

ORDINANCE NO. 5495

AN ORDINANCE AMENDING AMC CHAPTER 7.98, WHICH SET FORTH REGULATIONS RELATING TO THE PLANTING AND MAINTENANCE OF TREES; AND DECLARING AN EMERGENCY.

WHEREAS, on December 15, 1993, Ordinance No. 5096 established AMC chapter 2.23, which establishes a city tree commission, and established AMC chapter 7.98, which sets forth regulations relating to the planting and maintenance of trees, and amending AMC section 1.040.030, misdemeanors; and

WHEREAS, the Council of the City of Albany requested the Albany Tree Commission to provide regulations addressing the removal of large diameter trees; and

WHEREAS, the Council of the City of Albany has duly advertised and caused notice to be given as required by law and has held a public hearing concerning the regulation of trees with diameters of 25 inches or greater; and

WHEREAS, the said hearing on the 11th day of July 2001 has been duly held and parties were given an opportunity to be heard and the Council being fully informed; and

WHEREAS, on the 11th day of July 2001 the Council of the City of Albany voted to regulate the removal of trees with diameters of 25 inches and greater; and

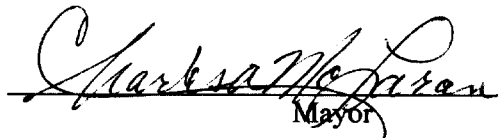
WHEREAS, the proposed amendments to the Albany Municipal Code have been made and are attached to this ordinance.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: AMC Chapter 7.98 is hereby amended to read as provided in Exhibit 'A,' attached hereto.

Section 2: Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the city of Albany, an emergency is hereby declared to exist; and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by Council: July 25, 2001
Approved by Mayor: July 25, 2001
Effective Date: July 25, 2001



Mayor

ATTEST:



City Recorder

EXHIBIT A

Chapter 7.98 TREE REGULATIONS

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7.98.010 Purpose.

The following chapter is established by the Albany City Council to promote and protect the public health, safety, and general welfare of the citizens of Albany by providing for the regulation of the planting, maintenance, and removal of trees in the City of Albany. (Ord. 5096 § 2, 1993). **Trees of significant size possess considerable environmental and aesthetic qualities beneficial to the community. These standards are intended to balance the preservation of significant trees as a benefit to the community with the individual right to use and enjoy property.**

7.98.020 Definitions.

- (1) Certified Arborist.** A person certified by the International Society of Arboriculture as having specialized knowledge, experience, and training related to arboriculture.
- (2) City Forester.** The person designated by the Public Works Director to be the authorized representative in matters concerning the urban forest of the City of Albany.
- (3) Critical Root Zone.** The distance extending out from and surrounding a tree trunk. The critical root zone distance is calculated by multiplying the diameter of the tree, in inches, measured at 4½ feet above the mean ground level, by 18. For example, a tree with a diameter of 2 inches would have a critical root zone of 36 (2 × 18) inches all around the tree.
- (4) "Dangerous tree" is a Hazardous or Dangerous Tree.** A tree that is classified as a hazardous or dangerous tree by the City Tree Commission. (Ord. 5096 § 2, 1993).
- (5) Person.** Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns.

~~(6)(2) "Public trees" are defined as trees~~ **Public Trees.** Trees located on property designated as a public park and trees located in public right-of-way not defined as street right-of-way.

(7) **Public Works Director.** The person designated by the City Manager to supervise the **Public Works Department** and who is charged with certain duties and responsibilities by this article, or the duly authorized representative.

(8) **Remove or Removal.** To fell or sever a tree or the intentional use of any procedure, the natural result of which is to cause the death or substantial destruction of the tree. Removal does not in any context include normal pruning of trees.

~~(3) "Heritage trees" are trees of significant historical value so designated by the City Tree Commission.~~

~~(9)(3) "Heritage trees" are trees of significant historical value so designated by the City Tree Commission.~~ **Significant Tree.** (a) Any **Heritage**, rare, threatened, or endangered tree of any size as defined or designated under state or federal law, or (b) Any tree designated as significant by the City Tree Commission by virtue of heritage parameters or size.

~~(10)(1) "Street trees" are defined as trees,~~ **Street Trees.** Trees located in public rights-of-way within the City.

(11) **Tree.** A self-supporting, perennial woody plant characterized by one main trunk or in some cases multiple trunks, and one main canopy of leaves, usually growing to a height of 15 feet or higher.

(12) **Tree Circumference.** The distance measured around the trunk of a tree at 4½ feet above the mean ground level from the base of the trunk. The circumference of a tree with multiple trunks is determined by adding together the individual trunk circumferences greater than six inches.

~~7.98.1207.98.030~~ **7.98.0907.98.030 Prohibited Activities. Protection of trees.**

(1) It shall be unlawful for any person to remove, destroy, break, or injure any street tree or public tree.

(2) It shall be unlawful for any person to attach or keep attached to any street or public tree or to the guard or stake intended for the protection of such tree, any rope, wire, chain, sign, or other device whatsoever, except as a support for such tree.

(3) During the construction, repair, alteration or removal of any building or structure it shall be unlawful for any owner or contractor to leave any street tree or public tree 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 construction or removal.

(4) Excavations shall not occur within 10 feet of any street tree or public tree without approval of the City Forester, applying criteria developed by the City Tree Commission. Utility pole installations are exempted from the requirements set forth in this subsection. During such excavation or construction, any such person shall guard any street tree or public tree within 10 feet thereof.

(5) All building material or other debris shall be kept at least four feet from any street tree or public tree. (Ord. 5096 § 2, 1993).

(6) **Unless removal is expressly authorized by a land use action or approval issued by the City of Albany, it shall be unlawful to remove any tree larger than or equal to 6½ feet in circumference (approximately 25" in diameter), public or private, within the City of Albany city limits without first making application to the City of Albany and obtaining a permit or as otherwise authorized by this code.**

~~7.98.0907.98.040~~ **7.98.0907.98.040 Permits Required.**

(1) A permit shall be obtained from the City Forester, applying criteria developed by the City Tree Commission, before planting, pruning, or otherwise affecting a street tree.

(2) **A permit shall be obtained from the City Forester, applying criteria contained in AMC 7.98.180, for the removal of individual trees equal to or greater than 6½ feet circumference on all property within the city limits of the City of Albany.**

~~(2)(3)~~ (3) With a permit, adjacent property owners may plant street trees so long as the selection, location, and planting of such trees is in accordance with this chapter.

~~(2)~~(4) Any street tree planted that does not comply with this chapter may be removed by the City at the direction of the City Tree Commission. The cost of such removal will be borne by the person or persons who planted the tree.

~~(2)~~(5) Permits shall be valid for a period of 180 days following the date of issuance. (Ord. 5096 § 2, 1993).

~~7.98.030~~**7.98.050** Street trees - Classification and spacing.

(1) The City Tree Commission shall develop and maintain a list of approved trees for planting along streets. The trees will be listed in three size classes based on mature height: small (under 30 feet); medium (30 to 50 feet); and large (over 50 feet). Lists of trees not suitable for planting will also be created by the City Tree Commission.

(2) The City Tree Commission shall develop criteria on the spacing of street trees. (Ord. 5096 § 2, 1993).

7.98.060 Distance between curb and sidewalk.

The distance ~~street trees~~ may be planted from curbs or curblines and sidewalks will be in accordance with the three size classes listed in AMC 7.98.030(1). No tree may be planted in a planting strip with a width of less than the following: small trees, three feet; medium trees, five feet; and large trees, eight feet. The exception to this rule shall be when curb and sidewalk are protected by a chemical or mechanical barrier approved by the City Forester. (Ord. 5096 § 2, 1993).

7.98.070 Distance from street corners and fire hydrants.

The City Tree Commission shall establish standards for planting ~~street trees~~ in vision clearance areas. (Ord. 5096 § 2, 1993).

~~7.98.130~~**7.98.080** Planting in roadways having no gutter or curb.

No trees, shrubs, or plantings more than 18 inches in height shall be planted in the public right-of-way abutting roadways having no established curb or gutter. (Ord. 5096 § 2, 1993).

~~7.98.140~~**7.98.090** Tree topping.

It shall be unlawful for any person, ~~firm, or the City of Albany~~ to top any street tree, public tree, or heritage tree. Topping shall be defined as the cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal top. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where normal pruning practices are impractical may be exempted at the determination of the City Forester, ~~applying criteria developed by the City Tree Commission.~~ (Ord. 5096 § 2, 1993).

~~7.98.150~~**7.98.100** Exemptions.

In the event of a storm, freeze, or other environmental event resulting in damage to street and public trees, the City Manager may declare an emergency suspension of the permit requirements for the removal and pruning of trees set forth in this chapter. Such declaration shall prescribe dates during which permits are not required, but in no event may any single declaration exceed 21 days. (Ord. 5096 § 2, 1993).

~~7.98.040~~**7.98.110** Private utility tree policy.

Upon obtaining a ~~written~~ permit from the City Forester, a private utility maintaining its utility system in a street may prune or cause to be pruned, using proper arboricultural practices in accordance with said permit, any tree located in or overhanging the street that interferes with any light, pole, wire, cable, appliance or apparatus used in connection with or as a part of the utility system; but no tree shall be pruned without the consent of the abutting owner until the utility shall have given a written, ~~or printed, or verbal~~ notice to the owner or occupant of the premises. ~~If the abutting property owner fails, neglects, or refuses to sign a written or printed notice, the~~ The City Forester must be notified before any work proceeds. In cases of emergency, the consent of the abutting property owner may not be required, but notification of any work completed must be reported to the City Forester. (Ord. 5096 § 2, 1993).

7.98.0507.98.120 Heritage trees.

The City Tree Commission may designate certain trees as "heritage trees" within the City with the consent of the owner(s) of record. The purpose of the heritage tree designation is to recognize, foster appreciation of, and protect trees having significance to the community. The City Tree Commission shall have the authority to determine, select, and identify such trees that qualify as heritage trees. Once a tree is designated as a heritage tree, it will remain so unless it becomes necessary to classify it as a dangerous tree and removed as such. Heritage trees may not be removed without the express consent of the City Tree Commission. (Ord. 5096 § 2, 1993).

7.98.0807.98.130 Pruning, corner clearance.

(1) Every owner of any tree, located on private property, overhanging any street or right-of-way within the City shall prune the branches so the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection, traffic sign, or traffic control device, and so that there shall be a clear space of 14 feet above street surface, and eight feet above the sidewalk surface. Said owner shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public. The City shall have the right to prune any tree or shrub on private property when it interferes with the light from any street lamp, or interferes with visibility of any traffic control device or sign or vision clearance area at intersections and driveways. Tree limbs that grow within 10 feet of high voltage electrical conductors shall be maintained clear of such conductors by the electric utility company in compliance with any applicable franchise agreements and AMC 7.98.040 of this chapter, Private Utility Tree Policy. (Ord. 5096 § 2, 1993).

7.98.1007.98.140 Dead or dangerous tree removal on private property.

The City Tree Commission shall have the right to cause the pruning or removal of any dead or dangerous trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute an imminent threat to other trees within the City. The City Manager or his designee will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 30 days after the date of service of notice. The failure of the property owner to prune or remove said dead or dangerous tree within 30 days of the delivery of notice shall be deemed a violation of the Albany Municipal Code, and, in addition to prosecution of said violation, the City Manager or his authorized representative may at any time thereafter prune or remove said dead or dangerous tree and assess the cost against the property as provided hereafter. (Ord. 5096 § 2, 1993).

~~7.98.110~~ ~~Abatement.~~

(1) ~~Deadline to Remove Dead or Dangerous Trees. Within 30 days after the date of service of the notice required in AMC 7.98.100, or as soon thereafter as a violation of AMC 7.98.100 may occur, the owner of the property shall cause the tree determined to be dead or dangerous in violation of AMC 7.98.100 to be removed.~~

(2) ~~Requested Removal by City. At the request of the owner, the City Manager or his/her designate will cause said dead or dangerous tree to be removed for a fee sufficient to cover the direct cost plus 30 percent for administrative overhead with a minimum fee of [_____].~~

(3) ~~Removal by City. The City Manager or his/her designate may cause to be removed any tree determined to be dead or dangerous that is in violation of AMC 7.98.100 at anytime following the deadline for removal set forth at subsection (1) of this section. The cost of the removal of said dead or dangerous tree shall be as calculated in subsection (2) of this section and will be a charge to the owner of the property and will become a lien against the property.~~

(4) ~~Right to Enter. In the event that it becomes necessary for the City Manager or his/her designate to undertake the removal of the said dead or dangerous tree from any private property within the City, the designate of the City Manager shall have the right at reasonable times to enter into or upon said property to remove said dead or dangerous tree.~~

(5) ~~Cost to Become a Lien. Upon completion of the removal of a dead or dangerous tree under the these provisions of AMC 7.98.100 hereof and in the event that the fee is not paid within 30 days thereafter, the~~

City Manager or his/her designate shall file with the City Recorder and thereafter present to the City Council an itemized statement of the cost thereof ~~as specified in AMC 7.98.110~~. After providing the notice and hearing set forth below, the City Council shall, by ordinance, determine the reasonableness of said statements of costs and adjust the same, and thereupon the amount of said statements as approved by the City Council shall be an obligation owed to the City of Albany by the owner or owners of the real property involved, and the City shall have a lien upon said real property for such sum and the lien shall be entered in the lien docket and enforced against said property in the same manner provided for the enforcement of City liens.

(6) Notice and Hearing. Prior to the adoption of the ordinance referred to above, the City Manager or his/her designate shall cause a notice to be mailed by registered or certified mail, postage prepaid, to the record owner or owners of any real property upon which the City proposes to impose a lien for the costs of the removal of a tree determined to be dead or dangerous ~~under AMC 7.98.100~~. This notice shall be mailed to the owner or owners of the real property in question at the address designated on the Linn or Benton County real property tax assessment rolls. An error in the name of the property owner or owners shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void and any lien imposed pursuant to this section shall be a valid lien against the property. The notice shall contain a summary of the costs which are proposed to be assessed against the owner's property and shall advise of the City's intent to assess said costs against the real property upon which the work was performed and shall further advise the owner or owners of their right to a hearing before the City Council concerning the proposed assessment and the date and time of said hearing.

(7) Summary Abatement. The procedure provided by in this section is not exclusive but is in addition to abatement procedure provided by other ordinances. (Ord. 5096 § 2, 1993).

~~7.98.105~~**7.98.150** City's power and authority is permissive, not mandatory. Under no circumstances shall this chapter obligate the City of Albany, or any employee or agent thereof, to undertake any particular action to enforce any of the terms of this chapter. All authority granted to the City, its agents and employees, shall be permissive and not mandatory, and the City, its agents and employees shall have complete discretion to determine whether or not enforcement action of any type should be undertaken and if so, the nature of the enforcement action itself. The remedies provided in these regulations shall be cumulative and in addition to any and all remedies available at law or equity. (Ord. 5181 § 1, 1995).

7.98.160 Arborist certification.

A tree contractor shall have on staff an arborist certified by the International Society of Arboriculture to be qualified to prune, treat, or remove street or public trees within the City. The certified arborist must oversee all pruning work and certify that all work meets the City's pruning specifications. If a certified arborist is not on the staff of the contractor, the City Forester, applying criteria developed by the City Tree Commission, must approve the tree service contractor before the work begins. **In cases where the professional opinion of a certified arborist differs from that of the City Forester, the City Forester may refer the matter to the City Tree Commission for a decision.** Nothing in this section shall prevent the employees of public agencies who are not certified arborists from pruning trees on the grounds of those public agencies. (Ord. 5096 § 2, 1993).

7.98.170 Permit approval.

The Public Works Director or designee shall approve or conditionally approve permits when it has been demonstrated that one or more criteria in 7.98.180 have been met.

7.98.180 Tree removal permit criteria.

(1) Tree removal will be approved when:

- (a) It has been determined by the City Forester or by a certified arborist , without objection from the City Forester, that a tree is hazardous, dangerous, or significantly impacted by aggressive pests or pathogens, with a potential to spread and no other viable**

options are reasonably available to minimize hazard or alleviate risk of pest or pathogen to spread, or

(b) A logging permit issued by the Oregon Department of Forestry has been submitted to the City Forester, or

(c) Trees are overcrowded and it is determined by the City Forester or a certified arborist that removal will have a positive impact on the overall site and will not compromise the health of residual trees, or

(d) When necessary pursuant to a building permit for an improvement for which a site plan approval is not required, or

(e) Variance Clause: When unique circumstances specific to the applicant's situation have been expressed in writing with the application and the City Tree Commission has approved removal. Unique circumstances that could allow for a variance may include but are not necessarily limited to: 1) a tree that is causing significant negative impacts to improvements or personal property; 2) personal health reasons such as severe allergic conditions; or, 3) the tree is invasive, having significant negative impact to surrounding vegetation.

(2) In all other cases, a tree removal permit shall be denied.

7.98.200 Conditional permit approval.

The City Forester may specify conditions to the approval of tree removal. Such conditions may include but not necessarily be limited to; a requirement for certified arborist oversight during construction activities, specific construction methods such as critical root zone protection and protective fencing, post-removal site clean up, maintenance of replacement trees, and/or post-construction evaluation of tree health.

7.98.205 Permit fees.

Fees for removal permits shall be established by Council Resolution.

7.98.210 Appeals.

Any person who is denied a permit or is granted a permit with conditions may appeal the denial or imposition of condition by filing a written notice of appeal to the City Forester. The notice must be received within fifteen calendar days of the date of denial or the date of issuance of the permit with conditions imposed. The appeal must describe in writing the specific basis upon which the appellant asserts that the decision was in error. The specific basis may include but not necessarily be limited to private need, which is unique to the property owner's circumstances as stated in 9.98.180(1)(e). The City Tree Commission will review all appeals. Appeals of decisions made by the City Tree Commission are made to the City Council in accordance with AMC 2.23.060.

~~7.98.170~~7.98.220 Penalties.

Any person willfully violating any of the provisions of the Albany Municipal Code relating to the planting, pruning, trimming, or removal of trees shall be guilty of a misdemeanor punishable under the general penalty provided for in Chapter 1.04 of the Albany Municipal Code. (Ord. 5096 § 2, 1993).