

ORDINANCE NO. 2016-07

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE MAINTENANCE OF SIDEWALKS AND LANDSCAPE STRIPS; AND PROVIDING A PENALTY.

WHEREAS, the La Pine City Council (the "Council") finds that insufficiently maintained sidewalks present a danger and threat to the health, safety, and general welfare of the public; and

WHEREAS, the lack of landscaping and/or landscape maintenance in the area between the street and sidewalk, including overgrown, dead, or decayed vegetation and weeds and the accumulation of debris, is a condition that is injurious to the public health, safety, and welfare of the residents of the City of La Pine ("City"); and

WHEREAS, the Council recognizes the private and public benefits resulting from the safe, sanitary, and attractive maintenance of sidewalks, landscaped areas, landscape strips, and/or planter strips that are visible from the public right-of-way; and

WHEREAS, the Council finds that attractively maintained sidewalks, vegetation, and landscaping protects and enhances the natural beauty, environment, and greenspace within City and advances economic development, attracts residents, and promotes tourism; and

WHEREAS, City desires to establish regulations for the maintenance of sidewalks and landscape strips.

NOW, THEREFORE, THE CITY OF LA PINE ORDAINS AS FOLLOWS:

1. Findings. The above-stated findings are hereby adopted.
2. Short Title. This Ordinance No. 2016-07 will be known as the "Sidewalk Ordinance" and will be cited and referred to herein as this "Ordinance."
3. Definitions. For purposes of this Ordinance, the following terms and phrases have the meanings assigned to them below:

"City Manager" means City's then city manager or his or her designee.

"Council" means the La Pine City Council.

"Good Repair" means a state of being free of patent and latent defects and all landscaping is properly maintained.

"Landscaping" means material placed in a landscaped area including, without limitation, grass, trees, shrubs, flowers, vines and other groundcover, native plant materials, planters, brick, stone, natural forms, water forms, aggregate, and other landscape features. Landscaping does not include fences, walls, benches, or other manufactured materials unless the same is incidental to the total area of the landscaped area.

"Landscape Maintenance" means activities such as pruning, mulching, mowing,

fertilizing, removal, and/or replacement of dead vegetation and other similar acts that promote the life, growth, health, and/or beauty of the landscape vegetation.

“Landscape Strip(s)” means the property between the sidewalk and the street frontage, also referred to as “planter strips.”

“Maintenance” means any and all activities necessary or appropriate to maintain sidewalks in a safe condition and in good repair.

“Nuisance Ordinance” means City Ordinance No. 2014-03, as amended.

“Owner(s)” means (a) the person recorded in the official records of the state, county, or City as holding title to property, and that person’s agent(s), (b) any person who has purchased or otherwise acquired property but whose ownership is not yet reflected in the official records of the state, county or City, (c) a trustee, executor, administrator, guardian, or mortgagee in possession and having control of the property, (d) a person who has care and control of property in the case of the absence or disability of the person holding title thereto, and/or (e) a lessee or tenant in possession.

“Property” means a lot, or parcel of land, including any buildings or structures located thereon.

“Safe Condition” means a state of being free of snow, ice, debris, obstructions, and/or any other condition causing an actual or potential hazard to persons or vehicles using the public right-of-way.

“Sidewalk(s)” mean that part of the street right-of-way between the lateral lines of a roadway (curb-lines) and the adjacent property lines (including the curbs and any landscaping) and, as the context requires, any portion of the sidewalk fronting an owner’s property.

“Sidewalk Maintenance” means all activities necessary or appropriate to maintain the sidewalk in a safe condition and in good repair.

4. Duty to Perform Sidewalk Maintenance. An owner of real property abutting a sidewalk must maintain at all times the sidewalk along the entire frontage of the owner’s real property in a safe condition and in good repair. Sidewalk maintenance must be performed promptly and in a timely manner. All sidewalk maintenance will be performed at the owner’s cost and expense and will be performed in accordance with this Ordinance and all other applicable federal, state, and local laws, regulations, ordinances, and standards. An owner must obtain and maintain all applicable permits and approvals prior to performing any maintenance.

5. Vegetation Management. No owner of property abutting a sidewalk and/or street will permit trees or shrubs on his or her property to interfere with street or sidewalk traffic. An owner must keep all trees and shrubs on his, her, or its property trimmed to a height of not less than eight feet above the sidewalk. No vegetation should be permitted to encroach more than ten percent (10%) of the width of the sidewalk or to any extent that violates the Americans with Disabilities Act and/or any other applicable federal, state, or local laws, regulations, ordinances, and/or standards. All vegetation maintenance will be performed at the owner’s cost and expense and will be performed in accordance with this Ordinance. It is hereby declared a public nuisance under the Nuisance Ordinance to allow

vegetation to become a hazard to pedestrian use, vehicle use, and/or traffic of any sidewalk or street by obstructing passage or vision. The city manager, or a person authorized by the city manager, may enter upon the property to abate the vegetation creating the hazards in accordance with the Nuisance Ordinance.

5.1 Hazards include, without limitation, the following:

(a) Vegetation that encroaches upon or overhangs a pedestrian or parking strip or encroaches upon or overhangs a street.

(b) Vegetation which obstructs motorist or pedestrian view of traffic signs and signals, street lights, and/or name signs, or other safety fixtures or markings placed in the public way.

(c) Vegetation that is an obstruction of access to a use of any public facilities placed within the public right-of-way.

(d) Between the months of May and October, the accumulation of dry vegetation (including, without limitation, grasses, weeds, and shrubs). Lots less than one acre will be completely free of dry vegetation and lots greater than one acre will maintain a fire break around the exterior of the property of at least twenty feet.

(e) Noxious vegetation on public or private property. Noxious vegetation includes, without limitation; the following: (i) all noxious weeds as defined by the then current Deschutes County Noxious Weed Program; and/or (ii) vegetation more than ten inches high unless that vegetation is an agricultural crop or does not create a fire hazard or traffic hazard.

5.2 Notwithstanding City's abatement authority, between April 1 and June 15 of each year, City's city recorder or his or her designee may cause to be published in the newspaper of general circulation in City the following statement:

"No owner or person in charge of property may allow noxious vegetation to be on the property or in the public right-of-way abutting the property. It will be the duty of an owner or person in charge of property to cut down or destroy grass, shrubbery, brush, and bushes, to prevent them from becoming a fire hazard, or, in the case of weeds or other noxious vegetation, from maturing or from going to seed. All lots less than one acre will be maintained completely free of dry grass and weeds that may constitute a fire hazard. Lots one acre or more in area will be maintained with a twenty (20) foot fire break around the perimeter of the lot that is clear of all dry grass and weeds; in addition the entire property must be free of noxious weeds as defined by the Deschutes County Noxious Weed Program. If the owner or person in control of the property is unwilling to abate the nuisance the City will cause such abatement in accordance with City nuisance abatement procedures and charge the cost of doing so on any particular parcel or property to the owner thereof, or the property itself."

5.3 The vegetation management duties imposed by this Section 5 are in addition to, and not in lieu of, any landscaping duties imposed under this Ordinance.

6. Duty to Perform Landscaping Maintenance.

6.1 Irrigation and landscape maintenance will be provided by the adjacent property owners for plants, trees, and vegetation in the landscape strip between the curb and sidewalk. City encourages efficient water use in area landscapes.

6.2 It will be unlawful for any person owning or having possession or control of any property subject to the provisions of the City of La Pine Zoning Ordinance, Ordinance No. 2012-05, for which landscaping standards or requirements were established to fail to maintain landscaping in accordance with such conditions of approval imposed thereon.

6.3 It will be unlawful for any owner and/or occupant of any property visible from the public right-of-way to:

- (a) Allow or permit on adjacent landscape strips any overgrown vegetation including, without limitation, trees, shrubbery, ground covers, lawns, and other plantings.
- (b) Allow or permit on adjacent landscape strips dead, decayed, and/or diseased trees, shrubs, and/or other vegetation.
- (c) Fail to provide and properly maintain landscaping in landscape strips on property zoned for commercial or industrial use.

6.4 It will be unlawful for any person owning or having possession or control of any property to maintain adjacent landscape strips in violation of the following minimal standards:

- (a) Landscape strips will be kept free from weeds and debris;
- (b) All plant materials will receive regular maintenance, including, without limitation, watering, fertilizing, mowing, and trimming;
- (c) Any damaged, dead, diseased, and/or decaying plant materials will be removed and replaced;
- (d) Irrigation systems will be kept in proper working order to provide proper amounts of water and proper coverage; and
- (e) Landscape screening materials, such as hedges, will be pruned to maintain their screening ability.

6.5 Owners and/or occupants of properties fronting on, or adjacent to, any portion of a street will comply with the provisions of this Ordinance for any landscaping along the street or within the street right-of-way adjacent to their property, fronting on, or adjacent to, any portion of the street, that includes the care of public or private parkways.

7. Snow and Ice Removal. An owner of real property abutting a sidewalk must remove snow and/or ice from public sidewalks adjacent to the owner's real property as follows: (a) snow and/or

ice must be removed from the entire width of the sidewalk up to three feet; (b) snow and/or ice must be removed within the first six hours of daylight in commercial areas and within one day in all other areas; and (c) removed snow and/or ice must not be placed on or in the street or anywhere where it may block runoff water and/or impede traffic (vehicular or pedestrian).

8. Failure to Perform Sidewalk Maintenance and/or Landscape Maintenance.

8.1 An owner's failure to perform required maintenance and/or maintain a sidewalk in a safe condition and in good repair is a public nuisance and subject to abatement through the procedures for abating public nuisances set forth in the Nuisance Ordinance. Notwithstanding anything contained in this Ordinance to the contrary, City may immediately remove snow and/or ice if an owner fails to comply with this Ordinance and, upon the city manager's determination of an immediate threat to the public health, safety, and/or welfare, may summarily perform any required maintenance.

8.2 An owner's failure to perform required maintenance and/or maintain an adjacent landscape strip in accordance with this Ordinance is a public nuisance and subject to abatement through the procedures for abating public nuisances set forth in the Nuisance Ordinance. Notwithstanding anything contained in this Ordinance to the contrary, City may perform those landscaping duties described in Section 6 of this Ordinance, if an owner fails to comply with this Ordinance, upon the city manager's determination of an immediate threat to the public health, safety, and/or welfare.

8.3 Costs incurred by City under this Section 8, plus an administrative fee equal to twenty percent (20%) of the total costs sustained or incurred by City, will be immediately payable and will be assessed against the owner as a lien on the owner's property.

9. No Mandatory Duty of City Created. Nothing in this Ordinance is intended to create a mandatory duty on the part of City and/or city manager to protect persons or property from a violation of the provisions of this Ordinance.

10. Owner Liability and Indemnification. An owner responsible for maintaining sidewalks under this Ordinance is liable for any individual injured because of such owner's failure to maintain the sidewalk(s) in a safe condition and in good repair and for any claims, demands, actions, suits, damages, liabilities, costs, and/or expenses of any kind whatsoever, including, without limitation, attorney fees and costs, arising out of or resulting from his, her, or its performance of any sidewalk maintenance or repairs. No liability will be imputed to or imposed upon City and/or its officers, employees, and/or agents because of injuries or damages sustained by any person or property by reason of any sidewalk not being in a safe condition and in good repair and/or such owner performing any sidewalk maintenance or repairs. An owner responsible for maintaining sidewalks under this Ordinance releases and will defend, indemnify, and hold City and City's officers, employees, volunteers, agents, and insurers harmless for, from, and against all injuries, claims, demands, actions, suits, damages, liabilities, costs, and expenses of any kind whatsoever, including, without limitation, attorney fees and costs, arising out of or resulting from such owner's performance or failure to perform his, her, or its obligations under this Ordinance, including, without limitation, any bodily injury, personal injury, sickness, disease, death, property loss or damage, and/or any other loss.

11. Penalty. City may maintain an action in a court of competent jurisdiction to enforce the provisions of this section. Any violation of this Ordinance is punishable by a fine not to exceed \$500.00

per violation. City will be entitled to collect from any person violating this Ordinance City's attorney fees and other fees, costs, and expenses incurred by City to enforce this Ordinance. Each violation, and each day that a violation continues, constitutes a separate civil infraction. The remedies available under this Ordinance are not exclusive of any other remedies available under any applicable federal state, and/or local laws, regulations, and/or ordinances. It is within City's discretion to seek cumulative remedies for a violation of this Ordinance.

12. Interpretation; Severability; Errors. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, rule, regulation, code, or ordinance includes the law, rule, regulation, code, or ordinance as now in force and which may hereafter be amended. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the council to cure editorial and/or clerical errors.

This Ordinance was PASSED and ADOPTED by the La Pine City Council by a vote of ___ for and ___ against and APPROVED by the mayor on this 8th day of June, 2016.

Ken Mulenex, Mayor

ATTEST:

Richard L. Allen, Interim City Manager