

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 4 OF CHAPTER 13 OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, ENTITLED "TREES AND SHRUBS" AND REPEALING EXISTING ARTICLE 4 OF CHAPTER 13 AND OTHER SECTIONS IN CONFLICT HEREWITH.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Article 4 of Chapter 13 of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

13-401a. PURPOSE.

The purpose of this article is to preserve, protect, replace and properly maintain Street Trees within the City of Leawood, because trees are an important part of the community infrastructure, similar to waterlines, storm water systems and roadways. They improve our air, water and land quality by virtue of their biological functions. Trees provide aesthetic value to our community by increasing property values and improving our quality of life. Trees are long-lived and their services and value improve with age. For these reasons, Street Trees are recognized as important green infrastructure in our community. Examples of how Street Trees provide services to our community include:

1. Street Trees improve air quality by absorbing carbon dioxide, filtering out pollutants and providing oxygen.
2. Street Trees preserve and enhance the physical and aesthetic environment.
3. Street Trees reduce energy consumption, by shading roofs and streetscapes.
4. Street Trees reduce costs associated with gray infrastructure.
5. Street Trees absorb and intercept stormwater and help to reduce flooding and erosion.
6. Street Trees provide habitat for wildlife and food for birds and insects.
7. Street Trees improve physical and psychological health and social behavior.

13-401b. DEFINITIONS. For purposes of this article, the following terms shall have the following meanings:

- (a) *Approved Landscape Plan* shall mean a landscape plan approved by the Governing Body that establishes the location, and number of Street Trees in a specific development or area.
- (b) *Large Tree* shall mean a tree which, when mature, is expected to grow to a height of greater than 40 feet.
- (c) *Medium Tree* shall mean a tree which, when mature, is expected to grow to a height of 25 to 40 feet.
- (d) *Street Trees* shall mean trees within the street right-of-way.
- (e) *Tree Lawn* shall mean the area of right of way between the back of curb to the edge of the sidewalk, or the area from back of curb to right of way line where no sidewalk is present.
- (f) *Tree Topping* shall mean the reduction of a tree's size using heading cuts that shorten limbs or branches leaving stubs or lateral branches that are not large

enough to assume a terminal role to such a degree so as to remove the normal canopy and disfigure the tree.

(Code 1984)

13-402. STREET TREES. The City of Leawood shall maintain an extensive list of recommended species of Street Trees. The list shall be available on the City of Leawood website.

(Ord. 1541C; 11-6-95)

13-403. SAME; SPACING. Residents or homes associations replacing or planting new Street Trees shall maintain minimum spacing. The minimum spacing of Street Trees shall 30 feet for Medium Trees, and 40 feet for Large Trees. The Director of Public Works may approve an exception to the minimum spacing when, due to the layout of a lot, street or sidewalk, and/or because of the location of existing trees, the minimum spacing cannot reasonably be achieved.

(Ord. 1707C; 1-19-98)

13-404. PLACEMENT OF TREES. Street trees shall be planted in a minimum 10 feet wide tree lawn, or a minimum of 5 feet from the curbline when no sidewalk is present. Street trees planted prior to 2015 in tree lawns less than 10 feet wide, but greater than 7 feet wide, may be replaced in the same location. Existing Street trees in tree lawns less than 7 feet shall not be replaced when removed.

After the effective date of this Ordinance, no Street Tree shall be planted:

- (a) Within 35 feet of any street corner, measured from the point of nearest intersecting curbs or curb lines;
- (b) Within 10 feet of any fire hydrant;
- (b) Under or within 20 lateral feet for Medium Trees or 30 lateral feet for Large Trees of any overhead electric distribution lines.
- (d) In violation of any overhead transmission line utility easement.

(Ord. 1707C; 1-19-98)

13-404A STREET TREES REQUIRED FOR NEW CONSTRUCTION. Construction or reconstruction resulting in a new single family or two family dwelling shall provide for the planting of one street tree for each 40 feet of street frontage. Such trees shall be in the right-of-way unless the layout of the lot, utilities, sidewalk and street do not allow for such planting, in which case a tree planted no more than 5 feet from any sidewalk, shall be allowed to meet this requirement. Existing trees in good health located in the right-of-way adjacent to the lot, shall be counted toward this requirement.

13-405. CARE OF STREET TREES. It shall be the responsibility of the adjacent landowner and/or homes association to plant, prune, maintain and remove Street Trees. The city shall have the right to prune, maintain and remove trees, plants and shrubs or any part thereof within the right-of-way of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety. 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 storm sewers or other public improvements, as determined by the Superintendent of Parks and in accordance with the procedures set forth in this Ordinance and Kansas Statutes.

(Code 1984)

13-406. TREE-TOPPING UNLAWFUL; EXEMPTION. It shall be unlawful for any person, firm or entity to perform Tree Topping or otherwise to top any Street Tree. Street 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 by the Superintendent of Parks,

(Ord. 1707C; 1-19-98)

13-407. DUTY TO PRUNE OVERHANGING TREES.

- (a) Every owner of any tree or the owner of land adjacent to right-of-way where a Street Tree is planted, is required to prune the branches so that such branches shall not obstruct the light from any street lamp, obstruct the view of any street intersection or obstruct any public sidewalk, and to provide a clear space of 10 feet above the surface of the sidewalk and 14 feet above the surface of the street at the curbline.
- (b) Every owner of any tree or the owner of the land adjacent to the right-of-way where Street Trees are planted, shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a danger to the health, safety or welfare of the public. In accordance with the City's Code and Kansas law, the city shall have the right to prune any tree or shrub on public right-of-way or 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 or interferes with any public sidewalk. The cost of such work shall be charged to such owner as provided by law.
- (c) Should such owner fail to prune trees as provided herein, the City shall send a notice of violation to such owner providing that such trees must be pruned within 10 days and that failure to abide by the notice will result in a citation being issued.

(Code 1984)

(Ord. 2522C; 02-06-12)

13-408. DISEASED, DEAD TREES; DUTY TO REMOVE. The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, 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 city. The city will proceed as required by Kansas law and

shall notify the owners of such trees in writing. Removal shall be done by the owners at their own expense within 60 days after the date of mailing of such notice.

(Ord. 648, Sec. 11)

13-409. SAME; FAILURE TO COMPLY. Upon the failure of a person who is under the duty to remove a dead or diseased tree pursuant to Section 13-408 to so remove, the city shall have the authority to remove such trees and to charge the cost of removal against the owner, in accordance with the procedures set forth in Kansas law. The City Clerk shall, at the time of certifying other city taxes to the County Clerk, certify the unpaid costs of removal and the County Clerk shall extend the same on the tax roll of the county against the lot or parcel involved.

(Ord. 648, Sec. 11)

13-410. REMOVAL OF STUMPS. All stumps of Street Trees shall be removed below the surface of the ground within 60 days of tree removal.

(Ord. 648, Sec. 12; 09-17-79)

13-411. INTERFERENCE WITH CITY UNLAWFUL. It shall be unlawful for any person to prevent, delay, or interfere with the City of Leawood or its agents, contractors or employees, while engaging in and about the pruning, or removing of any Street Tree.

(Code 1984)

13-412. ENFORCEMENT AUTHORITY. The Community Development Department's code enforcement officers, in cooperation with and on the recommendations of the Parks and Recreation Department's Superintendent of Parks, will be responsible for enforcement of this article.

(Ord. 1707C; 01-19-98)

13-413. VIOLATION, PENALTIES. Any person who shall violate a provision of this Article, or fail to comply with any of the requirements of this Article, shall be subject to a fine of not less than \$100.00 or more than \$1,000.00, and may be ordered to correct the violation or make restitution for the correction of the violation thereof, at the discretion of the court. Each day that a violation continues shall be deemed a separate offense.

SECTION TWO: This ordinance shall be construed as follows:

A. **Liberal Construction.** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. **Savings Clause.** The repeal of Ordinance sections, as provided herein below shall not affect any rights acquired, fees, fines, penalties, forfeitures or liabilities incurred there under, or actions involving any of the provisions of said Ordinances or parts thereof. Said Ordinance repealed is hereby continued in force and effect after the passage, approval, and publications of this Ordinance for the purposes of such rights, fees, fines, penalties, forfeitures, liabilities and actions therefore.

C. Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Code or other Ordinances.

SECTION THREE: That existing Article 4 of Chapter 13 and any provisions in conflict herewith are hereby repealed.

SECTION FOUR: This ordinance shall take effect and be in force from and after publication in accordance with law.

PASSED by the Governing Body this 7th day of January, 2019.

APPROVED by the Mayor this 7th day of January, 2019.

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Debra Harper, City Clerk, CMC

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney