

CITY OF SILVERTON
ORDINANCE
19-14

AN ORDINANCE OF THE SILVERTON CITY COUNCIL AMENDING SILVERTON MUNICIPAL CODE TITLE 12 TO ADD CHAPTER 12.60 TO PROVIDE REGULATION OF THE PLANTING, PRESERVATION, MAINTENANCE AND REMOVAL OF TREES ON CITY-OWNED PROPERTY AND DECLARING AN EMERGENCY

WHEREAS, the Silverton City Council has approved the formation of an Urban Forestry Program in the Public Works Department; and

WHEREAS, the City in cooperation with the Oregon Department of Forestry recommends the adoption of a tree code which will designate a staff position as having jurisdiction over all City-owned trees and which will encourage, support, promote, and define Silverton's commitment to the preservation and maintenance of Silverton's public urban forest; and


WHEREAS, a City-owned tree code will formalize permitting procedures and inform Silverton residents of practices and processes related to planting and removal of trees on City-owned property.

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

Section 1: The Silverton Municipal Code is amended in substantially the same form as set forth in the attached Exhibit A adding Chapter 12.60.

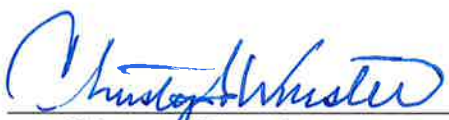
Section 2: The City Council declares an emergency to ensure these provisions are put in the Code immediately and as such they will go into effect upon adoption.

Ordinance adopted by the City Council of the City of Silverton, this 2nd day of December, 2019.



Mayor, City of Silverton
Kyle Palmer

ATTEST:



City Manager/Recorder, City of Silverton
Christy S. Wurster

Exhibit A

12.60 TREES ON CITY-OWNED PROPERTY

12.60.010 Definitions.

As used in this chapter, the following definitions apply:

- A. "Certified arborist" means a person certified by the International Society of Arboriculture (ISA) as having specialized knowledge, experience, and training related to arboriculture.
- B. "City Tree Commission" means city planning commission.
- C. "City trees" means trees located on property designated as city property, including public parks, and trees located in public right-of-way not defined as street right-of-way.
- D. "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.
- E. "Dangerous tree" is a tree which in the professional assessment of an expert recognized by the city (such as but not limited to an arborist, professional forester or landscape architect) has a strong likelihood of causing a hazard to life or property.
- F. "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.
- G. "Public works director" means the public works director or the director's designee.
- H. "Remove or removal" means to fell or sever a tree or the intentional use of any procedure, the natural result of which is to cause the death or substantial destruction of the tree. Removal does not in any context include normal trimming of trees.
- I. "Significant tree" means:
 - 1. Any tree meeting the threshold standards in Silverton development code 3.2.200, and those that are located within a sensitive land area as identified by the comprehensive plan or any refinement of the comprehensive plan, or as inventoried through the development review process. See also environment-related definitions in Silverton development code 1.5.300 and Silverton development code 3.2.200,
 - 2. Any tree designated as a heritage tree as set forth under SMC 12.60.080.
- J. "Street trees" means trees located in public street rights-of-way within the city.
- K. "Tree" means a self-supporting, perennial woody plant characterized by one main trunk or in some cases multiple trunks, and one main canopy of leaves, usually growing to a height of 15 feet or higher.
- L. "Tree circumference" means the distance measured around the trunk of a tree at four 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.
- M. "Tree contractor" means a person licensed to complete tree servicing work by the State of Oregon Construction Contractor's Board (CCB).

N. "Trimming" is the selective removal of plant parts to meet specific goals and objectives, using best practices as set forth by American National Standards Institute (ANSI) A300 Standards.

12.60.020 Administration; rulemaking; responsibilities.

The public works director is responsible for the implementation and enforcement of this chapter and shall have jurisdiction over all street trees and city trees, including the planting, removal, care, maintenance, and protection thereof.

12.60.030 Prohibited activities.

Unless authorized in writing by the public works director or unless otherwise allowed under this chapter:

A. It shall be unlawful for any person to remove, destroy, break, or injure any street tree or city tree.

B. It shall be unlawful for any person to attach or keep attached to any street or city 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.

C. 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 city 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.

D. Excavations shall not occur within 10 feet of any street tree or city tree without approval of the public works director, applying criteria developed by the public works director. Utility pole installations and excavations on private property are exempted from the requirements set forth in this subsection. During such excavation or construction, any such person shall guard any street tree or city tree within 10 feet thereof.

E. All building material or other debris shall be kept at least four feet from any street tree or city tree.

F. Unless removal is expressly authorized by a land use action or approval issued by the City of Silverton, it shall be unlawful to remove any *Quercus garryana* (Oregon oak), on public or private property, larger than or equal to six and one-half feet in circumference (approximately 30 inches in diameter), within the city limits without first making application to the city and obtaining a permit or as otherwise authorized by this code.

12.60.040 Street trees – Classification and spacing.

A. The public works director shall develop and maintain a list of approved street trees for planting along streets. Lists of trees not suitable for planting will also be created by the city.

B. The city tree commission shall develop criteria on the spacing of street trees per Silverton development code 3.2.400.

12.60.050 Tree topping.

It shall be unlawful for any person to top any street tree, city tree, or significant 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

trimming practices are impractical may be exempted at the determination of the public works director.

12.60.060 Exemptions.

In the event of a storm, freeze, or other environmental event resulting in damage to street and city trees, the city manager may declare an emergency suspension of the permit requirements for the removal and trimming 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.

12.60.070 Private utility tree policy.

A private utility maintaining its utility system in a public right of way or utility easement may trim or cause to be trimmed, using proper arboricultural practices as set forth by the ISA, any portion of a tree located in a public right of way, utility easement 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. Private utilities are exempted from permit requirements set forth in this chapter however; the public works director must be notified in writing before any work proceeds. In cases of emergency, notification of any work completed, must be reported to the public works director.

12.60.080 Heritage trees.

The historic landmarks commission may designate certain trees as “heritage trees” within the city with the consent of the owner(s) of record. The purpose of the heritage tree designation is to recognize, foster appreciation of, and protect trees having significance to the community. The historic landmarks commission shall have the authority to determine, select, and identify such trees that qualify as heritage trees. Once a tree is designated as a heritage tree, it will remain so unless it becomes necessary to classify it as a dangerous tree and removed as such. Heritage trees may not be removed without the express consent of the historic landmarks commission.

12.60.090 City’s power and authority is permissive, not mandatory.

Under no circumstances shall this chapter obligate the city of Silverton, 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.

12.60.100 Arborist certification.

A tree contractor shall have on staff a certified arborist to be qualified to trim, treat, or remove street or city trees. The certified arborist must oversee all trimming work and certify that all work meets the city’s trimming specifications in Silverton development code 3.2.300. If a certified arborist is not on the staff of the tree contractor, the public works director, applying criteria developed by best practices as set forth by the ISA, must approve the tree contractor

before the work begins. In cases where the professional opinion of a certified arborist differs from that of the public works director, the public works director may refer the matter to the city tree commission for a decision. Nothing in this section shall prevent the employees of public agencies with property in the city, who are not certified arborists, from trimming trees on the property of those public agencies.

12.60.110 Permit approval.

The public works director shall approve or conditionally approve permits when it has been demonstrated that one or more criteria in SMC 12.60.120 or SMC 12.60.140 have been met.

12.60.120 Tree trimming and treating criteria.

Trimming of tree limbs with a caliper of two inches or less is exempt from permit requirements. A permit to trim a street tree or city tree may be granted if one or more of the following criteria are met, as determined by the public works director.

- A. A street tree or city tree is encroaching onto private property and causing injury to privately-owned trees or shrubs.
- B. A street tree or city tree is creating an adverse effect on adjacent infrastructure or buildings that may be resolved by trimming or treatment.
- C. A branch or branches of a street tree or city tree poses a threat to utility lines, cables, or other overhead structures.
- D. Adjacent street trees or city trees are unlikely to be harmed by trimming or treatment.
- E. A street tree or city tree is obstructing clearance areas/zones as established in applicable administrative rules, public works design standards, or Silverton development code standards.

12.60.130 Review of application for city or street tree removal.

Upon receipt of a complete permit application for street tree or city tree removal, the public works director shall review the application, and if the application fails to meet the applicable criteria, the application shall be denied and a notice of denial shall be provided to the applicant, which notice shall identify the reasons for the denial.

- A. The notice shall include the following:
 - 1. The name of the applicant;
 - 2. The location of the tree or trees subject to the decision;
 - 3. A reference to the criteria or standards applicable to the decision;
 - 4. A statement that interested persons may appeal the decision pursuant to SMC 12.60.170; and
 - 5. The effective date of the decision if no appeal is filed.
- B. The notice shall be provided to the neighborhood association and posted a minimum of 30 days prior to the effective date of the decision.
- C. Effective date. A decision to approve a permit application for street tree or city tree removal shall be effective no earlier than 30 calendar days after the decision has been issued, unless an appeal has been filed, and any appeal fee paid.

12.60.140 Street tree and city tree removal criteria.

- A. A permit to remove a street tree or city tree may be granted if one or more of the following criteria are met, as determined by the public works director:
 - 1. The tree is dead.
 - 2. The tree is in an advanced state of decline.
 - 3. The tree is a dangerous tree and the risk cannot be mitigated or the tree cannot be made sound by accepted arboricultural practices.
 - 4. The tree is infected with an acute fatal disease that cannot be treated successfully or there is a strong potential that the pathogen could spread and kill other trees in the immediate vicinity (e.g., Dutch elm disease).
 - 5. The tree is infested with an insect that cannot be treated successfully or there is a high likelihood that the infestation could spread and kill other trees or vegetation in the immediate vicinity (e.g., emerald ash borer).
 - 6. The street tree or city tree has been planted too close to another tree based on Silverton development code standards and the spacing causes an adverse effect on the neighboring tree. The tree with the greatest vigor will remain unless it meets other criteria for removal.
 - 7. The natural shape of the tree has been destroyed or the tree has gone into decline due to past trimming and other tree maintenance practices, other than required electrical line clearance, prior to the adoption of this code.
 - 8. The street tree or city tree requires removal due to construction if there is no reasonable alternative. The applicant shall be required to bear all cost of the tree's removal and replacement according to Silverton development code 3.2.200.
 - 9. The tree is having an adverse effect on adjacent infrastructure, including sidewalks, and that effect cannot be mitigated by trimming, reasonable alternative construction techniques, or accepted arboricultural practices.
- B. If a tree is removed pursuant to this section, the tree will be replaced in conformance with the applicable administrative rules, public works design standards and Silverton development code standards.
- C. The city shall not permit the removal of a street tree or city tree for any other reason, including, but not limited to, the following, unless the criteria for a variance has been approved:
 - 1. Dropping of leaves, flowers, seeds, bark, sap, stems, pests, or other matter.
 - 2. Improvement or maintenance of views.
 - 3. Competition with turf or impact on non-plant landscaping (e.g., mulch or gravel).
 - 4. Common allergies.
 - 5. Damage to items that have been placed too close to the trunk such as pavers, bricks, blocks and concrete.
- D. When street trees or city trees pose an immediate hazard to public safety, the city manager or public works director may approve removal.

12.60.150 Conditional permit approval.

The public works director or designee 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.

12.60.160 Permit fees.

Fees for removal permits shall be established by city council resolution.

12.60.170 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 public works director. 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 city tree commission will review all appeals filed with the public works director. Decisions made by the city tree commission are final.

12.60.180 Penalties.

Any person violating any of the provisions of this code relating to the planting, trimming, or removal of trees shall be strictly liable for such violations and punished under the general penalty provided for in SMC 1.08. Proof of a specific criminal intent shall not be required. Any violation of this chapter which affects an individual tree shall be a separate offense.