

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE CITY OF LEAWOOD, 2000, SECTION 13-401(B) ENTITLED "DEFINITIONS" AND ADDING A NEW SECTION 13-402A ENTITLED "PROTECTION OF STREET TREES DURING CONSTRUCTION", RESCINDING RESOLUTION NO. ____ AND REPEALING EXISTING SECTION 13-401(B) AND OTHER SECTIONS IN CONFLICT HEREWITH.

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

SECTION ONE: Section 13-401(b) of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

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.
- (c) *Large Tree* shall mean a tree which, when mature, is expected to grow to a height of greater than 40 feet.
- (d) *Medium Tree* shall mean a tree which, when mature, is expected to grow to a height of 25 to 40 feet.
- (e) *Street Trees* shall mean any tree with any portion of the trunk within the right-of-way.
- (f) *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.
- (g) *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.
- (h) *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)

SECTION TWO: A new Section 13-402A of the Code of the City of Leawood, Kansas, 2000, is hereby added to read as follows:

13-402A 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 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.

SECTION THREE: 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 FOUR: That existing Section 13-401(b) and any provisions in conflict herewith are hereby repealed.

SECTION FIVE: That Resolution No. ___ is hereby rescinded.

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

PASSED by the Governing Body this day of , 2023 .

APPROVED by the Mayor this day of , 2023.

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Stephen Powell, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney