

**COUNCIL BILL NO. 2678**

**ORDINANCE NO. 2424**

**AN ORDINANCE UPDATING AND REVISING THE PROCEDURES RELATED TO TREES WITHIN THE CITY OF WOODBURN; REPEALING ORDINANCE 1908; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council recently considered an issue regarding the removal of a street tree; and

**WHEREAS**, in the course of considering this specific issue, the Council requested a report on the administration of the City tree ordinance; and

**WHEREAS**, the Council received the report from City staff and discussed the relevant policy issues; and

**WHEREAS**, the Council directed that certain revisions be made to the City tree ordinance; and

**WHEREAS**, these revisions are extensive enough in nature that they should be contained in a new revised ordinance; **NOW, THEREFORE**,

**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:**

**Section 1. Definitions.**

A. "Certified Arborist" means a person who has met the criteria for certification from the International Society of Arboriculture or American Society of Consulting Arborists, and maintains his or her accreditation.

B. "Park tree" means a tree, shrub, bush, or other woody vegetation in public parks or areas to which the public has free access.

C. "Person" means an individual or legal entity.

D. "Private infrastructure" means a driveway apron or paved or concrete private walkway located within the City right-of-way.

E. "Private tree" means a tree, shrub, bush, or other woody vegetation located on private property other than a dedicated right-of-way or public easement, or public parks and grounds.

F. "Public infrastructure" means public water and sewer lines, electric lines, gas lines, telephone or cable television lines, curbs, and sidewalks located within the public right-of-way, and other public improvements.

G. "Public Works Director" means the Woodburn Public Works Director or designee.

H. "Real Property Owner" means the person holding legal title to the real property or properties upon which a street tree is located.

I. "Remove" or "Removal" means to cut down a tree, or remove 50% or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline and/or die. Remove or removal includes topping. Remove or removal includes but is not limited to damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. It does not include normal trimming or pruning.

J. "Street tree" means a tree, shrub, or other woody vegetation on land, the trunk of which is located wholly or partially within the right-of-way along either side of a street, avenue or other way or within a dedicated side of a street, avenue or other way.

K. "Topping" means the severe cutting back of a tree's limbs to stubs three inches or larger in diameter within the tree's crown to such a degree so as to remove the natural canopy and disfigure the tree.

## **Section 2. Permit to Remove Trees Required.**

A. No person shall remove a street tree without obtaining a permit from the Public Works Director. Permits to remove street trees will be granted only if one of the following conditions exist:

- (1) The tree is dangerous and may be made safe only by its removal.
- (2) The tree is dead or dying, and its condition cannot be reversed.
- (3) The tree is diseased and presents a potential threat to other trees within the City, unless it is removed.
- (4) The tree is causing damage, which cannot be corrected through normal tree maintenance, to public infrastructure as defined by this Ordinance.

(5) The tree is causing damage, which cannot be corrected through normal tree maintenance, to private infrastructure as defined by this Ordinance.

B. Any application for a permit to remove a street tree shall be supported by a report prepared by an Arborist as defined by this Ordinance and paid for by the applicant for the permit.

C. Street Tree Removal Applications and Street Tree Permits shall be prepared by the Public Works Director in a form approved by the City Attorney.

D. Street tree removal permits shall remain valid for a period of 180 days from the date of issuance. Permits that have lapsed are void. Trees removed after a tree removal permit has expired shall be considered a violation of this Ordinance.

E. Misrepresentation of any fact necessary for the City's determination for granting a tree removal permit shall invalidate the permit. The City may at any time, including after a removal has occurred, independently verify facts related to a tree removal request and, if found to be false, or misleading, may invalidate the permit and process the removal as a violation. Such misrepresentation may be related to matters including, without limitation, tree size, location, health or hazard condition, justification for issuance of permit, or owner's authorized signature.

**Section 3. Requirement for Certified Arborist.** Pruning, treating, or removing street or park trees shall be performed by or under the direct supervision of a Certified Arborist. Before a permit is granted by the Public Works Director, the arborist shall provide proof of current City business license and evidence of possession of liability insurance in the minimum amounts provided by ORS 30.270. Permits shall not be required of a City employee doing work on behalf of the City. Permits shall not be required of franchisees or other public service companies doing work in pursuit of their public service endeavors, provided that all such work is completed in conformance with any applicable franchise requirements and by or under the direct supervision of a Certified Arborist.

**Section 4. City Cost Sharing for Street Tree Removal.** Subject to the availability of funds in the City's budget, the Public Works Director is authorized to expend City funds to share in the cost of removal of street trees according to the following formula:

COST OF REMOVAL	OWNER SHARE	CITY SHARE
First \$200	100%	0%
Above \$200	50%	50%

The maximum City subsidy for one property shall not exceed \$500, except in cases where the street tree removal is done exclusively for the protection of public infrastructure where the Public Works Director is authorized to have the City pay the entire cost. No subsidy shall be provided for trees removed at a Real Property Owner's request in order to protect private infrastructure. Additional guidelines for cost sharing of tree removal may be established, and amended from time to time as needed, by resolution of the City Council.

**Section 5. Tree Replacement.** The City may require the replacement by the Real Property Owner, at the Real Property Owner's expense, of a new tree after permission has been granted by the Public Works Director for the removal of an existing street tree. Replacement trees must have a minimum caliper of 2 inches at 4-foot height, be of a species that reaches the same height at maturity as surrounding street trees, and may not be a prohibited species under the Woodburn Development Ordinance.

**Section 6. Woodburn Street Tree Planting Regulations.** All street trees shall be planted in conformance with the Woodburn Street Tree Planting Regulations which shall be adopted, enforced, and administered by the Public Works Director consistent with the terms of this Ordinance. Copies of the Woodburn Street Tree Planting Regulations shall be on file in the City Recorder's office, Public Works Department, Community Development, and the Woodburn Public Library.

**Section 7. Street Tree Species to be Planted.** No person shall plant a street tree of any species that is prohibited by the Woodburn Development Ordinance without the written permission of the Public Works Director.

**Section 8. Tree Maintenance by City.** The City shall have the right to plant, prune, maintain, and remove trees located within the public right-of-way as may be necessary to protect public safety or to preserve or enhance the appearance of public property. The City may remove, or order to be removed at the expense of the Real Property Owner, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electrical power lines, telephone or cable television lines, natural gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest.

## **Section 9. Street Tree Maintenance by Owner.**

A. In consideration of the value and benefits derived from the beauty and enjoyment of a street tree, the Real Property Owner shall have the responsibility, control, and shall bear the cost of maintenance and care of the street tree, and shall regularly inspect and remove defective conditions as necessary.

B. The Real Property Owner shall prune the branches of a street tree so that the branches do not obstruct the light from a street light or obstruct the view of any street intersection. The Real Property Owner shall maintain a clear space of 15 feet above the surface of the street and 10 feet above the surface of any sidewalk. The Real Property Owner shall remove all dead, diseased, or dangerous, or broken or decayed limbs which constitute a danger to the safety of the public.

C. The Real Property Owner shall be liable for injury, damage, or loss to persons or property caused by the Real Property Owner's failure to comply with subsection A or B of this section.

D. The City of Woodburn shall not be liable for injury, damage, or loss to person or property caused in whole or part by the defective or dangerous condition of any tree located in or upon a right-of-way. The Real Property Owner shall defend and hold harmless the City from all claims for loss and damage arising from the Real Property Owner's failure to comply with subsection A or B of this section.

## **Section 10. Mutilation and Topping of Trees.**

A. Mutilation. Unless specifically authorized in writing by the Public Works Director, no person shall intentionally damage, cut, carve, transplant, or remove any park tree or street tree; attach or place any rope or wire (other than one used to support the tree itself), sign, poster, handbill, or other thing to it; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with it; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any such tree.

B. Tree Topping. No person shall top any park tree or street tree, except as authorized by the Public Works Director.

**Section 11. Removal of 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 Real Property Owner.

**Section 12. Summary Powers for Removal of Dangerous or Nuisance Trees.**

A. The City may prune a private tree when it interferes with the spread of light along the street from a street light, or interferes with the visibility of any traffic control device or sign.

B. The City may require or initiate 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.

C. The City 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 30 days after receiving notice by the City Administrator is a violation of this Ordinance, and the Public Works Department may then remove or trim and tree and assess the costs as a lien against the property.

**Section 13. Nuisance Abatement.** All street trees that the Public Works Director requires to be removed pursuant to this Ordinance, constitute nuisances and are subject to the abatement and lien procedure contained in Ordinance 2338, the City of Woodburn Nuisance Ordinance.

**Section 14. Enforcement.**

A. Civil Infraction. In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of this Ordinance constitutes a Class I Civil Infraction which shall be processed according to the procedures contained in the Woodburn Civil Infraction Ordinance.

B. Civil Proceeding Initiated by City Attorney. The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the city to enforce the provisions of this Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate any violations of this Ordinance.

**Section 15. Separate Offenses.** Each day during which a violation of this Ordinance continues shall constitute a separate offense for which a separate penalty may be imposed.

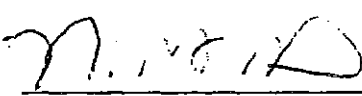
**Section 16. Appeal.** If the Public Works Director refuses to issue any permit under this Ordinance, or requires the removal of a tree, the Public Works Director shall provide written notification to the applicant who may appeal to the City Council in writing within ten calendar days after the date of the written notification from the Public Works Director. The City Council shall proceed to hear and determine the appeal, based upon information submitted by the permit applicant and the Public Works Director. Any review of the City Council's final decision shall be to the Marion County Circuit Court pursuant to ORS Chapter 34.

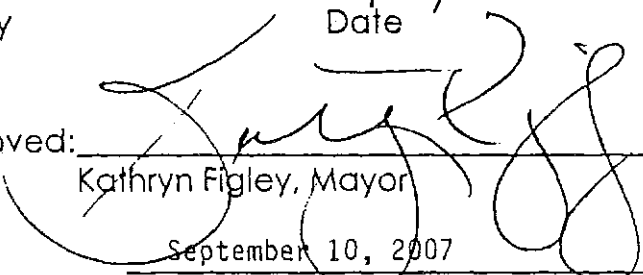
**Section 17. Severability.** The sections and subsections of this Ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

**Section 18. Repeal.** Ordinance 1908 is hereby repealed.

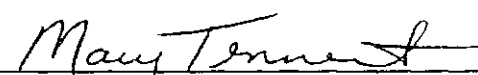
**Section 19. Saving Clause.** Notwithstanding the repeal of Ordinance 1908, Ordinance 1908 shall remain in force for the purpose of authorizing the prosecution of a person who violated Ordinance 1908 prior to the effective date of this Ordinance.

**Section 20. Effective Date.** This Ordinance shall take effect on November 1, 2007.

Approved as to form:  9/10/2007  
City Attorney Date

Approved:   
Kathryn Figley, Mayor  
September 10, 2007

Passed by the Council \_\_\_\_\_  
Submitted to the Mayor \_\_\_\_\_  
Approved by the Mayor \_\_\_\_\_  
Filed in the Office of the Recorder \_\_\_\_\_  
September 12, 2007

ATTEST:   
Mary Tennant City Recorder  
City of Woodburn, Oregon