

**ORDINANCE NUMBER 3043**

AN ORDINANCE AMENDING CHAPTER 12.32 MISSOULA MUNICIPAL CODE ENTITLED "COMPREHENSIVE TREE AND SHRUB, PLANTING, PRUNING AND MAINTENANCE REGULATIONS" ADOPTING A REVISED TREE APPENDIX TO ACCOMPANY THE ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MISSOULA THAT CHAPTER 12.32 MISSOULA MUNICIPAL CODE BE AMENDED BY ADDING SECTION 20 AND PROVIDING A REVISED TREE APPENDIX.

***Section 1. 12.32.010 Purpose.*** A. The purpose of this chapter is to protect the health, safety and welfare of both the public citizenry and the trees in the City of Missoula by establishing standards and regulations to control planting, planning, removal, maintenance, and protection of the trees and shrubs within the public rights of way and public land areas from undesirable and unsafe planting, removal, maintenance and protection practices and by eliminating and guarding against dangerous conditions which may result in injury to persons using the public areas of the city; and by promoting the enhancement and natural beauty of the city; as well as to prevent damage to any public sewer or water main, street, sidewalk or other public property; and to guard all trees and shrubs within the City against the spread of disease or pests.

B. The City Council determines these tree standards and regulations are reasonably necessary and desirable for the following reasons:

1. Trees are proven producers of oxygen, a necessary element for the survival of mankind;
2. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air;
3. Trees play an important role in the hydrologic cycle, transpiring considerable amounts of water daily day, thereby precipitating dust and other particulate airborne pollutants from the air;
4. Trees play an integral role in neutralizing wastewater which passes from the surface to lower ground water aquifers;
5. Trees through their root systems, stabilize the soil and play an important and effective part in City-wide soil conservation, erosion control and flood control;
6. Trees are essential and an invaluable physical and psychological addition to the City, making life more comfortable by providing shade and cooling both air and land, reducing noise levels and glare, and breaking the visual monotony of development of land;
7. Trees provide wildlife habitat and play other important ecological roles;
8. The protection of trees within the city of Missoula is not only desirable, but essential to the present and future health, safety, and general welfare of all the citizens of City of Missoula;
9. Some tree species are more beneficial than others as necessary contributors to the City's environment and it is not necessary to protect each and every tree in order to attain the public benefit of a tree protection and replacement ordinance.

C. The provisions of this ordinance shall apply to all trees and shrubs presently or hereafter planted in or upon any public area, which shall endanger the life, health or safety of persons or property.

**Section 2. 12.32.020 The City Tree Board.** The City Tree Board shall serve as the appellate body for property owner appeals to City Park and Recreation Department decisions pertaining to woody vegetation located in any public right of way, as well as an advisory body to the City Council and shall perform any functions, responsibilities or duties established herein.

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**Section 3. 12.32.030 City forester, establishment, duties.** A. The position of City Forester may be established within the City Parks and Recreation Department and is responsible to the City Parks and Recreation Director.

B. The City Forester shall perform any duties determined by the City Council and The Parks and Recreation director and shall assist the Park Board with the Park Board's statutory responsibility to plant, cultivate, maintain and improve all trees and other plants upon the streets, avenues, boulevards, and public places, including the Park Board's right to designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards and public places.

**Section 4. 12.32.040 Scope of applicability.** A. This chapter applies to all trees, plants and shrubs located on or in the right-of-way, boulevards, and public places of the city, and to private property trees that encroach, and/or create a condition which renders dangerous for passage on any public right-of-way, boulevards and public places, except for all woody vegetation located within the boundaries of the city cemetery while it is managed by a city cemetery staff.

B. The provision of this ordinance pertaining to planting, spacing, or species of tree shall not apply to any tree existing at the time of the enactment of this ordinance.

**Section 5. 12.32.050 Definitions.** The following definitions shall apply to the provisions of this chapter.

A. "Public right-of-way" means the entire width between the dedicated boundaries of all public streets, roads, boulevards, alleys and includes all sidewalks and public parking strips located within any such boundaries.

B. "Public area" means all public right-of-ways, public parks, and other lands owned or leased by the city, unless the context of a specific provision expressly applies to other public lands as well.

C. "Woody vegetation" means trees, shrubs, plants and any other vegetation with a woody stem.

- D. "Encroaching woody vegetation" means any woody vegetation that grows or extends within the boundaries of the public right-of-way, which renders it dangerous for passage.
- E. "Tree preservation zone" or "TPZ" is a circle surrounding the target tree with a radius of one (1) foot for every one (1) inch diameter of tree being considered.
- F. "Boulevard trees" means any tree which exists in an area of public right-of-way between the edge of the public roadway, whether curbed or not, and the private property line.
- G. "Park trees" means all trees on city owned or leased land other than trees that are in the public right-of-way.
- H. "Arboricultural treatments" means all services, treatments or operations involving trimming, pruning, spraying, injecting, fertilizing, cabling, surgery work, removal of and cutting above or below ground level of a tree.
- I. "Topping" means 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 tree canopy and disfigure the tree.
- J. "Notice" means a written or verbal announcement to the abutting property owner.

- A. "Tree Board" means an appointed sub-committee comprised of 4 members of the City Park and Recreation Board.

***Section 6. 12.32.060 Permit requirement.*** It is unlawful for any person or contracted tree service person to engage in the business of planting or arboricultural treatment of trees within the public right-of-way or public area, without written consent obtained by issuance of a permit by the City Parks and Recreation Department.

***Section 7. 12.32.070 Responsibility for trees.***

- A. The abutting property owner shall be responsible for the regular watering, care and maintenance of the boulevard or parking strip per MMC section 12.48.030. The City Council and/or City Parks Department may require any property owner to treat or remove any woody vegetation in a parking strip abutting upon the owner's property.
- B. The City Parks Department may take action to remove, or treat any tree on public land if it:
  1. is diagnosed to have an epidemic insect infestation or disease that would prove to be detrimental to the Urban Forest; or
  2. creates a hazard or an immediate threat to public safety, and assess the cost of such action against the abutting property owner; or

3. is identified as a tree that would be either an obstruction or would not live after a street, sidewalk, curb and gutter, alley or public utility construction or maintenance project is implemented.

**Section 8. 12.32.080 Licensing.** All contracted arboricultural work or services performed by businesses advertising or soliciting performance of services on trees within the City, whether public or private, shall obtain a city business license from the city prior to performing any work.

**Section 9. 12.32.090 Landscaping required for new developments.**

Trees shall be a part of the landscaping for all new residential developments and new commercial developments and will be consistent with city zoning ordinance. All tree plans shall be evaluated by the Office of Community Development and the Parks Department as part of the development review.

**Section 10. 12.32.100 Public utilities.** Public Utility work affecting woody vegetation within public areas should be limited to the actual necessities of the services of the company and all work should be done in a neat and professional manner consistent with National Arborist Association and International Society of Arboricultural standards on tree maintenance. The City Parks and Recreation Department shall be notified before work is performed and reserves the right to inspect work after completion.

**Section 11. 12.21.110 Vandalism or damage to woody vegetation.** It is unlawful for any person to abuse, injure, mutilate, destroy, or kill any tree, shrub or plant growing in the public right-of-way or to permit any animal under his control to do so. Unlawful conduct shall include but not be limited to permitting any fire to injure any portion of any tree or shrub; permitting any toxic chemical to seep, drain, or be emptied on or around any woody vegetation; permitting the storage of any stone, brick, sand concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree or shrub growing herein; permitting any wire charged with electricity to come in contact with any tree or shrub, located within any public area, or any general destruction or mutilation by whatever means. The party responsible for any such act shall bear the cost of repairing or replacing the tree or vegetation pursuant to the determination of the City Parks and Recreation Department.

**Section 12 12.32.120 Providing barriers during construction.** Adequate barriers will be placed around trees growing in the public right-of-way to protect the trunk and limbs from damage due to construction work. Excavation taking place within the "tree preservation zone" of any tree growing in the public right-of-way will require a permit from the city engineer and City Parks Department. The City Parks and Recreation Department will inspect all such excavations to ensure minimum damage to tree roots. When trees are damaged severely, as determined by the

Parks Department, due to excavation or construction, the abutting property owner shall be responsible for planting a new tree pursuant to the City Parks Department specifications, except where contractor negligence damaged the tree in which case the contractor shall be responsible for repairing or replacement of the tree.

**Section 13. 12.32.130 Attaching ropes, wires or handbills to trees in public place.** It shall be a violation of this chapter to attach or place any rope, cable or wire (other than one used to support a young or broken tree or to support a weak crotch within the tree), nail or otherwise place any sign, poster, handbill or other thing to any tree growing in a public place, except in emergencies such as accidents and storms.

**Section 14. 12.32.140 Tree Topping.** It shall be unlawful, as a normal practice for any person, tree service business, city department or any other private or public entity to top any street tree, park tree or other tree located in a public area. Trees severely damaged by storms or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the conservation committee.

**Section 15. 12.32.150 Declaration of hazard.**

A. Any woody vegetation, whether on public or private property, of whatever nature, which is endangering or which in any way may endanger the public health, safety, security or usefulness of any public street, public utility line or sidewalk is hereby declared to be a public hazard and may be treated by the City Parks and Recreation Departments. If the City Parks and Recreation Department determines with reasonable certainty, upon inspection, that any woody vegetation or any part thereof, located on private property, that encroaches into the public right-of-way or renders it dangerous for passage, it shall notify in writing the owner or tenant in charge of the premises. If the owner or tenant in charge of the premise where the hazard is located, is unable to comply with the terms of the written notice, the City Parks and Recreation Department will work with the property owner where the hazard is located to cause the treatment or removal of the hazard woody vegetation. The private property owner shall be responsible for any liability arising out of injury, damage, or death caused by the dangerous condition existing on the private property. The city shall not be liable for any injury, damage, or death caused by the said hazard or dangerous condition on private property.

**Section 16. 12.32.160 Tree planting, maintenance, removal.** All trees and/or shrubs in any public area shall be planted, removed maintained and protected according to the provisions of the arboricultural standards, specifications and guidelines shall include sections on planting, maintenance, removals and a desirable species list, and will be reviewed annually by the conservation committee and city council.

**Section 17. 12.32.170 Interference with City Parks and Recreation Department.** No person shall obstruct, hinder, prevent, delay or interfere with the City Parks and Recreation Department in the execution or enforcement of this chapter.

**Section 18. 12.32.180 Appeal from order of City Parks and Recreation Department.**

Any decision of the City Parks and Recreation Department must be appealed within fifteen (15) calendar days after notice is given to the property owner.

**Section 19. 12.32.190 Penalties.**

(A) No imprisonment shall be imposed for a violation of this chapter. . The only penalty shall be a fine of up to five hundred dollars (\$500.00) for each separate offense, each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense.

(B) Upon conviction as part of the sentence imposed in addition to the penalty set forth in Subsection (A) above, any person who removes, damages, or destroys a tree, shrub, or other plant located on city-owned property in violation of the provisions of this Article shall pay a sum of money equal to either the cost of its replacement or the diminishment in its value. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of *Guide to Tree and Plant Appraisal*, as published by the International Society of Arboriculture.

**Section 20. 12.32.200 Tree Appendix.** An appendix outlining operational standards, procedures, desirable tree lists and other regulations pertaining to the operation of the City Forestry program as well as the operation of "for profit" private companies accompanies the enactment of this ordinance. The appendix is available in the City Clerks office and at the Parks and Recreation Department.

**Section 21. 12.32.210 Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a 12 Ayes, 0 Naye, 0 Abstain and 0 Absent vote and

APPROVED by the Mayor, this 1st day of December, 1997.

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