

CHAPTER XVIII. TREES

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ARTICLE 1. STREET TREES

- 18-101 **SHORT TITLE.**
This Article shall be known and may be cited as the "Street Tree Ordinance" of the City. (Code 1979, 18-301)
- 18-102 **DIRECTOR OF PARKS AND RECREATION.**
The office of the Director of Parks and Recreation is hereby created. The Director of Parks and Recreation shall be appointed by the City and shall receive such salary as may be authorized by the ordinance. (Code 1979, 18-401)
- 18-103 **DEFINITIONS.**
- (A) **Park** shall include all public parks having individual names, and all areas owned by the City, or to which the public has free access as a park.
 - (B) **Tree** unless the context clearly indicates otherwise, means any plant with a single or no more than four trunks and without lateral branches at the lower trunk areas.
 - (C) **Shrub** or bush shall be any plant with no defined trunk and many lateral branches from the main trunk and/or ground.
 - (D) **Brush and woody vines** shall be classified as weeds. (See Article 3 of this Chapter.)
 - (E) **Tree size:**
 - (1) **Large Trees** are designated as those attaining a height of 45 feet or more;
 - (2) **Medium Trees** are designated as those attaining a height of 30 to 45 feet;
 - (3) **Small Trees** are designated as those attaining a height of 20 to 30 feet. (Code 1979, 18-302)
- 18-104 **PERMITS FOR PLANTING, REMOVAL.**
The Director of Parks and Recreation or his or her designee shall be responsible for the planting, care and removal for all trees located within the street right-of-way and parks of the City. The owner of land abutting on any street may, when acting within the provisions of this Article, prune, spray, plant or remove trees in that part of the street abutting his or her land not used for public travel. A street tree permit shall be required only when the owner of property intends to deviate from the rules and regulations contained within this Article; except that when a property owner requests the City to plant a tree on the right-of-way in front of his or her property, he shall be required to sign a street tree permit agreeing to care for such tree. (Code 1979, 18-303)

18-105

TREE PLANTING PROCEDURE.

Tree planting on any right-of-way shall be performed in strict accordance with the following regulations established for the planting, pruning and care of trees in public places. If a person intends to deviate from the rules herein, they must make application for a street tree permit to plant or set out trees or plants. The Director of Parks and Recreation or his or her designee shall have the authority to require from the applicant a detailed declaration of intentions with regard to planting.

Whenever any tree shall be planted or set out in conflict with the provisions of this Section, it shall be lawful for the Director of Parks and Recreation or his or her designee to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

- (A) Trees must not be less than one (1) inch in diameter of trunk one (1) foot above the ground.
- (B) All trees from one (1) to three (3) inches in diameter of trunk one (1) foot above the ground must be protected and supported by tree guards.
- (C) No tree shall be placed so as to cause a traffic hazard.
- (D) Spacing of trees should be determined by the Director of Parks and Recreation or his or her designee according to local conditions, the species, cultivars or varieties used, their mature height, spread and form. Generally all large trees shall be planted 40 to 60 feet on center, all medium sized trees shall be planted a minimum of 35 feet on center; and all small trees shall be planted a minimum of 25 feet on center.
- (E) No tree shall be planted where the clear space between the curb and sidewalk is less than three (3) feet.
- (F) No tree shall be planted nearer than one (1) foot from the curbline or outer line of the sidewalk.
- (G) No tree or shrub shall be planted on a corner nearer than 50 feet from the intersecting curbline of the two (2) streets or within the triangle connecting these two (2) points. (Code 1979, 18-304)

18-106

RESPONSIBILITY OF CITY.

If at any time the City Commission authorizes widening a street so that the requirements of Section 18-105 are not met, the City of Lawrence or its designated contractor shall remove the tree or trees that do not conform at no cost to the owner of the abutting property. (Code 1979, 18-304)

18-107

TREE PROTECTION.

No person shall intentionally damage, cut, carve, transplant, or remove any tree, attach any rope, wire, nails, advertising poster or other contrivance to any tree, allow any fire, gaseous liquid, solid substance which is harmful to such trees to come in contact with them. All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four (4) feet high and eight (8) feet square or at a distance in feet from the tree equal to the diameter of the trunk in inches (D.B.H.), whichever is greater, and all building material, dirt or other debris shall be kept outside the barrier. No person shall excavate any ditches or trenches or lay any drive or walk within a radius of ten (10) feet from any tree within the public right-of-way without first obtaining a permit from the Director of Parks and Recreation or his or her designee. For the installation or repair of any underground

utility within the ten (10) foot radius, a permit may be issued by the Director of Parks and Recreation or his or her designee to tunnel under the root system to minimize tree damage. No person shall deposit, place, store or maintain upon any public right-of-way any stone, brick, sand, concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein. (Code 1979, 18-306; Ord. 5506)

18-107A

TREE EXEMPTION.

The Director of Parks and Recreation or his or her designee may exempt certain trees within the right-of-way from protection as provided in Section 18-107 and have them removed when in the way of public improvements such as tree planting, pruning, and underground or overhead utility work. The standards for exemption are:

- (A) Poor spacing;
- (B) Poor condition of tree;
- (C) Dead tree;
- (D) Undesirable tree type for location.

Tree conditions are defined as follows:

- (1) Good: healthy and vigorous tree. No apparent signs of insect, disease, or mechanical injury. Little or no corrective work required. Form representative of species.
- (2) Fair: average condition and vigor. The tree is in need of some corrective pruning or repair. It lacks desirable form characteristics or shows minor insect injury, disease, or physical damage.
- (3) Poor: the general state of the tree is in decline. It shows severe mechanical, insect, or disease damage, but death is not imminent.
- (4) Dead/Dying: the tree is dead or death is imminent. (Ord. 5506)

18-108

PUBLIC TREE CARE.

The Parks and Recreation Department shall have the right to plant, trim, spray, preserve and remove trees, plants and shrubs within the line of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary to insure safety or to preserve the symmetry and beauty of such public grounds. The Director of Parks and Recreation or his or her designee 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 sewers or other public improvements, or is affected with any injurious fungus, insect or other pest. (Code 1979, 18-306)

18-108.1

LANDSCAPED TRAFFIC CALMING DEVICES – FEE REQUIRED.

From and after the effective date of this ordinance, the City shall require the payment of a one time fee for the installation and maintenance of landscaping in traffic calming circles. The payment of the fee shall be required at the time of the approval of the street plans for the development. All landscaping shall be approved by the City's Parks and Recreation Department. The fee shall be \$2,000.00 per traffic calming circle. Upon payment of the fee, and the installation of the traffic calming circle, the Parks and Recreation Department shall install and maintain appropriate landscaping in the traffic calming circle. (Ord. 7901)

18-109

TRIMMING AND CORNER CLEARANCE.

Every owner or occupant of any house, building, lot or premises who owns any tree located on their property which overhangs any street or right-of-way within the City shall trim the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight (8) feet above the surface of the street or sidewalk. The owners shall remove all dead, diseased or dangerous trees or broken or decayed limbs from their property which constitutes a menace to the safety of the public. The City shall have the right to trim 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 approaching vehicles or any traffic control device or sign, such trimming to be confined to the area immediately above the right-of-way. (Code 1979, 18-307)

- (1) All shrubs and bushes located on the triangle formed by two (2) curb lines at the intersection of two (2) streets and extending for a distance of fifty (50) feet each way from the intersection of the curb lines on any corner lot within the city, shall not be permitted to grow to a height of more than thirty-six (36) inches above the road level of any street, avenue, or alley, in order that the view of the driver of a vehicle approaching a street intersection shall not be obstructed.
- (2) Every owner or occupant of any house, building, lot or premises shall keep any shrub, bush or tree growing on the premises, trimmed to a height that will not obscure or block the view of a vehicle leaving the premises and entering the public right-of-way.
- (3) Any owner or occupant of any property failing to trim any trees, shrubs, or bushes in conformity with this Section shall be notified by the Director of Parks and Recreation or his or her designee to do so and such notice shall require trimming in conformity with this Section within five (5) days after the date of such notice. Upon the expiration of such period, the Director of Parks and Recreation or his or her designee may cause the trimming to be done and the cost thereof may be collected from the owner of the property in the manner provided by law. (Code 1979, 18-307)

18-110

INTERFERENCE WITH DIRECTOR OF PARKS AND RECREATION.

It shall be unlawful for any person to prevent, delay or interfere with the Director of Parks and Recreation or his or her designee or any of his or her agents, or servants, while engaging in the planting, cultivating, mulching, pruning, spraying, inspecting or removing of any trees, plants or shrubs in or upon any public right-of-way, public park or upon any private grounds as authorized in this Article. (Code 1979,18-308)

18-111

RULES AND REGULATIONS.

The Director of Parks and Recreation or his or her designee may make additional rules and regulations pertaining to the planting, removal and care of trees, bushes and shrubs not inconsistent with the provisions of this Article. No person shall fail to obey any such rule or regulation. (Code 1979,18-309)

18-112

TREE TOPPING.

It shall be unlawful as a normal practice for any person, firm or City department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs large than three (3) 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 provision at the determination of the Director of Parks and Recreation or his or her designee. (Code 1979, 18-310)

- 18-113 **PUBLIC NUISANCES DECLARED.**
 Any living or standing elm tree or part thereof infected with the Dutch Elm Disease fungus *Ceratocystis ulmi* (Buisman) Moreau which harbors any of the elm bark beetles *Scolytus multistriatus* (Eichh.) or *Hylurgopinus rufipes* (Marsh.) is hereby declared to be a public nuisance wherever it may be found within the City. (Ord. 5286, Section 2)
- 18-114 **NUISANCES PROHIBITED.**
 No person, firm or corporation shall permit any public nuisance as defined in Section 18-113 of this Article to remain on any premises owned or controlled by him within the City. (Code 1979, 18-403)
- 18-115 **INSPECTION.**
 The Director of Parks and Recreation or his or her designee shall inspect or cause to be inspected all premises and places within the City at least twice each year to determine whether any public nuisance as defined in Section 18-113 of this Article exists thereon, and shall also inspect or cause to be inspected any elm tree reported or suspected to be infected with the Dutch elm disease fungus or any elm bark-bearing material reported or suspected to be infested with the elm bark beetle. The Director of Parks and Recreation or his or her designee shall have the authority to enter upon private premises at all reasonable times for the purpose of carrying out any of the provisions of this Article. (Code 1979, 18-404)
- 18-116 **ABATEMENT OF DUTCH ELM DISEASE NUISANCES.**
 Provisions relating to the abatement of Dutch Elm disease nuisances are:
- 18-116.1 Whenever the Director of Parks and Recreation or his or her designee shall find with reasonable certainty on examination or inspection that any public nuisance as defined in this Article exists within the City, he or she shall cause it to be sprayed, removed, burned or otherwise abated in such manner as to destroy or prevent as fully as possible the spread of Dutch elm disease fungus or the insect pests or vectors known to carry such disease.
- 18-116.2 Before abating any nuisance on private premises or in any terrace strip between the lot line and the curb, the Director of Parks and Recreation or his or her designee shall proceed as follows:
- (A) If the Director of Parks and Recreation or his or her designee shall determine that danger to other elm trees from the nuisance is not imminent because of elm dormancy, he shall make a written report of his or her findings to the City Commission who shall proceed as provided in Chapter 12, Article 32 of the Kansas Statutes Annotated.
- (B) A City of Lawrence representative or competent state or federal authority when requested by the Governing Body of the City will mark private trees between May 1 and September 1 of each year and shall file with the Governing Body a statement in writing based upon a laboratory test or other supporting evidence that trees or tree materials or shrubs located upon private property within such City are infected or infested with or harbor any tree or plant disease or insect, pest or larvae, the uncontrolled presence of which may constitute a hazard to or result in the damage or destruction of other trees or shrubs in the community, describing the same and where located, and the Governing Body shall direct the City Clerk to issue a notice sent by registered mail or delivered by a police officer, requiring the owner or agent or the owner of the premises to treat or remove any such

designated tree, tree material or shrub by December 30 of that calendar year. If the owner or agent shall fail to comply with the requirements of the notice within the time specified, then the Director of Parks and Recreation or his or her designee shall proceed to have the designated tree, tree material or shrub treated or removed and report the cost thereof to the City Clerk, and the cost of such treatment or removal shall be paid by the owner of the property or shall be assessed and charged against the lot or parcel of ground on which the tree, tree material or shrub was located. The City Clerk shall at the time of certifying other city taxes to the County Clerk, certify the unpaid costs and the County Clerk shall extend the same on the tax roll of the County against the lot or parcel of ground.

18-116.3 No damage shall be awarded to the owner for destruction of any elm tree, elm wood or elm material or any part thereof pursuant to this section. (Code 1979, 18-405)

18-117 **SPRAYING OF ELM TREES.**

Rules and regulations pertaining to the spraying of elm trees in the City are:

(A) Whenever it is determined that Dutch elm disease fungus is present within the city, the Director of Parks and Recreation or his or her designee may cause to be sprayed all trees located on the City right-of-way with a recognized effective elm bark beetle concentrate or he may authorize use of a systemic insecticide. Spraying shall be done between November 15 and May 1.

(B) Before causing the spraying of any elm tree on private property in accordance with this Section, the Director of Parks and Recreation or his or her designee shall notify the owner as provided in Section 18-1 16.2 of this Article. (Code 1979, 18-406)

18-118 **STORAGE AND USAGE OF ELM WOOD.**

American Elm wood may be stored and used as firewood if it is burned or debarked before April 1 each year. American Elm wood kept past April 1 must be rendered unsuitable as a breeding site for the elm bark beetle by covering the elm wood with plastic for at least sixty (60) days. (Ord. 5286, Sec. 3)

ARTICLE 2. LICENSING AND REGULATIONS

18-201 **LICENSE REQUIRED.**

No person shall engage in the business of cutting, trimming, pruning, removing, spraying or otherwise treating trees, within the City without first procuring a license therefor from the City Clerk. The application for such license shall specify the types of service for which the applicant desires to be licensed. Nothing contained in this Article shall be construed to prevent the owner or occupant from performing work on his or her own property. (Code 1979, 18-201)

18-202 **SAME; EXAMINATION.**

Before any such license shall be issued, the City Clerk shall submit to the Director of Parks and Recreation or his or her designee who shall thereupon examine the applicant orally and in writing upon the applicant's qualifications and competency to engage in the types of service for which his or her application discloses that he desires to be licensed. A current certification from the Kansas Arborist Association or equivalent certification may be used in lieu of a written examination. The applicant shall demonstrate such actual practical ability and competence or furnish such evidence of previous satisfactory experience as the Director of Parks and Recreation or his or her designee deems proper. The Director of Parks and Recreation or his or her designee shall return said application with an endorsement of approval for the

type of service in which the applicant has been found qualified, or an endorsement of disapproval accompanied by a written explanation for all other applied for types of service. The City Clerk shall issue or refuse to issue such license in accordance with the endorsement of the Director of Parks and Recreation or his or her designee. (Code 1979, 18-202)

18-203

LICENSE.

Every such license shall show upon its face the types of service in which the licensee therein named is licensed and authorized to render and perform. (Code 1979, 18-203)

18-204

INSURANCE REQUIREMENT.

No license shall be effective or be issued until the applicant or licensee shall present to the City Clerk a satisfactory public liability insurance policy covering all operations of such applicant or licensee in such business in the city in the sum of at least \$50,000 per occurrence bodily injury liability insurance and at least \$50,000 per occurrence, \$100,000 aggregate limit property damage liability insurance. Should any policy be canceled, the City shall be notified of such cancellation within 10 days after such cancellation is effective.

A provision requiring such notice shall be incorporated in such policy. In the event any such policy at any time fails, in the opinion of the Director of Parks and Recreation or his or her designee, to comply with the provisions hereof or to afford reasonably satisfactory protection to the persons intended to be protected, such failure shall be grounds for revocation of any such license, or in the discretion of the Director of Parks and Recreation or his or her designee, grounds for the suspension thereof until the insurance required hereby be so furnished. It shall be unlawful for any person to engage in the business defined herein while his or her license is for any reason suspended or revoked. (Code 1979, 18-204)

18-205

LICENSE FEE.

The initial fee for every licensee to engage in this business shall be \$60 for the calendar year or portion thereof, or \$30 if the licensee is certified by the Kansas Arborist Association. The issuance of such license shall entitle and authorize the licensee to engage in only such types of service as shown on the face of such license. It shall be unlawful and a ground for revocation of such license, for the licensee to engage in any or other different types of service constituting all or any part or parts of such business. Renewal of such license shall be \$18 per calendar year. The initial fee for a license limited to dead tree removal from private property shall be \$30 for the first calendar year or portion thereof, and \$12 per year for renewal.

Effective date of initial licenses shall be the first day of operation within the City. Current licenses must be renewed by February 15. (Code 1979, 18-205; Ord. 5517)

18-206

RULES AND REGULATIONS.

The Director of Parks and Recreation or his or her designee may recommend for adoption reasonable rules and regulations governing those aspects of the conduct of the business defined in 18-201 hereof and of any and all parts thereof, directly affecting the public health and safety and requiring the use of such safety appliances, apparatus and equipment as are reasonably necessary for the protection of the workmen engaged therein, and the public and private property and it shall be unlawful for any licensee hereunder to violate or fail, neglect or refuse to comply with any such rules or regulations. Such rules and regulations shall be adopted, amended and repealed by majority vote of the City Commission and shall be effective when filed with the City Clerk. (Code 1979, 18-206)

18-207

NAME AND ADDRESS DISPLAYED.

All automobiles, trucks, trailers or other vehicles operated by any licensee for the transportation of the equipment used by him or her in such business and all self-propelled, draw or tow equipment used by any licensee in such business shall have the name and address of such licensee displayed on both sides thereof in plain and legible figures and letters not less than three inches in height which shall be kept in such condition as to permit the same to be readily distinguished and read at a distance of at least sixty (60) feet. It shall be unlawful and a ground for revocation of his or her license for any licensee to operate any such vehicle or cause any such equipment to be operated or drawn or towed upon the streets, alleys or any public ways or places within the City unless or without the same being so displayed thereon. (Code 1979, 18-207)

ARTICLE 3. WEEDS

18-301

PURPOSE.

The purpose of this Article is to declare the excessive growth of certain vegetation within the City to be noxious and prohibit said excessive growth; to provide for notification of the owner, occupant, or agent of property upon which a violation of this Article has been determined to exist and to afford such person the opportunity to request a hearing before the Governing Body; to charge a public officer with the administration and enforcement of this Article and authorize the City to abate the excessive growth upon failure of the owner, occupant, or agent of the property to correct the violation. This Article is designed to promote traffic safety by removing obstructions to the vision of motorists; to protect the public health and safety by eradicating conditions which may accelerate the spread of fire and which are conducive to the nesting and proliferation of rodents, snakes, mosquitos, vermin, or other pestiferous conditions; and to promote the general welfare by improving the physical environment, correcting blighted areas and preserving property values. This Article shall not apply to that portion of land used for agricultural use which is more than 150 feet from any occupied residential subdivision, lot, tract, or parcel of land. (Ord. 5650)

18-302

DEFINITIONS.

For the purposes of this Article, the following definitions shall apply:

- (A) **Agent** means any person registered with the City Minimum Housing and Environmental Inspector as agent for a property, or any nonowner listed on the Douglas County tax roll as the person to receive the tax bill notice.
- (B) **Excessive growth** means plant length twelve (12) inches or more above the ground in height, or length if matted down, as measured along the stem.
- (C) **Owner** means the person shown on an affidavit of equitable interest in ownership on file with the register of deeds in Douglas County, or the person(s) listed as the owner of record for the property as registered with the register of deeds in Douglas County, Kansas.
- (D) **Person** means any individual, individuals, partnership, corporation, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative, who has charge, care or responsibility for maintenance of any property, lot or parcel of land regardless of status as owner, tenant or lessee, whether or not in possession.
- (E) **Vegetation** includes, but is not limited to, weeds (as defined herein), woody

vines, brush, uncultivated plants and grasses.

- (F) **Weeds** include, but is not limited to, barnyard grass (*echinocloa crusgalli*); beggar tick, sticktight, devil's pitchfork (*bidens frondosa*); burdock (*arctium minus*); Canada goldenrod (*solidago canadensis*); crabgrass, large or large hairy (*digitaria sanguinalis*); cocklebur (*xanthium strumarium*); curled dock, sour dock (*rumex crispus*); curltop smartweed (*polygonum lapathifolium*); daisy fleabane (*erigeron strigosus*); dandelion (*taraxacum officinale*); dog bone (*apocynum cannabinum*); fall panicum (*panicum dichotomiflorum*); fescue (*festuca pratensis*); flannel mullein (*verbascum thapsus*); fireweed (*kochia scoparia*); foxtail barley (*hordeum jubatum*); green foxtail (*setaria viridis*); hedge parsley (*forilis arvensis*); hemp (*cannabis sativa*); hoary verbena (*verbena stricta*); horsenettle (*solanum carolinense*); horseweed (*conyza canadensis*); Indian mallow, velvet leaf (*abutilon theophrasti*); ironweed (*verononia baldwinii*); Japanese brome (*bromus japonicus*); Johnson grass (*sorghum halepense*); lambsquarter (*chenopodium album*); maple-leaved goosefoot (*chenopodium hybridum*); milkweed (*asclepias syriacs*); mullein, common (*verbascum thapsus*); musk, nodding thistle (*carduus nutans*); patience dock (*rumex patientia*); Pennsylvania smartweed (*polygonum pennsylvanicum*); pennycress (*thalspi arvense*); pigweed, rough, or redroot (*amaranthus retroflexus*); pokeberry (*phytolacca americana*); prickly wild lettuce (*lactuca serriola*); purpletop grass (*tridens flavus*); ragweed, common (*ambrosia artemisiifolia*); ragweed, giant kinghead (*ambrosia trifida*); sagewort (*artmisia ludoviciana*); shepherd's purse (*capsella bursapastoris*); smooth dock (*rumex altissimus*); snakeroot (*eupatorium rugosum*); Spanish needles (*bidens bipinnata*); spurge, nodding or upright spotted (*euphorbia maculata*); stinging nettle, nettle (*urtica dioica*); stinkgrass, lovegrass (*eragrostis cilianensis*); sumpweed (*iva annual*); swamp smartweed, tanweed, devil's shoestring (*polygonum coccineum*); tall thistle (*cirsium altissimum*); treacle mustard or spreading erysimum (*erysimum arvense*); tumble panicgrass or witchgrass (*panicum capillare*); tumbleweed, tumble amaranth (*amaranthus albus*); water hemp (*amaranthus rudis*); wild four-o'clock (*Mirabilis nyctaginea*). (Ord. 5650)

18-303

DECLARATION OF NOXIOUS CONDITION.

All weeds, woody vines, brush, uncultivated plants, grasses or other vegetation which attain an excessive growth are hereby declared noxious and are subject to eradication and abatement as provided in this article. (Ord. 5650)

18-304

WEEDS TO BE REMOVED.

- (A) It shall be unlawful for any owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided.
- (B) Nothing in this article shall be construed to subject trees, shrubbery, flowers, ornamental plants and properly maintained gardens to the provisions of this Article. The City shall bear no responsibility for the cutting or abatement of trees, shrubbery, flowers, ornamental plants or other vegetation which are not reasonably distinguishable at the time of abatement from other vegetation which is to be abated due to excessive growth.

- (C) Property owners may voluntarily register their property zoned for residential uses with the City of Lawrence, Codes Enforcement Division as property to be used for natural landscaping. For purposes of this Article, natural landscaping shall mean the growth of any vegetation to its natural height and form; provided such vegetation is not prohibited by the laws of the State of Kansas. Upon the receipt of a Notice of Violation pursuant to this Article, a property owner of property zoned for residential uses may claim that natural landscaping exists on the property and the property owner may seek an exemption from the provisions of this Article. The claim for exemption shall be presented to the City Codes Enforcement Division within the ten (10) day time limit of Section 18-305. The claim for an exemption shall be in writing and shall be considered by the City Commission. The claim for an exemption shall stay the enforcement of this Article until the claim has been heard and determined pursuant to this Article. No exemption shall be allowed if the vegetation growth constitutes a nuisance. No exemption shall be allowed if the public health, safety, and welfare of the community is harmed by the granting of the exemption. (Ord. 5650; Ord. 6892)

18-305

NOTICE OF VIOLATION; ORDER TO REMOVE; HEARINGS AND ABATEMENTS.

The City Manager shall designate a public officer to be charged with the administration and enforcement of this Article. The public officer or an assistant shall conduct a reasonable investigation of the property upon which vegetation of excessive growth is believed to exist. (Ord.8424)

- (A) It shall be unlawful for any owner, occupant or agent of a property to allow the excessive growth of vegetation on that property. Any violation of this section shall be a misdemeanor, and shall be punished by a fine not less than \$25 or more than \$100; or a jail term not to exceed 180 days; or both such fine and jail term. Each day any violation of this Article continues shall constitute a separate offense.
- (B) If a violation of the Article is determined to have occurred, the owner, occupant, or agent of the property shall be provided a notice of violation by personal service or by certified mail return receipt requested notice. The notice of violation shall serve as a one time yearly written notification for the property unless the record owner of title to the property changes subsequent to the sending of the notice of violation, in which case a notice of violation shall be sent to the new record owner. No further notice shall be given prior to removal of weeds or excess vegetation during the year. Failure to sign for the certified return receipt requested mail notice of violation from the City or failure to pick up the notice of violation from the post office within ten (10) days shall not constitute a lack of notice under this Article where delivery was attempted and a record of this attempt was provided as required by procedures for restricted mail.
- (C) The notice of violation required by this subsection shall include the following:
 - (1) That the property is in violation of the City weed control ordinance, describing the property and its locale and the nature of the violation.
 - (2) That the person in charge of the property shall have ten (10) days from the date of the mailing of the notice, or in cases where the owner is unknown ten (10) days after notice has been published by the City in the official City paper to either eradicate the excessive growth of vegetation or request a hearing before the Governing Body or its designated representative on the matter.
 - (3) That the notice serves as the one time yearly written notification for the property and that no further notice shall be given prior to removal of weeds or excess vegetation during the year.
 - (4) That if the owner, occupant, or agent of the property fails to correct the violation or request a hearing within ten (10) days of the mailing

of notice, the City or its authorized agent will remove the excessive growth of vegetation by reasonable means and assess the costs of removal, including reasonable administrative costs, against such person.

- (5) That if the assessed costs of removal, including administrative costs, are not paid within thirty (30) days of the date when the assessment comes due, the costs will be added to the property tax as a special assessment.
 - (6) That if any special assessments levied by the City in accordance with this Article remain unpaid for a period of one (1) year or more after their initial levy, the City may collect the amount due in the same manner as a personal debt of the property owner to the City by bringing an action in the Douglas County District Court. Such actions may be maintained, prosecuted, and all proceedings taken, including any award of post judgment interest in accordance with K.S.A. 16-204, and amendments thereto, to the same effect and extent as for the enforcement of an action for debt. All provisional remedies available in such actions shall be available to the City in the enforcement of the payment of such obligations. In such actions, the City also shall be entitled to recover interest at the rate provided in K.S.A. 79-2968, and amendments thereto, from and after the date a delinquency occurs in the payment of special assessments levied under this Article.
 - (7) That violation of any provisions of this Article shall be deemed a misdemeanor and be punishable by a fine of not less than \$25 or more than \$100; or a jail term of not more than 180 days; or both such fine and jail term, and that each day any violation of this Article continues shall constitute a separate offense.
 - (8) That the public officer should be contacted if there are any questions concerning the order.
- (D) Hearing and Abatement Procedure.
- (1) At the request of an owner, occupant or agent of a property that is the subject of a notice of violation, the governing body or its designated representative shall hold a hearing to determine whether a violation exists under this Article. Such hearing must be requested during the ten days subsequent to the mailing or service of the notice of violation. If, after hearing, a violation of this Article is determined to exist the governing body or its designated representative shall enter an order requiring the violation of this Article to be corrected by a specified date. In no event will this date be prior to the eleventh day subsequent to the mailing or service of the notice of violation.
 - (2) If the owner, occupant, or agent of a property that is the subject of a notice of violation fails to request a hearing or to eradicate the weeds or excessive growths of vegetation within ten days of the mailing, publication or personal service of the notice of violation, or if, following the expiration of the ten day period and during the same year, any further weeds or excessive growths of vegetation exist on the property the City may abate the condition and remove the weeds or excessive growth of vegetation by reasonable means.

18-306

ASSESSMENT OF COSTS.

- (A) If weeds or the excessive growths of vegetation are abated from a property pursuant to this Article, the costs of the removal, including administrative costs, may be taxed against any owner, occupant or agent of the property who was personally served or sent a notice of violation as required by this

section. Notice of the total cost of the abatement shall be provided to such owner, occupant or agent by certified mail return receipt requested or personal service, and such notice shall provide that the abatement costs are due within 30 days of the receipt of the notice. (Ord.8424)

- (B) If the costs of the abatement are not paid within 30 days of the receipt of the notice of abatement costs, a record of all of these costs will be certified to the City Clerk and the City Clerk shall cause a special assessment to be levied for such costs against the lot or piece of land in the same manner as is provided in K.S.A. 12-1617e, and amendments thereto. In the alternative or in addition to such special assessment the City may collect the costs in the manner provided in K.S.A. 12-1,115, and amendments thereto. (Ord.8424)
- (C) If the City pursues collection both by levying a special assessment and in the manner provided in K.S.A. 12-1,115, and amendments thereto, collection may only be pursued until the full cost of the abatement, including administrative costs, and any applicable interest has been collected. (Ord.8424)

18-307

RIGHT OF ENTRY.

The public officer, the public officer's designees, and authorized agents of the City, are expressly authorized to enter upon private property for the purpose of investigating alleged noxious conditions or eradication of noxious conditions existing thereon in a manner not inconsistent with this Article. (Ord. 5650)

18-308

UNLAWFUL INTERFERENCE.

It shall be unlawful for any person to interfere with, prevent or attempt to prevent the public officer, the public officer's designees, or authorized agents of the City from investigating alleged noxious conditions or eradication of noxious conditions as defined in Section 18-303. Such interference, prevention or attempt to prevent shall constitute a misdemeanor punishable by:

- (A) A fine of not less than \$25 or more than \$100; or
- (B) Imprisonment in the City jail for not more than 180 days; or
- (C) Both such fine and imprisonment not to exceed (a) and (b) above.

(Ord. 5650)