

1 (Published in the Topeka Metro News February 13, 2012)

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3 **ORDINANCE NO. 19699**

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5 AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, repealing  
6 Chapter 11.05, Forestry, in its entirety and adding a new Chapter  
7 12.65, Forestry, to the Code of the City of Topeka concerning the  
8 City Forester.  
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10 BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA, KANSAS:

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12 Section 1. That Chapter 11.05 Forestry, § 11.05.010 through § 11.05.160, of

13 The Code of the City of Topeka, Kansas, is hereby repealed in its entirety.

14 Section 2. That The Code of the City of Topeka, Kansas, is hereby amended  
15 by adding a section, to be numbered 12.65.010 in Article I “Generally” of Chapter 12.65  
16 “Forestry”, which said section reads as follows:

17 **Duties and jurisdiction of city forester.**

18 The city forester is subject to the supervision and control of the director of public  
19 works or designee. The city forester shall have the superintendence of all trees and  
20 other plants planted or growing on public property. Public property means property  
21 owned by the city and city right of way including but not limited to streets, parkways,  
22 avenues, boulevards, and alleys.

23 Section 3. That The Code of the City of Topeka, Kansas, is hereby amended  
24 by adding a section, to be numbered 12.65.020 in Article I “Generally” of Chapter 12.65  
25 “Forestry”, which said section reads as follows:

26 **Function of forestry division.**

27 The forestry division is a part of the department of public works. It shall be the  
28 function of the division of forestry under the administration and supervision of the city  
29 forester to: (1) administer and supervise planting, maintenance, protection, spraying,

fertilizing, treating, pruning, trimming and removal of trees, hedges, shrubs, bushes and vines upon public property; (2) regulate the business of planting, cutting, trimming, pruning, removing, spraying, banding, protecting, fertilizing or otherwise treating trees, hedges, shrubs, bushes or vines within the city; and (3) administer and supervise planting, maintenance, protection, spraying, fertilizing, treating, pruning, trimming and removal of trees, hedges, shrubs, bushes and vines upon private property where such vegetation: (a) endangers trees, hedges, shrubs and bushes on private or public property; (b) endangers public safety; or (c) hinders the use of public property.

Section 4. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 12.65.030 in Article I “Generally” of Chapter 12.65 “Forestry”, which said section reads as follows:

**Permits required.**

(a) No person shall plant, set out, maintain, protect, spray, fertilize, treat, trim, prune or remove any tree, hedge, bush, shrub or vine upon public property without first securing a permit therefor from the division of forestry. The permit may be issued, issued with conditions, or denied.

(b) The permit may be revoked if permit conditions are not followed or if a person fails to remove leaves, trimmings, branches, stumps, trash or other material from the premises.

(c) A person may appeal the denial or revocation of a permit pursuant to chapter 2.145 of this Code.

51           Section 5.   That The Code of the City of Topeka, Kansas, is hereby amended  
52 by adding a section, to be numbered 12.65.040 in Article I “Generally” of Chapter 12.65  
53 “Forestry”, which said section reads as follows:

54           **Protection of public trees.**

55           (a)   No person shall allow any substance to come into contact with the soil on  
56 public property which would in any manner kill, destroy or injure any tree located  
57 thereon.

58           (b)   No person shall paint, whitewash, treat, band or encircle any tree on  
59 public property which would in any way be injurious to the tree. The city forester may  
60 give written approval if the painting, whitewashing, banding or encircling would protect  
61 and not injure the tree.

62           (c)   No person shall attach any wire, rope, chain, sign or any other material to  
63 any tree on public property except when the same is done for the protection of the tree  
64 and with the approval of the city forester.

65           (d)   No person in charge of or having control of any animal shall allow the  
66 animal to injure any tree on public property.

67           (e)   No person shall cut, deface or in any way injure any tree, sapling, hedge  
68 or shrub standing or growing on public property except as otherwise provided in this  
69 chapter.

70           Section 6.   That The Code of the City of Topeka, Kansas, is hereby amended  
71 by adding a section, to be numbered 12.65.050 in Article I “Generally” of Chapter 12.65  
72 “Forestry”, which said section reads as follows:  
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74           **Protecting trees in building operations.**

75           Any person constructing, repairing, altering or removing any building or structure  
76 shall use sufficient guards or protectors to prevent injury to any tree on public property.  
77 If any such tree is injured or destroyed by any person constructing, repairing, altering or  
78 removing any building or structure, such person shall replace such tree at the person's  
79 own expense, and the city forester shall supervise the type and size of tree to be  
80 planted as replacement for the destroyed tree.

81           Section 7.     That The Code of the City of Topeka, Kansas, is hereby amended  
82 by adding a section, to be numbered 12.65.060 in Article I "Generally" of Chapter 12.65  
83 "Forestry", which said section reads as follows:

84           **Utility wires.**

85           Prior to trimming one or more trees on public property that have come into  
86 contact with a utility line, a public utility shall notify and secure approval from the city  
87 forester; provided, that any public utility may in an emergency take the necessary steps  
88 to restore service as may be caused by storms or other natural emergencies.

89           Section 8.     That The Code of the City of Topeka, Kansas, is hereby amended  
90 by adding a section, to be numbered 12.65.070 in Article I "Generally" of Chapter 12.65  
91 "Forestry", which said section reads as follows:

92           **Appeals; Prosecution**

93           Any person cited for a violation of this chapter may appeal in accordance with  
94 chapter 2.145 of this Code. However, nothing in this chapter shall prevent the city from  
95 prosecuting violations pursuant to §1.10.070.

Section 9. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 12.65.080 in Article II "Private Property" of Chapter 12.65 "Forestry", which said section reads as follows:

**Duties of private property owners.**

(a) It shall be the duty of a private property owner abutting a street or alley to remove vegetation, including trees, bushes, and weeds located in the street or alley where such vegetation impedes travel, as determined by the city forester.

(b) It shall be the duty of a private property owner to treat or remove vegetation including trees, tree materials, or shrubs located upon the owner's property where the city forester determines that such vegetation is infected or infested with plant disease, insect pest or larvae, the uncontrolled presence of which may result in damage or destruction of other trees or shrubs in the community.

(c) Upon determination by the city forester that a private property owner has failed to comply with subsection (a) or (b), the city forester may take whatever actions are reasonably necessary to remove or treat the vegetation and assess the costs against the property owner pursuant to Article III of Chapter 3.45 of this Code.

Section 10. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 12.65.090 in Article II "Private Property" of Chapter 12.65 "Forestry", which said section reads as follows:

**Order to treat or remove.**

Whenever the city forester shall determine that trees, tree materials, or shrubs located upon private property are a hazard to convenient travel on public streets, sidewalks or alleys, or are infected or infested with 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 on public or private property, the city forester shall give written notice to abate to the owner of the property upon which such hazard exists.

Section 11. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 12.65.100 in Article II “Private Property” of Chapter 12.65 “Forestry”, which said section reads as follows:

**Notice to abate – Contents.**

The notice to abate shall contain:

(a) An order to abate the hazard or to appeal the order pursuant to Chapter 2.145 of this Code;

(b) The location of the hazard;

(c) A description of the hazard;

(d) A statement of acts necessary to abate; and

(e) A statement that if the hazard is not abated as directed and no appeal is filed within the prescribed time, the city will seek the remedy of prosecution and enforcement under TMC 1.10.070 and/or abate the hazard and assess the cost thereof against the owner.

Section 12. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 12.65.110 in Article II “Private Property” of Chapter 12.65 “Forestry”, which said section reads as follows:

**Notice to abate – Service.**

(a) The notice to abate may be served as follows upon the owner or agent of the owner by (1) first class mail, with a record of proof of mailing maintained by the city

forester or designee; (2) certified mail, return receipt requested; or (3) personal service.  
If the premises are unoccupied and the owner is a nonresident of the city, such notice  
may be mailed to the last known address of the owner.

(b) Notwithstanding subsection (a) of this section, the notice to abate may be  
published in the official city newspaper in cases where the owner is unknown or is a  
nonresident, and there is no known resident agent.

Section 13. That The Code of the City of Topeka, Kansas, is hereby amended  
by adding a section, to be numbered 12.65.120 in Article II “Private Property” of Chapter  
12.65 “Forestry”, which said section reads as follows:

**Abatement by city.**

(a) If the owner fails to abate the hazard, in addition to the remedy of  
prosecution and enforcement as provided in TMC 1.10.070, the city forester or other  
duly designated officer of the city may abate the hazard.

(b) Abatement under the direction of the city forester shall not be a defense or  
excuse to the owner of property.

Section 14. That The Code of the City of Topeka, Kansas, is hereby amended  
by adding a section, to be numbered 12.65.130 in Article II “Private Property” of Chapter  
12.65 “Forestry”, which said section reads as follows:

**Assessment of city’s costs.**

Any and all costs incurred by the city in the abatement of a hazard described  
herein may be assessed against the property pursuant to Article III of Chapter 3.45 of  
this Code.

Section 15. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 16. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 17. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on February 7, 2012.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk