

## **BILL NO. 22-262**

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AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE V, BOARDS, COMMISSIONS AND COMMITTEES, BY ADOPTING A NEW DIVISION 5, TREE BOARD; AND CHAPTER 30, VEGETATION, BY ADOPTING A NEW ARTICLE IV, PUBLIC TREES, PARK TREES AND GROUND COVER OF THE CODE OF ORDINANCES FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, the City of Lee's Summit, Missouri, has continuously identified a need to have available to its citizens the ability to work collaboratively on beautification projects and maintaining the character of the City in support of its strategic plans; and,

WHEREAS, by passage of Ordinance 9536, the City Council established the Lee's Summit Cultural Commission with a purpose, function, and role that includes Beautification and replaced the Beautification Commission among other boards, committees and commissions with the Cultural Commission; and,

WHEREAS, by passage of Ordinance 9537, the City Council established the Lee's Summit Wellness Commission with a purpose, function and role that also supports the Livable Streets Policy and replaced the Livable Streets Advisory Board among other boards, committees and commissions with the Wellness Commission; and,

WHEREAS, from time to time the former Beautification Commission fulfilled roles assigned to it such as performing the duties of a "Tree Board" for Tree City USA requirements and in coordination with the former Livable Streets Advisory Board fulfilled roles assigned to it such as Livable Streets Policy oversight, which includes street trees, streetscape and landscape considerations associated with Complete Streets, Bicycle Friendly Community and Walk Friendly Community requirements, but neither Cultural Commission nor Wellness Commission function or perform the duties of a "Tree Board"; and,

WHEREAS, the "Tree Board" and duties of the "Tree Board" were removed from Code of Ordinances with the abolishment of the Beautification Commission and those responsibilities were intentionally not assigned to the new Cultural Commission, but will be assigned to a new group of individuals among City Staff that will carry out the duties in alignment with City Departmental responsibilities, providing more opportunity for the Cultural Commission and Wellness Commission to share interests in the same regard for beautification and other functions, roles and activities of these Commissions more broadly without the burdens of a "Tree Board" ; and,

WHEREAS, the City has determined that it was in the best interests of the City to amend its Code to expand the focus of the Cultural Commission and Wellness Commission as described by the ordinances establishing those Commissions to all manner of beautification projects among other duties and roles, and to recreate the "Tree Board" with duties assigned to another group of individuals aligned with City Departmental functions; and,

WHEREAS, the City has also identified ambiguities in its Code pertaining to tree and shrub maintenance responsibilities that should be clarified through Code revisions that align with past practice and intentions.

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NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, AS FOLLOWS:

SECTION 1. Chapter 2, Administration, Article V, Boards, Commissions and Committees is hereby amended by adopting a new Division, which shall be Division 5 – Tree Board, so that said new Division shall read as follows:

### **DIVISION 5 – TREE BOARD**

Sec. 2-275. Creation and Establishment of the Tree Board.

The Tree Board shall coordinate, plan and assist in managing public and park trees and shrubs on land within right-of-way of all City streets and on all property owned by the City and trees and shrubs on land designated as park property within the City of Lee's Summit in accordance with the code provisions herein and provisions of Chapter 30 of this Code and other duties as assigned by the City Manager from time to time dealing with vegetation on publicly owned or leased lands, rights-of-ways and easements. In addition, the Tree Board can assume all the duties and responsibilities of a Tree Board as may be required for the City to receive and maintain the designation as a Tree City through the Tree City USA Program by the Arbor Day Foundation.

Sec. 2-276 - Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Public Trees* – trees and shrubs planted and maintained by the City, as listed on the Tree Schedule kept in the Office of the Director of Public Works, or their designee, located on land within the right of way of City streets and on property owned by the City, except trees and shrubs located on park property or where such trees and shrubs within the right of way are maintained by other individual(s) or entity according to separate written agreement or easement.

*Park Trees* – trees and shrubs on land designated as City park property.

Sec. 2-277 - Composition, qualifications, and term of office.

The Tree Board shall consist of five (5) members appointed by the City Manager, of which should include the Manager of Public Works Operations, the City Engineer, an Assistant City Manager, the Manager of Codes, and the City Arborist; whereas these position titles may change and persons with similar qualifications and duties may fulfil the same role on this Tree Board and associated job descriptions should include service on the Tree Board as an essential or peripheral function of the employee's job. The terms of the members shall run for the period of time the individual holds the title referenced herein or until the City Manager designates and appoints a replacement, as applicable, and shall continue to serve until their successors are duly appointed and qualified.

Sec. 2-278 - Duties and Responsibilities

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It shall be the responsibility of the Tree Board to study, investigate, counsel, develop and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of Public Trees. Such plan will constitute the Public Tree Plan and will be presented in writing to the Director of Public Works or their designee for review and consent prior to application for approval and adoption as the City's Comprehensive Tree Plan by the Planning Commission, and shall be updated as needed as determined by the Tree Board and Director of Public Works or their designee.

The Tree Board may assist or provide consultation to the Administrator of Parks and Recreation for the care, preservation, pruning, planting, replanting, removal, or disposition of Park Trees. The Administrator of Parks and Recreation or their designee may study, investigate, counsel, develop, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of Park Trees. Such plan, if written, will be provided to the City for inclusion in the City's Comprehensive Tree Plan. The Parks and Recreation Tree Plan shall be updated as needed as determined by the Administrator of Parks and Recreation or their designee.

Sec. 2-279 - Operation. The Tree Board shall, in keeping with the City's Comprehensive Tree Plan, establish its' own rules and regulations, set its' own schedule of meetings, and shall be responsible for updates to the Comprehensive Tree Plan deemed necessary by the board or City Manager.

SECTION 2. Chapter 30, Vegetation is hereby amended by adopting a new Article IV, which new Article IV, Public Trees, Park Trees and Ground Cover, shall read as follows:

### ARTICLE IV. – PUBLIC TREES, PARK TREES AND GROUND COVER

Sec. 30-40 - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Ground Cover* – grasses, low growth plants, moss, ivy, flowers, and other vegetation not defined as Other Trees, Park Trees, Public Trees, or Weeds herein.

*Other Trees* – trees, shrubs and bushes that are not Public Trees or Park Trees, including trees and shrubs located in the right of way which are not Public Trees or Park Trees.

*Park Trees* – trees, shrubs and bushes on land designated as City park property.

*Public Trees* – trees, shrubs and bushes planted and maintained by the City, as listed on the Tree Schedule kept in the Office of the Director of Public Works, or their designee, located on land within the right of way of City streets and on property owned by the City, except trees and shrubs located on park property or where such trees and shrubs within the right of way are maintained by other individual(s) or entity according to a separate written agreement.

*Right of Way* – as defined in Chapter 26 of the Code of Ordinances.

*Tree Board* – the board referenced in Chapter 2, Administration, Article V, Boards, Commissions and Committees, Division 5 – Tree Board of the City Code of Ordinances.

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*Weeds* – as defined in Chapter 16 of the Code of Ordinances.

### Sec. 30-41 - Purpose and Intent.

The purpose and intent of Sections 30-40 through 30-56 is to protect and encourage the protection of trees and shrubs; to provide for public health, safety and general welfare; to promote and preserve the City's aesthetic value; to regulate and control the planting, maintenance, and removal of trees, shrubs, bushes, ground cover and weeds, generally, on and adjacent to public and private property, City rights of way and City Parks within the City; and to manage the City's community urban forest and landscape in a strong, healthy condition for today and for the future.

### Sec. 30-42- Enforcement.

- A. **Public Trees.** It shall be the duty and responsibility of the Director of Public Works or their designee to enforce the provisions of this Chapter as applied to Public Trees and Other Trees within Right of Way owned by the City; and the duty and responsibility of the Director of Development Services or their designee to enforce the provisions of this Chapter as applied to Public Trees and Other Trees upon property owned by the City, except park property or public property functioning as Right of Way
- B. **Park Trees.** It shall be the duty and responsibility of the Administrator of Parks and Recreation or their designee to enforce the provisions of this Chapter as applied to Park Trees and Other Trees upon park property owned by the City.
- C. **Other Trees.** It shall be the duty and responsibility of the Director of Development Services or their designee to enforce the provisions of this Chapter as applied to Other Trees on private property adjacent to public property and/or adjacent to City Right of Way.
- D. **Ground Cover.** The duties and responsibilities described and assigned in Chapter 16 of the Code of Ordinances for Weed enforcement shall also apply to Ground Cover and the same duties and responsibilities shall apply to Ground Cover on City property, including Right of Way, but not park property. The Administrator of Parks and Recreation shall have the duty and responsibility to enforce the provisions of this Chapter as applied to Ground Cover on park property.
- E. **Weeds.** The duties and responsibilities described and assigned in Chapter 16 of the Code of Ordinances as applicable to Weed enforcement are the same duties and responsibilities that shall apply to Weeds on City property, including Right of Way, but not park property. The Administrator of Parks and Recreation shall have the duty and responsibility to enforce the provisions of this Chapter as applied to Weeds on park property.
- F. For purposes of this Chapter, enforcement shall be conducted in accordance with other applicable City codes; and include:
  - 1. Enforcing the sections of Chapter 30, Article IV; and

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2. Serving notice upon any person in violation thereof or instituting legal proceedings as may be required and the City Attorney or their designee is hereby authorized to institute appropriate proceedings to that end; and
3. Supervising, directing and controlling the planting, pruning, maintenance and removal of Public Trees, Park Trees, Other Trees, Ground Cover and Weeds, as applicable, pursuant to this chapter.

### Sec. 30-43 Permission.

- A. No person shall plant any tree or shrub on property or Right of Way owned by the City without first obtaining the necessary permission of the Director of Public Works or their designee, or, in the case of park property, the Administrator of Parks and Recreation or their designee, or in the case of City Property that is not park property or Right of Way owned by the City, the Director of Development Services or their designee. Other Tree or shrub Right of Way or easement encroachments shall also be subject to the provisions, permissions, and approval authority described in Chapter 26 of the Code of Ordinances.
- B. To the extent a person has been granted permission to plant a tree or shrub on public property or Right of Way or park property, they shall be required to comply with all applicable City ordinances and rules, including applicable permits, and directions of the Director of Public Works or the Administrator of Parks and Recreation, which ever position has authority over the location where the tree or shrub is being planted.
- C. The City has authority to manage its Codes, Rights-of-Ways, easements, and owned property, including but not limited remedies and activity to preserve public safety, that may require trimming, pruning, and removal of Other Trees as determined by the Director of Public Works or their designee, or, in the case of park property, the Administrator of Parks and Recreation or their designee, or in the case of Other Trees on private property, the Director of Development Services or their designee, to carry out the provisions of sections 30-50 and 30-51. Where Other Trees may be impacted, the owner or responsible party shall be notified in accordance with section 30-52.

### Sec. 30-44 Existing trees.

- A. Any Public Tree or Park Tree planted and existing as of the date of this Article may be allowed to remain in place unless it is determined by the Director of Public Works or the Administrator of Parks and Recreation, or their designees, as applicable, that the tree presently does, or at maturity will, obstruct vision clearance areas, interfere with utilities, traffic control devices, or street lights, be adverse to the design or use of the public or park spaces or facilities or infrastructure, or otherwise present a danger to the safety and/or welfare of the public.
- B. Any Other Tree planted and existing within the right of way as of the date of this Article shall be allowed to remain in place unless it is determined by the Director of Public Works or their designee that the tree presently does, or at maturity will, obstruct vision clearance areas, interfere with capital improvements, utilities or street

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lights, or otherwise present a danger to the safety and/or welfare of the public. Such planted and existing Other Tree, unless otherwise determined by the Director of Public Works or their designee, shall not require applicable permission or approval to remain in place under the provisions of Chapter 26 of the Code of Ordinances and all requirements thereof shall be inherent thereto.

### Sec. 30-45 Tree species.

- A. The Tree Board will develop and maintain a list of trees recommended for planting consistent with the City's Comprehensive Tree Plan and incorporated therein. Said list will be updated from time to time as deemed necessary by the Tree Board. The purpose of this listing will be to maintain diversity in the total tree population in the community. This list shall be available to residents and property owners of the City upon request to aid in the selection of trees for private and public properties. The list of recommended trees may be updated periodically by the Tree Board to reflect new developments or species that will affect the community urban forest.
- B. The Administrator of Parks and Recreation shall retain the authority to develop and maintain a list of trees acceptable for planting within the parks of the City.

### Sec.30-46 Distance for planting.

- A. No trees or shrubs may be planted within the vision clearance area as defined in the City's Unified Development Ordinance or within the sight triangle as determined by the City Traffic Engineer, unless the encroachment has been reviewed and approved by the City Traffic Engineer
- B. No trees or shrubs may be planted closer than:
  - 1. Ten (10) feet from any fire hydrant/fireplug and storm box; and,
  - 2. Two (2) feet from any curb of a street or sidewalk.
- C. No trees or shrubs may be planted in conflict with Chapter 26 of the Code of Ordinances.

### Sec. 30-47 Clearance over sidewalks, streets and alleys.

No person occupying, in charge or control of or owning any property in the City shall permit the trees or shrubs on such property, or Other Tree, to hang over so as to obstruct or interfere with the safe and accessible use of sidewalks, streets and alleys. The City shall have the right to trim and prune any and all trees or shrubs and to remove any and all limbs or branches as necessary for the safe and accessible use of sidewalks, streets and alleys for which it deems a hazard or as potentially disruptive to the continued usefulness of any infrastructure or for which it deems destructive or potentially destructive to the continued usefulness of any infrastructure.

### Sec. 30-48 Utilities.

No trees, other than those species approved by the Director of Public Works or their designee may be planted within the Right of Way, easement, or property owned by the City, except park property, under or within ten (10) feet from any overhead utility wire, or over or within five (5)

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lateral feet of any underground water, sewer, storm sewer, electric, fiber, telephone or other utility line.

### **Sec. 30-49 Tree topping.**

It shall be unlawful for any person to top any Public Tree or Park Tree. Topping is defined as the severe cutting back of limbs within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes where other pruning practices are impractical may be exempted from this section at the determination of the Director of Public Works or the Administrator of Parks and Recreation or their designees, as applicable.

### **Sec. 30-50 Tree Care.**

- A. Care of Public Trees. The Director of Public Works or their designee shall have the right to plant, prune, maintain and remove trees and shrubs within the right-of-way of all streets and alleys and on property owned by the City, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such areas. The Public Works Director or their designee may remove or cause or order to be removed, any tree or shrub which is in an unsafe condition or which, by reason of their nature are injurious to water, sanitary sewer, storm sewer, electric, telephone, fiber or other utility lines or other public improvements or are affected with an injurious fungus, insect or other pest. All tree pruning and removal will be done in accordance with the most current ANSI A300 Tree Shrub and Other Woody Plant Maintenance – Standard Practices. Where Other Trees are affected, notice shall be given in accordance with Section 30-52 with exception of emergencies.
- B. Care of Park Trees. The Administrator of Parks and Recreation or their designee shall have the right and responsibility for ensuring proper maintenance of all Park Trees within the City.
- C. Care of Other Trees. The owner of property or property adjacent to Right of Way when and where such Other Tree is located in Right of Way shall be responsible for Other Tree care, including but not limited to planting, pruning, maintenance, and removal as may be necessary to insure public safety. Other Trees may be cared for in conformance with Subsections A and B, and shall be subject to Section 30-52, Notice.
- D. Care of Groundcover and Weeds. The owner of property or property adjacent to Right of Way when and where such Groundcover and Weeds are located in Right of Way shall be responsible for Groundcover and Weed care in accordance with applicable provisions of the Unified Development Ordinance and Chapter 16 of the Code of Ordinances.

### **Sec. 30-51 Dead or diseased tree removal on private property.**

The Director of Development Services or their designee shall have the right to cause the removal of any dead or diseased trees or shrubs on private property within the City, when such

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trees or shrubs constitute a hazard to life or property, or harbor insects or disease which constitute a potential threat to Other Trees, Park Trees or Public Trees within the City.

### Sec. 30-52 Notice.

- A. The Director of Development Services or Director of Public Works, or their designees, as applicable, shall notify the person or entity occupying, in charge or control of or owning any property, or property adjacent to any Right of Way, on which property or Right of Way, as applicable, such tree or shrub is located that pruning, maintenance, and or removal pursuant to Sections 30-50 and 30-51 is to be done or is required, within the timeframe specified in the notice. The notice shall also indicate whether the City or the person occupying, in charge or control of or owning the property, or property adjacent to Right of Way, will bear the expense of the work to be done on the property or Right of Way.
- B. In the event of failure to comply with such notice, the City shall have the right and authority to prune, maintain and/or remove such trees or shrubs and charge the cost of removal to the person occupying, in charge or control of or owning the property, or property adjacent to Right of Way, on which property or Right of Way, as applicable, such tree or shrub is located. Such notice shall be deemed properly served if a copy thereof is:
  1. Delivered personally;
  2. Sent by certified or registered mail addressed to the person at the last known address with the return receipt requested; or
  3. Delivered in any other manner as prescribed by local law or posted upon the property.
- C. If the certified or registered letter is returned showing that the letter was not delivered, a copy of the notice shall be posted in a conspicuous place in or about the property. Service of such notice in the foregoing manner upon the owner or upon the person in charge or control of the property, or property adjacent to Right of Way, as applicable, shall constitute service of notice upon the owner.

### Sec. 30-53 Imminent danger.

Notwithstanding any other provisions of this Code, whenever, in the opinion of the Director of Public Works or their designee, there is an emergency or other condition which poses an imminent danger to life and/or property due to a tree or shrub, the Director of Public Works or their designee shall order any necessary work to be done to abate the dangerous condition whether or not any notice or other procedure described herein has been instituted; and shall cause such other action to be taken as the Director of Public Works or their designee deems necessary to meet such emergency and/or abate the dangerous condition. This provision provides exceptions to required notice described in sections 30-50 and 30-52, but does not preclude the right of City to seek cost recovery for work related to Other Trees as provided in Section 30-50.

### Sec. 30-54 Interference.



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It shall be unlawful for any person to prevent, delay or interfere with the Director of Public Works, the Administrator of Parks and Recreation, the Director of Development Services, their designees, or any employees, contractors, or agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any Public Tree, Park Tree, or Other Tree, trees and shrubs on private property, as authorized in this Chapter.

Sec. 30-55 Review by City Manager.

- A. The City Manager shall have the right to review the decisions of the Director of Public Works and Director of Development Service, or their designees as it pertains to actions involving the enforcement of this Chapter.
- B. Any person aggrieved by a decision of the Director of Public Works or Director of Development Services, or their designees may appeal such decision by filing a written notice of appeal with the City Manager within ten (10) days following the date of the decision. The written notice of appeal shall include all documentation which the aggrieved person believes relates to their appeal. If an aggrieved person fails to appeal the decision of the Director of Public Works or Director of Development Services, or their designee, as applicable, within ten (10) days as set forth herein, the decision shall be final and no appeal shall be heard.
- C. A Hearing Officer shall be appointed by the City Manager, who shall provide notice to the aggrieved person of the date, time and place of hearing, which shall be no later than thirty (30) days from the date of the filed notice of appeal (unless continued by mutual consent), where such person will have full opportunity to present evidence and testimony in support of the appeal. The hearing shall be conducted by the Hearing Officer as a contested case under the provisions of Chapter 536, RSMo., and the City Manager shall issue a final decision within ten (10) days of the hearing date. The decision shall include written findings of fact and conclusions of law.
- D. The decision of the City Manager shall be final for purposes of appeal pursuant to Chapter 536, RSMo.

Sec. 30-56 Penalty for violation. In addition to any other remedies the City may have available at law or equity, any person violating any provision of this Article shall be punished in accordance with Section 1-13.

SECTION 3. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Lee's Summit, Missouri, and the sections of this Ordinance may be renumbered to accomplish such intention as deemed appropriate by the City Clerk or the codifier of the City's Code.

SECTION 4. All ordinances inconsistent with this Ordinance are hereby repealed.

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SECTION 5. Should any section, sentence or clause of this Ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

SECTION 6. Nothing in this ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred nor any cause or causes of action occurred or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this ordinance

SECTION 7. This Ordinance shall be in full force and effect on and after January 1, 2023, after its passage and adoption, and approval by the Mayor.

PASSED by the City Council of Lee's Summit, Missouri, this \_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*