

Chapter 8

COMMUNITY FORESTRY

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Sec. 8-1. Short Title.

This ordinance shall be known and cited as the City Community Forestry Ordinance.

Sec. 8-2. Statement of Intent and Purpose.

This ordinance is intended to encourage the preservation, expansion, protection and proper maintenance of the community forest of the City. Enhancing the beauty of the City, stimulating the planting and growing of desirable trees and educating the public about the community forest are the primary goals of this ordinance.

Sec. 8-3. 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 context, words used in the present tense include the future tense, and words used in the future tense include the present tense, and words in the plural include the singular

and words in the singular include the plural. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined in this section shall have their common and ordinary meaning:

- A. *Administrator* means a City staff member appointed by the Mayor to be responsible for coordinating requests to and recommendations from the Moscow Tree Commission. The Administrator oversees the Community Forest and acts to effectuate the Community Forestry Ordinance.
- B. *Applicant* means a person who is applying for a license, certification or permit as required by this chapter.
- C. *Community Forest* means the sum of all trees and shrubs within the City.
- D. *Controller* means every person (owner, agent, tenant, occupant or lessee) who exercises care, custody and control of private real property that abuts a right-of-way upon which a public tree or shrub is located.
- E. *Diseased tree* means a tree or part thereof which has become blighted, defaced or has become significantly diseased.
- F. *Injurious Pest or Disease* refers to organisms capable of seriously damaging the form or structural integrity of a tree.
- G. *Licensee* means a person with a valid contractor's license and/or tree service certification as required by this Chapter.
- H. *Moscow Tree Commission* means an advisory committee appointed by the Mayor and approved by the Council to assist the City in the management of its community forest.
- I. *Park trees* means all public trees in public parks and in all areas owned by the City or to which the public has free access, but excluding those trees in the public right-of-way.
- J. *Planted tree* means a tree having a minimum diameter of one inch (1") at one and one-half feet (1 ½') above

- ground level.
- K. *Private tree or shrub* means a tree or shrub that is not a public tree or shrub.
- L. *Pruning* means the removal of plant parts, dead or alive, in a careful and systematic manner so as not to damage other parts of the plant or the tree as a whole.
- M. *Public right-of-way* means 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, alleys, sidewalks, tree lawn, provisions for public utilities, cut and fill slopes, and open public space.
- N. *Public tree or shrub* means a tree or shrub that is situated in such a manner that fifty-one percent (51%) or more of the tree trunk or shrub base at ground level is on public property or public right-of-way, including the tree lawn.
- O. *Shrub* means a multiple stemmed, woody plant whose height at maturity is between three feet (3') and fifteen feet (15').
- P. *Street* means that portion of the public right-of-way which is improved, maintained and intended for use by vehicles to provide traffic circulation, primary access to abutting properties and parking. This definition includes all of the area typically located between curbs.
- Q. *Street trees* means all public trees located within the public right-of-way.
- R. *Topping* means the severe cutting back of limbs within a tree's crown to such a degree that only stubs remain or the removal of the top part (trunk and limbs) of a coniferous tree, thereby removing a significant portion of the normal crown.
- S. *Tree* means a woody perennial plant usually having one main stem or trunk

and many branches. It usually exceeds fifteen feet (15') in height at maturity, however, its failure to achieve such height at maturity shall not preclude its inclusion as a tree.

- T. *Tree lawn* means that portion of the public right-of-way lying between the street and private property boundary lines which is generally unimproved and planted with grass or other vegetation.
- U. *Tree service* means services provided for trees, including, but not limited to: planting, removal, topping, pruning or engaging in technical arboricultural practices.
- V. *Tree standards* means the set of specifications concerning the planting, care and maintenance of trees as found in the Arboricultural Specifications And Standards Guide For The City Of Moscow.
- W. The terms *Ordinance* and *Chapter* shall have the same meaning as used herein.

Sec. 8-4. Applicability.

This Chapter shall apply to any public tree, all trees and shrubs located in the public right-of-way, in public parks, in a tree lawn, and on other City property as well as to those trees and shrubs located on public and private property that have been declared to be a public nuisance pursuant to Section 10 of this Chapter. Further, this Chapter shall apply to all for fee tree services performed on any tree within the City, whether public or private.

(Res. 99-01, 2/16/99)

Sec. 8-5. Duties and Powers of the Administrator.

- A. **Task Assignment.** The duties of the Administrator shall be assigned to a staff member by the Mayor.
- B. **Duties and Responsibilities.** The Administrator, subject to the provisions of this Chapter, is hereby authorized to:
1. Carry out the municipal public

tree responsibilities outlined in Section 9 of this Chapter;

2. Oversee and require compliance by controllers in the execution of their responsibilities as outlined specifically in Section 9(B) of this ordinance and noted in detail in other sections of this Chapter;

3. Develop a licensing and certification program for the controlled supervision of commercial tree care management in the City. This program shall include the development of a controlled practical testing program for potential licensees and/or certificate holders, on-site supervision of tree care services, establishment of a license/certification suspension/revocation process and the appeal process thereof;

4. Develop a permitting program for non-fee and fee tree work to include procedures for the approval and control of topping practices, planting and removal of public shrubs and trees;

5. Develop and oversee the implementation of the Dutch Elm Disease (DED) Management Program for the City.

C. Authority of the Administrator

1. The Administrator is authorized to declare trees in the City public nuisances, as defined in this Chapter.

2. The Administrator is authorized to approve, deny, suspend or revoke tree work licenses, certifications or permits issued by the City, in accordance with this Chapter.

3. The Administrator is authorized to inspect and approve any public tree/shrub work done in the City.

Sec. 8-6. Damaging, Destroying or Topping of Public Trees or Shrubs.

Unlawful Practices Prohibited. It is unlawful for any person to:

1. damage, mutilate or destroy any

public tree or shrub of the City;

2. store or place, or cause to be stored or placed: oil, gasoline, chemicals and other materials which are harmful to trees and shrubs, around or near public trees and shrubs;

3. attach a potentially harmful device or structure (i.e., tree houses) to or on public trees unless otherwise authorized by the Administrator;

4. spill or dump substances, whether liquid or solid, which are toxic to trees and shrubs, on the soil between the base of the public tree and the extent of its root system;

5. damage public trees through construction operations in violation of the Arboricultural Standards and Specifications Guide for tree protection measures;

6. make excavations in the soil near roots of public trees unless appropriate measures are taken to prevent exposed soil from drying out;

7. damage roots of a public tree by compacting or filling on or around the base of the tree;

8. to damage a public tree by the practice of "topping", except under special circumstances, provided, that 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 Section at the determination of the Administrator, based upon good cause therefore.

Sec. 8-7. Licensing/Certification Procedures.

A. Licenses Required. It is unlawful for any person to engage in the business of planting, pruning, or removal of a public tree or shrub for a fee without being licensed as required by this Chapter. It is unlawful for a "for-fee" contractor to provide tree service in the City without being licensed as required by this Chapter.

- B. Types of Licenses.
1. Tree Service Contractor's License. Any person engaged in the business of tree service for a fee shall obtain a license from the Administrator. Such license shall require that the contractor or at least one employee of the contractor shall be certified as required by Section 7(B)(2), and such certified individual shall be on site whenever and wherever technical arboricultural practices are being performed. It shall also be required that the contractor's insurance as defined in Sections 7(F) and 8(G) of this Chapter shall extend to all of its employees while conducting tree service work within the City.
 2. Tree Service Certification. A tree service certification is required of any individual who personally performs technical arboricultural services or procedures allowed under this Chapter for a fee, unless that person is working under the direct supervision of a certified tree service worker. The successful procurement of a tree service certification shall not permit a person to engage in tree services for a fee unless that person has obtained a valid tree service contractor's license as required by Section 7(B)(1) of this Chapter.
- C. License Application Procedures.
1. Application for a tree service contractor's license shall be submitted to the Administrator on a form supplied by the Administrator and shall be accompanied by proof of insurance as required in Sections 7(F) and 8(G) of this Chapter. The Administrator shall approve or deny the application within seven (7) days, based upon the following criteria:
 - a. the applicant has not been convicted of a violation of Section 7 of this Chapter within the preceding two (2) years; and,
 - b. the applicant shows proof that he or she has obtained a valid tree service certification, or that the applicant is currently employing a holder of a valid tree service certification.
 2. Tree Service Certification. Application for a tree service certification shall be submitted on a form supplied by the Administrator. The Administrator shall approve or deny the application within seven (7) days, based upon the following criteria:
 - a. the applicant must complete a written examination to be administered by the Administrator and shall, at the discretion of the Administrator, submit to an examination of his or her practical skills;
 - b. the applicant has not been convicted of a violation of Section 7 of this Chapter within the preceding two (2) years.
 3. If the application is denied, the applicant may appeal the denial as provided by Section 7(K) of this ordinance, or may re-apply when the requirements are met.
 4. The Administrator shall forward the approved tree service contractor's license and/or tree service certification application to the Clerk, who shall issue the license and/or certification to the applicant upon payment of any required fee.
- D. License Terms and Renewal. The tree service contractor's license and tree service certification shall be valid for the remainder of the calendar year in which it was issued and will expire on December 31st of each year.
1. Tree service contractor's licenses may be renewed by filing a renewal application with the Administrator, including the annual license fee and proof of insurance as required herein.
 2. Tree service certification may be renewed by filing a renewal

- application with the Administrator, provided, that if the holder of a tree service certification fails to renew his or her certification within twelve (12) consecutive months of its expiration, then the applicant shall not be eligible for renewal and shall be required to file a new application for certification as required by Section 7(C)(2) of this Chapter.
- E. License Fee. Fees shall be established from time to time by resolution of the Council taking into consideration recommendations of the Moscow Tree Commission and the Administrator.
- F. License Insurance Coverage. Applications for a tree service contractor's license shall be accompanied by proof of insurance acceptable to the Administrator showing the applicant to have in effect during the term of the license a policy of liability and property damage insurance covering the work of the applicant and the applicant's employees, and listing the City as an additional insured in a sum not less than that provided by Idaho Code Section 6-926, *et seq.*
- G. Workers Compensation Insurance. Applications for a new tree service contractor's license or renewal must be accompanied by proof that the licensee has current workers compensation insurance coverage as required by Idaho Code, if applicable.
- H. Licensee Responsibility. All licensees shall be responsible for the work performed under the provisions of this Chapter and shall comply with the professional standards as noted in Section 9(D) of this Chapter. All licensees shall:
1. utilize safety measures and equipment to protect workers and the public as prescribed by law;
 2. obtain required permits for tree removal;
 3. comply with all applicable ordinances of the City, and all applicable County, State and Federal laws;
4. comply with the City's Arboricultural Specifications and Standards Guide for planting, pruning and removal.
- I. License/Certification Transfer or Refund. Licenses and certifications granted pursuant to this Chapter shall not be transferable, nor shall any part of any license or certification fee be refundable.
- J. License Suspension/Revocation. The Administrator may suspend or revoke any license or certification 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 this Chapter;
 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, associate or in any other capacity with another person in an attempt to evade the provisions of this Chapter.
- K. Appeal Procedures. When a license or certification is suspended, revoked, or denied, the appeal procedure shall be as follows:
1. The licensee/applicant shall be notified in writing that the license has been suspended, revoked or denied, and said notice shall be by registered mail or personal service within seven (7) days after the 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 Administrator to the Moscow Tree Commission.
 2. 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.

3. If an appeal hearing is requested by the licensee/applicant, the Administrator shall arrange a time, date and place for the hearing within thirty (30) days before the Moscow Tree Commission and shall so notify the licensee/applicant no more than fourteen (14) days prior to the date of the hearing.

4. When the hearing is conducted, the licensee/ applicant may be in attendance, and/or he or she may be represented. The hearing will be open to the public. The evidence presented by either party may consist of relevant physical evidence and testimony. Upon completion of the hearing, the Tree Commission shall take under advisement all evidence presented and shall notify the licensee/applicant in writing within fourteen (14) days from the hearing, of its findings and ruling, which shall either affirm, overturn or modify the action of the Administrator.

5. If the licensee/applicant is aggrieved by the decision of the Moscow Tree Commission, the applicant/licensee may appeal that decision to the Council by filing an appeal, in writing to the Administrator. An appeal of a decision of the Moscow Tree Commission must be taken within fourteen (14) days from the date of the adverse decision. The hearing before the Council shall take place within thirty (30) days from the filing of the appeal. The procedures to be followed when conducting the appeal hearing shall be in conformance with Section 7(K)(4). The Council shall issue its decision within thirty (30) days from the date of the appeal hearing.

Sec. 8-8. Permit Procedures for Individuals and For-Fee Licensees.

- A. Public tree work permits required.
1. There will be no charge for a planting or removal permit.
 2. It is unlawful for any person, including a licensee, to plant or remove a public tree without a valid permit.
 3. In addition to a tree work permit, a temporary street closure approval is required whenever such tree work will impair the free and full use of any sidewalk, street or alley as determined by the City Engineer.
 4. Appeals from granting or denial of permit. Any controller may appeal the decision of the Administrator in the granting or denial of a permit required under this Chapter as follows:
 - a. An appeal must be made in writing delivered to the Administrator within fourteen (14) days of the granting or denial of the permit;
 - b. An appeal hearing shall be granted before the Moscow Tree Commission within thirty (30) days from the receipt of the notice of appeal, at which time the Commission shall conduct the hearing in conformance with Section 7(K)(4) of this Chapter.
 - c. An aggrieved party may appeal the decision of the Moscow Tree Commission to the Council by filing a written notice of appeal with the Administrator within fourteen (14) days of the decision of the Moscow Tree Commission. A hearing shall be had before the Council within thirty (30) days from the filing of the appeal, and the procedures followed in conducting such hearing shall be in conformance with Section 7(K)(4) of this ordinance.
- B. Permit Application Procedures: Planting or removal.
1. Application for a permit to do public tree work consisting of either

planting or removal shall be made on a form supplied by the Administrator and shall be submitted to the Administrator for approval.

2. Tree Topping: Special Permit Required (see Section 6(A)(8)).

Sec. 8-9. Care of Trees Within the City.

A. City Responsibilities. The City shall be responsible for the following:

- 1. care and maintenance of park trees and shrubs;
- 2. removal of dead, diseased, or hazardous park trees and shrubs;
- 3. controlling insects and diseases of park trees and shrubs;
- 4. care and maintenance of all public trees in the downtown area;
- 5. managing insect and disease management programs for all trees in the City (e.g., Dutch Elm Disease).

B. Private/Controller Responsibilities. Every controller shall be responsible for the following:

- 1. meeting all the requirements and obtaining all the permits necessary for work done on adjacent public trees as described in this Chapter;
- 2. care and maintenance of public trees and shrubs located on the right-of-way adjacent to the controller's private real property, including:
 - a. removal and replacement of public trees or removal of those portions of public trees declared to be a public nuisance when they are located on the right-of-way adjacent to the controller's private real property;
 - b. pruning of public trees and shrubs located on the right-of-way adjacent to the controller's private real property. Branches of trees that overhang sidewalks must be pruned to provide eight feet (8') of vertical clearance and branches that overhang the street must be pruned to provide twelve feet (12') of vertical clearance;
 - c. control of injurious pests for public trees and shrubs located on the

right-of-way adjacent to the controller's private real property ;

d. repairing damage done to the sidewalk and surrounding areas by the roots of private trees or shrubs, or public trees and shrubs located on or adjacent to the controller's private real property;

e. removal of private trees and shrubs located on the controller's private real property that have been declared to be a public nuisance;

3. control of significant pests for private trees and shrubs on the controller's private real property.

(Res. 99-01, 2/16/99)

C. Clearing. The controller is responsible for removing all tree work derived debris from the street and sidewalk, by sunset of the day on which the work is done unless street closure is authorized.

D. Standards. Care and maintenance of public trees and shrubs shall be governed in part by the City's Arboricultural Specifications and Standards Guide.

E. Removal of Public Trees and Shrubs.
 1. Policy. It is the policy of the City that public trees and shrubs shall not be removed without written authorization of the Administrator, who may seek concurrence from the Moscow Tree Commission. Permits will be granted only under the criteria specified below:

- a. the tree or shrub is sufficiently diseased or is an alternate host of a significant disease;
- b. the tree or shrub is harboring injurious insects or pathogens and may cause significant potential danger to the City community forest;
- c. the tree or shrub is dead or near dead and/or constitutes a public safety hazard;
- d. the tree interferes with overhead utility lines and creates an unresolvable public safety hazard;

e. the tree or shrub causes sight obstruction that cannot be resolved in a more moderate manner;

f. any other criteria deemed appropriate by the Administrator.

2. Removal Permit Required. It is unlawful for anyone to remove a public tree or shrub unless a permit therefor has been issued by the Administrator. Applications for such tree removal permit shall be filed with the Administrator. If removal is justified, the Administrator shall issue a removal permit within ten (10) working days. Work may be inspected by the Administrator or his or her agent. All costs of the removal shall be at the expense of the applicant.

3. Replacing Trees or Shrubs - Required. Whenever a public tree or shrub is removed, as a condition of issuance of a permit for removal, the applicant shall replace the tree or shrub removed, unless such requirement is waived by the Administrator for good cause shown.

4. Replacing Trees and Shrubs - Selection Criteria. Selection and location of required replacement trees and shrubs shall be based on the City's Arboricultural Standards and Specifications Guide.

Sec. 8-10. Public Nuisances.

A. The following are hereby declared public nuisances under this Chapter:

1. any dead tree or shrub located on city-owned property, including the public right-of-way;
2. any tree or shrub which harbors pathogens or injurious insects which reasonably may be expected to injure or harm other trees or shrubs;
3. any tree or shrub which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street light or traffic control device;
4. any tree or shrub or portion thereof which obstructs the view in the "visibility triangle" as defined by

Idaho Code;

5. any tree or shrub which, by reason of location or condition, constitutes an imminent danger to the health, safety, or welfare of the general public.

B. Right to Inspect Suspected Nuisance Trees and Shrubs. The officers, agents, servants and employees of the City shall have the authority to enter onto private property whereon there is reasonable cause to believe that there is located a tree or shrub that is suspected to be a public nuisance as defined herein.

C. Abatement. The following are the prescribed means of abating public nuisances under this Chapter:

1. Any public nuisance located on city-owned or private property shall be pruned, removed or otherwise treated, in whatever fashion required by the Administrator in accordance with the requirements of this Chapter.

2. The Administrator shall cause a written notice to be personally served or sent by registered mail to the person listed by the Latah County Assessor's Office as the record owner of the particular property.

3. In the event the nuisance is not abated by the date specified in the notice, the Administrator is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the owner of the property upon which the nuisance is located shall be subject to prosecution under this Chapter, or this Code or the Idaho Code for maintaining a public nuisance. Nothing in this provision shall be construed to exempt any person from the requirement of obtaining permits under Section 8 of this Chapter. The Administrator is empowered to cause the immediate abatement of any public nuisance provided that the nuisance is

determined by the Administrator to be an immediate threat to any person or property. The Administrator is hereby empowered to seek from a court of competent jurisdiction, an order directing immediate abatement of any public nuisance.

(Ord. 99-25, 7/19/99)

Sec. 8-11. Violations; Penalties.

- A. Damage to, or destruction of a public tree or shrub by any person except as provided lawfully herein may result in the assessment of fees against such person set at a rate not greater than the International Society of Arboriculture's replacement or appraisal value formulas for said damaged tree or shrub. Such fees shall be established by the Administrator utilizing said value formulas.
- B. Intentional interference with the Administrator in the performance of his or her duties so as to prevent, delay or otherwise interfere with the performance of his or her supervisory responsibilities outlined above is unlawful and a misdemeanor punishable pursuant to this Code and the Idaho Code.
- C. Failure to perform tree services in compliance with accepted and established arboricultural practices as outlined in the Arboricultural Standards and Specifications Guide of the City shall be a misdemeanor. Any person(s) convicted of a violation of this Chapter shall be fined pursuant to this Code and the Idaho Code.
- D. Failure to comply with the permitting and licensing provisions of this ordinance shall be a misdemeanor. Any person(s) convicted of a violation of this Chapter shall be fined pursuant to this Code and the Idaho Code.

(Ord. 917, 9/2/52; 1285, 8/18/75; 90-14, 7/16/90; 91-10, 3/25/91; 93-07, 3/22/93; 93-12, 4/19/93; 2006-02, 02/06/06)