

**CITY OF FAIRWAY, KANSAS  
ORDINANCE NO. 1791**

**AN ORDINANCE AMENDING THE FAIRWAY CITY CODE  
PERTAINING TO PUBLIC TREE PROTECTION; AMENDING AND  
REPEALING CHAPTER 11, ARTICLE I, SECTION 11-19 AND ARTICLE  
IV OF THE FAIRWAY CITY CODE.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FAIRWAY,  
KANSAS:**

**SECTION 1.** Existing Chapter 11, Article I, Section 11-19 of the Fairway City Code is hereby amended to read as follows:

**Sec. 11-19. - 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:

*Community tree manager* means the City Public Works Director or his designee.

*Community trees* means all street and park trees as a total resource.

*Park trees* means trees, shrubs, bushes and all other woody vegetation located in areas shown as parks on the City's official zoning map and at all other green spaces owned by the City.

*Street trees* means trees on land lying between the front lot lines on either side of all streets, avenues or ways within the City measured to the center of the tree at breast height.

*Tree topping* means the severe cutting back of limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

**SECTION 2.** Existing Chapter 11, Article V of the Fairway City Code is hereby amended to read as follows:

**ARTICLE IV. PUBLIC TREE PROTECTION<sup>1</sup>**

**Sec. 11-89. 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:

*Community Tree Manager* means the Director of Public Works or his designee.

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<sup>1</sup>State law reference(s)—Authority to regulate trees on public property, K.S.A. 12-3201.

*Covered property* means real property located within the incorporated boundaries of the City that is owned, leased, or rented by the City, including all parkland and green space; and all easements and rights-of-way within the incorporated boundaries of the City that are used, in whole or in part, for a public road or highway.

*Diameter at breast height (DBH)* means the diameter in inches of a tree as measured through the main trunk at a point four and one-half feet (4.5') above the natural grade level.

*Drip line* means a vertical line run through the outermost portion of the canopy of a tree and extending down to the ground.

*Feature tree* means any tree that has a DBH of greater than thirty inches (30"). Trees that have received special care provided by the City for the treatment or prevention of disease or infestation may also be considered a feature tree.

*Owner* means the person who has the legal title to the property or lessee, agent or other person acting on behalf of the titleholder with authorization to do so.

*Protected tree* means any tree that has a DBH of thirty inches (30") or less.

*Protective/temporary fencing* means a snow fence, chain-link fence, orange vinyl construction fence or other similar fencing with a minimum four foot (4') height.

*Replacement tree* means a tree from the replacement tree list with a preferred caliper size of two and one-half inches (2.5") but a minimum of two inches (2"), measured twelve inches (12") from the ground and height of not less than seven feet (7') when planted.

*Tree removal authorization* means permission granted by the City to remove a protected tree or a feature tree (at Owners expense).

#### **Sec. 11-90. Enforcement and penalty.**

The Community Tree Manager or his designee has the authority to enforce the terms and conditions of this article. Any person, firm, corporation, agent, or employee thereof who violates any provision of this article shall be assessed an administrative fine of not more than five hundred dollars (\$500.00) for each incident. The unlawful injury, destruction or removal of each protected tree shall be considered a separate incident. In addition, all violations shall be required to meet the requirements outlined under tree replacement or the Fairway Tree Fund. If any administrative fine or assessment to the Fairway Tree Fund shall remain unpaid thirty (30) days after receipt of notice of the imposition or assessment, the City may use any and all reasonable means available to collect the funds, including, but limited to, imposing a lien on the property for the amount of the fine or assessment.

#### **Sec. 11-90.5. Appeal process.**

Any person, firm, corporation, agent, or employee thereof may submit a written appeal of a decision of the Community Tree Manager or designee to the Fairway City Council via the City Administrator's Office within ten (10) days of receipt of notice of the imposition or assessment. The appellant shall appear at a public hearing before the Fairway City Council at the next regularly scheduled meeting. Any imposition or assessment affirmed or amended shall be paid to the City within fourteen (14) days to prevent the City from taking any and all reasonable means available to collect the funds, including, but not limited to, stop work orders or imposing a lien on the property for the unpaid portion of the fine or assessment.

**Sec. 11-91. Applicability of article.**

The terms and provisions of this article shall apply to all covered property.

**Sec. 11-92. Fairway Tree Fund.**

There is established a Fairway Tree Fund, which shall be a special account administered by the City. The Fairway Tree Fund shall be used only for purchasing, planning and maintaining trees on covered property. The amount of payment required shall be calculated based on the following: DBH removed minus DBH replaced multiplied by one hundred dollars (\$100.00). If approved by the Community Tree Manager, an applicant or owner may make a payment into the Fairway Tree Fund in lieu of planting replacement trees.

**Sec. 11-93. Tree protection.**

Prior to demolition or construction, the following procedures shall be followed on all types of construction projects. It is the responsibility of the developer and/or contractor and his subcontractors to take appropriate action to preserve all protected trees and feature trees during all phases of construction.

- (1) *Protective/temporary fencing.* Protective/temporary fencing shall be required for all protected trees and feature trees to prevent infringement on the root system from any construction-related activities. The protective fencing shall be installed according to tree diameter at breast height (DBH) as follows:

Trees greater than twenty-eight inch (28") DBH must have a fence to encompass a perimeter twenty feet (20') from center or seventy-five percent (75%) of drip line (whichever is lesser);

Trees between twenty inch (20") and twenty-eight inch (28") inch DBH must have a fence to encompass a perimeter fifteen feet (15') from center of tree or seventy-five percent (75%) of drip line (whichever is lesser);

Trees less than twenty inch (20") DBH must have a fence to encompass a perimeter ten feet (10') from the center of the tree or seventy-five percent (75%) of the drip line (whichever is lesser);

Fencing shall exclude any preexisting structures, foundations, slabs, roadways, highways, and driveways. The fencing is to be installed along the edge of the driveways/roadways encompassing the tree to restrict access from the street side. All fencing must appear on construction documents and shall be installed prior to any other construction-related activity. The fencing shall remain in place at all times until all other construction-related activity has been completed or final grade achieved.

- (2) *Prohibited activities.* Prohibited activities adjacent to trees shall include the following:
  - a. *Material storage.* No materials for construction or waste accumulated due to excavation, demolition, or construction shall be placed under the canopy of any protected tree or feature tree.
  - b. *Equipment cleaning/liquid disposal.* No equipment shall be cleaned or other materials or liquids deposited or allowed to flow over land within the limits of the

canopy of a protected tree or a feature tree. This includes, without limitation, paint, old solvents, asphalt, concrete, mortar or similar materials.

- c. *Tree attachments.* No signs, wires or other attachments other than those of a protective nature shall be attached to any protected tree or feature tree.
- d. *Vehicular traffic.* No vehicular and/or construction equipment traffic or parking shall take place within the limits of the protective fencing.
- e. *Grade changes.* No grade changes in excess of two inches (2") (cut or fill) shall be allowed within the limits of the drip line of any protected tree or feature tree.
- f. *New impervious paving.* No new paving with asphalt, concrete or other impervious materials in a manner which may, in the reasonable discretion of the Community Tree Manager, reasonably be expected to severely damage or kill a tree shall be placed within the limits of the drip line of a protected tree or a feature tree.
- g. *Exceptions.* Notwithstanding anything contained in this article or in Section 9-76(j) to the contrary, this section shall not prohibit work that is necessary to install, maintain, repair, replace or remove utility lines or to activity that merely disrupts the surface of the ground.

#### **Sec. 11-94. Tree removal.**

- (a) *Authorization.* No person, directly or indirectly, shall cut down, destroy, move or remove, or effectively destroy, any protected tree or feature tree located on covered property without first obtaining tree removal authorization. Generally, if a tree removal authorization is granted, the applicant shall replace the protected trees being removed with replacement trees. A sufficient number of replacement trees shall be planted so that the total caliper of the replacement trees is equal to the caliper of the tree removed as measured at DBH. If, for whatever reason, planting replacement trees is deemed infeasible, the owner shall make payment to the Fairway Tree Fund.
- (b) *Process.* Owners must request tree removal authorization in writing to the Community Tree Manager. If the removal is in conjunction with a construction project, the written request must be submitted at the same time as the building permit application. Requested removals (if approved) are at the Owners expense.
- (c) *Authority to review; approval.* The Community Tree Manager shall be responsible for the review and approval of all requests for tree removal authorizations submitted in accordance with the requirements specified in this article. Upon receipt of a completed application, the Community Tree Manager may take one (1) of the following actions:
  - (1) *Deferral of decision.* The Community Tree Manager may defer the approval of a tree removal authorization to the Tree Board for any reason. Any decision made by the Tree Board may be appealed to the City Council. All decisions made by the City Council shall be final.
  - (2) *Approval.* The Community Tree Manager shall issue tree removal authorization provided the owner has agreed in writing to either meet the tree replacement criteria or make payment to the Fairway Tree Fund. If the tree to be removed is a Sweet Gum (as

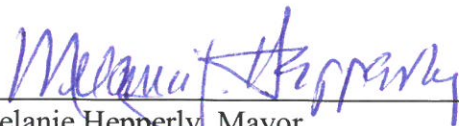
determined by the Community Tree Manager), no payment into the Tree Fund will be required.

- (d) *Authorization expiration.* Tree removal authorization issued in connection with an approved building permit or site plan shall be valid for the period of that building permit's or site plan's validity. A tree removal authorization not issued in connection with an approved building permit or site plan shall become void after one hundred eighty (180) days after the date of approval.
- (e) *Authorization for removal of a feature tree by owner.* A feature tree may be removed by an owner with approval from the City Council provided that the burden is upon the owner to show that the following criteria have been met:
  - (1) Removal of the feature tree is necessary for construction, development, or redevelopment;
  - (2) All reasonable efforts have been made to avoid removing the feature tree for construction/development and removal cannot be avoided;
  - (3) The presence of the feature tree places undue financial burden on the applicant; and
  - (4) No other reasonable accommodations can be made to preserve the feature tree.
- (f) *Authorization for removal of a feature tree by the City.* A feature tree may be removed by the City at any time if the Community Tree Manager determines that one (1) of the following conditions exists:
  - (1) The feature tree is dead, dying, diseased and/or in decline and constitutes a threat to healthy trees, property, or public safety, as determined by a certified arborist;
  - (2) The feature tree was previously scheduled to be removed as a part of a City project that has been approved by the City Council.

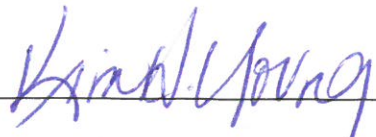
**SECTION 3.** Existing Chapter 11, Article I, Section 11-19 and Chapter 11, Article V of the Fairway City Code are hereby repealed.

**SECTION 4.** This Ordinance No. 1791 shall become effective upon adoption and publication in the official City newspaper.

**PASSED** by the City Council the 9th day of October, 2023. **APPROVED** by the Mayor.

  
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Melanie Hepperly, Mayor

ATTEST:

  
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Kim Young, City Clerk

APPROVED AS TO FORM:



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Richard Cook, City Attorney