

ORDINANCE O-26-09

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING THE BISBEE CITY CODE, CHAPTER 9 – HEALTH AND SANITATION; AND CEMETERY, BY CREATING A NEW ARTICLE 9.9 – TREES, TO PROVIDE FOR THE REGULATION OF TREES WITHIN THE CITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Arizona Revised Statutes (A.R.S.) § 9-240(B)(9) authorizes the City of Bisbee (the “City”) to adopt and maintain regulations governing the planting, protection and maintenance of trees within the City’s public grounds and rights-of-way; and,

WHEREAS, the City recognizes that trees are a valuable part of the community infrastructure and that well-maintained trees enhance the comfort of the community by providing shade, preventing erosion, moderating temperatures, reducing storm water runoff, absorbing air pollution and dust, and reducing energy needs; and,

WHEREAS, the City recognizes that well-maintained trees increase property values, enhance the economic vitality of business areas, beautify the community wherever they are planted, and are a source of joy and spiritual renewal; and,

WHEREAS, the City recognizes that accepted industry standards exist for the maintenance and care of urban trees, and that promoting these standards significantly increases overall tree health and reduces liability and risk, ensuring that the community forest will increase in value and benefits provided; and,

WHEREAS, the City recognizes that this Code amendment is critical to earn recognition as a “Tree City, USA,” as bestowed by the National Arbor Day Foundation, a designation that will increase the opportunity for the City to pursue and successfully obtain grant funding specific to the establishment, promotion, and management of the community forest; and,

WHEREAS, the City desires to amend the City Code to provide for the regulation of trees within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, THAT:

SECTION 1. In General.

The Code of the City of Bisbee is hereby amended by amending Chapter 9 – Health and Sanitation; and Cemetery, by creating a new Article 9.9 – Trees, which shall read as follows:

ARTICLE 9.9 TREES

9.9.1 Purpose

This Article is enacted to enhance the quality of life and the present and future health, safety, and welfare of all residents, to enhance property values, and to ensure proper planting and care of trees on public property, the City Council herein delegates the authority and responsibility for managing public trees, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

9.9.2 Definitions

- A. “City” - The City of Bisbee, Cochise County, Arizona and/or the City Manager and the Public Works Department.
- B. “City Arborist” - An (existing) employee of the City designated by the Director of the Public Works Department.
- C. “Contractor”- a person or company that undertakes a contract to provide landscape maintenance, arboricultural services, or construction services for the City.
- D. “Damage” – any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part of the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.
- E. “Nuisance” – any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety, and welfare.
- F. “Parkway” – the area along a public street between the curb and the sidewalk; or if there is no curb or sidewalk, the unpaved portion of the area between the street right-of-way line and the paved portion of the street or alley.
- G. “Public property” – all grounds and rights-of-way (ROWs) owned or maintained by the City.
- H. “Public tree” – any tree or woody vegetation on city-owned or city-maintained property or rights-of-way.
- I. “Top or Topping” – the non-standard practice of cutting back limbs to stubs within a tree’s crown to such a degree as to remove the normal canopy and disfigure the tree.

9.9.3 Administration

A. The Public Works Director and/or their designee, hereinafter referred to as the "Director", shall have full authority and responsibility to plant, prune, maintain and remove trees and woody plants growing in or upon all municipal streets, rights-of-way, city parks, and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, deemed a hazard or public nuisance, or any tree that is affected by fungus, insect, or other pest disease.

B. All officers and investigators of the City Police Department, the City building official, code enforcement officers, building inspectors, code enforcement specialists, and the City Arborist are authorized to issue notices to comply and citations for violations of this Code within City jurisdiction.

9.9.4 Duties and Responsibilities

A. It shall be the responsibility of the Public Works Department to study, investigate, counsel and develop and/or update every ten (10) years, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas.

B. All City departments shall coordinate as necessary with the Director and will provide services as required to ensure compliance with this Article as it relates to streets, alleys, rights-of-way, drainage, easements, and other public properties not under direct jurisdiction of the Director.

9.9.5 Tree Planting and Care Standards

A. The City 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 ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

B. The City may remove or cause or order to be removed, 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, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest.

C. Only Ornamental trees (20 feet or less in height at maturity) may be planted under or within 15 lateral feet of any overhead utility wire. The maintenance of municipal trees for utility clearance shall conform to all applicable utility industry standards.

D. No tree may be planted within the visibility triangle of a street intersection or within 10 feet of a fire hydrant.

E. With the exception of required maintenance, no person shall damage, cut, carve, attach any rope, wire, nails, advertising posters, or other contrivance to any municipal tree; allow any gaseous, liquid, chemical, or solid substance that is harmful to municipal trees to come in contact with them; or set fire or permit fire to burn when such fire or the heat will injure any portion of any municipal tree.

F. It shall be unlawful for any person, firm, or corporation to “top” any municipal tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical, may be exempted from this provision at the determination of the Director.

G. Any person, firm, corporation, or city department performing construction near any public tree(s) shall consult with the Director. It shall employ appropriate measures to protect the tree(s), according to procedures established by the Director.

9.9.6 Certain trees declared a nuisance.

A. Any tree, or limb thereof, on private property determined by the Director to have contracted a lethal, communicable disease or insect; to be dead or dying; to obstruct the view of traffic signs or the free passage of pedestrians or vehicles; or that threatens public health, safety, and welfare is declared a nuisance and the City may require its treatment or removal.

B. Private property owners have the duty, at their own expense, to remove or treat nuisance trees on their property. The City may remove such trees at the owner's expense if the owner does not comply with treatment and/or removal as specified by the Director within the written notification period.

C. No property owner shall allow a tree, or other plant growing on his or her property to obstruct or interfere with pedestrians or the view of drivers, thereby creating a hazard. If an obstruction persists, the Director shall notify the property owner to prune or remove the tree or plant. If the owner fails to comply with the notice, the City may undertake the necessary work and charge the cost to the property owner.

9.9.7 Municipal Tree Removal & Replacement

A. Municipal trees shall not be removed without a permit issued by the City.

B. An abutting property owner who desires to remove a municipal tree shall apply to the City a permit on forms provided for such purpose by the City. The City may grant or deny the permit in accordance with the following procedures and requirements.

(1) Replacement. If a permit to allow tree removal is issued, it shall require a tree or trees be planted on the site and within the right-of-way to replace the

removed tree or the permit shall impose an in-lieu fee unless it makes written findings detailing the basis for waiving or modifying this requirement.

(a) Replacement tree(s) shall be chosen from the City's recommended tree list.

(b) If the tree to be removed has a diameter at breast height ("DBH") of less than 6 inches or it is a non-desirable species as determined by the City, it shall be replaced with one (1) 15-gallon or larger tree.

(c) If the tree to be removed has a diameter at breast height ("DBH") of 6 inches to 12 inches, it shall be replaced with two (2) 15-gallon or larger trees.

(d) If the tree to be removed has a diameter at breast height ("DBH") greater than 12 inches, it shall be replaced with (3) 15-gallon or larger trees.

(2) In-Lieu Fees. If a permit is granted for tree removal and an in-lieu fee required, the in-lieu fee shall be determined by the City based on the estimated replacement value of the tree to be removed. In-lieu fees may be required if the lot in question is inadequate in size to accommodate the required replacement tree.

(3) Municipal Tree Fund. Monies collected from in-lieu fees and penalties shall be credited to a Municipal Tree Fund to be used for care and maintenance of municipal trees and to offset the loss of municipal trees due to removal, destruction, or death. Persons may donate money for the purpose of tree planting and maintenance and said donations shall be credited to the Municipal Tree Fund.

9.9.8 Penalty

A. Unless otherwise specifically provided for in this Article, any person or corporation who shall violate any provision of this Article shall be deemed guilty of a class 1 misdemeanor, and shall be punished as provided in Article 1.8 of this Code.

B. Any and all amounts paid or collected pursuant to this subsection, with the exception of enforcement and administrative costs, shall be deposited into a Municipal Tree Fund.

SECTION 2. Providing For Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the City Code adopted herein, are hereby repealed.

SECTION 3. Providing For Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the City Code adopted herein, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Penalties.

A violation of the Ordinance is subject to the following fines and penalties:

A. Unless otherwise specifically provided for in this Article, any person or corporation who shall violate any provision of this Article shall be deemed guilty of a class 1 misdemeanor, and shall be punished as provided in Article 1.8 of the Bisbee City Code.

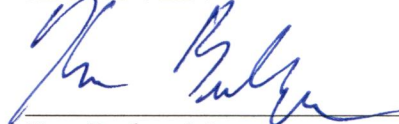
B. Any and all amounts paid or collected pursuant to this subsection, with the exception of enforcement and administrative costs, shall be deposited into a Municipal Tree Fund.

SECTION 5. Effective Date.

This Ordinance shall be effective from 30 days after the date written below.

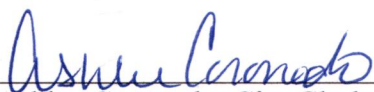
PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this 5th day of May, 2026.

APPROVED:



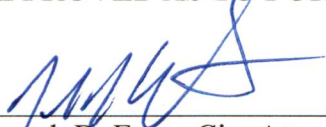
Ken Budge, Mayor

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



Joseph D. Estes, City Attorney
Pierce Coleman, PLLC