

ORDINANCE NO. 3979

AN ORDINANCE AMENDING CHAPTER 5 OF THE BEAVERTON CODE RELATING TO TREES IN THE PUBLIC RIGHT OF WAY OR ON PUBLIC PROPERTY BY ADDING NEW PROVISIONS, AMENDING SECTIONS 5.05.015, 5.05.115(E)(8) AND 9.05.032(D) AND REPEALING SECTIONS 5.05.100 AND 5.05.102.

WHEREAS, the Council finds that the public welfare requires a clear statement of the City's policy as to responsibility for maintaining trees in the public right of way, and desires to implement a companion policy whereby the City will plant and establish such trees in areas of new development, and

WHEREAS, the Council finds it necessary and desirable to adopt standards for maintaining such trees according to accepted trade practices, to publish and distribute those standards to City residents and to enforce compliance with such standards, and

WHEREAS, the Council desires to meet standards of care for trees in public rights of way promulgated by Tree City USA so as to regain the status of a Tree City for Beaverton, now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Beaverton Code Section 5.05.015 is amended as follows, with deleted material *[in brackets and italics]* and new matter in **bold**:

"5.05.015 Definitions. For the purposes of this ordinance, the following mean:

Pruning - Cutting or removing less than 20 percent of the branching structure of a plant in either the crown, trunk or root areas.

Removal - Cutting or removing 20 percent or more of the crown, trunk or root system of a plant.

[Street Tree - A tree that is at least six feet tall with a one-inch caliber at six inches above ground level, planted in the portion of the public right of way between a roadway and the property abutting the right of way.]

[Tree - Any woody perennial plant with a single main stem from which the branches extend.]

Top or Topped - Cutting or removing the terminal leaders in the crown of an ornamental shade or flowering tree or conifer to an extent that removes the normal canopy and disfigures the tree."

Section 2. The Beaverton Code is amended by adding new provisions to be numbered and to read as follows:

"5.05.100 Purpose and Scope.

The purpose of this ordinance is to preserve trees in the public right of way or on public property as an important natural resource, to enhance the appearance of the City and private property values, to clearly define responsibility for the maintenance of trees in the public right of way and City property and to adopt professional standards for planting and maintenance for use by the City and by private property owners alike, all for purposes of the general public welfare. This ordinance may be referred to as the Public Tree Ordinance and may be referred to in the following sections as 'this ordinance.'

"5.05.101 Planting and Maintenance of Trees.

A. No person shall plant or remove any tree in the public right of way or on City property except as allowed by this ordinance.

B. The owner or occupant, or an agent for the owner or occupant, of property abutting the right of way may plant, treat, prune or replace any tree in that portion of the right of way abutting the property only in accordance with current tree maintenance standards established by the National Arborist Association, International Society of Arboriculture, or under the supervision of a person having a current, valid certification as an Arborist by the International Society of Arboriculture.

C. The owner of property abutting the public right of way shall be responsible for maintenance of all trees planted in the right of way between the edge of the roadway and the property line in accordance with the standards issued under this ordinance. As to trees planted in the right of way in conjunction with new development of property, the obligation imposed by this section shall commence after the City determines, and notifies the abutting owner, that the tree(s) is/are established.

D. The City shall be responsible for maintenance of trees located in the right of way along that portion of property which abuts a major arterial, minor arterial or major collector street as designated on the City's Comprehensive Plan, if the abutting portion of such right of way:

1) Is separated from the property by a permanent barrier (such as a sound wall or fence) at least four feet in height; and,

2) Does not have direct pedestrian or vehicular access (such as a driveway) to the property; and,

3) Does not allow parking along the property allowing safe access for private maintenance; and,

4) Abuts property used for single-family residential purposes and not commercial, industrial, multi-family, and homeowner or unit owner common area uses.

The streets which have been identified for maintenance by the City, subject to the above criteria, are as follows: Farmington Road (east of Murray Boulevard to Lombard Avenue), Brockman Road, Greenway Avenue, 125th Avenue, Hall Boulevard, Denney Road, Watson Avenue, Hart Road (west of Murray Boulevard to City limits), Davis Road, 5th Street, Davies Road, Conestoga Drive, Downing Drive, 155th Avenue (Bonneville power line right-of-way to Davis Road), Allen Boulevard, Weir Road, Beard Road, Sexton Mountain Drive.

E. The obligation to maintain those trees as well as trees planted in the median of such roadway shall remain with the governmental unit which is obligated to maintain such roadway arterial or major collector.

F. Except as otherwise allowed under a tree preservation or landscape plan submitted as part of a development or subdivision application, any person desiring for any purpose to plant a tree in or upon any right of way shall perform such work according to the standards of the City's Tree Planting and Maintenance Policy.

"5.05.102 Standards for Maintenance and Removal of Trees.

A. Trees within the public right of way or on City property shall be pruned, damaging insects shall be controlled, disease shall be treated and the trees otherwise shall be maintained following the procedures and according to the standards of the City's Tree Planting and Maintenance Policy. Trees within and without the public right of way shall be maintained so as not to obstruct the vision clearance area at intersections provided for in the Development Code, Ordinance 2050.

B. Trees within the public right of way shall be maintained so that no part of the tree occupies any portion of the area that is 14 feet or less above the surface of an arterial roadway as designated on the Comprehensive Plan, or 12 feet or less above the surface of any roadway not designated on the Comprehensive Plan as an arterial, or 8 feet or less above the surface of a sidewalk or bicycle or pedestrian path.

C. No tree within the public right of way or on City property shall be topped unless the tree interferes with overhead utility wires or street lights as determined by the owner of the utility or street lights, or unless topping is necessary to limit further damage to a tree already damaged by other causes as determined by the Mayor or designee.

D. A tree within the public right of way or on City property that presents an imminent risk of bodily injury or property damage may be removed on order of any public official having authority to enforce motor vehicle laws or fire or life safety codes at the location of the risk. As to emergency removal by any other person, it is an affirmative defense that a person removed or caused to be removed a tree within the right of way without obtaining a permit or direction to do so from an appropriate public official, because such removal was necessary as an emergency measure to avoid an imminent public or private injury; and the threatened injury was of

such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweighed the desirability of protecting the public's interest in the tree.

E. Except as provided by subsection D of this Section, no person shall remove or destroy a tree within the public right of way without a permit issued by the City upon the person's application, on a form prescribed by the City, and payment of the required fee. Such permits shall obligate the person to replace the removed tree with a species approved by the City and, to plant and maintain same according to the Tree Planting and Maintenance Policy, unless the Mayor or his designee upon request by the permittee determines it would not be in the public interest to do so. The City may require a person seeking a permit to remove or destroy a tree within the public right of way to give security for the cost of replacement and establishment.

F. No person shall excavate, place fill or compact the soil within the root zone of any tree in the public right of way except as expressly allowed by a City Site Development Permit.

"5.05.103 City May Act on Notice.

A. Upon notice to the Mayor or designee that any tree within the public right of way or on City property is infected with disease or infested with damaging insects or otherwise presents an imminent risk of personal injury or property damage or threatens the health of other trees, the City shall inform the abutting property owner responsible for maintenance of the tree(s), if any, of the person's obligation to take appropriate measures under the City's Tree Planting and Maintenance Policy to limit or remove the risk, including but not limited to destruction or removal of the tree under the terms of a permit to be issued by the City upon the person's application. The City shall take appropriate measures under the same Policy with regards to trees that it maintains as provided by this ordinance.

B. Trees that present a risk of personal injury or property damage or that threaten the health of other trees, as described in subsection A of this section, and that are not maintained, or the risk or threat is not remedied, according to the Tree Planting and Maintenance Policy are declared to be a public nuisance and may be abated in the matter provided for in Sections 5.05.200 through 5.05.230 of this Code. Trees that present an unreasonable risk of such injury or damage or an immediate threat to the health of other trees may be summarily abated without prior notice to the abutting property owner.

C. No permit fee shall be charged for permits to remove trees as required by subsection A of this section.

D. The City in its discretion may, from time to time, cause the maintenance, destruction, removal or replanting of trees within the public right of way that are a nuisance partially or wholly at the City's, not the abutting property owner's, initiative and expense when it deems that the

public interest so requires.

"5.05.104 Liability and Indemnity; Penalties.

A. A person owning property abutting the public right of way shall be solely liable for, and shall hold the City harmless from and indemnify it against, any and all claims for personal or bodily injury or property damage including costs and attorney fees incurred in the defense of any such claim, arising out of the person's failure to maintain trees in the right of way as required by this ordinance.

B. A violation of any provision of this ordinance shall constitute a Class 1 civil infraction. In addition to and not in lieu of any other remedy available to it for a violation of this ordinance, the City may require the person committing the violation to pay the cost of repairing, restoring or replacing and re-establishing any and all trees damaged as a result of the violation."

Section 3. The Mayor shall designate a City department to write and implement an annual community forestry work plan, including a Tree Planting and Maintenance Policy to be adopted by resolution of the City Council and thereupon published and made available to property owners within the city.

Section 4. Beaverton Code Section 5.05.115 E (8) is amended to read:

"(8) Ornamental trees, shrubs, grass or other landscaping within the parking strip, if the landscaping does not constitute a nuisance, does not occupy any portion of the area that is 14 feet or less above the surface of an arterial roadway as designated on the Comprehensive Plan, or 12 feet or less above the surface of any roadway not designated on the Comprehensive Plan as an arterial, or 8 feet or less above the surface of the sidewalk or bicycle or pedestrian path, conforms as to species and location with the City's Tree Planting and Maintenance Policy, and complies with all other Code or City ordinance requirements. The City may use the planted area for any purpose whatsoever and may issue a permit to any applicant to encroach or to perform work on it. If the planted area is damaged or disturbed in the course of an authorized encroachment, it shall be removed and replaced by the permittee unless the permit specifically states otherwise and the owner of the abutting property is so notified in advance."

Section 5. Beaverton Code Section 5.05.230 A is amended to read:

"A. A City representative may proceed summarily to abate a nuisance that imminently endangers human life or property. Notwithstanding BC 5.05.200, a person responsible for the nuisance condition shall pay the cost of abatement incurred by the City pursuant to BC 5.05.210, and the property shall be subject to an assessment and placement of a lien in accordance with BC 5.05.215."

Section 6. Beaverton Code Section 9.05.032 D is amended to read:

"D. A person who begins work on a project requiring a permit under BC 9.05.005 - .170 without first securing a permit shall pay as a penalty twice the fee authorized by Council resolution, unless the city engineer determines either (1) that it was not reasonably possible to obtain a permit before commencing the work, or (2) the person who requires a street tree permit is the owner of adjacent property or agent of the owner and the property is used for a single family residence. Payment of the fee shall not relieve or excuse a person from the forfeitures imposed for violation of BC 9.05.005 -.170 and/or conformance with Code requirements. Payment of the fee shall not foreclose any other enforcement provisions."

Section 7. Existing Beaverton Code Sections 5.05.100 and 5.05.102 hereby are repealed but shall remain effective as to all actions and omissions by any person occurring before enactment of this ordinance.

First reading this 14th day of April, 1997.
Passed by the Council this 21st day of April, 1997.
Approved by the Mayor this 22ND day of APRIL, 1997.

ATTEST:

Darleen Cogburn
DARLEEN COGBURN, City Recorder

APPROVED:
Rob Drake
ROB DRAKE, Mayor