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*amended by
Ord 305*

THE CITY OF BEL AIRE, KANSAS

ORDINANCE NO. 257

AN ORDINANCE PROVIDING FOR CREATION OF A
CITY TREE BOARD; PROVIDING FOR THE
PLANTING AND CARE OF TREES; AND PROVIDING
PENALTIES FOR THE VIOLATION OF THIS
ORDINANCE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BEL AIRE,
KANSAS:

Section 1. Purpose of the Ordinance

This ordinance is in recognition of the value of trees to a community. Trees add beauty and character to a city, encourage the presence of birds, provide shade, reduce the velocity of winds, help prevent soil erosion and add to the world's supply of oxygen.

This ordinance is established to promote trees in the city and to provide guidance, through education and technical assistance, in the planting, growing and maintenance of trees. The purpose of this ordinance is to:

provide for the care of trees on public property; and allow for the trimming or removal of trees for public safety or to avoid damage to public utilities.

Section 2. Establishment of a Tree Board

(a) There is hereby created and established a five member Tree Board. The Board shall be comprised of residents of the City of Bel Aire, Kansas and shall be appointed by the Governing Body.

(b) The term of the five persons shall be four years except that the term of three of the members appointed to the first Board shall be for only two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

(c) Members of the Board shall serve without compensation.

(d) The Board shall prepare, administer and annually update a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks and in other public areas. Such plan shall be presented annually to the Governing Body for approval. Said plan shall constitute the official City tree plan.

(e) The Board, when requested by the Governing Body, shall consider, investigate, make findings, report and recommend upon any special matter of questions coming within the scope of its work.

(f) The Board shall choose its own officers, make its own procedural rules and provide the city clerk with copies of the minutes of its proceedings. A majority of the members shall constitute a quorum for the transaction of business.

(g) A member shall hold office on the board until:
the end of his or her appointment;
the member resigns from the Board;
the member fails to attend 3 consecutive meetings;
the member moves out of the city; or
the Tree Board is terminated by the governing body.

(h) When there is one or more vacancy on the Board, each member of the governing body may submit a recommendation for appointment to the board. The governing body will vote by ballot for the selection of the person(s) to serve on the Board. Each member of the governing body shall have one vote for each position to be filled. The person(s) that receive the highest number of votes are thereby appointed to the Board. If the votes result in a tie, additional ballots shall be taken until one or more persons receive sufficient votes to be appointed.

(i) The Board may make recommendations to the City Administrator regarding the trimming or removal of trees for public safety or to protect public utilities.

(j) The Board may provide for training and/or information to be available regarding the planting and care of trees.

Section 3. Definitions

(a) "Park Trees" are defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all areas owned by the City, or to which the public has free access as a park.

(b) "Sight Triangle" is an area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of 2-1/2 feet and 8 feet above the grades. Such Sight Triangle shall have sides which are measured from the center of the lot line intersection and a third side, across the lot, that joins the ends of the other two sides. Where the lot lines at intersections have rounded corners, the said lot line will be extended in a straight line to a point of intersection. In all residentially zoned districts, the two sides forming the lot line intersection shall be a minimum distance of 30 feet and in all other zoning districts such distance shall be 20 feet.

(c) "Street Trees" are defined as trees, shrubs, bushes and all other woody vegetation with a mature height in excess of 18 inches on land lying between property lines on either side of all streets, avenues or ways within the city.

(d) "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.

Section 4. Street Trees

A list of preferred and recommended street trees species, which shall consist of small, medium and large trees, shall be established from time to time by the Board, and a copy of the current list shall be maintained in the city offices and copies of the list shall be provided to persons requesting the same.

Section 5. Trimming Required

The owner or occupant of any premises abutting on any street, avenue or alley in the City shall cut, trim or remove, in accordance with the provisions of this ordinance, all trees and shrubbery growing in the City which may constitute any hazard or any sight obstruction to any vehicular or pedestrian traffic upon the streets and sidewalks.

Section 6. Minimum Height

The limbs of trees or shrubbery abutting on any street, avenue or ally in the City shall be trimmed or cut so that the same shall not be less than eight (8) feet above the sidewalks and not less than twelve (12) feet above the streets or avenues over which they hang.

Section 7. Distance from Light Poles and Fire Hydrants

All trees and shrubbery which are greater than 18 inches in height are prohibited within ten (10) feet of street lighting poles or within five (5) feet of fire hydrants.

Section 8. Notice to Cut

Notice to cut any trees, boughs, shrubbery or limbs to conform to the provisions of this ordinance shall be served by mailing a copy of the notice by certified mail, return receipt requested, to the owner of the abutting premises.

Section 9. Abatement

If such owner shall not within thirty (30) days after said notice cause such

obstructing trees, boughs, shrubbery or limbs to be removed as provided in accordance with the provisions of this ordinance, then the City shall remove them. Proper pruning season will be taken into consideration. This section, however, shall not be construed as waiving the rights of the City to prosecute under the provisions of this ordinance.

Section 10. Assessment of Costs

The costs of abatement of any condition prohibited by this ordinance shall be assessed and charged against the lot or parcel of property on which the condition existed.

Section 11. Collection of Costs

The City Clerk shall, in writing, inform the owner said property of the costs of abatement and request payment of the same. Should the costs of abatement remain unpaid, the City Clerk shall, at the time of certifying other City taxes to the County Clerk, certify the costs of abatement of any condition prohibited by this ordinance; and the County Clerk shall extend the same on the tax roll of the County against the property upon which such condition existed. Such costs shall be collected by the County Treasurer and paid to the City as other city taxes are collected and paid.

Section 12. Street Tree Spacing

(a) To promote the healthy growth of trees, the city encourages the new planting of Street Trees so that the spacing between trees shall be in accordance with the size of the trees to be planted. The spacing of new street trees is approximately 30 feet between small trees, approximately 40 feet between medium trees and approximately 50 feet between large trees.

(b) The distance trees may be planted from curbs or curblines and sidewalks shall be in accordance with the size classes in the list of Street Trees provided for in Section 4 herein, and no trees may be planted closer to any curb or sidewalk than the following: small trees, two feet; medium trees, three feet; and large trees, four feet. Exceptions can be granted by the City Administrator or Board.

Section 13. Sight Triangle

No street trees shall be planted within the sight triangle of an intersection as defined in Section 3 of this ordinance.

Section 14. Utilities

No street trees other than those species listed as small trees in the list of Street Trees provided for in Section 4 of this ordinance may be planted under or within (ten) 10 lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground municipal water line, sewer line, transmission line or other public utility. The City, a utility company, or their designee shall have the right to prune any tree or shrub on private property when it obstructs the view of drivers to observe traffic, traffic control devices, or signs, or interferes with the operation or maintenance of a utility.

Section 15. Public Tree Care

(a) The City shall have the right to plant, prune, maintain and remove trees, plants, shrubs and tree stumps, within the right-of-way of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to avoid damage to public utilities.

Section 16. Tree Topping

It shall be unlawful for any person or firm to top any street tree, park tree or any other tree on public property. 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 ordinance by determination of the Board.

Section 17. Corner Clearance

Every owner of premises or other property with any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall have a clear space of eight (8) feet above the surface of the sidewalk and twelve (12) feet above the surface of the street. The owner shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety

of the public. It shall be unlawful to permit any hedge or shrub to grow over any sidewalk, street or alley, unless the height limitations as set out above are met.

Section 18. Tree Protection

(a) It shall be unlawful for any person to attach wire, rope, chain, sign or any other material to any tree on any public street, alley or public property; except when used as a preservation practice.

(b) The City Administrator or Board may exempt certain trees on any street, alley or public property from protection and have them removed when in the way of public improvements.

Section 19. Inspection

The Board or a duly authorized agent of the City may inspect the work of all commercial, private or contracting arborists performing tree pruning on public property to insure that proper pruning practices are being followed. Inspections shall be random and without notice.

Arborists found in violation of proper pruning practices shall be notified verbally and in writing by the City by certified mail, return receipt requested. Such violations shall be corrected if possible and future pruning shall comply with approved practices.

Section 20. Penalty

A complaint may be filed in the Municipal Court of Bel Aire, Kansas against any person or commercial, private or contracting arborists found to be in violation of the provisions of this ordinance, provided that the person or arborist shall first have been notified by being mailed a copy of a written notice by certified mail, return receipt requested. The notice shall:

- (1) state the condition which has caused the violation of this ordinance;
- (2) provide the person in violation 30 days from date of deliverance of the notice to alleviate the hazardous or harboring condition; and
- (3) state that failure to alleviate the condition or to request a hearing may result in prosecution and/or abatement of the condition by the City with the cost assessed against the property.

Upon such complaint in the municipal court, any person or commercial, private or contracting arborists found to be in violation of the provisions of this ordinance shall upon conviction be punished by a fine of not less than \$50.00 nor more than \$100.00.

Section 21. Review

The City Administrator shall have the right to review the conduct, acts, and decisions of the Tree Board. Appeal of any decisions may be taken to the Governing Body.

Section 22. Effective Date

This Ordinance shall take effect and be in force from and after its publication in the official city newspaper.

Passed by the City Council this 15th day of August, 1995.

Approved by the Mayor this 15th day of August, 1995.



Harold A. Smith
MAYOR, HAROLD A. SMITH

ATTEST:

Sherryl L. Cutter
CITY CLERK, SHERRYL L. CUTTER