

Chapter 7.16
TREES AND SHRUBS

Sections:

- 7.16.010 Diseased or Insect Infested - Notice and Removal. (Repealed)
- 7.16.020 Service of Notice. (Repealed)
- 7.16.030 Failure to Comply with Notice - Action. (Repealed)
- 7.16.040 Removal of Trees to Prevent Disease Spread. (Repealed)
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7.16.010 Diseased or Insect Infested - Notice and Removal.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171-B)

7.16.020 Service of Notice.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171-B)

7.16.030 Failure to Comply with Notice - Action

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171)

7.16.040 Removal of Trees to Prevent Disease Spread.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-874)

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7.16.050 Dead Trees.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171)

7.16.060 Treatment by City if on Public Right-of-way.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171)

7.16.070 Payment for Treatment or Removal.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171)

7.16.080 Violation - Penalty.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171)

7.16.090 Exceptions.

Repealed.

(History: Ord. REP-1151 §1, 82; DST-171-A)

7.16.100 Purpose and Intent.

The purpose and intent of this ordinance is to protect and encourage the protection of trees, plants, shrubs, hedges, woody vegetation or other vegetation; to provide for public health, safety and general welfare; to promote and preserve the City's aesthetic value; to establish a City Tree Board; to designate a City Forester; and to regulate and control planting and maintenance on and adjacent to public and private property, rights-of-way, and easements.

(History: Ord. TP-2032 §1, 97; TP-1289 §1, 85)

7.16.110 City Tree Board.

A. Creation.

There is hereby created and established a City Tree Board for the City of Overland Park, Kansas, to be known as the "Legacy of Greenery Committee," hereinafter referred to as the "Committee."

B. Purpose and Responsibility.

The Committee shall be responsible for studying, investigating and developing a plan for the care, preservation, trimming, planting, replanting and removal of trees and shrubs in the public rights-of-way. Such a plan shall constitute the official comprehensive city tree plan for Overland Park.

C. Membership.

1. The Committee shall consist of 12 members to be appointed by the Mayor and approved by the City Council. The Committee shall also consist of ex-officio

members representing the Planning Commission, City Council, Citizens' Advisory Council on Parks and Recreation and other groups as appropriate. The appointments shall be men and women possessing some degree of experience in or who are constructively interested in the beautification and aesthetic quality of the entire community.

2. All members of the Committee shall be, at the time of their appointments, not less than 18 years of age and residents of Overland Park. Should any members of the Committee move outside the City, the Committee shall declare to the Mayor the existence of a vacancy.
3. The appointments shall be made for two-year terms, provided all vacancies shall be filled for the unexpired term.
4. Members of the Committee shall serve on a volunteer basis without compensation from the City or any other organization, trust, donation, or legacy for their services to the City.
5. The Committee shall adopt rules and by-laws which shall become effective when approved by the City Council.
6. The Committee shall elect from its membership a chairperson, vice-chairperson and a historian. Special duties and responsibilities of these offices shall be stipulated in the by-laws of the Committee.

(History: Ord. TP-1289 §2, 85)

7.16.120 City Forester, Appointment, Authority.

A City Forester shall be designated and appointed by the City Manager to observe and enforce the provisions of this chapter.

- A. Public property. The City Forester shall have the authority to regulate and supervise, and to enforce all ordinances, laws and regulations concerning the planting and maintenance of trees, hedges, shrubs, plants, woody vegetation and other vegetation, living or dead, located on public property. For the purposes of this chapter, maintenance shall include, without limitation, protecting, spraying, fertilizing, abatement of infestation, treating, pruning, trimming and removing of those trees, hedges, shrubs, plants, woody vegetation and other vegetation, living or dead. For the purposes of this chapter, public property shall include, without limitation, public streets, parkways, avenues, alleys, rights-of-way and other public property.
- B. Private property. The Neighborhood Services Division shall have the authority to enforce all ordinances, laws and regulations concerning the planting and maintenance of trees, hedges, shrubs, plants, woody vegetation or other vegetation located on private property. Where such trees, hedges, shrubs, plants, woody vegetation or other vegetation may endanger other public or private trees, hedges, shrubs, plants, woody vegetation or other vegetation, or endanger the public safety or hinder the use of public property, the Neighborhood Services Division, on the recommendation of the City Forester may, subject to the procedures set forth in Section 7.16.190, order the maintenance of such

materials by the property owner, or declare such materials to be a nuisance subject to the abatement of nuisance provisions in the municipal code. It is unlawful for the property owner or other person in control of any premises to permit any tree, hedge, shrub, plant, woody vegetation or other vegetation to remain on such premises in violation of a maintenance or nuisance order from the Neighborhood Services Division. The Neighborhood Services Division, the City Forester, or any person performing tree, hedge, shrub, plant, woody vegetation or other vegetation inspections under the authority of the City is hereby authorized and directed to enter on private property where there appears to be a threat to public or private property or the public safety, for the purpose of inspecting said materials. This entry and inspection may be done without the prior permission of the person in control of the property if the threat is imminent and if such notification is not feasible under the circumstances. If any person prevents such entry and inspection, the City may seek an appropriate court order to make such entry and inspection possible.

- C. Other regulations. The regulation of all other vegetation including, but not limited to, weeds, woody vines, brush, grass and uncultivated plants, is contained in Chapter 7.20 of the Overland Park Municipal Code.

(History: Ord. TP-2032 §2, 97; TP-1289 §3, 85)

7.16.130 Definitions.

For purposes of this chapter the following definitions shall apply to the listed terms:

- A. City Forester - The designated official of the City of Overland Park assigned to carry out the enforcement of this ordinance as specified therein.
- B. Large Trees - Trees, shrubs, and all other woody vegetation with a potential mature height of 55 feet or more.
- C. Maintenance - Shall include, without limitation, protecting, spraying, fertilizing, treating, pruning, abatement of infestation, trimming and removing of trees, hedges, shrubs, plants, woody vegetation or other vegetation.
- D. Medium Trees - Trees, shrubs, and other woody vegetation with a potential mature height of 25 to 55 feet.
- E. Neighborhood Services Division - The current City office designated by the City Manager to perform the duties specified in this chapter, or any successor office designated by the City Manager.
- F. Nuisance - The doing of an act, failure to perform a legal duty, or the allowance or creation of a condition which injures, endangers, or hinders the public health, safety or welfare in the use and enjoyment of rights-of-way by the general public.
- G. Paved Surface - All areas within rights-of-way covered with asphalt, concrete, or other permanent surface including streets, roadways, highways, curbs, sidewalks and storm drainage facilities.
- H. Property Owner - Person owning such property as shown by public records on file at the Johnson County Register of Deeds office.
- I. Public property - Shall include, without limitation, public streets, parkways, avenues,

alleys, rights-of-way and other public property.

- J. Rights-of-way - Any street, highway, road, alley, right-of-way and other land dedicated to or otherwise subject to the public use, whether improved or not.
- K. Shrubs - A low, usually several-stemmed, woody plant.
- L. Small Trees - Trees, shrubs, and other woody vegetation with a potential mature height of no more than 25 feet.
- M. Street Trees - Trees, shrubs, and all other woody vegetation located within public rights-of-way.
- N. Tree - A woody plant having a well defined stem or trunk, a more or less definite crown, a height at maturity of at least eight feet, and the trunk diameter exceeds two inches.

(History: Ord. TP-2032 §3, 97; TP-1289 §4, 85)

7.16.140 Distance From Paved Surface.

No tree shall be planted within three feet from any paved surface. No shrub shall be planted in the right-of-way within three feet from any paved surface.

(History: Ord. TP-1289 §5, 85)

7.16.150 Sight Distance; Fireplugs.

- A. The areas as defined in 12.04.126 and 18.450.070 of this code shall remain free of shrubs which exceed a height of two feet measured from the roadway. No street tree shall be planted in the public right-of-way within a zone of approach to an intersection. Said zone of approach is defined as the area allowing an unobstructed view in advance of an actual or possible future traffic control device for a distance of 150 feet as measured from the point of nearest intersecting curbs or curblines.
- B. No tree, shrub, or woody vegetation shall be planted within a distance of 10 feet from any fireplug.

(History: Ord. TP-1866 §1, 94; TP-1784 §1, 93; TP-1289 §6, 85)

7.16.160 Residential Traffic Islands, Thoroughfare Rights-of-Way, Planting Restrictions.

No trees, shrubs, woody vegetation, or other landscape improvements over two feet in height will be permitted on residential traffic islands or thoroughfare rights-of-way unless approved by the Committee.

(History: Ord. TP-1289 §7, 85)

7.16.170 Planting Near Overhead Utilities; Prohibited Trees.

- A. No trees other than those species defined as small trees in Section 7.16.130 may be planted or allowed to grow under or within 15 lateral feet of any overhead primary or secondary utility wire. No tree of the following species shall be planted or allowed to grow under or within 30 lateral feet of any overhead primary or secondary utility wire.
 - 1. Acer saccharinum (Silver Maple)

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2. *Fraxinus pennsylvanica* (Green Ash)
 3. *Populus* spp. (Cottonwood)
 4. *Platanus* spp. (Sycamore & London Planetree)
- B. The provisions of this section shall not apply to any property that was annexed into the City pursuant to Ordinance No. A-2719, unless and until such property is rezoned.
(History: Ord. TP-2733 §1, 2008; TP-2032 §4, 97; TP-1289 §8, 85)

7.16.180 List of Street Trees; Prohibited Trees.

A. Official Street Tree Species to be Planted.

The following is a list of street trees species for Overland Park, Kansas. The City Forester is authorized to adopt regulations providing procedures and criteria for the approval of the planting of other species. These regulations may authorize, without specific written permission of the City Forester, the planting of certain trees under specified conditions. The planting of any species not listed in subsection 7.16.180 (A), or those regulations, shall be prohibited unless prior written authorization of the City Forester is obtained.

1. *Acer platanoides* (Norway Maple)
rubrum (Red Maple)
saccharum (Sugar Maple)
campestre (Hedge Maple)
2. *Aesculus glabra* (Ohio Buckeye)
3. *Betula nigra* (River Birch-single stem only).
4. *Carpinus betulus* (European Hornbeam)
5. *Celtis* spp. (Hackberry)
6. *Fraxinus americana* (White Ash)
7. *Ginkgo biloba* (Ginkgo)
8. *Gleditsia triacanthos inermis* (Thornless Honeylocust)
9. *Koelreuteria paniculata* (Golden-rain tree)
10. *Maclura pomifera inermis* (Osage Orange fruitless/thornless varieties)
11. *Quercus alba* (White Oak)
acutissima (Sawtooth Oak)
imbricaria (Shingle Oak)
macrocarpa (Bur Oak)
muehlenbergii (Chinkapin Oak)
robur (English Oak)
rubra (Red Oak)
12. *Taxodium distichum* (Bald Cypress)
13. *Tilia cordata* (Littleleaf Linden)
tomentosa (Silver Linden)
americana (American Linden)
14. *Ulmus parvifolia* (Lacebark Elm)

B. Prohibited Street Trees.

The following is a list of tree species that are prohibited as street trees.

1. *Abies* spp. (Fir)
2. *Acer saccharinum* (Silver Maple)
3. *Albizia julibrissin* (Mimosa)
4. *Diospyros virginiana* (Persimmon)
5. *Elaeagnus angustifolia* (Russian Olive)
6. *Fraxinus pennsylvanica* (Green Ash)
7. *Maclura pomifera* (Osage Orange fruited/thorned varieties)
8. *Morus* spp. (Mulberry)
9. *Picea* spp. (Spruce)
10. *Pinus* spp. (Pine)
11. *Platanus acerifolia* (London Plane-tree)
occidentalis (Sycamore)
12. *Populus* spp. (Cottonwood)
13. *Pyrus calleryana* 'Bradford' (Bradford Pear)
14. *Salix* spp. (Willow)
15. "Edible Fruit trees"

C. Nothing in this section shall require the removal or eradication of any existing trees on any property that was annexed into the City by Ordinance No. A-2719.

(History: Ord. TP-2732 §1, 2008; TP-2032 §5, 97; TP-1289 §9, 85)

7.16.185 Prohibited Trees.

The following is a list of tree species that may not be planted or grown within the corporate limits of the City of Overland Park, Kansas:

1. *Ulmus* spp. (Elms except for *Ulmus parvifolia* and *Ulmus americana*)
2. *Ailanthus altissima* (Tree of Heaven)
3. *Acer negundo* (Boxelder)

(History: Ord. TP-2032 §6, 97; TP-1289 §10, 85)

7.16.190 Removal and maintenance by City; When Notice Required.

- A. Whenever the Neighborhood Services Division or the City Forester shall determine that removal of a tree, hedge, shrub, plant, woody vegetation or other vegetation within private or public property, or maintenance within private property, is necessary and authorized by this chapter and does not constitute an immediate hazard, the City shall notify the property owner or abutting property owner by certified mail or by a verified service of process by a police officer at least 10 days prior to removal. The notice shall describe the property at issue, describe the violation, state the reason for the required removal, advise the property owner of opportunities for relocation, and inform the

property owner that a hearing may be requested, in writing, before the Legacy of Greenery Committee should the property owner object to the action. The City or the property owner may appeal, in writing within ten days following the decision of the Committee, to the Community Development Committee. If the abutting property is vacant, or is owned by a person, corporation or other such entity who does not reside on the abutting property, the City shall send notice to the last known address of the property owner, or shall take other actions, including posting the notice on the property, to reasonably attempt to notify the property owner. Such removal within public property will be at the City's expense.

- B. Whenever the City Forester shall determine that maintenance, excluding removal, is required concerning trees or shrubs on any public property and order such work to be performed, notice shall not be required. Such work shall be performed at City's expense.
- C. Notice of removal or maintenance shall not be required when the City Forester shall determine that the existing condition constitutes an immediate hazard to the public health, safety and welfare or otherwise determines that the condition endangers persons or property. In such cases, the provisions of Chapter 7.28 of the Overland Park Municipal Code shall be followed; provided, however, that the City Forester may take unilateral action if he/she observes a situation that requires immediate action and compliance with Chapter 7.28 would threaten life or safety of the public.
- D. These provisions are supplementary to and are not intended to interfere with the enforcement or interpretation of any other ordinance or law concerning property maintenance, rights-of-way or the removal of vegetation such as the regulation of all other vegetation including, but not limited to, weeds, woody vines, brush, grass and uncultivated plants listed in Chapter 7.20 of the Overland Park Municipal Code.

(History: Ord. TP-2032 §7, 97; TP-1289 §11, 85)

7.16.195 Removal of Street Trees.

It shall be unlawful for any person including, but not limited to, the abutting property owner, to abuse, damage, mutilate, destroy or remove any tree within any City rights-of-way, or other City property without the prior written permission from the City Forester.

(History: Ord. TP-2032 §8, 97)

7.16.200 Abutting Property Owners, Duty to Maintain.

Property owners abutting rights-of-way, as defined herein, shall be responsible for maintaining trees, shrubs, and other woody vegetation within such rights-of-way in a manner which promotes safe and healthy plants and which protects the health, safety, and welfare of the public. Said property owners shall not allow such plants to hinder or obstruct the rights-of-way or to create a nuisance. Minimum height clearance over sidewalks shall be eight feet. Minimum height clearance over streets shall be twelve feet six inches, except for improved thoroughfares and designated truck routes which shall be thirteen feet six inches. Further, the provisions contained in this chapter shall not exempt or otherwise waive any other duties and responsibilities imposed upon such property owners by the Overland Park Municipal Code.

(History: Ord. TP-2032 §9, 97; TP-1289 §12, 85)

7.16.210 Penalties and Violation; Civil Actions.

- A. It shall be unlawful for any person to plant or otherwise maintain a new growth of a tree, shrub, plant, woody vegetation or other vegetation in an area where such planting or maintenance is prohibited by this chapter.
- B. It shall be unlawful for the property owner or other person in control of any property to permit any tree, shrub, plant, woody vegetation or other vegetation to remain on such property in violation of a maintenance or nuisance order from the Neighborhood Services Division or the City Forester.
- C. It shall be unlawful for the property owner or other person in control of any property to allow any trees, shrubs, woody vegetation or other vegetation to hinder or obstruct any rights-of-way abutting such property or to violate any minimum height clearance requirements.
- D. It shall be unlawful for any person to prevent, hinder or otherwise interfere with authorized employees or officials of the City in the performance of their official duties pursuant to the provisions of this chapter.
- E. Any person who violates any of the provisions of this chapter is guilty of a public offense and upon conviction shall be punished as provided in 1.12.010 of this code.
- F. The City of Overland Park may further enforce the provisions of this chapter by maintaining an action in the appropriate court for injunction to enforce the provisions of this chapter; to cause correction of any such violation; for assessment and recovery of a civil penalty for such violation; or to pursue other appropriate civil remedy.

(History: Ord. TP-2032 §10, 97; TP-1289 §13, 85)

7.16.220 Exceptions.

Sections 7.16.140, 7.16.170, 7.16.180 and 7.16.185 shall not affect trees, shrubs or woody vegetation planted prior to the earliest effective date of the applicable prohibitions contained therein. The judgment of the City Forester concerning the planting date of the object at issue shall be entitled to a presumption of correctness that may be rebutted by credible evidence. Any re-placement or additional plantings after such earliest effective date shall be in full compliance with all applicable provisions of the Overland Park Municipal Code.

(History: Ord. TP-2032 §11, 97; TP-1289 §14, 85)

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