

ORDINANCE NO. 973

AN ORDINANCE AMENDING ORDINANCE NO. 575,
REGULATING THE PLANTING AND MAINTENANCE OF TREES AND SHRUBS;
AND REPEALING ORDINANCE NO. 600.

The people of the City of Prineville ordain as follows:

Ordinance No. 575 is amended to read as follows:

Section 1. Title of Ordinance. This ordinance shall be hereafter referred to and cited as the "Street Tree Ordinance" of the City of Prineville, Oregon.

Section 2. Definitions.

Public right-of-way -- City streets, alleyways, including that portion of a street or alleyway that is dedicated as a street or alley, but is not currently being used as street or alley.

Public parking strip -- That portion of a street or alleyway that is not currently being used as a street or alleyway.

Public place -- Any area within the city limits of Prineville, Oregon, owned by the City of Prineville, Crook County, Crook County Parks & Recreation District, or any other municipal corporation.

Section 3. Enforcing Authority. The city street superintendent, or his duly authorized representative, shall be charged with the enforcement of this ordinance.

Section 4. Permit Required.

(1) No person shall plant or remove trees or shrubs from a public right-of-way or other public place in the City, without permission from the city street superintendent.

(2) No person shall plant, grow, or maintain a tree, shrub, or vegetable growth upon the sidewalks, sidewalk areas, or public right-of-way in the City, or so close thereto that they overhang the sidewalks, sidewalk areas, or public right-of-way at an elevation of less than 9 feet, without first obtaining a permit from the city street superintendent.

Section 5. Permit Applications.

(1) When an application is filed by an applicant setting forth all relevant facts relating to the request in question, the

city street superintendent may issue a permit to plant, grow, and main trees, shrubs, or vegetable growth in areas in which they are prohibited by Section 3.

(2) The city street superintendent shall not grant the permit unless he finds that to do so would not be detrimental to the public interest. The superintendent shall give consideration to the following factors in granting permits:

- (a) Width of sidewalks, sidewalk areas or public right-of-way.
- (b) Type of tree, shrub, or vegetable growth.
- (c) Location of parking meters, light standards, crosswalks, building entrance and exit ways, streets, utility poles, alleys, loading zones, and other physical conditions and legal restrictions then existing or reasonably contemplated.
- (d) Traffic count.
- (e) Purpose of applicant.
- (f) Any other factors found by the superintendent to be relevant.

(3) The city street superintendent shall designate in the permit or in an exhibit attached to it, the areas in which planting shall be allowed, the type of plantings allowed, and any other condition or restriction that he deems necessary or expedient to protect the public interest.

Section 6. Permit Conditions. Each person planting, growing, or maintaining trees, shrubs, or vegetable matter under a permit shall comply with and be subject to the following general conditions and restriction:

(1) The permittee shall abide by all of the terms, conditions, and restrictions contained on the permit.

(2) The permit shall be nontransferable without prior written approval of the city street superintendent.

(3) The permit shall be revocable at any time, with or without cause, at the pleasure of the council and no expenditure of money, lapse of time, or any act or thing shall act as an estoppel against the city or be held to give permittee or the owner of property any vested right.

(4) The installation and care of plantings shall be at the sole cost and expense of the permittee, without cost to the City, and the sidewalks, sidewalk areas and public right-of-way in the vicinity of the plantings and the structure served thereby shall be maintained in a good state of repair and maintenance at the sole cost and expense of the permittee.

(5) At the expiration or termination of the permit, the permittee shall remove all plantings and vegetable matter from the area at his sole cost and expense and place the sidewalk or public right-of-way in the area in a good condition of repair.

(6) The permittee shall indemnify and save the city, its officers, agents, officials, and employees, harmless from any claim or award for damages or injuries to property or persons, including costs and attorney fees allegedly arising in whole or in part out of the use, occupation, or disruption of sidewalks, sidewalk areas, or public right-of-way, by the permittee or those acting on his behalf or with his approval or ratification, or allegedly arising in whole or in part out of the failure by the permittee to abide by the terms of this ordinance and the permit.

(7) The permittee shall remove, replace, or relocate individual plantings or vegetable growth as the public convenience or necessity warrants and at the request of the city street superintendent.

(8) No permit shall become effective until the permittee has filed with the city recorder proof of the existence of a repaid liability insurance policy naming the City of Prineville, its officers, agents, officials, and employees as named insureds. The policy shall have limits of \$100,000 or more for injury to one person in one accident, and \$500,000 or more for case of injuries to more than one person in any one accident, and \$50,000 or more for property damage. The insurance shall indemnify the city, its officers, agents, officials, and employees as specified in subsection (6).

(9) No permit shall be issued for placing plants that are for sale in or on the sidewalks, sidewalk areas, or public right-of-way, nor shall any advertising be placed on plantings or on a contained in which plantings may be set; the plantings shall be for decorative purposes only.

(10) No permit shall become effective unless the permittee, simultaneously with the issuance of the permit, files with the city street superintendent, on a form approved by him, a notice of acceptance of the terms, covenants, and conditions of the permit and an agreement to abide by all of the terms, covenants, conditions, and obligations imposed on the permitted by this ordinance.

Section 7. Prohibited Trees. It shall be unlawful to plant in any public parking strip the following trees:

Poplar	Cottonwood
Willow	Fruit trees
Conifer	Nut Trees
Ailanthus	

It shall be unlawful to plant willow, cottonwood, or poplar trees anywhere in the city unless the city street superintendent approves the site as one where the tree roots will not interfere with a public sewer.

Section 8. Removal or Trimming of Trees, Shrubs, Bushes or Plants. The owner, possessor or occupant of property upon which any tree, shrub, bush or plant is located or the owner, possessor or occupant of property adjacent to a public right-of-way upon which is located any tree, shrub, bush or plant, has a duty to trim such trees, shrubs, bushes or plants which:

(1) endanger or which in any way may endanger the security or usefulness of any public street, sewer, or sidewalk;

(2) are located at or near any intersection in the City of Prineville, and which tend to obstruct the vision of persons using the streets at or near such intersection or which create a traffic hazard;

(3) partially or wholly obstruct the visibility of a stop sign or vehicular traffic regulatory sign so that said sign cannot be seen for a minimum distance of 100 feet when viewed from the normal vehicular approach.

When the owners, possessor or occupants of property as described above shall neglect or refuse to trim or remove any tree, shrub, bush or plants as provided in this paragraph, the street superintendent may trim or remove, or cause to be trimmed such tree shrub, bush or plant. The person remedying the condition shall be authorized to enter the property for that purpose.

Section 9. Liability.

1) Any person, firm or corporation who is responsible for trimming or removing any tree, shrub, bush or plant as described in Section 8 is liable to any person injured because of failure to trim or remove said trees, shrubs, bushes or plants.

2) If the City of Prineville is required to pay damages for an injury to any person caused by the failure of an owner, possessor or occupant of property to trim or remove trees, shrubs, bushes or plants on their property or on a public right-of-way adjacent to their property as required by Section 8, such owner, possessor or occupant shall reimburse the City of Prineville for the amount of the damages thus paid by the City of Prineville and for the attorney fees and costs against defending against the claim of damages. The City of Prineville may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

Nothing in this ordinance shall be deemed to impose any liability upon any member of the Prineville City Council or the City of Prineville, or any of its officers or employees for: (1) failure to trim or remove any trees, shrubs, bushes or plants; (2) failure to require any owner, possessor or occupant of property to trim or remove trees, shrubs, bushes or plants on their property or adjacent public right-of-way property; (3) for failure to discover trees, shrubs, bushes or plants that should be trimmed or removed, or (4) for any other duty owed to any person, firm or corporation under this ordinance.

Section 10. Abuse or Mutilation of Trees. It shall be a violation of this ordinance to abuse, destroy, or mutilate any tree, shrub, or plant in a public right-of-way or any other public place, or to attach or place any rope or wire (other than one used to support a young or broken tree), sign, poster, handbill, or other thing to or on any tree growing in a public place, or to cause or permit any wire charged with electricity to come in contact with any such tree, or to allow any gaseous, liquid, or solid substance which is harmful to such trees to come in contact with their roots or leaves.

Section 11. Violation of This Ordinance--Penalty. Any person violating any of the provisions of this ordinance or failing to comply with them shall, upon conviction thereof, be punished by a fine not to exceed \$50.00.

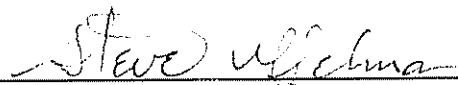
Section 12. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 13. Validity. If any section of this ordinance is declared invalid by any court of competent jurisdiction, such decision shall be deemed to apply to that section only and shall not affect the validity of the ordinance as a whole or any part thereof other than the part declared invalid.

Section 14. Ordinance No. 600, Street Trees, adopted June 7, 1967, is repealed.


Passed by the Council this 12th day of March, 1991.

Approved by the Mayor this 12th day of March, 1991.



Mayor, Steve Uffelman

ATTEST:



Recorder Henry Hartley