



## NOTICE OF PUBLIC MEETING

CITY OF ALBANY  
TREE COMMISSION  
Albany City Hall, Santiam Room  
333 Broadalbin Street SW

Thursday, October 23, 2008  
3:00 p.m.

### AGENDA

- |           |  |              |
|-----------|--|--------------|
| 3:00 p.m. | 1. CALL TO ORDER                                   | Tom Krupicka |
|           | 2. ROLL CALL                                       |              |
|           | 3. COMMENTS FROM THE PUBLIC                        |              |
|           | 4. APPROVAL OF MINUTES                             |              |
| 3:15 p.m. | 5. Scheduled Business                              |              |
|           | a) Outstanding Tree Issues                         | Carnagey     |
|           | b) Tree Code Revision Discussion                   | All          |
| 4:00 pm   | 6. BUSINESS FROM THE COMMISSION                    |              |
|           | 7. NEXT MEETING DATE – Thursday, November 20, 2008 |              |
| 4:30 p.m. | 8. ADJOURNMENT                                     |              |

### PLEASE BRING YOUR COPY OF:

- Urban Forestry Management Plan

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The location of the meeting/hearing is accessible to the disabled. If you need special accommodations to attend or participate, please notify the Human Resources Department in advance by calling 917-7501.

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**CITY OF ALBANY  
TREE COMMISSION  
Albany City Hall, Council Chambers**

Tuesday, September 16, 2008  
3:00 p.m.

**MINUTES**

**\*\*NOTE: Recorder malfunction, minutes are limited**

Commission members present: Dick Miles, Mark Azevdo, David Smith,  
Barb Bolden, Tom Krupicka

Commission members absent:

Staff present: Jim Delapoe, City Attorney, Craig Carnagey, City Forester,  
Tari Hayes, Administrative Assistant

Others present: Bodie Dickerson, Ellen Hammill

**1. CALL TO ORDER**

Tom Krupicka called the meeting to order at 3:00 pm.

**2. ROLL CALL**

**3. COMMENTS FROM THE PUBLIC -**

Bodie Dickerson asked if there was an appeal process for the public when removal permits are approved. The City Attorney said that the only person able to appeal a permit is the permit requestor. There is no public appeal process for tree removals on private property or for street trees. If the public does not like a decision they can express their feelings to the City Council.

**4. APPROVAL OF MINUTES – approved June and July, August with changes**

**5. SCHEDULED BUSINESS**

a) Tree Code Revision Discussion\*\*

The City Attorney provided clarification on action items from the August meeting. The Action Items and his response were as follows:

**ACTION ITEM:**

Craig will invite the City Attorney to the next Commission meeting to answer the above questions and to give an opinion on the roles and responsibilities of the Commission.

Some of the questions were:

- Who develops criteria? – The City Forester with input from the Tree Commission
- How does the Commission interact with the City Forester (advisory or directs) – The Commission is an advisory body for the City Forester

- What power does the Commission have over the discretionary decisions of the City Forester? – None, they do however hear appeals of decisions by the City Forester with regards to tree removal permits
- What responsibilities does the Commission have regarding the AMC, ADC, and the UFMP, particularly in regards to trees in the City, both on private land and City street trees? – The Commission assists the City Forester in reviews of above codes and helps to create the UFMP. The Commission is an appeal body for denied removal permits. The City Forester will provide the Tree Commission with advance notice, when possible, of permit removal requests that the Forester may deem controversial due to tree species, size, age, location, etc. This would apply to tree permit removal requests on private property as well as removal street trees.
- Everyone agreed that the Commission answers to the City Council, not the City Forester, is this a correct assumption? – Correct

The City Attorney suggested that the portion of the AMC pertaining to the Tree Commission, Chapter 2.23, be updated to clarify the purpose, duties, responsibility and procedure sections based on this discussion.

ACTION ITEM: Nuisance Trees (AMC7.98.020)

- Ask the City Attorney for opinion on the need to include or the ability to exclude. – Set aside for further discussion with City Attorney and Commission.

ACTION ITEM: The Definition of Significant Tree (AMC 7.98.020)

- Ask the City Attorney for a legal perspective on the definition and by whose designation. Ask for clarification on neighborhood input on significant designation. – Set aside for further discussion with City Attorney and Commission.

ACTION ITEM: Duties and Responsibilities of City Officials. (ADC 9.207)

- Ask the City Attorney if a) the authorization is already there in job descriptions, etc. and b) opinion on this addition. – There is no need to add “City Manager” to this part of the code, the duty and responsibility is already provided.

AMC Review

The Commission discussed and approved, disapproved, or edited updates to the AMC. The changes approved are attached to this document. Two items will be brought back for review, definitions, and their relevance, for significant and nuisance trees. Somewhere in the past review process and section of 7.98.180 – Tree Removal Permit Criteria – was dropped. Bodie Dickerson will send staff the missing text and it will be added to the code revisions for the October meeting.

**ACTION ITEM(S):**

- **Further discussion and clarification with the City Attorney for the definition and relevance of Significant Tree and Nuisance Tree as they relate to the codes.**
- **Bodie Dickerson will send staff 7.98.180.1(F) to be added to the proposed code.**
- **The City Forester will send staff the added definitions for 7.98.020.9(c)**
- **The City Forester and Commission members will bring definitions for “Grove” in October (7.98.020.9(d))**
- **The City Forester will provide added definition of “Canopy” in October (7.98.020.12)**

The Commission will review the proposed changes to the ADC at the October meeting.

**6. BUSINESS FROM THE COMMISSION - none**

**7. NEXT MEETING DATE**

The next meeting of the Tree Commission is scheduled for Thursday, October 23, 2008 at 3:00 p.m. in the **Santiam Room** in Albany City Hall.

**8. ADJOURNMENT**

The meeting adjourned at 5:30 p.m.

Submitted by

Tari Hayes  
Parks and Recreation Administrative Assistant



# All Tree Issues

Date Initiated    Address    Location    Resolution

Description of Issue    Action Requested

10/13/2008    125 Pine St    Sidewalk and along side house     Public  
 Private  
 Tree roots underneath drive way, clogging the sewage pipe, safety hazard    Tree removal permit

09/25/2008    4149 Evergreen St. SE    Sidewalk     Public  
 Private  
 Roots are coming under the sidewalk into owner's garden space    The homeowner is asking for "something" to be done about the roots.

05/15/2008    201 Darfordll Ln    Private trees     Public  
 Private  
 Homeowner's are requesting to have 2 Maples reevaluated for removal. Original request was made in 2007 and removal of 1 of 3 Maple trees was approved.    The homeowner is now asking for the removal of the 2 remaining trees due to rot and safety concerns.    The commission will go out and evaluate the trees in the next 30 days and will bring this request back to the June commission meeting.

05/15/2008    817 14th Ave SW    Private trees     Public  
 Private  
 Disabled home owner's asked for permission to remove 2 Hawthorne trees. They have become unmanageable.    Remove trees and replant    The City will be removing the trees and replanting in the fall.

05/15/2008    2935 Park Terrace SW    Private trees     Public  
 Private  
 Homeowner asked for variance to remove two Fir trees at his home that have a large amount of invasive roots, causing damage to foundation and sewer/septic fields. Additionally he has a safety concern.    Approval to remove two trees    Commission voted 4-1 to approve the removal

# Roots In Garden

9-25-08

Dear Craig Corrahey;

I live on the West side of Weaver St. The roots are coming under the sidewalk into my garden. I water the garden. However I have the worst garden this year than ever due to the roots coming in the garden area. They are getting worse every year.

I can not even grow zucchini this year. Nine plants and not enough for me to eat due to the roots. Also the green beans did not grow, the beets are short and small till they get past the roots, then they are normal size and height.

Two men have been out to look at it already also workers looked at it last summer.

There are 2 big roots coming

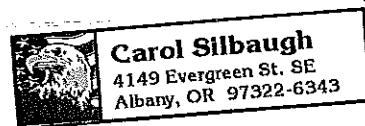
Page 1

from the tree, they are above  
the ground on Waverly Street  
between the sidewalk and my  
fence.

I hope something can be  
done about the roots in the  
garden. There are no trees  
around on my side of fence.

Thank you in advance.  
Please let me hear from you  
soon.

Carol Silbaugh  
541-926-7572  
cel 541-974-7534



My place is second house from  
Moraga Ave S.E. to the North.

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## Hayes, Tari

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**From:** Carnagey, Craig  
**Sent:** Tuesday, October 14, 2008 11:34 AM  
**To:** Hayes, Tari  
**Subject:** FW: 125 pine street

would you add this to the outstanding tree issues for next TC meeting.

Craig

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**From:** hjgski@comcast.net [mailto:hjgski@comcast.net]  
**Sent:** Mon 10/13/2008 9:13 PM  
**To:** Carnagey, Craig  
**Subject:** 125 pine street

To: Craig Carnagey, City Forester

Re: Tree removal at 125 Pine Street

Date: October 13, 2008

I have tried to attached photos of the tree; however, my mail keeps getting returned. I will bring photos of the tree to the commission meeting next week unless you need them this week. If so, please inform me of how to get around the city's firewall.

From the photos, you will be able to see how close the tree is to the existing house. The sidewalk next to the tree was being pushed up. We removed the concrete in preparation for the tree removal.

The tree's roots have also gone underneath the driveway at 125 Pine Street. There are also a photos taken inside the back storage of 1405 2<sup>nd</sup> street showing the floor that had to be removed to fix the sewage pipe.

Tree roots had worked their way into the pipe causing it to clog. We have had the pipes roto rooted several times since purchasing the property. Last year, American Rooter scoped the pipe and found tree roots clogging 15 feet of the line. I will bring a copy of a statement written by them regarding their repair work. If you would rather, I can fax you the letter.

My biggest concern about the tree is one of safety. Last winter a pretty good size branch came down and went through the roof of the shed. A few feet farther and it could have hit the house. From the pictures taken inside the tree, you can see how many large branches it has. The tree was topped by previous owners' years ago. The tree has since sent many side branches up.

While getting bids to remove this tree, two companies agreed that removal of the tree was the best fix.

I will gladly re-plant another tree to replace this one based on arborist recommendations, but this tree is unsafe and a nuisance.

Sincerely

Hank

--  
Hank Gurczynski  
Lindsay Forest Products  
Office 503-331-0783  
FAX 503-335-0075  
Cell 503-559-3548

**Albany Municipal Code**  
**A Codification of the General Ordinances**  
**of the City of Albany, Oregon**

Revised, Reformatted, and Reprinted by  
CODE PUBLISHING COMPANY  
Seattle, Washington

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*Current through Ordinance 5685, passed October 24, 2007*

## Chapter 7.98 TREE REGULATIONS

### Sections:

- 7.98.010 Purpose.
- 7.98.020 Definitions.
- 7.98.030 Prohibited activities.
- 7.98.040 Permits required.
- 7.98.050 Street trees – Classification and spacing.
- 7.98.060 Distance between curb and sidewalk.
- 7.98.070 Distance from street corners and fire hydrants.
- 7.98.080 Planting in roadways having no gutter or curb.
- 7.98.090 Tree topping.
- 7.98.100 Exemptions.
- 7.98.110 Private utility tree policy.
- 7.98.120 Heritage trees.
- 7.98.130 Pruning, corner clearance.
- 7.98.140 Dead or dangerous tree removal on private property.
- 7.98.150 City's power and authority is permissive, not mandatory.
- 7.98.160 Arborist certification.
- 7.98.170 Permit approval.
- 7.98.180 Tree removal permit criteria.
- 7.98.200 Conditional permit approval.
- 7.98.205 Permit fees.
- 7.98.210 Appeals.
- 7.98.220 Penalties.

### **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. ~~Trees of significant size possess considerable~~ provide 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. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993).

### **7.98.020 Definitions.**

(1) "Certified arborist" means a person certified by the International Society of Arboriculture as having specialized knowledge, experience, and training related to arboriculture.

(2) "City Forester" means the person designated by the ~~Public Works~~ Parks and Recreation Director to be the authorized representative in matters concerning the urban forest of the City of Albany.

(3) "Critical root zone" means 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 four and one-half feet above the mean ground level, by 18. For example, a tree with a diameter of two inches would have a critical root zone of 36 (2 × 18) inches all around the tree.

(4) ~~“Hazardous or dangerous tree” means a tree that is classified as a hazardous or dangerous tree by the City Tree Commission.~~ “Hazardous tree” means any tree as determined by the City Forester to be dead, or alive and so affected by a significant structural defect or physical damage that the failure of the tree or limbs of the tree appears imminent, or it constitutes a hazard to life and property, or harbor insects or disease which constitute an imminent threat to other trees within the City.

(5) “Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns.

(6) “Public trees” means trees located on property designated as a public park, trees on the grounds of public facilities, and trees located in public right-of-way not defined as street right-of-way.

(7) ~~“Public Works Director”~~ “Parks and Recreation Director” means the person designated by the City Manager to supervise the ~~Public Works~~ Parks and Recreation Department and who is charged with certain duties and responsibilities by this chapter, or the duly authorized representative.

(8) ~~“Remove or removal”~~ “Fell” means to ~~fell~~ remove 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~~ Fell does not in any context include normal pruning of trees.

(9) “Significant tree” means: - ***set aside, add c, d and review further with Jim the definitions and his opinion on using this in code.***

(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.

(c) Craig’s added definition

(d) Grove definition

(10) “Street trees” means trees located in public rights-of-way within the City.

(11) “Tree” means a non-parasitic, 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) “Canopy” means...

(13) “Tree circumference” means the distance (in inches) measured around the trunk or trunks in the case of trees with multiple trunks. The circumference is measured at 4-1/2 feet above mean ground level from the base of the trunk. To obtain the total circumference of a tree with multiple trunks, add the largest trunk circumference with one-half the total circumferences of all other individual trunks. These individual trunks must be greater than size inches in circumference to be included in this measurement. ~~of a tree at four and one-half 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.~~ (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993).

(14) “Nuisance Tree” Any dead, dying, or diseased tree on private or public property that may pose a health or safety threat to other life or property as determined by the City Forester. - ***set aside for clarification from Jim***

(15) “Topping” means 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.

### **7.98.030 Prohibited activities.**

(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.

(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 six and one-half feet in circumference (approximately 25 inches in diameter), public or private, on property five thousand square feet or larger, 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. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.120).

### **7.98.040 Permits required.**

(1) A permit shall be obtained from the City Forester, applying criteria developed by the City Tree Commission outlined in the Urban Forestry Management Plan, 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 six and one-half feet in circumference on all property five thousand square feet or larger within the city limits of the City of Albany.

(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.

(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.

(5) Permits shall be valid for a period of 180 days following the date of issuance. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.090).

### **7.98.050 Street trees – Classification and spacing.**

(1) The City Tree Commission Forester, with cooperation of the city Tree Commission, shall develop and maintain a list of approved trees for planting along streets. This list may be found in the Urban Forestry Management Plan. The trees will be listed in three size classes based on mature height: small (under less than 30 feet); medium (30 to 50 feet); and large (over more than 50 feet). Lists of trees not suitable for planting will also be created by the City Tree Commission.

(2) ~~The City Tree Commission~~ City Forester, with cooperation of the City Tree Commission, shall develop criteria on the spacing of street trees. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.030).

#### **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 7.98.050(1). No tree may be planted in a planting strip with a width of less than the following: small trees, three-four feet; medium trees, ~~five~~ four-six feet; and large trees, ~~eight~~ six plus 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. 5495 § 1, 2001; Ord. 5096 § 2, 1993).

#### **7.98.070 Distance from street corners and fire hydrants.**

~~The City Tree Commission~~ City Forester, with cooperation of the City Tree Commission, shall establish standards for planting street trees in vision clearance areas. These standards are listed in the Urban Forestry Management Plan. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993).

#### **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. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.130).

#### **7.98.090 Tree topping.**

It shall be unlawful for any person 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. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.140).

#### **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. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.150).

#### **7.98.110 Private utility tree policy.**

Upon obtaining a 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, printed, or verbal notice to the owner or occupant of the premises. 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. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.040).

#### **7.98.120 Heritage trees.**

The City Forester, with cooperation of 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 or groves having significance to the community. The City Tree Commission shall have the authority to determine, select, and identify such trees or groves that qualify as heritage trees. Once a tree or grove is designated as a heritage tree, it will remain so unless it becomes necessary to classify the tree or grove of trees as hazardous ~~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. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.050).

#### **7.98.130 Pruning, corner clearance.**

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~~ hazardous 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 7.98.110, Private utility tree policy. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.080).

#### **7.98.140 ~~Dead or dangerous~~ Hazardous tree removal on private property.**

The City Tree Commission shall have the right to cause the pruning or removal of any ~~dead or dangerous~~ hazardous trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease which constitutes 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~~ hazardous 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~~ hazardous tree and assess the cost against the property as provided hereafter.

(1) ~~Deadline to remove dead or dangerous Hazardous Trees.~~ Within 30 days after the date of service of the notice, the owner of the property shall cause the tree determined to be ~~dead or dangerous~~ hazardous 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~~ hazardous tree to be removed for a fee sufficient to cover the direct cost plus 30 percent for administrative overhead with a minimum fee.

(3) Removal by City. The City Manager or his/her designate may cause to be removed any tree determined to be ~~dead or dangerous~~ hazardous at any time following the deadline for removal set forth at subsection (1) of this section. The cost of the removal of said ~~dead or dangerous~~ hazardous 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~~ hazardous 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~~ hazardous tree.

(5) Cost to Become a Lien. Upon completion of the removal of a ~~dead or dangerous~~ hazardous tree under these provisions 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. 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. 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. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.1100, 7.98.110).

### **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. 5495 § 1, 2001; Ord. 5181 § 1, 1995. Formerly 7.98.105).

### **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 and outlined in the Urban Forestry Management Plan, 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. 5495 § 1, 2001; Ord. 5096 § 2, 1993).

### **7.98.170 Permit approval.**

The ~~Public Works~~ Parks and Recreation Director or designee shall approve or conditionally approve permits when it has been demonstrated that one or more criteria in AMC 7.98.180 have been met. (Ord. 5495 § 1, 2001).

### **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 promote the health of residual remaining 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:

(i) A tree that is causing significant negative impacts to improvements or personal property;

(ii) Personal health reasons such as severe allergic conditions; or

(iii) The tree is invasive, having significant negative impact to surrounding vegetation.

(f) When subsequent conditions may reasonably be expected to occur that would render the tree eligible for removal under the criteria in (a) through (e) above. In such cases, a conditional permit may be granted pursuant to 7.98.200 which will allow removal if the anticipated conditions occur.

(2) In all other cases, a tree removal permit shall be denied. (Ord. 5495 § 1, 2001).

### **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 cleanup, maintenance of replacement trees, and/or post-construction evaluation of tree health. (Ord. 5495 § 1, 2001).

#### **7.98.205 Permit fees.**

Fees for removal permits shall be established by Council resolution. (Ord. 5495 § 1, 2001).

#### **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 15 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 AMC 7.98.180(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. (Ord. 5495 § 1, 2001).

#### **7.98.220 Penalties.**

Any person willfully violating any of the provisions of this 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 AMC. Violation of AMC 7.98 et seq. is strict liability offense and no other culpable mental state is required. (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.170).

(1) In addition to penalties provided for in Chapter 1.04 AMC, the City may require the person to pay a mitigation fee. The mitigation fee shall be an amount established equal to the value of any tree(s) removed as determined by the City Forester using methods set forth in the current edition of "Guide for Plant Appraisal," the official publication of the International Society of Arboriculture.

(2) The City may also require payment of a tree replacement fee. The tree replacement fee shall be assessed by the City Forester using any reasonable means to estimate compensation for the tree loss. All replaced trees must be a minimum two-inch (2") caliper. Planting procedures and maintenance of trees must meet current City standards, and the life of each replacement tree be guaranteed through bond, letter of credit, or cash for no less than two years.

#### **Footnotes**

1. Code reviser's note: Ordinance 2758 was repealed by Ordinance 3382.
2. Prior legislation: Ords. 4346 and 4601.
3. Prior legislation: Ords. 2823, 3298, 3603, 4416, 4521, 4527, 4714, 4756, 4858, 4897, 4905, 5026 and 5083.

## **Chapter 2.23 CITY TREE COMMISSION**

### **Sections:**

- 2.23.010 City Tree Commission established.
- 2.23.020 Purpose.
- 2.23.030 Term of office and compensation.
- 2.23.040 Duties and responsibilities.
- 2.23.050 Procedures.
- 2.23.060 Review by City Council.

### **2.23.010 City Tree Commission established.**

There is hereby established a City Tree Commission for the City of Albany, which shall consist of five members. The members shall be appointed by the Mayor and ratified by the City Council. At least one member of the City Tree Commission shall be a representative from the field of arboriculture, landscape architecture, or otherwise have professional knowledge of trees and their care. Members shall be residents of the City of Albany or shall own property or maintain a business within the City of Albany. (Ord. 5269 § 1, 1997; Ord. 5096 § 1, 1993).

### **2.23.020 Purpose.**

The City Tree Commission 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 § 1, 1993).

### **2.23.030 Term of office and compensation.**

City Tree Commission members shall each serve a three-year term with the exception of the original members. The term of office of the first member appointed shall expire on December 31, 1994; the terms of office of the second and third members appointed shall expire on December 31, 1995; and the terms of office for the fourth and fifth members appointed shall expire on December 31, 1996. Commission members shall serve without compensation. (Ord. 5096 § 1, 1993).

### **2.23.040 Duties and responsibilities.**

It shall be the responsibility of the City Tree Commission to:

- (1) Study, investigate, develop, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees in parks, and in public areas, which includes the public right-of-way. The plan will be presented to the City Council and upon their acceptance and approval shall constitute the City Tree Plan for the City of Albany. The Commission, when requested by the City Council, shall consider, investigate, make finding, report, and recommend upon any special matter or question coming within the scope of its work;
- (2) Develop criteria for the City Forester to apply in making decisions entrusted to his/her discretion;
- (3) Designate heritage trees on public and private lands within the City;
- (4) Promote the planting and proper maintenance of trees through special events including an annual local celebration of Arbor Day;

(5) Obtain the annual Tree City USA designation by the National Arbor Day Foundation; and

(6) Review the discretionary decisions of the City Forester. (Ord. 5096 § 1, 1993).

**2.23.050 Procedures.**

The City Tree Commission shall elect a chairperson and a vice-chairperson and shall develop its own meeting schedule. A majority of the members shall constitute a quorum. The Commission shall keep a journal of its proceedings, which shall be kept on file in the office of the City Recorder. (Ord. 5096 § 1, 1993).

**2.23.060 Review by City Council.**

The City Council shall have the right to review the conduct, acts, and decisions of the City Tree Commission. Any person may appeal any ruling or order of the City Tree Commission to the City Council who may hear the matter and make a final decision. (Ord. 5096 § 1, 1993).