

Chapter 7.04

PUBLIC TREES

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7.04.010 Purpose. The purpose of this ordinance is to regulate public trees within the Town of Superior, to provide for their planting, protection, maintenance and removal, and establishing a Tree Board and delegating to the Public Works Superintendent the duty of assuring orderly development of public trees. This ordinance does not address tree planting on private land.

7.04.020 Definitions. For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the content, words used in the present tense include future, words in the plural include the singular and words in the singular include plural. The word "shall" is mandatory and not merely directory.

- A) TOWN--The Town of Superior, Mineral County, Montana.
- B) PERSON---Any person, firm, partnership, association, corporation, company of any kind.
- C) STREET---The entire width of every public way or right of way when any

part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

- D) PUBLIC PLACES---This shall include all other grounds owned by the Town of Superior.
- E) PROPERTY LINE---The outer edge of a street or highway right of way.
- F) BOULEYARD---That part of the public right of way not covered by sidewalk or other paving, lying between the property line and the curb line of any street. (In the absence of a curb, the curb line of a street shall be deemed to be the edge of that portion of the public right of way maintained and open to the use of the public for purposes of vehicular travel.)
- F) PUBLIC TREES---All shade and ornamental trees, shrubs, bushes or woody vegetation growing on any street or any public area.
- G) PROPERTY OWNER---The person owning such property and recorded at the Clerk and Recorder's Office of Mineral County, Montana.
- H) TREE TOPPING---The severe cutting back of tree limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

7.04.030 Creation of "Tree Board". There shall be created a Board to be known as "Tree Board" composed of five (5) citizens of the Town of Superior. All five (5) members shall be appointed by the Mayor with approval of the Town Council.

All members of the Tree Board shall serve without pay. The five members appointed by the Mayor shall be appointed as follows: Three (3) for three (3) years and two (2) for two (2) years and serve until their successors are duly appointed and approved by the Town Council.

Successors to those members appointed by the Mayor shall thereafter be appointed for three (3) and two (2) years dependent upon whom they are succeeding. Vacancies for any reason shall be filled for the unexpired term in the same manner as original appointments are made.

The Tree Board shall select a chairman and secretary from among the members of the Board.

7.04.040 Duties of the Tree Board. The duties of the Tree Board shall be to study the problems, determine the needs and provide recommendations to the

Town, in connection with its tree planting and maintenance program.

Other duties shall be to assist the properly constituted officials of the Town, as well as the Council and citizens of the Town in the dissemination of news and information regarding selection, planting, maintenance and removal of trees within the corporate limits, and to make such recommendations from time to time to the Town Council, as to desirable legislation concerning the tree program and activities for the Town. The Tree Board shall provide regular and special meetings at which the subject of trees insofar as it relates to the Town may be discussed by the members of the Board, officers and personnel of the Town, and all others interested in the tree program.

7.04.050 Operation. The Tree Board shall choose its own officers, adopt its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

7.04.060 Species, Cultivars, Varieties Permitted.

A. The chairperson of the Board shall prepare lists of trees acceptable for planting in the public sites of the Town of Superior. Undesirable trees shall not be recommended for general planting and their use, if any, shall be restricted to special locations where, because of certain characteristics of adaptability or landscape effect, they can be used to advantage.

B. Only desirable, long-lived trees of good appearance, beauty, adaptability, and generally free from injurious insects or disease shall be planted in public places. An Arboretum may be established whose purpose shall be the education, demonstration and experimentation of trees and shrubs for the public's benefit. The Tree Board shall review, no less than once every five (5) years the species, cultivars, and varieties included on the approved list.

7.04.070 Tree Location and Spacing.

A. Based on a 40-year cycle, no tree which will attain a trunk diameter greater than twelve (12) to fifteen (15) inches shall be planted in a boulevard less than three (3) to five (5) feet in width. In boulevards less than three (3) feet in width, or where overhead lines or building setback presents a special problem, the selection of the site and species shall be determined by the Public Works Superintendent.

B. Trees shall be planted at least thirty (30) feet from street intersections and at least fifteen (15) feet from driveways and alleys.

C. No tree shall be planted closer than ten (10) feet of a utility pole.

D. Spacing of trees should be determined by the Public Works

Superintendent according to local conditions, the species, cultivars, or varieties used, their mature height, spread, and form. Generally, all large trees shall be planted forty (40) to sixty (60) feet on center; all medium sized trees shall be planted a minimum on thirty-five (35) feet on center; and all small trees shall be planted a minimum of twenty-five (25) feet on center.

E. All planting on unpaved streets without curbs must have the special permission of the Public Works Superintendent who shall determine the tree's location so it will not be injured or destroyed when the street is curbed and paved.

7.04.080 Work on Public Trees. All work on public trees will comply with the "Tree Ordinance" for the Town of Superior.

A. The Public Works Superintendent or a designated representative shall have the authority and jurisdiction to regulate the planting, maintenance, and removal of public trees on streets and other publicly owned property to insure safety or preserve the aesthetics of such public sites. Owners of overhead utility lines have the authority to maintain trees interfering with the normal use of such lines.

B. The Public Works Superintendent or a designated representative shall have the authority, and it will be his/her duty to supervise or inspect all work performed under the terms of this ordinance.

C. he Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. Prior to any of the above stated action, landowners most adjacent to the public way will be consulted on proposed action. All effort will be made to arrive at a mutually agreeable plan of action. This Section does not prohibit the planting of street trees by adjacent property owners providing that the location of said trees is inspected prior to planting and approved by the Public Work Superintendent.

D. The Town Tree Board may recommend, to the Town Council or Public Works Superintendent, the removal of any tree, or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. The landowner will be informed of the proposed action at least 30 days prior to any action being taken unless an immediate safety hazard exists.

7.04.090 Tree Topping. It shall be unlawful as a normal practice for any person, firm, or Town personnel to top any public tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions

where other pruning practices are impractical may be exempted from this ordinance by the Town Council.

7.04.100 Removal of Public Trees. Replacement and Allocation of Costs.

A. No person is to remove a public tree from the boulevard for the purpose of construction, or for any other reason without first obtaining written approval from the Town Council or Public Works Superintendent.

B. Public trees removed under Section 10(A) must be replaced as deemed appropriate by the Public Works Superintendent. The person shall bear the cost of removal and replacement of all public trees removed.

7.04.110 Appeal to Town Council. Any person may make a written appeal from any ruling or order made by the Public Works Superintendent or a designated representative to the Town Council, which shall make a final decision.

7.04.120 Damage to Public Trees Prohibited. Unless specifically authorized by the Public Works Superintendent, it is unlawful for any person to intentionally damage, cut, carve, transplant, or remove any public trees, attach any rope, wire, nails or other contrivance to any public tree; allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fires or permit any fire to burn when such fire or the heat thereof could injure any portion of any public tree.

7.04.130 Protection of Trees.

A. All trees on any street or other publicly owned property near any excavation or construction or any building, structure or street work, shall be guarded with a good substantial fence, frame or box. All building material, dirt, or other debris shall be kept outside the barrier.

B. It is unlawful to excavate any ditches, tunnels or trenches within a radius of ten (10) feet of any public tree without first obtaining permission from the Public Works Superintendent. Maintenance or repair work on existing underground or over head utilities will be permitted.

Excavation for new utilities and structures within a radius of ten (10) feet of any public tree will not be permitted unless approved by the Public Works Superintendent.

7.04.140. Removal of Public Trees. No trees shall be removed from public places unless they are dead, diseased, constitute a hazard to life or property, are a public nuisance, or because a revision of planting plans necessitates.

7.04.150. Public Protection. To protect the public from danger, suitable street and sidewalk barriers, highway cones, or signs must be used when pruning,

removing or spraying trees. Flashing signals or flares must be placed on all barriers or obstructions remaining in the street after dark. All safety devices must conform to the Standards as set forth in "The Manual of Uniform Traffic Control Devices" distributed by the Federal Highway Administration, U. S. Department of Transportation.

7.04.160. Pruning, Corner Clearance. Every owner of any tree overhanging any street or right of way within the Town shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space or eight (8") above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The Town shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign. The Town will notify in writing the owners of such trees.

7.04.170. Dead or Diseased Tree Removal on Private Property. The Town shall have the right to cause the removal of any dead or diseased trees on private property within the Town, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the Town. The Town will notify in writing the owners of such trees. Removal shall be done by said owners at their own expenses within sixty days after the date of service of notice. In the event of failure of owners to comply with such provision the Town shall have the authority to remove such trees and charge the total costs thereof to the taxes levied against the real property of the owner(s). The Town Council has the authority to defer costs to property owners on the basis of need.

7.04.180. Stumps. The stumps of all removed public trees shall be cut as close to the ground level as possible, not be exceed six (6) inches above ground level. If the area where the tree is removed is to be paved, the stump shall be removed to meet general construction standards. Larger trees, if suitable, may be cut to resemble a bench or other design for the public's benefit with concurrence from the Town Council.

7.04.190. Removal of Violating Trees, Procedure. Whenever any tree is planted or set out in violation of the provisions of this Ordinance, the Public Works Supervisor may remove or cause removal of the same. The Public Works Supervisor will first notify the property owner(s), in writing, of the Town's intention to remove the tree(s) and give the property owner(s) a reasonable period of time (not to exceed 45 days) within which to remove the tree(s). If the property owner(s) does/do not comply within the specified time, the Public Works Supervisor will cause the removal of the trees and the total costs thereof will be added to the taxes levied against the real property of the owner(s).

7.04.200. Criminal Penalty. Any person, firm or corporation who violates

any provisions of this Ordinance, or fails to comply with any provisions of this Ordinance, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or imprisonment for a period not to exceed six (6) months or both.

7.04.210 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 any provisions of this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provision will be in full force and effect.

(Ord 186)