

ORDINANCE NO. 3858

AN ORDINANCE AMENDING ORDINANCE NO. 3366, THE TREE ORDINANCE, TO PROVIDE FOR ESTABLISHMENT OF A TREE COMMISSION

WHEREAS, the City of Pendleton has a tree ordinance and wishes to preserve and protect existing street trees and encourage the planting of additional street trees for the beautification of the community; and

WHEREAS, the City desires to enhance the economic, environmental, aesthetic and psychological effects that a healthy urban forest provides in our community; and

WHEREAS, Pendleton's Comprehensive Plan policies encourage the installation of additional trees and landscaping throughout the City; and,

WHEREAS, appropriate guidelines are needed to provide that street trees do not become a nuisance or liability to the residents of Pendleton;

NOW, THEREFORE, THE CITY OF PENDLETON ORDAINS AS FOLLOWS:

Sections of Ordinance 3366 shall be amended as follows:

SECTION 1. Definitions. The following words and phrases, when used in this Ordinance, shall have the meanings respectively ascribed to them in this section:

City Manager. The Pendleton City Manager or his designee(s).

City. The City of Pendleton, Umatilla County, Oregon.

Commercial Tree Service. Any person(s) engaged in the business or occupation of planting, maintaining, trimming, pruning, topping, treating or removing trees located on public property.

Park Tree. A tree, shrub, bush and all other woody vegetation, or any part thereof, located in individually named public parks and all areas owned by the City, or areas to which the public has free access as a park.

Person. Any individual, firm, partnership, association, corporation, company or organization of any kind.

Public Right of Way. The area between boundary lines of a street, road, highway, vehicular access way, pedestrian way or bicycle way that is dedicated for use by the public.

Street Tree. A tree, shrub, bush and all woody vegetation or any part thereof located within a public right of way, or a tree planted on private property with branch(es), limb(s), trunk(s) or any part of the tree extending into the public right of way, with the exception of Olney Cemetery.

Tree. Any self-supporting, woody plant of a species which normally, in this area, grows at maturity to an overall height of a minimum of fifteen (15') feet.

SECTION 2. Creation and Establishment of a City Tree Commission

A. There is hereby created and established a City Tree Advisory Commission for the City of Pendleton, Oregon, which shall consist of seven members. The membership shall include the Parks Director, a representative from the Parks Commission, and five resident citizens with established professional competence in a pertinent discipline, with the following characteristics serving as guidelines:

- (1) Two representatives from the fields of arborist, horticulturist, landscape architect/designer, or a member of the academic community with training in the biological or other natural sciences, with a strong preference for one of these to be an arborist;
- (2) Qualified and interested persons from garden clubs, conservation and beautification organizations;
- (3) Members of the public interested in trees as a significant component of Pendleton's physical and aesthetic environment.

Members of the Tree Commission shall be appointed by the mayor with the approval of the Council.

B. Term of Office.

The term of the seven persons to be appointed by the mayor shall be three years except that the term of two of the members appointed to the first Commission shall be for only one year and the term of two members of the first Commission shall be for two years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term.

C. Operation.

The Commission shall choose its own officers, make its own rules and regulations and keep a record of its proceedings. A majority of the members shall be a quorum for the transaction of business. Meetings shall be held monthly or as called by the chair of the Commission.

D. Compensation.

Members of the Commission shall serve without compensation.

E. Duties and Responsibilities.

In addition to all other duties and responsibilities set forth in this section, the Tree Commission shall act in an advisory capacity to the City Council, City Manager and city staff in the administration of this ordinance and with regard to all tree matters in parks, along streets and in public areas. The Commission shall have the following duties and responsibilities:

A. Formulate, adopt and continually update, a long-range, comprehensive community urban forestry plan, which shall deal with recommended areas of planting, pruning, removal and regular or periodic maintenance in parks, along streets and in other public areas. The plan shall prioritize the areas of need in the order the Commission deems appropriate, which priorities may from time to time be revised or restructured as the needs arise or change.

B. The comprehensive urban forestry plan shall include a lists of preferred trees, trees the Commission deems inappropriate or unfit, and areas of the city, with emphasis on public grounds, where certain species of trees are deemed appropriate for planting.

C. Present to the Council annually, prior to finalization of annual budget, its recommendation of a short-range plan to be implemented by the Commission for the next calendar year. The short-range plan shall include trees located on city property for removal or pruning due to death, disease, damage or danger to lives or property and include a cost estimate.

D. Recommend new or modified rules as related to public tree activity within the municipal limits of Pendleton.

E. Develop a program for identifying and maintaining trees in the city which have significant historical, cultural, environmental or public significance and make recommendations to the park Commission and city council on adopting such a program.

F. Conduct an Arbor Day ceremony and coordinate with and/or recognize groups and individuals completing tree projects.

G. The Commission, when requested by the City Council or Parks Commission, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

SECTION 3. Permit Required. Before installing street trees, the person proposing to install said trees shall obtain a permit from the City Manger. The permit application, to be furnished by the City, shall include the following information:

A. The name of abutting property owner(s).

B. The name of applicant(s) and, if applicable, the commercial tree service.

C. An exhibit drawing(s) describing the type(s) of street trees proposed, indicating the location of proposed street tree(s) with dimensions to:

(1) Adjoining Street trees and trees on adjoining property;

(2) Street and driveway intersections;

(3) Street signs and signals;

(4) All utilities;

(5) The nearest building;

(6) A public sidewalk and curb;

(7) Parking spaces,

D. A notarized statement that the owner and applicant agree to maintain said street trees in an attractive condition.

E. A notarized statement that the owner and applicant agree to indemnify and hold the City harmless with regard to street tree

liability,

F. A notarized statement that the owners and applicant agree to bear any and all costs of street tree removal and/or relocation if requested by the City in writing.

G. A notarized statement that the owners and applicant agree to bear any and all costs of street sign, signal or utility relocation necessary for desired street tree installation.

H. Said permit shall be recorded in the Umatilla County deed records and run with the land. The City shall be responsible for payment of all recording fees.

SECTION 4. Street Tree Installation Guidelines.

A. Street trees installed within the City shall be in accordance with the list of trees attached hereto as Exhibit "A" and incorporated herein by this reference. Species not listed are allowed only if approved in writing by the City Manager.

B. Street trees shall have a minimum 1-1/4 inch caliper/diameter measurement at installation.

C. Street trees shall be root pruned at the nursery. In commercially zoned areas, street trees shall be provided with a fiberglass root box or root deflector.

D. Street tree sidewalk cut-outs shall be of a dimension no greater than one third of the total sidewalk width. At least three (3) feet of clear sidewalk width shall be retained for wheelchair access. After street tree installation, sidewalk cut-outs shall be brought to sidewalk grade level by use of grates, soil, landscaping materials or other porous materials approved by the City Manager.

E. Tree stakes and tethers shall be provided as necessary to stabilize young trees against damage due to wind and other forces. Stakes and tethers shall not interfere with sidewalk usage.

F. The spacing of street trees will be in accordance with the three species size classes listed in Exhibit "A" of this ordinance, and no trees may be planted closer together than the following: Small Trees, 30 feet; Medium Trees, 40 feet; and Large Trees, 50 feet; except in special plantings designed or approved by a landscape architect.

G. The distance trees may be planted from curbs for curblines and sidewalks will be in accordance with the three species size classes listed in Exhibit "A" of this ordinance, and no trees may be planted closer to any curb or sidewalk than the following: Small Trees, 2 feet; Medium Trees, 3 feet; and Large Trees, 4 feet.

H. No Street Tree shall be planted closer than 10 feet to any fireplug.

I. No Street Tree other than those listed in Exhibit "A" of this ordinance may be planted under or within 10 lateral feet of any overhead utility wire, or over 5 lateral feet of any underground water line, sewer line, transmission line or any other utility.

SECTION 5 Street Tree Maintenance.

A. Clearances. Street trees shall be periodically trimmed by the owner(s) of the property adjacent to the street tree location as follows:

(1) The lowest branches shall be at least eleven (11') feet above the vehicle lanes of the public right of way and at least fourteen (14') feet above the vehicle lanes of a public right of way designated as a state highway and as may be regulated by the State Department of Transportation. (See Exhibit "S").

(2) The lowest branches of a street tree shall be at least eight (8') feet above the surface of any street or footpath, and at least ten (10') feet above the surface of any bicycle way. Street trees shall be installed and maintained in accordance with the clear-vision area requirements of the City Zoning Ordinance. (See Exhibits "S" and "C").

(3) Newly planted trees may remain untrimmed, provided said trees do not interfere with street traffic or persons using the sidewalk or obstruct any street sign or signal.

B. Protection. It shall be unlawful for any person to injure, destroy, or prevent the growth of any street tree. The following conduct shall be prima facie proof of injury, destruction, or prevention of growth of a street tree:

(1) Pouring or spraying an injurious matter such as salt, brine, whitewash or toxic chemicals on or around any street tree, on the ground around it or on any public lawn or sidewalk adjacent to the street tree;

(2) Posting any sign on a street tree, tree stake, or guard; fastening any guy wire, cable, or rope (other than a tether) to any street tree, tree stake, or guard;

(3) Piling materials around any street tree which could damage the tree, stake, or guard;

(4) Using concrete, asphalt, brick, or gravel around street trees to shut off air, light, or water from the roots;

(5) Permitting any gas leakage within the root zone of any street tree;

(6) Cutting down or disfiguring any street tree unless authorized by the City in accordance with this Ordinance.

(7) The topping of any Street Tree, Park Tree, or other tree on public property. Topping is defined as the severe 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 canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Tree Commission.

C. Guard Required. No person in charge of any construction, repair, moving, alteration, or removal of a structure shall leave any

tree in or upon any public right of way in the vicinity of such structure without a good and sufficient guard or protectors to prevent injury to such tree arising out of or by reason of such activity,

D. Responsibility of Abutting Owners. The abutting property owner shall be responsible for planting, watering, spraying, pruning, and removing dangerous or damaged street trees or portions thereof which are damaged or dangerous. The abutting property owner shall be responsible for watering and maintaining the area around street trees and for the maintenance of trees on the abutting private property in a safe and prudent manner. The abutting property owner shall be responsible for all street tree relocation or removal costs, and shall hold the City harmless in the event of a lawsuit brought about as a result of street tree installation or lack of adequate maintenance.

SECTION 6. Notice to Remove. Replace. Water. Spray or Prune Street Trees.

A. If the City Manager determines that a street tree needs to be removed, replaced, watered, sprayed or pruned, the City Manager shall issue a notice. The notice shall require the owner to begin corrective action within thirty (30) days after the date of service of the notice, and diligently complete the work in a time specified by the City Manager. If such corrective action is not completed as required, the City may complete the corrective action and the costs and expenses of the work will become a lien on the adjoining property.

B. The City Manager shall attempt to cause a certified copy of the notice to be served personally upon the owner of the property adjoining the street tree requiring corrective action and the City-Manager shall mail a copy of the notice by certified mail.

C. Immediately after making service of the notice the person making such service shall make a written return noting the time, place, and manner of service. The City Manager shall file the original notice and the return or certificate of service with the City Recorder's Office.

SECTION 7. City May Take Corrective Action. If the corrective action required pursuant to Section 6, involving the street tree, is not started within thirty (30) days after the date of service of notice, or if the work is not diligently completed within a specified time, the City Manager may have the work completed by the City or a commercial tree service. After determining the cost of the work, the City Manager shall notify the City Recorder in writing. The notice shall state the time and manner of making the repair and the cost of the work. The City Recorder shall attach the City Manager's notice to the original service of notice, both of which are a part of the record of lien for the improvement. After receipt of the City Manager's notice, the City Recorder shall enter both records, together with the expenses, in the City lien docket, as a lien on the lots and premises abutting the affected street tree.

SECTION 8. Emergency Powers for Removal of Dangerous or Nuisance Trees.

A. The City may prune a street tree when it interferes with visibility.

B. The City may plant, water, spray, prune, maintain and remove street trees to insure public safety, or to preserve or enhance the appearance of public lands. The City may remove or cause to be removed, at the expense of the abutting property owner, a street tree or part of a street which is in an unsafe condition, or which by reason of its nature is injurious to public waterlines, public sewers, electric lines, telephone lines, gas lines, or other public improvements, or which is affected with any injurious fungus, insect, or pest.

C. The actual costs of such emergency maintenance or removal may be billed to the adjoining property

D. The City shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city. The City Tree Commission will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

SECTION 9. Cost of Repair; Lien. After entry in the City lien docket by the City Recorder, the City shall have a lien which is due and payable on the property adjoining the street tree. The *lien* shall be for the full amount of the costs and expenses, including interest on the unpaid balance at a rate three (3%) percent above that established by the local government investment pool, from the date of entry in the lien docket. The City Recorder shall notify the owner of the amount and nature of the lien and of the time by which it shall be paid. No Interest shall be charged if the lien is paid within thirty (30) days of entry. The City may proceed to foreclose the lien in the manner provided by law sixty (60) days after date of entry.

SECTION 10. Removal of Street Trees by Property Owners.

A. Street trees may be removed only after permission is granted by the City Manager. Persons removing street trees shall demonstrate that precautions will be taken during removal to protect persons and property.

B. The City shall require the replacement by the adjoining property owner, at the property owner's expense, of a new tree after removal of an existing street tree. Replacements shall be made in accordance with the procedure set forth in this Ordinance for tree installations. Exceptions to this replacement requirement may be granted upon written request of the property owner to the City Manager.

C. 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.

SECTION 11. Interference with City Tree Commission. It shall be unlawful for any person to prevent, delay or interfere with the City Tree Commission, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees, or trees on private ground, as authorized by this ordinance.

SECTION 12. Commercial Tree Service. Persons engaged in a commercial tree service business shall comply with the provisions of the Pendleton Business License Ordinance. As a condition of business license approval, a commercial tree service operator shall submit proof of licensing with the State of Oregon Construction Contractor's Board, together with a copy of a certificate of insurance on file with the Oregon Construction Contractor's Board.

SECTION 13. Appeals. Decisions of the City Manager pursuant to this Ordinance may be appealed to the Pendleton City Council by any aggrieved party. Notice of the appeal shall be made in writing to the City Council within fifteen (15) days of the subject decision. Upon receipt of an appeal, the City Council shall conduct a review of the matter within thirty (30) days. The decision of the City Council shall be final.

SECTION 14. Violation and Penalties.

A. A violation of this Ordinance shall be punishable by a fine not to exceed Five Hundred and No/100 (\$500.00) Dollars.

B. Every full day during which an activity continues to be conducted in violation of this Ordinance shall be considered a separate offense.

C. Offenses under this Section shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to jury trial or court appointed counsel. .

D. Additional Remedies.

(1) In addition to the penalties provided in this Ordinance, the City may sue in a court of competent jurisdiction to obtain a judgment for a fee due under this Ordinance and to enforce collection of the judgment by execution.

(2) The City may seek an injunction to prohibit a person from installing, altering, moving, maintaining or removing a street tree in violation of this Ordinance.

(3) In an action authorized by this Section, if the City prevails, it shall recover reasonable attorney's fees to be set by the Court in addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal.

(4) Whenever a fee required by this Ordinance is not paid when due, the City Recorder shall add as a penalty to the fee an amount equal to ten (10%) percent of the fee for each month or part thereof during which the fee and accumulated penalty amounts remain unpaid. The total amount of penalties shall not exceed one hundred (100%) percent of the original fee.

SECTION 15. SEVERABILITY. The sections of this Ordinance are severable. The validity of a section shall not affect the validity of the remaining sections.

APPROVED:

Phillip W. Houk
Mayor

ATTEST: _____
Andrea F. Denton, City Recorder

APPROVED AS TO FORM:

Nancy Kerns, City Attorney

SECTION A. ACCEPTABLE STREET TREES FOR PENDLETON.

SHORT

15' TO 30' Mature Height

QUEEN ELIZABETH MAPLE
 *AMUR MAPLE
 GLOBE NORWAY MAPLE
 OLMSTEAD NORWAY MAPLE
 *THORNLESS COCKSPUR
 HAWTHORN
 *LAVELLE HAWTHORN
 *WASHINGTON HAWTHORN
 *WINTER KING HAWTHORN
 *FLOWERING CRABAPPLES
 'Adams' (pink)
 'Centurion' (rose-red)
 'Donald Wyman' (white)
 'Prairifire' (bright pink)
 'Professor Sprenger'
 (white, pink buds)
 'Red Jewel' (white)
 'Red Splendor' (pink)
 'Robinson' (deep pink)
 'Sugar Tyme' (white)
 'Winter Gold' (white)
 'Zumi Calocarpa' (white)
 *EUROPEAN MOUNTAIN ASH
 'Black Hawk'
 'Cherokee Mountain'

MEDIUM

30' to 50' Mature Height

NORWAY MAPLE
 'Summershade'
 'Superform'
 RED MAPLE
 'Bowhall'
 'Red Sunset'
 SUGAR MAPLE
 'Green Mountain'
 RUBY HORSECHESTNUT
 *PYRAMIDAL EUROPEAN
 HORNBEAM
 *COMMON HACKBERRY
 *YELLOWWOOD
 WHITE ASH
 'Autumn Purple'
 FLOWERING ASH
 *RAYWOOD ASH
 *GREEN ASH
 'Patmore'
 'Summit'
 GINGKO (male forms only)
 *THORNLESS HONEYLOCUST
 'Moraine'
 'Shademaster'
 'Sunburst'

30' to 50' Mature Height (cont.)

SARGENT CHERRY
 COLUMNAR SARGENT CHERRY
 *FLOWERING PEAR
 'Aristocrat'
 'Chanticleer'
 *IDAHO LOCUST
 *JAPANESE PAGODA
 'Regent'
 REDMOND LINDEN
 LITTLE-LEAF LINDEN
 'Chancellor'
 'Glenleven'
 *ZELKOVA
 'Village Green'

TALL

50' to 75' Mature

SWEETGUM
 *LONDON PLANETREE
 SCARLEJ OAK
 PIN OAK
 NORTHERN RED OAK

TALL

Over 75' Mature

GOLDEN EUROPEAN ASH
 TULIP TREE

*These trees are suitable for planting on upland sites with limited irrigation available. All selections are suitable for planting on the valley floors, where the local groundwater tables can be reached by tree roots.

SECTION B. PROHIBITED STREET TREES IN PENDLETON

The following trees may not be planted in a public right of way:

COMMON NAME:

Poplar Species	Tree of Heaven*
Willow Species	Hickory*
Holly*	Catalpas*
Elms*	Walnuts*
Lilac Species*	Box Elder*
Pines*	Silver Maple*
Spruces*	Horsechestnut* (except Rudy Horsechestnut listed above)

*May be permissible in limited applications with approval of the City Manager. For example, new hybrid elms and varieties of the Lacebark Elm, the Japanese Tree, Lilac and other may be suitable in certain cases. Fruit or nut-bearing trees, other than those listed in Section A of this Exhibit shall be prohibited. The Parks and Recreation Department is available to provide advice as to the suitability and installation/maintenance techniques for various trees.