

PERMITS, STREETS AND PUBLIC WAYS

CHAPTER 86

TREES AND SHRUBS

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86.005. TITLE AND PURPOSE. This chapter shall be known as the Municipal Shade Tree Ordinance for the planning, planting, maintenance, care, and removal of trees on public property for the City of Salem, Oregon. It is hereby declared to be for the best interest of the city, and of the citizens and public thereof, that a comprehensive development guide for planting and maintenance of trees in public streets within the city should be developed and established. This chapter is enacted for the purpose of developing and providing for such a plan and program, and for the purpose of establishing rules and recommendations relating to the planting, care, and maintenance of trees. (Ord No. 185-71)

86.010. DEFINITIONS. For the purposes of this chapter the following words and phrases shall have the following meanings:

- (a) "Agency" means the department of community services.
- (b) "Director" means the director of community services, or the designee of the director.
- (c) "Heritage trees" means trees designated as such due to their location, size, or age of their species, botanical interest, commemorative plantings, or historic significance.
- (d) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- (e) "Public tree project" means any tree or group of trees on public property or trees on private property that are a hazard to public safety; that are to be sprayed, removed, treated; or maintained and cared for by a tree trimmer or a person as herein defined.
- (f) "Shade tree," "street tree," or "tree" means a tree in any public place and include shrubs and bushes, except where trees are otherwise indicated.
- (g) "Tree planting strip" mean the area between the curb or place where the curb should be and the property line, or an area inside the property line where an easement is given for the purpose of permitting the planting of shade trees, or required planting strip.
- (h) "Tree trimmer" shall mean any person or persons engaged in the business or occupation of trimming, pruning, treating, or removing trees that are located within public or private property. (Ord No. 5200; Ord No. 5424; Ord No. 185-71; Ord No. 7-82; Ord No. 36-97; Ord No. 51-2002)

86.015. SHADE TREE POLICY AND RESPONSIBILITY. (a) The city hereby adopts the policy to line its streets with desirable species of trees, to plant or cause to be planted such trees in all areas of the city, and to provide a consistent and adequate program for maintenance and preservation of such trees. The city shall establish comprehensive and specific plans for the planting and maintenance of trees along the streets within the city.

(b) It is hereby declared that the public interest and welfare requires that the city maintain the program for the planting, maintenance, and preservation of all trees on public property in the city.

(c) Except as provided in this chapter and SRC 132.210, the city shall be responsible for planting, treating, pruning, and removing dangerous or damaged trees within the right-of-way adjacent to single family dwellings and duplex structures. After initial occupancy, the abutting property owner shall be responsible for watering and maintaining the area around the trees within the right-of-way, including shrubs, bushes and other plant material, unless this responsibility is specifically withdrawn by the city. The abutting property owner shall also be responsible for the maintenance of trees, shrubs, or bushes on his or her own or adjacent public

property in accordance with SRC 86.080 and in such a way as not to cause a hazard to the public safety. (Ord No. 185-71; Ord No. 36-97; Ord No. 22-2000; Ord No. 51-2002)

86.020. PERMIT REQUIRED TO CUT TREES. It shall be unlawful for any person, without a written permit from the director to remove, destroy, cut, break, or injure any tree, or to remove or prune any branch that is planted or growing in or upon any public street within the city or cause or authorize or procure any person to do so, or to injure, misuse, or remove or to cause, authorize, or procure any person to injure, misuse, or remove any device set for the protection of any tree in or upon any public street. (Ord No.5200; Ord No. 5424; Ord No. 36-97)

86.025. PERMIT REQUIRED TO INSTALL DECORATIVE LIGHTING ON STREET TREES. It shall be unlawful for any person, without a written permit from the director, to install or otherwise physically attach decorative lighting on any street tree. In addition to other requirements the director may establish, the permit shall specify a 90 day maximum period during which the lighting may be attached between October 1 and March 1, require that installation and removal shall be accomplished without injury to the street tree and provide that the correction of any damage to the tree or replacement of the tree shall be at the permittee's cost and accomplished by a trimmer licensed under SRC 33.195. (Ord No. 88-98)

86.030. APPLICATION; CONFORMANCE TO TERMS OF PERMIT. (a) Any person desiring for any lawful purpose to remove, destroy, cut, trim, prune, or treat with a view to its preservation from disease or insects any tree, in or upon any public street shall make application to the director. Such application must state the number and kind of trees to be trimmed, removed, or treated, the name of permittee and contractor, and the time the proposed work is to be done and such other information as the director may deem pertinent.

Any work done under such written permit must be performed in strict accordance with the terms thereof and the provisions of this chapter, of sections 33.190 to 33.240 and with the approval of the director.

(b) Any person desiring for any lawful purpose to plant or remove trees in the Salem Downtown Historic District or the Central Business District shall make application to the director. In addition to the application requirements in SRC 86.030(a), an application to plant or remove a tree in the Salem Downtown Historic District or the Central Business District shall follow the guidelines in SRC 86.130(c) and must include:

(1) A site plan, drawn to scale, which includes the following information:
(A) The location, species, and size of existing tree(s) to be removed or relocated;
(B) The location, species, and size of tree(s) to be planted;
(C) The location of any underground utilities that may be impacted; and
(D) Elevations for any building(s) which may be impacted by the tree planting or removal.

2) Photographs of the site.

(c) Whenever the director receives an application to remove or plant a tree in the Salem Downtown Historic District or the Central Business District, it shall be referred to the shade tree committee for its recommendation. Before any permit is issued under this section, the director shall consider the recommendation of the shade tree committee in consultation with the director of community development, or designee of director. The director shall report the

director's decision on each application to the Salem Historic Landmarks Commission and the shade tree committee. (Ord No. 5200; Ord No. 36-97; Ord No. 51-2002)

86.040. OPEN SPACE AROUND TREE. When any impervious material or substance is laid down or placed in or upon any street near any tree, there shall be provided about the base of the trunk of each tree in such public street at least nine square feet of ground for a tree up to three inches in diameter, and for every two inches of increase of such diameter, there must be an increase of at least one square foot of open ground. (Ord No. 5200; Ord No. 36-97)

86.050. MAINTENANCE STANDARDS. It shall be unlawful for any person to wilfully injure, destroy, top or prevent the growth of any tree on public property, including but not limited to the following:

(a) Pouring or spraying an injurious matter such as salt, brine, whitewashing, or toxic chemicals on or around any tree, or on the ground around it or on any public lawn or sidewalk.

(b) Posting any sign on a tree, tree stake, or guard; fastening any guy wire, cable, or rope to any tree, tree stake, or guard; except under written authority from the director.

(c) Piling materials around any tree which would in fact or potentially cause injury to a tree or damage the tree, stake, or guard.

(d) Use of concrete, asphalt, brick, or gravel around trees so as to shut off oxygen or water from the roots.

(e) Knowingly permit any gas leakage within the root zone of any public tree, and if such occurs, he shall be requested to have it fixed as soon as practicable.

(f) At the director's discretion, electrical power providers may be exempted from the no topping clause when state law demands the practice of topping. (Ord No. 5200; Ord No. 185-71; Ord No. 36-97)

86.060. PROTECTION OF TREES DURING ERECTION, REPAIR, ETC., OF BUILDINGS. During the erection, repair, alteration, or removal of any buildings or structure, it shall be unlawful for the person in charge of such erection, repair, alteration, or removal to leave any tree in or upon any public street in the vicinity of such building or structure without a good and sufficient guard or protectors as shall prevent injury to such tree arising out of or by reason of such erection, repair, alteration, or removal. (Ord No. 5200; Ord No. 36-97)

86.070. EXCAVATIONS AND DRIVEWAY CONSTRUCTION NEAR TREES. Excavations and driveways shall not be placed within six feet of any tree in or upon any public street without written permit from the director. During such excavation or construction, any such person shall guard any tree within six feet thereof, and all building material or other debris shall be kept at least four feet from any tree. (Ord No. 5200; Ord No. 36-97)

86.080. TRIMMING OF TREES AND SHRUBS PROJECTING OVER STREETS. The city has the authority to trim trees standing in or upon any public street or alley or on public or private grounds and having branches projecting into a public street or sidewalk. Trees, shrubs or other plants that project over alleys, and shrubs or other plants that project over

street right-of-way are the responsibility of owner or owners of the property adjacent to such trees, shrubs, or plants so that:

(a) The lowest branches shall not be less than 14 feet above the surface of the street or alley.

(b) The lowest branches shall not be less than eight feet above the surface of any sidewalk or footpath. No planting, bush, or shrub shall project over a sidewalk or curb, or be more than 24 inches in height in a parking strip or in that triangular area at the street or highway corner of a corner lot or the alley-street intersection of a lot, such area being defined by a line across the corner between the points on the street right-of-way line measured thirty feet for streets and ten feet for alleys back from the corner and extending such line to the street curbs or, if there be no curbs, then to that portion of the street or alley used for vehicular traffic.

Newly planted trees may remain untrimmed; provided they do not interfere with street traffic or persons using the sidewalk or obstruct the light of any street electric lamp. (Ord No. 5200; Ord No. 5424; Ord No. 36-97)

86.090. NOTICE TO ABUTTING PROPERTY OWNER, TO TRIM TREES AND SHRUBS. Whenever the owner or owners, lessees, occupants, or person in charge of private grounds shall neglect or refuse to trim any tree, shrub, or plant provided in SRC 86.080, the director may cause to be served upon such owner or owners, lessees, occupants, or person in charge a written notice to trim such tree or trees, shrubs, or plants within ten days after the giving of such notice, and in case such owner or owners, lessees, occupants, or person in charge fail to do so, he or they shall be guilty of a violation of this chapter and subject to the penalties provided by SRC 86.170. Such notice shall be served upon the owner or owners, lessees, occupants, or person in charge of the property by regular mail to the last known address of said person or persons. (Ord No. 5200; Ord No. 165-78; Ord No. 36-97)

86.100. NOTICE; BY CITY UPON FAILURE OF ABUTTING PROPERTY OWNER. If the owner or owners, lessees, occupants, or person in charge of the property, shall fail and neglect to trim such trees, shrubs, or plants within ten days after receiving the notice provided for in SRC 86.090, the director shall cause such trees, shrubs or plants to be trimmed. (Ord No. 5200; Ord No. 36-97; Ord No. 22-2000)

86.101. STATEMENT OF COSTS; BILLING AND LIEN PROCEDURES. Upon completion of the work under SRC 86.100, the community services director shall file with the director of finance an itemized statement of costs thereof, plus 10 percent to cover the expense of inspection, overhead, enforcement of this chapter, and the giving of notice required by SRC 86.090. The director of finance shall, upon receipt of the itemized statement from the community services director, notify by mail each property owner affected thereby of the sum of money due the City of Salem. If said costs are not paid within 30 days of the billing date, the director of finance shall thereafter file with the council the aforesaid mentioned itemized statement of costs including the 10 percent overhead plus an additional charge of 5 percent to cover assessment procedure expense. After a reasonable opportunity to be heard in objection thereto, the council shall then, by ordinance, declare the correctness of such statement and declare the same to be a lien upon the property involved, to be entered in the minor lien docket and enforced against the property, in the same manner provided for the enforcement of liens for street improvement. (Ord No. 165-78; Ord No. 36-97)

86.102. PAYMENT AND CREDIT OF COST FROM AND TO SPECIAL ASSESSMENT FUND. Upon the docketing of a lien pursuant to SRC 86.101, the amount of the lien shall be charged to the special assessment fund, and all income resulting from enforcement of the lien shall be credited to such fund. (Ord No. 165-78)

86.110. PLANTING TREES AND SHRUBS ON STREET OR ALLEY. (a) It shall be unlawful for any person to plant or set out any tree or shrub or cause or authorize or procure any person to plant or set out any tree or shrub in or upon any part of any public street or alley without obtaining from the director a written permit to do so, or approval of a landscape plan under SRC 132.140 and without first complying in all respects with the conditions set forth in such permit or approval and with the provisions of this chapter.

(b) Except as provided in subsection (c) of this section, applications for such permits shall describe the work to be done and the variety, size, and precise location of each tree or shrub. Plantings shall conform to the master street plan or official tree planting list. After the receipt of such an application, the director shall investigate the locality where the tree or trees are to be placed and shall grant a permit only if the location is such as to permit the normal growth and development of each tree. Such permit shall specify the location, variety, and grade of each tree and method of planting, including among other things the supplying of suitable soil. The permit shall be good only for the planting season stated in the same year issued.

(c) Applications for such permits for new single family and duplex dwellings shall specify the number of trees being planted, the species and the address of the dwelling. Trees shall be a minimum of one and one-quarter inch caliper, on a six foot standard (first branch no lower than six feet above ground level), be of a species approved by the director of community services, and be planted in accordance with good arboricultural practices. Applications for such permits shall be made at the time of application for building permits for the dwellings. The only inspection shall be to verify that trees have been placed. This inspection will occur during the final inspection of the dwellings.

(d) There shall be no fee for a permit under this section. (Ord No. 5200; Ord No. 185-71; Ord No. 81-86; Ord No. 2-91; Ord No. 36-97; Ord No. 22-2000)

86.115. MASTER STREET TREE PLAN. A master street tree plan shall be prepared by the director with the advice of the shade tree committee. This plan shall be in harmony with this chapter and shall:

(a) Include a complete map of the city with a listing of the current species of trees on all streets, parks, and public properties.

(b) Include an official tree planting list specifying those trees that are acceptable for planting on public property. Beauty and shade shall be among the most important considerations in the development of an official tree planting list.

(c) Include a list of trees that are prohibited from being planted on public streets and property.

(d) State the planting procedures and distance requirements between trees so that the selected trees shall fit the site at maturity.

(e) Provide for the preservation of those trees that are determined by the shade tree committee to be heritage trees.

(f) Encourage the preservation of standing trees in construction areas, both public and private, when said trees are of desirable types and in healthy condition.

The master street tree plan may from time to time be amended, changed, or modified. Copies of the official tree planting list included in the master street tree plan shall be made available for distribution to the public. (Ord No. 185-71; Ord No. 7-82; Ord No. 81-86; Ord No. 2-91; Ord No. 36-97)

86.120. CERTAIN TREES PROHIBITED. It shall be unlawful for any person to plant any edible fruit or nut bearing tree, poplar, cottonwood, willow, common horse chestnut, box elder, laburnum, broad leaf or silver maple, holly, or ailanthus species of tree within any street or alley within the city. Coniferous trees may be planted by special permit only. (Ord No. 5200; Ord No. 36-97)

86.130. PLANTING, CUTTING, AND PRUNING OF TREES. The following regulations are hereby established for the planting, trimming, and care of trees in or upon the public streets or alleys of the city:

(a) Trees shall be planted not less than forty feet apart except when a greater density is allowed under a special permit from the director.

(b) Trees shall be planted not less than six feet from a driveway or water meter and not less than fifteen feet from a street light.

(c) In addition to the above regulations, the following guidelines shall apply to the planting of trees in the Salem Downtown Historic District and the Central Business District:

(1) Trees shall not be planted in a location which would obscure significant architectural features.

(2) Trees shall not be planted in a location which would obstruct an entrance to a building.

(3) Only trees of a columnar nature or open limb structure and not otherwise prohibited by SRC 86.120, may be planted.

(4) Trees shall be planted a minimum of three feet from the curb of the street.

(5) Tree branches shall be at least seven feet from any building.

(d) The director may establish additional regulations for planting, cutting, and pruning of trees, using standard arboricultural practices. (Ord No. 5200; Ord No. 36-97; Ord No. 22-2000; Ord No. 51-2002)

86.135. DISEASED TREES AND SHRUBS PROHIBITED. It shall be unlawful for any owner or occupant of private property to allow any tree, shrub, or other vegetation growing on said property to grow in such a manner as to become a harbor for insects, pests, or disease or to create a hazard to public use of any street or alley right-of-way. (Ord No. 185-71)

86.140. REMOVAL OR TREATMENT OF DISEASED TREES AND SHRUBS. The director may remove or cause or order to be removed any tree, plant or shrub or part thereof planted or growing in or upon any public street or alley which is in an unsafe condition or which, by reason of its nature, is injurious to sewers or other public improvements or is affected with an injurious fungus, disease, insect, or other pest.

Whenever, in the opinion of the director, trimming of any such tree or shrub located on private grounds but having branches extending over any public street or alley is deemed necessary, the director shall have the power to trim any such branch or branches or cause or order the same to be trimmed.

The director shall have the authority, either by consent of the property owner or by appropriate legal process, to enter private property for the purpose of inspecting trees thereon to determine if such trees are infected with pests, insects, or disease that may endanger trees on public property. Upon discovering that any such trees are infected with pests, insects, or disease, a written notice shall be sent to the property owner advising said property owner of the conditions and the corrective measures to take. In the event the property owner fails to take the corrective measures indicated by the director, the director shall have the power to cause the treatment to be made. (Ord No. 5200; Ord No. 185-71; Ord No. 36-97)

86.145. Repealed. (Ord No. 185-71; Ord No. 36-97)

86.150. ENFORCEMENT OF CHAPTER BY COMMUNITY SERVICES

DIRECTOR. The director under the direction of the city manager shall have jurisdiction over all trees, plants, and shrubs planted or growing in or upon the public streets and alleys of the city and the planting, removal, care, maintenance, and protection thereof as specified in this chapter. The director shall be charged with the duties of enforcing the provisions of this chapter and shall discharge all duties in connection therewith that may be required or imposed upon him by the council or city manager. (Ord No. 5200; Ord No. 51-96; Ord No. 36-97; Ord No. 22-2000)

86.160. APPEALS FROM ACTIONS OF COMMUNITY SERVICES

DIRECTOR. Whenever any application for a permit under this chapter is denied by the director, or whenever an order is issued by said director directing certain trees, shrubs, or plants to be trimmed, treated, or removed, or whenever a permit is granted by the director containing conditions the applicant of the permit deems unreasonable, such applicant, affected person, or the director may have the matter referred to the shade tree committee for study and recommendation. The shade tree committee shall study the matter as soon as practicable, and make their recommendation to the agency. If such recommendation is in agreement, or non-agreement with that of the director, the agency shall immediately notify the property owner involved, the person making the request, or such other persons known to have an interest in the problem, of the decision. Any person may appeal the decision of the committee to the council which such appeal shall be made in writing and must be filed with the city recorder within ten days after the action of the agency. After hearing, the council may either grant or deny the application, rescind the order from which the appeal was taken, or modify the same. (Ord No. 5200; Ord No. 185-71; Ord No. 51-96; Ord No. 36-97)

86.165. CREATION OF SHADE TREE COMMITTEE WITHIN PARKS

ADVISORY BOARD. The parks and recreation advisory board shall designate three of its members and three citizen volunteers nominated at large, to act as a shade tree committee. The committee shall be advisory to the agency and the director and shall have functions as follows:

(a) It shall be the liaison between the public and the agency. It shall hear controversial tree issues and make recommendations thereon.

(b) As requested by the director, it shall consider permit applications relative to the criteria in SRC 86.030(b) and 86.130(c), and submit a written report to the director recommending either issuance or denial of the permit. Such recommendation shall be considered by, but shall not be binding upon the director.

(c) It shall meet at such times and places as may be necessary to discharge its duties and responsibilities.

(d) It shall keep up-to-date lists regarding current needs and make recommendations to the parks and recreation advisory board on tree plans and necessary ordinance changes. (Ord No. 185-71; Ord No. 36-97; Ord No. 51-2002)

86.170. VIOLATIONS. Violation of any of the provisions of this chapter is an infraction. (Ord No. 5200; Ord No. 193-79)

86.180. Repealed. (Ord No.81-86; Ord No. 2-91)

86.190. Repealed. (Ord No. 81-86; Ord No. 2-91)

86.200. Repealed. (Ord No. 81-86; Ord No. 2-91)

86.210. Repealed. (Ord No. 81-86; Ord No. 2-91)

86.220. Repealed. (Ord No. 81-86; Ord No. 2-91)

86.230. Repealed. (Ord No. 81-86; Ord No. 2-91)