION ACTIVITIES

Any tree located on public property within fifteen feet (15') of any excavation, demolition or construction site of any building, structure, street or utilities works, which has potential for injury, shall be protected from such injury.

SECTION 8.2 **PROTECTION OF PRIVATE TREES FROM**
EXCAVATIONS ON PUBLIC PROPERTY

Where excavations on public property may damage a tree(s) on private property, the contractor shall take reasonable care to protect such tree(s) from damage. All roots larger than three inches (3") in diameter shall be prevented from injury and all smaller roots which must be severed, shall be cleanly cut.

ARTICLE IX
GENERAL PROVISIONS

SECTION 9.1 **PENALTIES**

Any person who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to provision of the ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed \$500 for each separate offense.

Each day that a violation of this ordinance continues shall constitute a separate violation.

If, as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on city-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens" as published by the International Society of Arboriculture.

SECTION 9.2 SEVERABILITY CLAUSE

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 9.3 CORRECTIONS

This ordinance may be corrected by order of the Madras City Council to cure editorial and clerical errors.

SECTION 9.4 EMERGENCY CLAUSE

It is hereby determined and declared that existing conditions are such that it is necessary for the immediate preservation of the peace, health, general welfare, and safety of the City of Madras that an emergency be declared to exist and this ordinance shall be in full force and effect immediately upon and after its passage by the Council and approval by the Mayor of the City of Madras, Oregon.

PASSED by the Council and approved by the Mayor on December 14, 1993.