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ORDINANCE NO. 0-28-08

An Ordinance relating to the care, placement, and protection of trees in public rights-of-way; prohibition of certain trees in public right-of-way; and establishment of a Tree Board.

WHEREAS, the health, safety, and general welfare of the public and the conservation and protection of the natural resources of Kansas City, Kansas and Wyandotte County necessitate regulations to guide the planting, maintenance, and removal of shade and ornamental trees in public rights-of-way within the City of Kansas City, Kansas; and

WHEREAS, community forests function to the benefit of the local citizenry as a part of the public infrastructure as much as streets, utilities, stormwater management structures, and sewers; and

WHEREAS, integrated forest canopies reduce the costs of maintenance of other parts of the urban infrastructure; and

WHEREAS, high growth areas, where natural green spaces are diminishing, have left fewer trees to transform into oxygen the carbon dioxide of ever-increasing, harmful vehicular and industrial emissions, resulting in severe air quality degradation; and

WHEREAS, well managed urban forest resources increase in value and provide benefits to all the citizens of the community with respect to air quality, water quality, stormwater management, temperature amelioration, community aesthetics, and general quality of life; and

WHEREAS, healthy community forests increase local commercial and residential property values; and

WHEREAS, these benefits are crucial to the long-term health, safety, and welfare of the citizens of the community; and

WHEREAS, a tree protection law is one part of a dedicated and integrated planning process dealing with land use, effects of impervious surface, urban hydrology and water quality, air quality, soil erosion, transportation, noise abatement, and wildlife habitat; and

WHEREAS, the Board of Commissioners finds that it is in the best interest of the public to provide standards for the conservation, protection, and replacement of trees in the public rights-of-way for the purpose of making this city a more attractive place to live and a healthier living environment; and

WHEREAS, the Board of Commissioners supports the goals of the Arbor Day Foundation and its efforts to provide "Tree City USA" designations to communities and the Board wishes to seek "Tree City USA" for the City of Kansas City, Kansas,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:

Section 1. That the Unified Government Code of Ordinances be and the same is hereby amended to add a new article to read as follows.

Care, Placement, and Protection of Trees in Public Rights-of-Way.

Section 1. Purpose

The purpose of this ordinance is to protect and encourage the protection of trees in the Public Rights-of-Way; to provide for the public health, safety, and general welfare; to promote and preserve the City's aesthetic value; to establish a Unified Government Tree Board; to regulate and control the planting and maintenance of trees in the Public Rights-of Way.

Section 2. Scope

- a. This ordinance will apply within the limits of the City of Kansas City, Kansas.
- b. The provisions of this ordinance will not apply to the Board of Public Utilities of Kansas City, Kansas, which is subject to federal vegetation management regulations.
- c. Sections 7, 8, 9, 10, and 11 shall not affect trees planted prior to the earliest effective date of the applicable prohibitions contained in such sections. The judgment of the Director of Parks concerning the planting date of the plant shall be entitled to a presumption of correctness that may be rebutted by credible evidence. Any replacement or additional planting after such earliest effective date shall be in full compliance with all applicable provisions of this ordinance and the Code of Ordinances.
- d. Nothing in this ordinance shall prohibit utility companies from maintaining trees on easement owned by such companies if permitted by such easements.

Section 3. Definitions

For purposes of this ordinance the following words shall the meanings set out below:

Board of Public Utilities or BPU: The Board of Public Utilities of Kansas City, Kansas.

Director of Parks: The Director of the Unified Government's Parks and Recreation Department or any successor department or the Director's designated representative.

Large Trees: Trees that are usually more than 40 feet tall at maturity.

Medium Trees: Trees that are usually 25-40 feet tall at maturity.

Small Trees: Trees with a mature height of less than 25 feet.

Street Trees: Trees in the Public Right-of-Way.

Public Right-of-Way: The area on, below, or above the present and future streets, alleys, roads, highways, boulevards, bridges, bikeways, parkways, sidewalks, or other land dedicated as right-of-way.

Sight Distance Triangle: The area at a street corner which is created by straight line projections of the curb line or street pavement edge, the short leg of which is 20 feet and the long leg of which is 140 feet, and the third leg of which connects the extremities of the other two lines.

Section 4. Creation and Establishment of a Unified Government Tree Board.

There is hereby created and established a Unified Government Tree Board for the City of Kansas City, Kansas which shall consist of seven members who are residents of the city. The members shall consist of one representative of each of the following Unified Government departments: Parks and Recreation, Public Works, Health, and Planning and Zoning; one representative from the Board of Public Utilities; and two citizens to be appointed by the County Administrator. The two citizen members shall serve two-year terms. Nothing in this section shall limit the reappointment of a citizen member to a succeeding term. The Chairperson of the Board shall be the Director of Parks and Recreation.

Section 5. Duties and Responsibilities of the Tree Board.

- a. The Tree Board shall study, investigate, and develop a comprehensive written plan for the care, preservation, pruning, planting, replanting, and removal or disposition of Street Trees.
- b. Each year the Tree Board shall make recommendations to the Director of Parks for the next year's forestry plan of work. After receiving such recommendations from the Tree Board, the Director of Parks shall submit his final annual forestry plan of work for approval by the County Administrator.
- c. The Tree Board shall investigate and make recommendations upon any matter referred to it by the Director of Parks or the Board of Commissioners.
- d. The Tree Board shall undertake an annual public Arbor Day planting activity or celebration and shall develop and distribute tree care information to local residents.

Section 6. Operation of Tree Board.

The Director of Parks shall serve as the Chairperson of the Tree Board. The Tree Board shall keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

Section 7. Permitted and Prohibited Street Tree Species

- a. A list of permitted street trees can be obtained from the Unified Government's Parks & Recreation Department.

b. A list of prohibited street trees can be obtained from the Unified Government's Parks & Recreation Department.

c. Species Not Listed Elsewhere in this Section.

(1) No person shall plant as a Street Tree any species not listed in this section or authorized in any regulations adopted by the Director of Parks unless prior written authorization of the Director of Parks is obtained.

(2) The Director of Parks is authorized to adopt regulations providing procedures and criteria for the approval of the planting of other species not listed elsewhere in this section. The regulations may authorize, without specific written permission of the Director of Parks, the planting of certain trees under specified conditions.

Section 8. Street Tree Spacing.

No Street Tree may be planted closer to another tree than the following: Small Trees 15 feet; Medium Trees 35 feet; and Large Trees 50 feet.

Section 9. Street Tree Distance from Street.

No Street Tree may be planted closer to the edge of the street pavement than 3 ½ feet for Small Trees or 4 feet for Medium Trees or Large Trees.

Section 10. Street Tree Distance from Street Corners and Fireplugs

a. No Street Tree shall be planted within the Sight Distance Triangle at any intersection.

b. No Street Tree Shall be planted with 10 feet of any fireplug.

Section 11. Planting of Trees Near Overhead Utility Wires.

No Street Tree may be planted or allowed to grow under, or within 22 feet of any overhead utility wire.

Section 12. Requirement to Locate Underground Facilities Before Digging

Prior to the commencement of any excavation or digging in the Public Right-of-Way or on private property, a person shall identify and locate underground facilities according to the Kansas One Call System, shall notify affected utilities, and shall otherwise comply with the system's requirements. Failure to do so may result in the person responsible for the excavation being liable for any damages to underground facilities including but not limited to gas lines, sewer lines, or fiber optic cable.

Section 13. Abutting Property Owners—Duty to Maintain Street Trees

Owners of property abutting Public Rights-of-Way shall be responsible for maintaining Street Trees in a manner which promotes safe and healthy plants and which protects the health, safety, and welfare of the public. The provisions contained in this ordinance shall not exempt or otherwise waive any other duties and responsibilities imposed upon such property owners by the Code of Ordinances.

Section 14. Right of the Unified Government To Plant, Maintain, or Remove Trees and the Right of the Board of Public Utilities to Prune or Remove Trees in the Public Rights-of Way.

- a. The Unified Government shall have the right to plant, prune, and maintain Street Trees.
- b. The Unified Government may remove or cause to be removed any Street Trees which are:
 1. In an unsafe condition; or
 2. Injurious to sewers, electric power lines, gas lines, water lines, or other public improvements.
 3. Infected with an insect or disease that can cause wide-spread death of trees within the community.
- c. The Board of Public Utilities may prune or remove Street Trees which present a hazard to electric power lines or water lines.
- d. This section does not prohibit the planting of Street Trees by owners of property abutting the Public Rights-of-Way, provided that the selection and location of trees conforms to the requirements of this ordinance and any applicable regulations.

Section 15. Pruning and Corner Clearance

- a. Every owner of any Street Tree or any tree overhanging the Public Right-of-Way shall prune the branches so that such branches shall not severely obstruct the light from any street lamp or obstruct the Sight Distance Triangle at any street intersection or obstruct the view of any traffic control device or traffic sign and so that there shall be a clear space of thirteen feet above street surface or eight feet above the sidewalk surface.
- b. Every such tree owner shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a danger to the safety of the public.
- c. The Unified Government shall have the right to require the owner to prune any tree or shrub 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 Sight Distance Triangle at intersections.

Section 16. Topping of Street Trees

It shall be unlawful as a normal practice for any person to top any Street Tree. For purposes of this section, "topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. 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 written determination of the Director of Parks.

Section 17. Removal of Stumps

All stumps of Street Trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

Section 18. Protection of Trees

Street Trees of desirable species and good health shall be protected from damage during construction, sidewalk repair, utilities work above and below ground and other similar activities by avoiding the critical root radius (CRR). For purposes of this section, CRR (in feet) shall be determined by multiplying the diameter of the tree in inches (as measured one foot from ground level) by a constant of 1.5. (Example: 10 inch diameter x 1.5= 15 feet CRR). Those persons working in the Public Rights-of-Way shall also avoid the minimum zone of protection. For purposes of this section, the "zone of protection" shall include the ground beneath the canopy of the tree to the drip line of the tree. Any waivers of this section must be obtained in writing from the Director of Parks prior to commencing work.

Section 19. Interference with Unified Government or BPU Personnel

It shall be unlawful for any person to prevent, delay, or interfere with Unified Government or Board of Public Utilities personnel or any of their agents who are engaged in the planting, cultivating, mulching, pruning, spraying or removing any Street Trees or trees on private property as authorized in this ordinance.

Section 20. Arborists License and Insurance

- a. Except as otherwise set out in this section, it shall be unlawful for any person to engage in the business of pruning, treating or removing trees without obtaining an annual license from the Unified Government.
- b. The license fee shall be in an amount set by the County Administrator.
- c. No license shall be required of the Unified Government or the Board of Public Utilities or their agents.
- d. Before any license shall be issued, each applicant shall first file evidence of liability insurance in the minimum amounts of \$1,000,000 for bodily injury and \$500,000 property damage per occurrence indemnifying the Unified Government or any person

injured or damaged resulting from the pursuit of any activities governed by this ordinance.

- e. During the term of their license, all arborists shall maintain continuous insurance coverage in at least the amounts required under subsection d above with an insurance company admitted to do business in the State of Kansas and shall submit certificates of insurance to the Unified Government License Division evidencing such coverage and providing that the Unified Government License Division evidencing such coverage and providing that the Unified Government will be notified in the event of cancellation, non-renewal, or other change in coverage.

Section 21. Violations and Penalties; Civic Actions

- a. It shall be unlawful for any person to plant or otherwise maintain a new grow of a tree in an area where such planting or maintenance is prohibited by this ordinance.
- b. It shall be unlawful for the property owner or other person in control of any property to permit any tree to remain on such property in violation of an order from the Director of Code Enforcement or his or her designated representative, from the Director of Public Works or his or her designated representative, or from the Director of Parks.
- c. It shall be unlawful for the property owner or other person in control of any property to allow any trees to hinder or obstruct any Public Rights-of-Way abutting such property or to violate any minimum height clearance requirements.
- d. Any person who violates any of the provisions of this ordinance is guilty of a public offense and upon conviction or a plea of guilty, shall be sentenced to a fine not to exceed \$1,000.
- e. The Unified Government may further enforce the provisions of this ordinance by maintaining an action in the appropriate court for injunction to enforce the provisions of this ordinance to cause correction of any violation of this ordinance, for assessment and recovery of a civil penalty for such violation, or to pursue other appropriate civil remedy.