

**CITY OF NEWPORT**

**ORDINANCE NO. 2031**

**AN ORDINANCE AMENDING CITY OF NEWPORT ZONING ORDINANCE AND MUNICIPAL CODE TO ESTABLISH CRITERIA FOR THE MANAGEMENT OF THE CITY'S URBAN TREE CANOPY**

**Summary of Findings:**

1. Establishing a program for managing the City of Newport's urban tree canopy along streets, and in parks and other public spaces furthers the health, safety, and welfare of the citizens of this community.
2. The role of the Parks and Recreation Committee, as outlined in Chapter 2.05 of the Newport Municipal Code (Ordinance No 1951), should be expanded to include serving as the City of Newport's official "tree board," charged with the responsibility of developing and periodically updating a "tree plan" for planting, maintaining and removing trees within these areas. This plan may include criteria and standards for protecting heritage trees that have particular historic or scenic value. The Committee shall also pursue a "Tree City USA" designation from the National Arbor Day Foundation, including the coordination of Arbor Day observances and related proclamations.
3. Establishing standards for the placement, maintenance, and removal of trees prevents premature damage to city water, sewer, street and sidewalk infrastructure attributed to tree growth; limits demands for tree maintenance beneath overhead utility lines; reduces the chances that vegetation will obstruct public ways or obscure vehicle line of sight at street intersections; and enhances survivability of plantings through selection of tree species appropriate to the local climate.
4. While Chapters 9.10 and 9.15 of the Newport Municipal Code (Ordinance No. 1949) require members of the public to obtain permits for the removal of trees within public rights-of-way, those procedures need to be clarified and amended to ensure that they address standards for planting and maintenance of trees that are being developed by the Tree Board and provide clear guidance to the public for how permits can be obtained.
5. Newport Subdivision Ordinance No. 1990 and Section 2-4-5 of Newport Zoning Ordinance No. 1308 contain criteria for installation of street trees and landscaping within public rights-of-way that are associated with new development. These provisions need to be amended to ensure that such plantings are consistent with the adopted tree plan.
6. Chapter 8.10 the Newport Municipal Code (Ordinance No 1921), Chapter 9.25 of the Newport Municipal Code (Ordinance No. 1949) and Section 2-4-3 of Newport Zoning Ordinance No. 1308 contain conflicting standards related to the establishment and maintenance

of clear vision areas. These provisions need to be consolidated and clarified. Further, it is appropriate to change the method of measuring clear vision areas at street intersections to reference the curb line or edge of the road surface as opposed to the property boundary. This will make it easier for the public and staff to verify the size of the clear vision area in the field and avoids the need for costly surveys.

7. The Newport Parks and Recreation Committee reviewed the above changes at its December 21, 2011 meeting and voted to endorse the concept of the City of Newport pursuing a "Tree City USA" designation, with the Parks and Recreation Committee serving as the City's tree board.

8. The Newport Planning Commission and Planning Commission Citizens Advisory Committee reviewed the above changes (File No. 5-Z-11) at a work session on November 14, 2011. Following a public hearing on January 23, 2012, the Planning Commission voted to recommend adoption of the proposed amendments.

9. The City Council held a public hearing on March 5, 2012 regarding the question of the proposed revisions and voted in favor of their adoption after considering the recommendations of the Parks and Recreation Committee, Planning Commission, and evidence and argument in the record.

10. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

#### **THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** The above findings are hereby adopted as support for the Council's following amendments.

**Section 2.** The following language is hereby added to Section 2.05.040(B) of Ordinance No. 1951, codified under Chapter 2.05, Boards and Commissions, of the Newport Municipal Code:

5. To serve as the City's "Tree Board," with the responsibility to study, investigate, develop and periodically update a written plan for the care, preservation, pruning, planting, replanting, removal and disposition of trees in parks, along public streets, and in other public places.

a. As part of this plan, a list of acceptable species shall be developed and maintained for planting trees along public streets. The list shall provide spacing and planting details for each species, and divide trees into three classes based upon mature height: small (under 30 feet); medium (30 to 50 feet) and large (over 50 feet);

b. The plan may include criteria for determining, and standards for protecting heritage trees within the city. The purpose of the heritage tree designation is to recognize, foster appreciation of, and protect trees having significance to the community. Criteria may include such things as species rarity, age, size, quality, association with historical events or persons, or scenic enhancement;

c. A draft of the plan, and any amendments thereof, shall be presented to the City Council and, upon Council acceptance and approval, will constitute the official tree plan for the city; and

d. The plan shall be reviewed completely at least once in every three-year period after initial approval.

6. To obtain the annual Tree City USA designation by the National Arbor Day Foundation, including coordination of an Arbor Day observance and proclamation.

**Section 3.** Sections 9.10.020, 9.10.030 and 9.10.040 of Ordinance No. 1949, codified under Chapter 9.10, Right-of-Way Permits, of the Newport Municipal Code, are hereby amended to read:

#### 9.10.020 Applicability

The requirements of this chapter shall apply to all rights-of-way controlled or administered by the City of Newport, whether as a result of a dedication by plat or deed or agreement with Lincoln County or the State of Oregon. This chapter shall further apply to the planting, pruning, maintenance and removal of trees within parks and other city owned properties.

#### 9.10.030 Permit Required

A. No person may cut, break, dig up, damage in any manner, undermine or tunnel for any purpose in any developed portion of a right-of-way, or obstruct any developed portion of right-of-way, without obtaining a right-of-way permit under this chapter. Developed portions of rights-of-way include all streets, sidewalks and any other paved or improved area. No person may cut, break, dig up, damage in any manner, undermine or tunnel within any portion of a right of way to place, modify, repair or maintain any utility facility without obtaining a right-of-way permit. No person may construct any street, sidewalk, trail or path within any right-of-way without a right-of-way permit. Application for permits shall be in the form prescribed by the city. Permits shall be issued for a limited time and shall specify the extent of the authority granted by the permit. No permit shall be issued unless the applicant has complied with or is not subject to Chapter 9.05.

B. No person shall plant, prune, or remove a tree within public rights-of-way, public easements, or on city owned property without obtaining a right-of-way permit.

C. Any person who cuts, breaks, digs up, damages in any manner, undermines or tunnels under any unimproved portion of a right of way for purposes other than as specified in subsections (A) and (B) must obtain an encroachment permit pursuant to Chapter 9.15.

#### 9.10.040 Permit Applications

A. Applications for right-of-way permits shall be submitted on forms provided by the city and shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:

1. That all work will be performed and any facilities will be constructed in accordance with all applicable codes, rules, and regulations.

2. That all work will be performed and any facilities will be constructed by or for a franchisee in accordance with the franchise agreement
  3. The location, route, and description of all of applicant's new facilities to be installed as well as all of applicant's existing facilities in the construction area, including a cross-section to show the facilities in relation to the existing street, curb, sidewalk, and right-of-way.
  4. The construction methods to be employed for protection of existing structures, fixtures and facilities and a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.
  5. Installation of trees along public streets is in accordance with the subsection 9.10.140.
- B. Applications for right-of-way permits, other than for the planting, pruning or removal of trees, shall be accompanied by the following:
1. A verification that the drawings, plans, and specifications submitted with the application comply with all applicable technical codes, rules and regulations. The city may require that the verification be by a registered professional engineer.
  2. A written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city engineer.
  3. The permit fee in an amount to be determined by resolution of the City Council, unless otherwise provided in a franchise agreement or applicable state law. The fee shall be designed to defray the costs of city administration of the construction permit program. Permit fees shall not be charged to any franchisee operating under a currently valid franchise or to any other person using city rights-of-way under an agreement with the city that requires payment of a franchise fee.
- C. Applications for right-of-way permits for planting trees, or pruning or removing trees with a diameter of at least 8-inches dbh (diameter breast height) shall be accompanied by the following:
1. A statement describing the work to be performed; and
  2. A scaled drawing identifying the size, location, and species of the tree or trees to be planted, pruned or removed. For plantings the drawing shall also include distances between trees and nearby utilities, curbs and sidewalks.

**Section 4.** The following language is hereby added as Section 9.10.140 to Ordinance No. 1949, codified under Chapter 9.10, Right-of-Way Permits, of the Newport Municipal Code:

#### 9.10.140 Planting, Maintenance and Removal of Trees

- A. The planting of trees along public streets shall adhere to the following standards:
1. Only those tree species identified in the city's adopted tree plan may be planted along public streets;

2. Spacing between trees shall be in accordance with recommendations contained in the adopted tree plan;
  3. Only those trees listed as small in the adopted tree plan may be planted under or within 10 lateral feet of any overhead utility wire, underground water line, sewer line, transmission line or other utility;
  4. Trees shall be setback from curbs and sidewalks by the size classification in the adopted tree plan, as follows: small trees, two feet; medium trees; three feet; and large trees, four feet;
  5. No street trees shall be planted closer than 35 feet of a street corner, measured from the point of nearest intersecting curbs, curb lines, or edge of pavement; and
  6. Trees shall be setback at least 10 feet from fire hydrants.
- B. The city shall have the right to plant, prune, maintain, and remove trees within public rights-of-way and city owned property, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public spaces.
- C. Persons performing activities described in subsection (B) shall not be required to obtain a permit provided a written statement is filed with the Public Works Department confirming that they have reviewed and will follow applicable provisions of the city's adopted tree plan. Such statements shall be current within 12 months of the date work is to be performed.
- D. City Manager may order the removal of any tree, or part thereof, irrespective of the adopted tree plan, upon a determination that such action is necessary to resolve an unsafe condition or prevent damage to public improvements.

**Section 5.** Section 9.15.010(A), codified under Chapter 9.15, Encroachment Permits, of the Newport Municipal Code, is hereby amended to read:

- A. The following actions are prohibited within rights-of-way or on city property except as authorized by the city by a temporary encroachment permit:
1. Placing or maintaining a structure.
  2. Excavation or fill, including placing of rocks or other landscaping materials.
  3. Landscaping activities, other than in the portion of the right-of-way immediately adjacent to property owned, controlled or possessed by the person.

**Section 6.** Section 9.15.020(A), codified under Chapter 9.15, Encroachment Permits, of the Newport Municipal Code, is hereby amended to read:

- A. Certain encroachments are exempt from the encroachment permit requirement. Exempt encroachments are those which would have a minor impact on the present or planned use of

the unimproved public right-of-way, easement or public property and those which are expressly permitted by ordinance. Exempt encroachments are:

1. Mailboxes and their enclosing structures.
2. Guard/handrails along edges of driveway approaches, walks, stairs, etc. encroaching in unimproved public right-of-way.
3. Bicycle lockers and racks authorized in an approved parking district parking plan.
4. Work authorized by a right-of-way permit.

**Section 7.** The following language is hereby added to Section 13.05.015 of Ordinance No. 1990, codified as the Newport Subdivision Ordinance:

M. Street Trees. Trees may be installed within proposed or existing rights-of-ways provided the plantings conform to the city's adopted tree plan.

**Section 8.** The following language is hereby added as Section 2-4-5.055 of Ordinance No. 1308, codified as the Newport Zoning Ordinance:

**2-4-5.055. Tree Plantings.** Trees may be installed within rights-of-ways provided the plantings conform to the city's adopted tree plan.

**Section 9.** Section 8.10.060(D) of Ordinance No. 1921, codified under Chapter 8.10, Nuisances, of the Newport Municipal Code, is hereby amended to read:

D. Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures obstruct vision if they are within a clear vision area pursuant to Section 2-4-3 of the Newport Zoning Ordinance and, in the determination of the city manager, constitutes a safety hazard.

**Section 10.** Chapter 9.25, Intersection Safety, of Ordinance No. 1949, codified under the Newport Municipal Code, is hereby repealed in its entirety.

**Section 11.** Section 2-4-3, Vision Clearance Requirements, of Ordinance No. 1308, codified as the Newport Zoning Ordinance, is hereby repealed and replaced as follows:

**NZO SECTION 2-4-3. CLEAR VISION AREAS**

**2-4-3.005. Purpose.** The purpose of this section is to promote safety at intersections and drive access points by reducing obstructions to clear vision at intersections.

**2-4-3.010. Clear Vision Area Defined.** A vision clearance area includes the following:

- A. At the intersection of two streets, a triangle formed by the intersection of the curb lines, with each leg of the vision clearance triangle being a minimum of 35 feet in length. Where curbs are absent the edge of the asphalt or future curb location shall be used as a guide. The City Engineer may modify this requirement, in writing, upon finding that more or less distance is required (i.e. due to traffic speeds, roadway alignment, etc.).
- B. A portion of a lot subject to a front yard setback as defined in Section 2-3-2. A clear vision area does not include that portion of a second front yard outside of the area described in subsection (A).

2-4-3.015. Clear Vision Area Requirements. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding three feet in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees located within a clear vision area shall have their branches and foliage removed to the height of eight feet above the grade.

2-4-3.020. Maintenance of Clear Vision Areas. It shall be the duty of the person who owns, possesses, or controls real property or right-of-way adjacent thereto, to maintain a clear vision area in the manner provided in this section.

2-4-3.025. Exemptions for Buildings. A building erected in compliance with zoning ordinance setbacks is exempt from this section.

2-4-3.030. Liability. The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by this Section. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this Section.

2-4-3.035. Variances. The requirements of this section shall be subject to the processes and criteria contained in Section 2-5-2, Adjustments and Variances.

**Section 12.** This ordinance shall take effect at such time as a tree plan is developed by the Parks and Recreation Committee and approved by the Newport City Council.

Date adopted and read by title only: March 5, 2012

Signed by the Mayor on March 9, 2012.

Mark McConnell  
Mark McConnell, Mayor

ATTEST:

Margaret M. Hawker  
Margaret M. Hawker, City Recorder