



**CITY OF LEAWOOD  
GOVERNING BODY  
MEETING AGENDA**

Council Chamber  
4800 Town Center Drive  
Leawood, KS 66211

**GOVERNING BODY  
WORK SESSION**

**Tuesday, June 21, 2022  
6:00 P.M.**

**Mayor Peggy Dunn**

**Councilmembers**

**Ward One**

**Ward Two**

**Ward Three**

**Ward Four**

Debra Filla

Jim Rawlings

Chuck Sipple

Julie Cain

Andrew Osman

Mary Larson

Lisa Harrison

James Azeltine

**Discuss Proposed Tree Ordinance**

The public is invited to attend, however no public comments will be entertained during this Work Session. The City Council meeting will begin at 7:30 p.m. in the Council Chambers at Leawood City Hall (4800 Town Center Drive, Leawood, KS 66211).

**ADJOURN**

(This agenda is subject to changes, additions or deletions at the discretion of the City Council)

For public safety, the City encourages that masks be worn in public areas of its buildings but they are not required.

Copies of the agenda are available at the Office of the City Clerk on the Friday prior to the meeting. Leawood operates under a Council/Mayor form of government, with a separately elected mayor and 8 council persons. Council members are elected on a non-partisan basis from 4 wards. The Council develops policies and provides direction for the professional city administration.

If you require any accommodation (i.e. qualified interpreter, hearing assistance, etc.) in order to attend this meeting, please notify this office at 913.339.6700 or at [CityClerk@leawood.org](mailto:CityClerk@leawood.org) no later than 96 hours prior to the scheduled commencement of the meeting.

# Memo

**To:** Mayor Peggy Dunn and Leawood City Council  
**From:** Brian Anderson, Superintendent of Parks  
**C.C.** Patty Bennett, City Attorney  
Chris Claxton, Director of Parks, Recreation & Arts  
Travis Torrez, Director of Building & Codes Enforcement  
David Ley, Director of Public Works  
**Date:** June 21, 2022  
**Re:** Amendments to Ordinance: Article 4, Chapter13 – “Trees & Shrubs”

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City staff was directed to draft amendments to the street tree ordinances to specifically address the protection of street trees (trees planted in the street ROW) from being removed without city approval or from being damaged during residential construction activities.

Staff reviewed the street tree ordinances of the cities of Prairie Village and Fairway in assessing potential changes.

Through combined efforts of the Building Codes, Legal, Public Works, Planning and Park, Recreation & Arts departments, we have created a draft that accomplishes what we were tasked to do. Earlier this spring, staff met with Scott Lambers to make sure the project was on the right track and he confirmed that it was.

The attached draft provides a process to protect street trees and provides specific measures required during construction. These protections include:

- Setting up temporary fencing to protect trees from being damaged, or adding a mulched pathway to buffer the soil while allowing equipment access.
- Not allowing temporary stockpiling of excavated soil around street trees therefore requiring alternate methods.

On the non-construction side:

- Trees cannot be removed without an approved street tree permit.

- New street trees cannot be planted in the ROW without an approved street tree permit.
- Street trees are required to be removed when they die or are diseased.

Something staff is reviewing is the possibility of having a street tree inventory completed using our Tree Plotter software. This would allow us to add all the ROW trees into the software and maintain details with regard to permits. Without an inventory, we do have other means to determine whether a street tree has been added or removed using satellite imagery available on Johnson County AIMS mapping, the street tree inventories some home associations may maintain, or city records regarding landscape plans.

The Park & Recreation Department will become involved in the street tree permit and building permit review process as it relates to tree protection plans. Until we actually begin, I can't provide an accurate assessment of the impact on staff time. It would initially be the Park Superintendent and the Forestry Supervisor doing the tree protection plan and street tree permit reviews. We currently assist the public works department with right of way permits that involve planting trees and the neighborhood services staff with hazardous tree assessments and we are able to accommodate that without any impact. Mr. Lambers advised that should these changes be incorporated, we would begin with our current staff and come up with a recommendation if we were experiencing staffing problems and we believe this is a good way to proceed.

A copy of the draft ordinance is included, but a summary of the significant changes are listed below:

**13.401B. Definitions** – some new terms are used in the ordinance and they are defined in this section.

Critical root zone – shall mean the area immediately adjacent to the trunk where roots essential for tree health and stability are located.

Street Trees – shall mean any tree with any portion of the trunk within the right-of-way.

Tree Protection Zone – shall mean a defined area surrounding the trunk intended to protect roots and soil within the critical root zone and beyond, to ensure future tree health and stability.

**13.402A. Removal of Trees – [New Section].**

This introduces the need to obtain a permit to be able to remove a street tree and includes the criteria that the staff will use to determine if such a permit can be approved. It also requires the replacement of a new street tree within 6 months after removal as well as the penalty for not complying.

**13.402B – Protection of Street Trees during Construction – [NEW SECTION]**

This details the requirements necessary to provide a tree protection zone (TPZ) and what is necessary for tree protection planning.

It defines the standard size of the TPZ, but that special conditions may be approved for modification.

This section also lists what activities and storage can't be inside the TPZ. In some cases it may require the permit holder to haul all excavated soils off the lot temporarily. There are provisions to allow for equipment to travel through the TPZ that would still protect the tree from being damaged.

In closing, these tree protection requirements address the issues that have been of concern, but also can be flexible in allowing protection strategies to still allow construction projects to move forward.

As always, please contact me prior to the meeting with any questions you may have.

## CHAPTER XIII. STREETS AND SIDEWALKS

### ARTICLE 4. TREES AND SHRUBS

#### SECTIONS

13-401(A)	Purpose
13-401(B)	Definitions
13-402	Street Trees
13-403	Spacing
13-404	Placement of Trees
13-404(A)	Street Trees Required for New Construction
13-405	Care of Street Trees
13-406	Tree-Topping Unlawful: Exemption
13-407	Duty to Prune Overhanging Trees
13-408	Diseased, Dead Trees: Duty to Remove
13-409	Failure to Comply
13-410	Removal of Stumps
13-411	Interference with City Unlawful
13-412	Enforcement Authority
13-413	Violations

#### **13-401(a). 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 storm water 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.

#### **13-401(b). 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) *Critical Root Zone* shall mean the area immediately adjacent to the trunk where roots essential for tree health and stability are located.
- (bc) *Large Tree* shall mean a tree which, when mature, is expected to grow to a height of greater than 40 feet.

- (ed) *Medium Tree* shall mean a tree which, when mature, is expected to grow to a height of 25 to 40 feet.
- (de) *Street Trees* shall mean any trees with any portion of the trunk within the ~~street~~ right-of-way.
- (ef) *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.
- (fg) *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.
- (eh) ~~—~~*Tree Protection Zone* shall mean a defined area surrounding the trunk intended to protect roots and soil within the critical root zone and beyond, to ensure future tree health and stability.

(Ord. 2921C; 01-07-19)  
 (Code 2000)  
 (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. 2921C; 01-07-19)  
 (Code 2000)  
 (Ord. 1541C; 11-06-95)

**13-402A** REMOVAL OF TREES. It shall be unlawful to remove any Street Tree without first obtaining a permit from the City. Before granting a permit, the Public Works Director or their designee shall consider any relevant factors including, but not limited to:

- (a) Whether the tree is diseased or dead;
- (b) Whether the tree constitutes a threat to healthy trees, property, or public safety; and
- (c) Whether removal of the tree is necessary for construction, development, or redevelopment under the following criteria:
  - (i) All reasonable efforts have been made to avoid removing the tree through comparable alternative designs;
  - (ii) The presence of the tree places an undue financial burden on the applicant; and
  - (iii) No other reasonable accommodations, including adjustments to the otherwise allowable building footprint or site design can be made to preserve the tree.

Any tree removed pursuant to this Article shall be replaced within 6 months unless an extension is approved by the Superintendent of Parks. Any tree removed pursuant to this Article shall be replaced with a tree species from the Leawood Recommended Tree List or other tree species approved by the Superintendent of Parks and be a minimum of 2.5" caliper in size.

Any person who violates this section, or fails to comply with any of the requirements of this section, shall be subject to a fine of not less than \$500.00 or more than \$2,500.00, and may be ordered to correct the violation or make restitution for the correction of the violation thereof, at the discretion of the court.

**13-402B** PROTECTION OF STREET TREES DURING CONSTRUCTION.



A Tree Protection Zone (TPZ) surrounding Street Trees shall be established to protect the Critical Root Zone and tree canopy.

(a) A TPZ shall be required for all Street Trees during the following activities:

- (i) Any new residential structure is built on a vacant lot;
- (ii) An existing residential structure is torn down, whether it is just a demolition or a demolition and rebuild of a new residential structure;
- (iii) Any remodel of an existing residential structure that adds more than 400 square feet to the existing building footprint; and
- (iv) Any remodel of an existing residential structure that tears down more than ten percent of the existing structure associated with the new construction.

(b) Prior to the start of construction activities, including, but not limited to, any clearing, grading, or other earth disturbance, all Street Trees shall be protected by a conspicuous four-foot-high tree protection barrier to prevent encroachment into the TPZ by people, materials, and vehicles. The tree protection barrier must be approved by the Superintendent of Parks in accordance with the publication "Best Management Practices: Managing Trees During Construction" as published by the International Society of Arboriculture. The entire tree canopy shall be protected from all construction related activities. The Superintendent of Parks may approve the removal or pruning of limbs within the crown to facilitate construction activities.

(c) The TPZ required will vary in size according to species, trunk size, location, and health of a tree and shall be designed for maximum flexibility of shape and minimum effectiveness of size. The minimum TPZ shall be a circle with a radius extending from the tree trunk a distance equal to twelve (12) times the trunk diameter at breast height or to the tree crown dripline plus five (5) feet, whichever is greater.

(d) The use of orange polyethylene safety fencing or a similar highly visible material is recommended. Snow Fencing or other effective barriers may be used upon approval by the Superintendent of Parks.

(e) Fencing and barriers shall be placed outside the TPZ, unless otherwise approved by the Superintendent of Parks.

(f) Fencing and barriers may be erected around individual trees or groupings of trees, where feasible.

(g) The tree protection barrier shall be maintained by the applicant/permit holder while in place. It shall be removed only after all earthmoving and construction activities that may impact tree roots or tree canopy are completed.

(h) Signage shall be placed on the tree protection barrier to explain the purpose of the TPZ in the English and Spanish languages.

(i) Fenced areas shall exclude any preexisting structures, foundations, slabs, roadways, sidewalks, and driveways. The fence shall be installed along the edge of the driveways/roadways encompassing the tree to restrict access from the street side. All fences shall appear on construction documents and be installed prior to any other construction-related activity. The fence shall remain in place at all times until all other construction-related activity has been completed or final grade achieved. The City may authorize that fences be moved at certain times for final grading, access, or other work. As part of a permit, the City may determine that when vehicles and/or equipment must pass within the TPZ, that special cushioning measures shall be provided by the applicant and approved by the Superintendent of Parks. ;

(j) Prohibited activities. Except for public works utility work or in association with other activity approved by the City, the following activities are not allowed within the protective fencing area:

- (i) Stock piling of construction materials or waste from the construction process. A separate off-site staging and parking area for stockpiling materials, equipment and vehicles shall be provided for construction sites constrained by limited size.
- (ii) The cleaning of construction equipment;
- (iii) Parking, storage, or placement of any vehicles, construction equipment, or temporary structures;
- (iv) Grade changes, cut of fill, in excess of two inches;
- (v) New paving with asphalt, concrete, or other materials; and
- (vi) No signs, wires, or other attachments other than those of a protective nature shall be attached to any tree.
- (vii) The routing of underground utility lines. In the event underground utilities cannot be rerouted, installation shall be through tunneling rather than open cut trenches.

13-403.

**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. 2921C; 01-07-19)  
(Code 2000)

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

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 curb line 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;
- c) 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. 2921C; 01-07-19)  
(Code 2000)

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

13-404(A).

**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 or in accordance with an approved landscape plan filed with the City. 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. Before removing any existing Street Trees, owners shall comply with Section 13-402A.

(Ord. 2921C; 01-07-19)

- 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.

(Ord. 2921C; 01-07-19)

(Code 2000)

(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. 2921C; 01-07-19)

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

**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 curb line.
- (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.

(Ord. 2921C; 01-07-19)

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

(Code 2000)

(Code 1984)

13-408.

**DISEASED, DEAD TREES; DUTY TO REMOVE.**

The cityCity shall have the right to cause the removal of any dead or diseased trees on private property within the cityCity, 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 cityCity. The cityCity 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. Prior to removal, owner shall obtain a permit in compliance with Section 13-402A.

(Ord. 2921C; 01-07-19)  
(Code 2000)  
(Code 1984)  
(Ord. 648; 09-17-79)

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. 2921C; 01-07-19)  
(Code 2000)  
(Code 1984)  
(Ord. 648; 09-17-79)

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. 2921C; 01-07-19)  
(Code 2000)  
(Code 1984)  
(Ord. 648; 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.

(Ord. 2921C; 01-07-19)  
(Code 2000)  
(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. 2921C; 01-07-19)  
(Code 2000)

(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.

(Ord. 2921C; 01-07-19)