

SUMMARY OF ORDINANCE NO. 1177

Ordinance 1177 is an Ordinance of the City of Payette, Idaho, which creates a new chapter 18 in title 12. That chapter shall be known as the Payette Community Forest Chapter. The chapter creates the Payette Community Forestry Commission to administer the Payette Community Forest, defines numerous terms, has a statement of purpose, describes the trees to which the ordinance is applicable, defines commission responsibility, describes the powers of the Superintendent of Parks and outlines practices which are prohibited when dealing with public trees. The Ordinance mandates that a City business license is required for any person dealing with trees in a commercial enterprise and requires that such a person have liability insurance, workmans compensation insurance and comply with section 12.18.090 of the Ordinance. The Ordinance requires that a certified arborist be employed to deal with public trees, defines a land owners responsibility with regard to trees, prohibits injurious practices, provides a system of tree care within the City of Payette, defines tree hazards, prescribes penalties for violations, establishes severability, provides that the ordinance be in full force and effect from and after its passage, approval and publication, provides for publication by summary and it provides a penalty. The ordinance was passed at a regular Payette City Council meeting Monday, November 15, 1999.

I, Bert L. Osborn, City Attorney for the City of Payette, Idaho, certify that I am familiar with Ordinance 1177 of the City of Payette, Idaho and with the foregoing summary. The summary is true and complete and provides adequate notice to the public. The full text is on file with the Payette City Clerk and shall promptly be made available to any citizen upon request.

Dated this 17th day of November, 1999.



Bert L. Osborn

ORDINANCE NO. 1177

AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, CREATING A NEW CHAPTER 18 IN TITLE 12 WHICH SHALL BE KNOWN AS THE PAYETTE COMMUNITY FOREST CHAPTER; THE CHAPTER CREATES THE PAYETTE COMMUNITY FORESTRY COMMISSION TO ADMINISTER THE PAYETTE COMMUNITY FOREST; PROHIBITS INJURIOUS PRACTICES; PROVIDES A SYSTEM OF TREE CARE WITHIN THE CITY OF PAYETTE; DEFINES TREE HAZARDS; PRESCRIBES PENALTIES FOR VIOLATIONS; ESTABLISHES SEVERABILITY; PROVIDES THAT THIS ORDINANCE BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW; PROVIDES A PENALTY.

STATEMENT OF VALUE AND PURPOSE.

Whereas, trees constitute a major asset that enhance the quality of life within the Payette community; and

Whereas, community assets of such value deserve attention and protection to assure their viability for future generations; and

Whereas, the City Council deems it to be in the public interest to establish standards for enhancement and preservation of trees within the City,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PAYETTE, IDAHO AS FOLLOWS:

SECTION 1. There is hereby created a new chapter 18 in title 12 which shall be entitled Community Forest and which chapter shall read as follows.

12.18.010 SHORT TITLE. This ordinance shall be known and cited as the City of Payette Community Forest Ordinance.

12.18.020. DEFINITIONS

Alternate Host Plant - One of two kinds of plants on which a pest must develop to complete its life cycle.

ANSI A300 - The American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance Standard Practices. This is a document offering basic performance standards for tree pruning, published in 1995 by the American National Standards Institute (ANSI) or the same as amended from time to time.

Arboriculture - The cultivation of trees, including planting, pruning, removal or any other action that affects the growth and maintenance of trees.

City - The City of Payette, Idaho.

City Administrator - Payette City Clerk and/or a designee of the Mayor and Payette City Council.

Commission - Payette Community Forestry Commission.

Community Forest - The sum of all trees and shrubs within the City of Payette.

Council - Payette City Council.

Critical Root Zone - The area under a tree extending from the base of a tree in all directions to an imaginary line 10 feet outside of the drip line or as determined at a preliminary site inspection by the Superintendent.

Hazard/Hazardous - Any tree, public or private, with visibly defined structural defects likely to cause failure to all or part of the tree, and be a danger to public safety.

Notable Private Tree - A private tree that may be classified as an addition to the Payette Community Forest at the private owner's request.

Person - Any individual, firm, partnership, corporation, association, company or organization of any kind.

Pest - Any insect, disease or other organism harmful to trees.

Private Tree - Any tree (inclusive of roots within the critical root zone), within the community forest that is not a public tree.

Pruning - The practice of cutting tree limbs according to standards contained in ANSI A300.

Public Property - Any property owned by, dedicated to, or deeded to the public or for the public's use. City parks, public rights-of-way and other publicly owned, controlled, leased or managed properties are included in this definition. This definition excludes any federal or state owned properties except where otherwise provided by contract or law.

Public Rights-Of-Way - Improved or unimproved public property owned by, dedicated to, or deeded to the public or for the public's use, for the purpose of providing vehicular, pedestrian and

other public use. Such public property provides circulation and travel to abutting properties and includes, but is not limited to, streets, sidewalks, landscaping, provisions for public utilities, cut and fill slopes, and open public space.

Public Safety - The condition of being safe from bodily harm and/or property damage resulting from tree conditions and/or failures while using public property.

Public Tree - Any tree (inclusive of roots within the critical root zone) whose trunk is located, partly or in whole, on public property.

Shrub - A multiple stemmed, woody plant whose height at maturity is between three feet and fifteen feet.

Superintendent - The Superintendent of public parks and recreation of and for the City of Payette, Idaho. May also be referred to as the Payette City Forester.

Top - "Rounding" or "heading back" or any other term that can be described as severe cutting back of limbs within a tree crown to buds, stubs, or laterals not large enough to assume a terminal role or as defined in ANSI A300.

Tree - Any woody plant, which is 15 feet or more in height at maturity, with a single or multiple trunks, often un-branched for several feet above the ground and having a definite crown.

12.18.030. STATEMENT OF PURPOSE

The purpose of this ordinance shall be to encourage the preservation, expansion, protection and proper maintenance of the Payette Community Forest. It is intended that the Payette Tree Standards Manual developed by the Payette Community Forestry Commission be used as a guide for best management practices in tree planting, care and maintenance.

12.18.040. APPLICABILITY

This ordinance shall apply to any public tree within the City and to those trees on private property that violate the provisions of this ordinance. The Payette Community Forestry Commission can add private trees that are notable and/or special to the inventory of the community forest at the request of the private property owner. Payette City will not incur any liability and/or expense in the maintenance of these trees. Private trees must be maintained according to this ordinance to remain on the inventory of the Payette Community Forest.

12.18.050. CREATION AND ESTABLISHMENT OF A PAYETTE COMMUNITY FORESTRY COMMISSION

A. Commission Composition: A commission of Five (5) members who will receive no salary shall be appointed by the Mayor with the approval of the City Council to serve three-year appointments with staggered terms. A City Council member may be appointed to serve as a non-voting council liaison. The City Administrator shall serve as an advisor to the Commission.

B. Commission Operation: At their first meeting, and at the first meeting of each fiscal year, the commission shall elect a chair, vice chair, and secretary from within its membership, shall hold regular public meetings as required by the chair, and shall cause the secretary to maintain a written record of its deliberations and proceedings.

C. Commission Responsibility

1. The Payette Community Forestry Commission shall be advisory in nature with the purpose of providing advice to the Mayor and City Council as to the preservation, protection and management of the Payette Community Forest, in accordance with the intents and purposes of this ordinance.

2. Organize, conduct and periodically maintain an inventory of trees and plantable areas on the city rights-of-way, city parks, other public and School District No. 371-J properties. Notable private trees may be added to this inventory at the request of the owner.

3. Prepare a management plan designed to maintain and improve the existing community forest and develop long-term goals for the community forest. The Payette Community Forestry Commission shall present and recommend a proposed community forest program to the mayor and city council for approval. All provisions of the management plan pertaining to other public properties and School District No. 371-J shall only be advisory.

4. Draft ordinances and policies for the protection of the community forest to be recommended to the mayor and city council. These policies may also be recommended to other public entities, i.e. Payette County and School District 371-J.

5. The commission will hear appeals from the licensee and/or certification applicants who are aggrieved of some action or omission-taking place pursuant to the license/certification procedures of this ordinance.

6. The commission will hear appeals from applicants and/or licensees who are aggrieved by the granting or

denial of a permit required by this ordinance.

7. The commission will develop The Payette Tree Standards Manual, implement educational materials and programs addressing community forestry issues.

D. Coordination and Communication: The commission will coordinate its activities regarding public trees by communicating with the Superintendent of Parks and Recreation by liason through the Payette City Council.

E. Funding: The commission shall recommend an annual budget to the Mayor and City Council. The commission is authorized to seek outside funding for commission projects as may be approved by the City Council in accordance with budgetary procedures.

12.18.060. POWERS OF THE SUPERINTENDENT/CITY ADMINISTRATOR

The Superintendent of Parks and Recreation and/or City Administrator shall provide support staff for the activities of the Payette Community Forestry Commission as schedules allow. The Superintendent and/or City Administrator are authorized to carry out the tree related responsibilities set forth in this ordinance, including enforcement responsibility. In doing so, the Superintendent and/or City Administrator are authorized to appoint or designate others to carry out his/her responsibilities.

12.18.070. UNLAWFUL PRACTICES PROHIBITED FOR PUBLIC TREES

Public trees constitute an asset that belongs to every community resident. Public trees include all trees, which grow on City owned, or City managed lands within the corporate limits of the City of Payette. Pursuant to this ordinance it is hereby deemed unlawful and shall constitute a violation of this ordinance, punishable by misdemeanor criminal penalty or by appropriate civil remedy to do any of the following to a public tree:

A. "Top" or "head back" a tree by the improper pruning or severe cutting back of limbs within a tree's crown or the removal of the top portion of the trunk of a coniferous tree.

B. To cut down, destroy or materially damage any public tree without the express authorization by the Superintendent of Parks and Recreation.

C. Attach devices or structures (i.e. tree houses or signs) to, on, or within trees on public property.

D. Dispose of or apply substances which are toxic to trees, within the proximity of the critical root zone of trees on public property, whether such disposal or application be on public or private property.

E. Damage public trees through construction operations involving compaction of, excavation of, filling of, or tilling of soils within the critical root zone of trees on public property, whether such activities are on public or private property.

F. Damage a tree on public property by significantly pruning or disturbing the critical root zone whether such disturbance takes place on public or private property.

G. Vandalize or otherwise harm a public tree by defacing or injuring the bark, limbs, roots or trunk by cutting, burning, chopping, applying substances or other means of inducing harm to the shape or vitality of the tree.

H. Remove or break cultural devices such as bracing, cabling, guying, implant capsules, irrigation, stakes or protective devices for trees on public property.

I. Fail to immediately clean debris from public or private tree maintenance and/or removal so that travel will not be impeded on sidewalks or streets. Clean up of all debris from tree maintenance and/or removal shall be completed within 72 hours of completed trimming and/or removal work. The Superintendent and/or the Department of Public Safety may require a more timely clean up.

J. Plant a tree species with unacceptable tree height or rooting system (based on the Manual Of Woody Landscape Plants (Dirr, 1990) published by Stipes Publishing or Street Tree Fact Sheets (1993) published by Pennsylvania State University College of Agricultural Sciences), under a utility line, within a utility easement, or in sidewalk planting strips or other parts of the public right of way. The following trees are expressly prohibited for use as street trees within public street rights of way or where they are within the zone of influence of adjacent public sidewalks (unless in accordance with a landscape design approved by the Superintendent of Parks and Recreation and by the Community Forestry Commission):

- a. *Acer saccharum* - Silver Maple
- b. *Betula papyrifera* - Paperbark Birch
- c. *Betula pendula* - European White Birch
- d. *Fraxinus excelsior* - European Ash
- e. *Ginkgo biloba* - Ginkgo (female tree)
- f. *Gledistia tricanthos* - Thorned Honey locust
- g. *Juglans nigra* - Black Walnut
- h. *Populus* species - Poplars, Aspen, Cottonwood, etc.
- i. *Robinia pseudoacacia* - Black Locust
- j. *Salix* species - Willow species
- k. *Ulmus* species - Elm species
- l. Coniferous species - Firs, pines, or cedar

K. Plant trees under the following conditions or in the following circumstances (unless in accordance with a landscape design approved by the Superintendent of Parks and Recreation):

- a. Within 4' of any building or structure
- b. Within 10' of any fire hydrants or utility poles
- c. Within 2' of an existing curb or sidewalk
- d. Within 10' of a public sanitary sewer or waterline
- e. Within 4' of a meter vault box
- f. Within 20' of a stop or yield sign
- g. Within 4' of a residential driveway
- h. Within 6' of a commercial driveway
- i. Within 10' of an alley way access
- j. Within 20' of a streetlight standard

L. Plant a tree within the "sight vision triangle" of controlled or uncontrolled intersections. The vision triangle is defined as the triangular area formed by intersecting streets and roads protected from vision obstruction by provisions of Idaho Code and the Payette Municipal Code.

M. Not to replace a public tree, which was removed unless otherwise authorized by the Superintendent of Parks and Recreation.

N. Plant a public tree that is smaller than 1 1/2" caliper for Class I trees and 2 1/2" caliper for Class II and Class III trees. Class I trees are 15'-30' in ultimate height and spread. Class II trees are 30'-60' in ultimate height and width. Class III trees are greater than 60' in ultimate height. Ultimate height is to be determined by reference to the Manual of Woody Landscape Plants (Dirr, 1990) a copy of which is maintained in the Payette City Hall.

O. Plant trees within sidewalks without providing tree wells with a minimum 4' x 4' (16 sq. ft.) opening or plant trees in the right of way without providing protection of the tree base, such as edging, mulch or arbor guards.

P. Plant trees on public property which do not meet the minimum acceptable standards as established by the American Association of Nurserymen for stock true to name and type, which are bare-rooted, damaged, diseased or disfigured, which are not hardy for the Payette area or without removing all non-biodegradable wrapping around the root ball including twine, wire, baskets, rope, treated or synthetic burlap.

12.18.080. PAYETTE CITY BUSINESS LICENSE REQUIRED

A. Payette City Business License is required for any person or business performing tree care or pruning for a fee and/or

compensation within the Payette City Limits. The Payette Business License is to be renewed annually.

B. The licensee/applicant at the time of issuance and/or renewal of such business license shall furnish to the City of Payette:

1. Evidence of Public Liability Insurance with limits no less than \$500,000.00 combined single limits for business and vehicular operation.
2. Evidence of Workman's Compensation Insurance.
3. Satisfy Section 12.18.090 of this ordinance.

12.18.090. CERTIFIED ARBORIST REQUIRED

A. When the pruning of trees on public property is undertaken by utilities and/or professional tree care operators (including any person or business performing tree care or pruning for a fee and/or compensation), such work shall be done under the supervision of a person qualified as either a Certified Arborist by the International Society of Arboriculture; certification, by N.A.A. (National Arborist's Association); or, an equivalent certification approved by the Payette Community Forestry Commission. Compliance with these standards shall require that the Certified Arborist visit the site of the work to prescribe the pruning to be done and to actively monitor the pruning operation.

B. This requirement shall not prohibit an adjoining home or business owner from carrying out minor pruning on public trees immediately adjoining his/her property as long as such minor pruning does not alter the essential shape of the tree or does not violate any of the specific prohibitions established by this ordinance.

12.18.100. REQUIRED CARE OF PRIVATE TREES

Each landowner with private trees on his/her land is hereby legally responsible to carry out the following duties concerning said trees:

A. Maintain trees and shrubs on private lands so they will not endanger the public or become hazardous to public right-of-way, public utilities or other public property.

B. Control injurious pests by removing debris or trees harboring insects or disease from their private real property or by using other legally approved methods to eradicate tree-borne insects or disease.

C. The Community Forestry Committee is authorized to take

such steps as (s)he may deem necessary to protect the community forest from actions or inaction regarding trees on private lands. Retention or neglect of a tree on private lands which harbors insects or diseases which endangers the health or vitality of the Payette Community Forest shall be deemed a violation of this ordinance which shall be subject to the remedies and penalties otherwise set forth herein.

12.18.110. RECOMMENDED CARE OF PRIVATE TREES

A. Persons and/or businesses licensed by the City of Payette should do maintenance on private trees.

B. Private property owners may adopt Section 12.18.070 of this ordinance for the maintenance of private trees.

C. Private property owners shall report any violations and/or omissions concerning the maintenance of private trees to the Community Forestry Committee.

12.18.120. REMOVAL OF PUBLIC TREES

A. Trees on public lands shall not be removed by private individuals without the prior written authorization of the Community Forestry Committee. The following criteria will be considered:

1. Whether the tree is sufficiently diseased or is an alternate host of an injurious disease.
2. Whether the tree is harboring injurious insects or pathogens and may cause significant potential danger to the Payette Community Forest.
3. The tree is dead or nearly dead and/or constitutes a public safety hazard.
4. The tree interferes with overhead utility lines and creates an irresolvable public safety hazard.
5. Any other criteria deemed to be in the public interest, such as but not limited to the destruction of sidewalks.

B. Replacement of a public tree shall be required when removal of a public tree occurs without authorization from the Community Forestry Committee unless replacement would be contrary to the public interest. Said obligation of replacement shall be additional to other sanctions required by this ordinance. Replacement may be required at a location different from the place of removal.

12.18.130. VIOLATION AND PENALTIES

A. Any person who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and may be punished by a fine of not more than three hundred dollars (\$300.00) or imprisonment of not more than six (6) months in jail or by both a fine and imprisonment. Each violation, including the removal of each public tree, may be considered a separate violation. Should any person be found guilty in any court of competent jurisdiction or otherwise plead guilty to an alleged violation hereof, the court may order restitution if the Payette Community Forest is diminished or harmed as a consequence of such violation. Restitution recommendations shall not exceed the replacement or appraisal value formulas for said damaged or eliminated tree(s) established by the Guide For Plant Appraisal, written by the Council of Tree and Landscape Appraisers, published by the International Society of Arboriculture. The Community Forestry Committee shall recommend such restitution amount to the prosecutor, utilizing said value formulas.

B. The City may undertake civil legal action in a court of competent jurisdiction to seek to enjoin conduct, which violates the provisions of this ordinance, or to recover the reasonable costs of actions deemed necessary to bring about compliance herewith. Said actions may also seek restitution for damages and costs incurred to remedy the consequences of violation.

12.18.140. LICENSE SUSPENSION, REVOCATION AND OR DENIAL

A. Upon recommendation of the Community Forestry Committee, the City Administrator may suspend or revoke any license when the licensee commits one or more certain acts or omissions. These acts or omissions shall include, but are not limited to:

1. Violation of any provision of the Payette Community Forest Ordinance.
2. Knowingly combining or conspiring with another person by permitting one's license or certification to be used by such other person, unless employed by the licensee.
3. Acting as an agent, partner, and associate or in any other capacity with another person in an attempt to evade the provisions of this ordinance.
4. Denial of a license or certification by non-compliance of Sections 12.18.070 and 12.18.080 of this ordinance.
5. A complaint filed by a private tree owner and verified by the Community Forestry Committee.

B. The licensee/applicant shall be notified in writing that the license has been suspended, revoked or denied. This notice shall be by registered mail or personal service within Seven (7) days after the City Administrator's action. The written notice shall specify the reasons for the action and inform the licensee/applicant of his or her right to appeal the decision of the City Administrator to the City Council.

12.18.150. APPEAL PROCEDURE

A. When a license is suspended, revoked or denied, the appeal procedure shall be as follows:

1. Upon receipt of such notice, the licensee/applicant may request an appeal hearing. The request shall be in writing and submitted to the Administrator within Fourteen (14) days from the date of mailing or personal service of the Administrator's decision.

2. Upon receipt of a request for hearing by the licensee/ applicant, the Administrator shall arrange a time, date and place for the hearing within Thirty (30) days before the City Council and shall notify the licensee/ applicant no less than Fourteen (14) days prior to the date of the hearing. The notice shall state that counsel may represent the licensee/applicant and that the hearing will be a public meeting.

3. The Chair of the Payette Community Forestry Commission shall present the reasons for recommending the action taken. The licensee/applicant may be in attendance and/or may be represented by counsel. The evidence presented by either party may consist of relevant physical evidence and testimony. The City Council shall take the matter under advisement and shall notify the licensee/applicant within Fourteen (14) days from the date of the hearing, of its findings.

Section 2. SEVERABILITY

The provisions of this ordinance are declared to be severable. If any section, sentence, clause, or phrase of the ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in effect; it being the legislative intent that this ordinance shall remain in effect notwithstanding the invalidity of any part.

Section 3. REPEALER

Sections 12.16.040, 12.16.050, 12.16.060, 12.16.070, 12.16.080, 12.16.090, 12.16.100 of the Payette Municipal Code are hereby repealed. In addition, any provisions of the current Payette Municipal Code or any ordinances of the City of Payette, which are in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. EFFECTIVE DATE

This ordinance shall be effective immediately upon passage and publication as provided by law.

Dated this 15th day of November, 1999.

CITY OF PAYETTE

by *Ann Crosby*
Mayor

Attest:

by *John P. Francis*
City Clerk