

City of Cheney
609 Second Street
Cheney, Washington 99004

**CITY OF CHENEY, WASHINGTON
ORDINANCE V-27**

**AN ORDINANCE OF THE CITY OF CHENEY AMENDING
CHAPTER 12.60 OF THE CHENEY MUNICIPAL CODE
AND PROVIDING FOR OTHER MATTERS PROPERLY
RELATING THERETO**

WHEREAS, the City of Cheney is vested with the authority to regulate public trees located within the municipal boundaries of the City;

WHEREAS, the City desires to provide for a regulatory approach to the care and maintenance of trees within the City; and

WHEREAS, the City Council finds that it is in the best interest of the City to amend the Cheney Municipal Code to provide for tree care and maintenance by the City and its citizens;

NOW THEREFORE, The City Council of the City of Cheney, Washington, do ordain as follows:

Section 1. **Repealed.** Chapter 12.60 entitled as "Trimming Trees and Shrubs" is hereby repealed in its entirety.

Section 2. **New Chapter.** There is hereby added to the City of Cheney Municipal Code a new Chapter 12.60 entitled as "Community Forestry".

Section 3. **New Section.** There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.010, to read as follows:

12.60.010 Title.

This chapter shall be known as the "Community Forestry Ordinance" of the City.

Section 4. **New Section.** There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.020, to read as follows:

12.60.020 Purpose.

It is the intent of this chapter to:

1. Encourage cooperation between the City and its residents in caring for street trees.
2. Educate the public regarding responsible tree care.
3. Formally establish administrative responsibilities and City policy for public tree care.
4. Ensure that public trees are responsibly cared for and protected.
5. Establish a process for nomination and designation of heritage trees.

Section 5. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.030, to read as follows:

12.60.030 Jurisdiction.

This chapter regulates public trees within the municipal boundaries of the City. Private trees within the City are only regulated to the extent as outlined in sections 12.60.060, 12.60.070(3), and 12.60.100.

Section 6. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.040, to read as follows:

12.60.040 Definitions.

Whenever used in this chapter, the following words shall be defined as indicated:

“Adjacent property owner” means the owner of the property adjacent to a street tree and who shares the responsibility of caring for said tree.

“City” means the City of Cheney, Washington and its departments. The responsible departments are outlined in section 12.60.50.

“Emergency maintenance” means relief of an imminent and severe threat to public safety or property, including power lines, caused by the condition of a public tree.

“Hazard tree” means a tree that poses a severe threat to public safety or property, but the threat is not imminent enough to constitute an emergency.

“Major pruning” means trimming or cutting of limbs two inches or greater in diameter, root pruning, or trimming one third or more of a trees canopy.

“Minor pruning” means trimming or cutting of limbs of less than two inches in diameter.

“Park tree” means any tree located in a public park owned by the City.

“Private tree” means any tree located on private property that is not within a City right-of-way.

“Right-of-way” means all public property whether improved or unimproved that is dedicated for street and sidewalk use that includes but is not limited to motorized and non-motorized transportation, drainage, and utilities.

“Street tree” means a tree, shrub, bush, and all other woody vegetation on land lying within the public right-of-way.

"Topping" means the severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

“Traffic control device” means any sign or traffic light that is intended to inform drivers or regulate their behavior.

Section 7. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.050, to read as follows:

12.60.50 Administrative Responsibilities

- A. Public tree care in the City falls under the following three departments: The Public Works Department is responsible for matters relating to street trees and hazard trees; the Light Department is responsible for matters relating to any tree conflicting with power lines; and the Parks and Recreation Department is responsible for matters relating to park trees.
- B. The City shall have the ability to contract work to tree care companies.

Section 8. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.060, to read as follows:

12.60.060 Hazard Tree Removal on Private Property.

- A. The Public Works Department shall have the right to cause the removal of any hazard tree on private property, provided:
 - 1. The tree, or parts thereof, in question pose a significant risk to public safety or the well-being of other public trees, as determined by an International Society of Arboriculture certified arborist, and;
 - 2. The Public Works Department first notifies the occupants and owner of the property, in writing, of the situation and the need for remedy.
- B. The owner of the tree shall be held responsible and have thirty (30) days after the delivery date of the notice to remedy the hazard tree. Failure to remove the tree within the timeframe specified constitutes a violation of this chapter as outlined in 12.60.180, and the City may remove the tree and charge the owner for the cost of removal. In those instances where the City removes the tree and the tree owner is charged for the cost of removal, the City will waive the civil penalty under section 12.60.080. Payment for tree removal will be due within sixty (60) days of the cost of removal being provided to the owner in writing.

Section 9. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.070, to read as follows:

12.60.070 Regulated Maintenance Practices.

The following applies to park and street trees:

1. Tree Topping: It is unlawful for any person or company to top any park or street tree except when no other reasonable alternative exists as emergency maintenance.
2. Debris and stump removal: Upon the removal or pruning of any park or street tree, the debris of said tree shall be removed immediately. Furthermore, the stump of said tree shall be removed to a depth of at least six (6) inches below the existing grade within ten (10) days of removal of the tree.

The following applies to all trees, including private trees, within the City:

3. Disease and insect removal: If a tree being removed or pruned is affected with any contagious disease or insect infestation, all portions of the affected tree shall be removed in order to prevent spreading the affliction to other trees.

Section 10. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.080, to read as follows:

12.60.080 Harming Public Trees Forbidden.

It shall be unlawful for any person to damage any park or street tree by means including but not limited to: impede the passage of air and water to the roots, create a fire near the tree, place any toxic material upon the ground near the tree, and top the tree. Nothing in this section is meant to prohibit routine or emergency maintenance.

Section 11. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.090, to read as follows:

12.60.090 Park Trees – Responsibilities.

The City and its contractors shall be responsible for all aspects of park tree care.

Section 12. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.100, to read as follows:

12.60.100 Private Trees – Responsibilities

- A. The following shall be the responsibility of the property owner in regard to the care of private trees:
 1. Complying with the standards set forth in CMC 12.60.120.

Section 13. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.110, to read as follows:

12.60.110 Street Trees - Responsibilities

- A. The following shall be the responsibility of the City regarding the care of street trees:
 1. Major pruning.

2. Pruning to remedy power line conflicts.
 3. Caring for and mitigating root damage to streets, sidewalks, and underground public utilities.
 4. Treatment, when possible, of disease and invasive insect infestation.
 5. Tree removal when any conflict cannot be otherwise remedied.
 6. Emergency maintenance.
 7. Performing maintenance to meet the standards as outlined in CMC 12.60.120.
- B. The following shall be the responsibility of the adjacent property owner regarding the care of street trees, unless other arrangements are made with the Public Works Department:
1. Routine maintenance including: minor pruning; watering; fertilizing; and leaf, pinecone, and fallen limb removal.
 2. Notifying the City when: major pruning is required; emergency maintenance is needed; conflicts exist between roots and sidewalks / streets; limbs interfere with wires or power lines; limbs pose a risk to public safety; and when there may be disease or insect problems.
- C. The City has the right, but not the obligation to perform routine maintenance on street trees as described in subsection B.1. This does not dismiss the responsibilities of the adjacent property owner, nor does it impose any liability upon the City.
- D. In non-emergency situations, the City and its contractors reserve the right to schedule maintenance at their own discretion, but within a reasonable amount of time. Deciding factors include how imminent the need for maintenance is, as well as time and funding constraints.

Section 14. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.120, to read as follows:

12.60.120 Tree Standards

The following standards apply to all trees, including public and private, within the City:

1. Clear view triangle: Trees must adhere to the clear view triangle requirements as outlined in CMC 21.46 Clear View Triangle.
2. Traffic control device visibility: Trees and other vegetation shall not obstruct the view of any traffic control devices.
3. Fire hydrant clearance: Trees and other vegetation shall not obstruct the view of or access to fire hydrants.
4. Street light visibility: Trees and other vegetation shall not obstruct the light emitted from public street lights so as to render them ineffective.
5. Overhanging vegetation: Trees and other vegetation shall not obstruct the free-passage of streets and sidewalks. There shall be a clearance of at least eight (8) feet above sidewalks, and fourteen (14) feet above streets.
6. Power line conflicts: Trees and other vegetation shall not interfere with power lines.

Section 15. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.130, to read as follows:

12.60.130 Street Tree Permits – Planting of New Trees by Adjacent Property Owner

- A. Prior to planting a new street tree in the public right-of-way, the adjacent property owner shall first apply for a new street tree permit. The permit is intended to ensure that the tree will not be in violation of this chapter. The permit shall include:
 - 1. A sketch of the property including the locations of any fire hydrants, traffic control devices, overhead utility lines, other trees, streets, sidewalks, and buried utilities.
 - 2. Information on the tree to be planted, including species and expected height, canopy cover, and root spread at maturity.
- B. The property owner is responsible for obtaining any surveys that may be required.
- C. If a property owner plants a new adjacent street tree without first obtaining a permit, the City assumes no liability for damages that may occur as a result of improper planting, species selection, or site selection. Furthermore, the City may cause the removal of the tree if it is or will, at maturity, be in violation of this chapter.
- D. The Public Works Department will be responsible for administering and reviewing the permit applications.

Section 16. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.140, to read as follows:

12.60.140 Heritage Trees.

- A. Heritage trees are those trees or collection of trees that meet the criteria of exceptional value. Exceptional value can be defined by the following:
 - 1. Association with historic events or persons;
 - 2. A species possessing rare horticultural value;
 - 3. Possessing significant aesthetic traits;
 - 4. A specimen achieving significant height, canopy, or caliper size; and
 - 5. Is publicly visible from streets or other public places.Heritage trees are granted no special legal protection; however, they do receive formal recognition of their significance and are added to the City's register of heritage trees.
- B. The process for nomination shall be as follows:
 - 1. Completion of a heritage tree nomination application by any individual or group of individuals for any tree located on property within the City of Cheney. Nominations shall be submitted to the Parks and Recreation Department for consideration.
 - 2. Nomination applications shall include at a minimum:
 - a. Description of the tree or trees (property owner, species, caliper, height, canopy width, age, history of tree);
 - b. Photograph; and
 - c. Map detailing location of tree.
 - 3. Signature of the property owner on which the nominated tree is located is required and demonstrates property owner's consent by signing the nomination form.
 - 4. Property owner on which the tree is located must agree in writing to allow the tree to be placed on any City map of Heritage Trees.
 - 5. For the benefit of future property owners, the City will encourage current property owners to record a Notice to Title identifying the location of the Heritage Tree on the parcel.

- C. The process for designating Heritage Trees is as follows:
1. Upon completing an application, the matter will be presented at the next scheduled Park Board meeting for approval or denial of the heritage tree designation.
 2. Criteria for approval shall include:
 - a. Association with historic events or persons
 - b. A species possessing rare horticultural value
 - c. Possessing significant aesthetic traits
 - d. A specimen achieving significant height, canopy, or caliper size
 - e. Is publicly visible from streets or other public places.
 - f. The tree meet the standards as outlined in 12.60.120
 - g. The owner of the tree has agreed to the Heritage designation in writing and completed the nomination steps in subsection B.
 3. If it is determined by a quorum of the Park Board voting in favor of the nomination then the tree shall be designated as a heritage tree.
- D. Following the approval of a heritage tree application, a file shall be created that includes a copy of the application, a copy of the meeting minutes, and any subsequent materials that become associated with the tree.
- E. If a heritage tree application is denied, the Park Board must provide reasoning for the denial. The applicant may reapply if it can be shown that the tree in question is able to better meet the approval criteria.
- F. Once designated, a heritage tree or collection of trees does not become the responsibility or property of the City. Before removal of a heritage tree a property owner must notify the Parks Department in writing. The City strongly encourages owners of heritage trees to retain them. Designation of a heritage tree does not prohibit a property owner from developing a property or removing the heritage trees.

Section 17. New Section. There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.150, to read as follows:

12.60.150 Community Forestry Plan.

- A. Only a comprehensive approach to tree management can create an effective and sustained stewardship of the community forest. The Parks and Recreation Department is charged with creating and maintaining an annual Community Forestry Plan. This plan shall include the following elements:
 1. A general tree care guide for residents to consult when planting, maintaining, and removing trees.
 2. An overview of the current state of the community forest consisting of all public trees.
 3. A statement of City policies and goals in regard to the community forest, as well as a timeline for any specific tasks related to achieving the stated goals.
- B. The Community Forestry Plan shall be a regular topic at Park Board meetings. The Park Board will ensure that the City remains on track for meeting the stated goals. The Park Board will also hear matters from the public relating to the Community Forestry Plan specifically, as well as tree care in general.

Section 18. **New Section.** There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.160, to read as follows:

12.60.160 Tree Account.

A special tree account is hereby created for the purpose of enhancing the community forest. It shall not be used for complementing or supplementing tree maintenance or removal.

- A. Any fines collected for violations of this chapter shall be placed in the tree account. Donations made to the City for the purpose of enhancing the community forest shall also be placed in the account.
- B. All funds collected by the City pursuant to RCW 35A.80.040 shall be placed in the in the tree account.
- C. The account shall be maintained by the Public Works Department.
- D. In order to use the funds, the Public Works Department shall create a proposal detailing the requested use of the funds. The proposal will then be presented the City Council at a regular meeting for approval, denial, or approval with conditions.

Section 19. **New Section.** There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.170, to read as follows:

12.60.170 Interference Unlawful.

It is unlawful for any person to delay, prevent, or interfere with the City or any of its consultants while planting, pruning, removing, or performing any other maintenance on any park or street tree as authorized in this chapter.

Section 20. **New Section.** There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.180, to read as follows:

12.60.180 Penalty for Violation.

Any person, corporation, partnership, association, or agent thereof, violating any of the provisions of this chapter shall, upon commission of the first such offense, be guilty of having committed a civil infraction, and shall be punished by a civil penalty not to exceed two hundred fifty dollars.

Section 21. **New Section.** There is hereby added to the Cheney Municipal Code in Title 12, entitled "Community Forestry", a new section identified as Section 12.60.190, to read as follows:

12.60.190 Appeal.

Any property owner who is given notice to remove or perform maintenance on any private or adjacent street tree has the right to file an appeal of the decision to the City clerk within thirty (30) days of the date that the notice is received. The appeal shall be heard by the City Administrator and a decision shall be made to approve, deny, or condition the appeal.

Section 22. **Severability.** If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

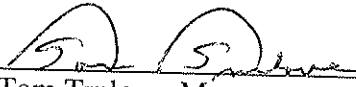
unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 23. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after publication of this Ordinance or a summary thereof in the official newspaper of the City as provided by law.


Introduced this 11th day of November, 2009.

Passed by the City Council this 12th day of January, 2010.

Approved by the Mayor this 12th day of January, 2010.


Tom Trulove, Mayor

ATTEST:


Cynthia L. Niemeier, City Clerk

APPROVED AS TO FORM:


Stanley Schwartz, City Attorney