



Parks & Recreation Department

**To:** Mayor Jerry Wiley, Fairway City Council  
**From:** Nathan Nogelmeier, City Administrator  
**Date:** 11/10/2016  
**Re:** Tree Protection Ordinance Amendments

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At the request of the Governing Body, the Fairway Tree Board convened in September to discuss potential changes to Fairways Tree Protection Ordinance. Staff had developed some proposed language that was reviewed. Attached you will find a redline version of the changes as well as a clean version of Chapter 11.

In addition, a change in Chapter 9 regarding trees was also made. The only change made was the addition of the following paragraph “j” to Section 9-76:

- (j) *In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.*

Ordinance #1638 is also attached.

NEALE PETERSON PARK AND FAIRWAY POOL  
6136 MISSION ROAD  
FAIRWAY, KANSAS 66205  
913-722-3161 (SUMMER ONLY)  
NNOGELMEIER@FAIRWAYKANSAS.ORG

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FAIRWAY CITY HALL  
4210 SHAWNEE MISSION PARKWAY, STE. 100  
FAIRWAY, KS 66205  
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Chapter 11 - TREES

ARTICLE I. - IN GENERAL

Secs. 11-1—11-18. - Reserved.

ARTICLE II. - TREE BOARD

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, shrubs, bushes and all other woody vegetation on land lying between the front lot lines on either side of all streets, avenues or ways within the City.

*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.

(Prior Code, §§ 11-401, 11-411; Ord. No. 1399)

Sec. 11-20. - Creation and establishment of a City tree board.

There is hereby created and established a Tree Board for the City which shall consist of eight (8) members, five (5) of whom shall be appointed by the Mayor with the approval of the City Council. Four (4) appointed members shall live in the four (4) wards of the City, one (1) from each ward, if possible. A fifth appointed member shall be a member at large living in the City. The other three (3) members shall be the Public Works Director, the Parks and Recreation Director and a member of the City Council appointed by the Mayor.

(Prior Code, § 11-402; Ord. No. 1399; Ord. No. 1425)

Sec. 11-21. - Term of office.

The term of the five (5) members appointed by the Mayor shall be three (3) years, except the initial term of two (2) of the members of the first Board shall be for one (1) year and the initial term of the other two (2) members of the first Board shall be for two (2) years.

(Prior Code, § 11-403; Ord. No. 1399)

Sec. 11-22. - Compensation.

Members of the Tree Board shall serve without compensation.

(Prior Code, § 11-404; Ord. No. 1399)

Sec. 11-23. - Duties and responsibilities.

- (a) It shall be the responsibility of the Tree Board to develop and review annually a written plan for the care, replacement, maintenance and removal of street and park trees. The plan shall be presented annually to the City Council and, upon its acceptance and approval, shall constitute the official comprehensive City Tree Plan.
- (b) The Tree Board shall choose its own officers from among the Board members, make its own rules and regulations and keep minutes of its meetings. A majority of the members (five (5)) shall constitute a quorum for the transaction of business. Failure of a Board member to attend three (3) consecutive meetings may result in removal from the Board. The Board may elect a vice-chair to serve and preside at meetings when the chairperson is absent.
- (c) The Tree Board, when requested by the City Council, shall consider, investigate, make findings and recommendations upon any special matter or question coming within the scope of its work.

(Prior Code, § 11-405; Ord. No. 1399; Ord. No. 1425)

Sec. 11-24. - Review by City Council.

The City Council shall have the right to review the conduct, acts and decisions of the Tree Board. Any person may appeal from any decision or order of the Tree Board to the City Council who may hear the matter and a render a final decision.

(Prior Code, § 11-416; Ord. No. 1399)

Secs. 11-25—11-51. - Reserved.

ARTICLE III. - TREE MANAGEMENT<sup>11</sup>

Footnotes:

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**State Law reference**— Authority to regulate trees on public property, K.S.A. 12-3201.

Sec. 11-52. - Penalty.

Any person violating any provision of this article shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500.00), provided that each day such violation exists shall constitute a separate offense.

Sec. 11-53. - Tree species to be planted.

The City shall maintain a list of recommended trees for planting in public areas. This list shall be available to residents of the City upon request to aid in the selection of trees for private properties. The list of recommended community trees shall be updated periodically to reflect new developments or species that will affect the population of the community trees.

(Prior Code, § 11-406; Ord. No. 1399)

Sec. 11-54. - Spacing and distances.

Street trees may be planted no closer together than thirty feet (30') from each other except in special plantings approved by the Tree Board or Community Tree Manager.

(Prior Code, § 11-407; Ord. No. 1399)

Sec. 11-55. - Distances and clearance for planting.

- (a) Street trees may be planted on the street side of the front property lines where there is more than six feet (6') between the street side edge of the sidewalk and the curb of the street. The Tree Board may grant exceptions.
- (b) No tree shall be planted closer than ten feet (10') to any fireplug.
- (c) Permission must be obtained from the Tree Board or the Community Tree Manager when planting street trees within ten feet (10') of any point on a line on the ground immediately below any overhead utility wire, or within five lateral feet (5') of any underground water line, sewer line, transmission line or other utility.

(Prior Code, § 11-408; Ord. No. 1399)

Sec. 11-56. - Public tree care.

- (a) The City shall have the right to plant, maintain and remove community trees to ensure public safety and to preserve and to improve the beauty of public grounds. The City shall have the responsibility to remove a dead, diseased, dying or dangerous community tree. Homeowners' associations have responsibility for islands and designated neighborhood gardens.
- (b) The Tree Board may remove or order removal of any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is seriously affected by any injurious insect or disease.
- (c) Property owners, at their expense and with permission from the Community Tree Manager, shall have the right to perform normal tree maintenance on all street trees on their property provided it is not potentially detrimental to the health of the tree.

(Prior Code, § 11-409; Ord. No. 1399)

Sec. 11-57. - Permission required.

No person shall plant a street tree in their yard as provided in Section 11-56 or on public land without first obtaining permission from the Community Tree Manager.

(Prior Code, § 11-410; Ord. No. 1399)

Sec. 11-58. - Tree topping.

No person or City department shall top any community tree, or tree on public property. Trees severely damaged by storm or other causes, or trees under utility wires or other obstructions where other pruning

practices are impractical may be exempt from this section at the determination of the Tree Board or the Community Tree Manager. Pruning practices shall conform to current ANSI A300 standards.

(Prior Code, § 11-411; Ord. No. 1399)

Sec. 11-59. - Clearances over streets and walkways.

Clearance over streets and walkways shall be the responsibility of the property owner. A clearance of eight feet (8') must be maintained over walkways and a clearance of fifteen feet (15') must be maintained over streets. Property owners are responsible for trees on their own property as well as trees on the public way that abut their property.

(Prior Code, § 11-412; Ord. No. 1399)

Sec. 11-60. - Traffic hazard.

If the Chief of Police or Community Tree Manager determines that any tree or shrubbery located on any private property abutting any sidewalk, street, avenue or parking constitutes a traffic hazard by dangerously obstructing the view of drivers of vehicles or traffic entering a street from an intersecting street, he shall notify the owner of such abutting property to remove the same, and it shall be the duty of the owner to remove the same.

Sec. 11-61. - Dead or diseased tree removal.

The City may remove or cause to be removed any dead or diseased tree within the City limits. Diseased trees are defined as trees that may be a hazard to life or property or harbor insects or disease which represent a threat to other trees within the City. The Community Tree Manager or his designee will notify the owner by certified mail of the responsibility of the property on which the dead or diseased tree is located to remove the dead or diseased tree. Removal shall be accomplished within ten (10) days from the date notice is mailed. If the owner fails to remove the tree within ten (10) days, the City shall remove that tree and charge the cost to the owner. Payment of such cost is due and payable within thirty (30) days following receipt of a bill from the City for such removal. If the cost is not paid within the thirty (30) day period, the cost, including staff and attorney fees for recovery of the same, shall be assessed as a special assessment against the lot or parcel of land on which the tree was removed and the City Clerk, at the time of certifying other City taxes, shall certify the unpaid portion of the costs, and the County Clerk shall extend the same on the tax rolls of the county against such lot or parcel of land.

(Prior Code, § 11-413; Ord. No. 1399)

Sec. 11-62. - Storage of wood from diseased, infected trees.

It shall be unlawful to store or otherwise harbor, on any property in the City, the material from any diseased or infected trees.

Sec. 11-63. - Removal of stumps.

All stumps of community trees shall be ground below the surface of the earth and the area covered with grass seed or sod or other appropriate ground cover.

(Prior Code, § 11-414; Ord. No. 1399)

Sec. 11-64. - Access.

It shall be unlawful for any person to prevent, delay or interfere with access by City workers to trees maintained by the City.

(Prior Code, § 11-415; Ord. No. 1399)

Sec. 11-65. - Savings clause.

Nothing contained in this article shall prevent the trimming, cutting or removal of any tree, shrub or growth which endangers persons or property and nothing in this article shall interfere with the suppression of pests or disease, including Dutch Elm disease.

Secs. 11-66—11-88. - Reserved.

#### ARTICLE IV. - PUBLIC TREE PROTECTION<sup>[2]</sup>

Footnotes:

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**State Law reference**— Authority to regulate trees on public property, K.S.A. 12-3201.

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.

*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.

(Prior Code, § 13-702; Ord. No. 1565, § 2, 2-10-2014)

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 may be imposed on the property for the amount of the fine or assessment.

Sec. 11-90.a – 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.

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(Prior Code, § 13-707; Ord. No. 1565, § 6, 2-10-2014)

Sec. 11-91. - Applicability of article.

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

(Prior Code, § 13-701; Ord. No. 1565, § 1, 2-10-2014)

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.

(Prior Code, § 13-703; Ord. No. 1565, § 3, 2-10-2014)

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 28 inch DBH- must have a fence to encompass a perimeter 20' from center of tree or 75% of drip line (whichever is lesser)

Trees between 20 inch and 28 inch DBH- must have a fence to encompass a perimeter 15' from center of tree or 75% of drip line (whichever is lesser)

Trees less than 20 inch DBH- must have a fence to encompass a perimeter 10' from the center of the tree or 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. 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 must encompass no less than seventy-five percent (75%) of the drip line of the protected tree, excluding any preexisting structures, foundations, slabs, roadways, highways, and driveways. All fencing must appear on construction documents and shall be installed prior to any other construction-related activity. The fencing shall remain in place until all other construction-related activity has been completed.

(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 Sec. 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.

(Prior Code, § 13-704; Ord. No. 1565, § 4, 2-10-2014)

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.
- (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.
- (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 and eighty (180) days after the date of approval.
- (e) *Authorization for removal of a feature tree.* A feature tree may only be removed with approval from the City Council provided that one (1) of the following exceptions is met. The burden of qualifying the exceptions is upon the applicant to show that the following criteria have been met:
  - (1) The tree is dead.
  - (2) The tree is diseased or dying and constitutes a threat to healthy trees, to property, or to public safety.
  - (3) Removal of the tree is necessary for construction, development, or redevelopment, and:
    - a. All reasonable efforts have been made to avoid removing the tree for construction/development and removal cannot be avoided.
    - b. The presence of the tree places undue financial burden on the applicant.
    - c. No other reasonable accommodations can be made to preserve the tree.

(Prior Code, § 13-705; Ord. No. 1565, § 5, 2-10-2014)

**ORDINANCE NO. 1638**

**AN ORDINANCE OF THE CITY OF FAIRWAY, KANSAS, AMENDING AND REPEALING SECTION 9-76, ENTITLED "PROTECTION OF THE PUBLIC," OF ARTICLE III, ENTITLED "PUBLIC RIGHTS-OF-WAY USE AND EXCAVATION, OF CHAPTER 9, ENTITLED STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, AND AMENDING AND REPEALING SECTION 11-56, ENTITLED PUBLIC TREE CARE, OF ARTICLE II, ENTITLED "TREE BOARD" AND SECTION 11-90, ENTITLED "ENFORCEMENT AND PENALTY," SECTION 11-90A, ENTITLED "APPEALS PROCESS," AND SECTION 11-93, ENTITLED "TREE PROTECTION" OF ARTICLE IV ENTITLED "PUBLIC TREE PROTECTION" OF CHAPTER 11, ENTITLED "TREES" OF THE CODE OF THE CITY OF FAIRWAY, KANSAS.**

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

**SECTION 1.** That Section 9-76 of the Code of the City of Fairway is hereby amended to read as follows:

Sec. 9-76. - Protection of the public.

- (a) It shall be the responsibility of the ROW user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- (b) The City shall not be liable for any damage to or loss of any of the ROW user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.
- (c) The ROW user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them, including, but not limited to, delay damages, repair costs, downtime, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW user to timely perform any of its obligations under this article to the extent caused by the acts or omissions of the ROW user.
- (d) The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- (e) Any ROW user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- (f) Whenever a ROW user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.

- (g) Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- (h) Every permittee shall notify the occupants of all properties within two hundred feet (200') of the work, provided that the Public Works Director may waive or modify this notification requirement in those limited instances where the Director determines the modification or waiver will not adversely impact the public health, safety or general welfare. There shall be notification, to each such occupant, which notification shall be in the form of a door hanger and shall be received by each occupant no later than three (3) days before the commencement of work. This door hanger notification shall include:
- (1) Scope of project;
  - (2) Construction schedule, including the date of commencement and expected completion of work;
  - (3) Name of field superintendent; and
  - (4) Telephone numbers (office and mobile) and electronic mail addresses for permittee personnel who can timely provide additional project information as needed.
- (i) Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW user may require such payment in advance. The ROW user must be given not less than fifteen (15) days' written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24) hours' advance notice from the person advising of the actual operation.
- (j) In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

**SECTION 2.** That existing Section 9-76 of the Code of the City of Fairway is hereby repealed.

**SECTION 3.** That Section 11-56 of the Code of the City of Fairway is hereby amended to read as follows:

**Sec. 11-56. - Public tree care.**

- (a) The City shall have the right to plant, maintain and remove community trees to ensure public safety and to preserve and to improve the beauty of public grounds. The City shall have the responsibility to remove a dead, diseased, dying or dangerous community tree. Homeowners' associations have responsibility for islands and designated neighborhood gardens.
- (b) The Tree Board may remove or order removal of any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines,

water lines or other public improvements, or is seriously affected by any injurious insect or disease.

- (c) Property owners, at their expense and with permission from the Community Tree Manager, shall have the right to perform normal tree maintenance on all street trees on their property provided it is not potentially detrimental to the health of the tree.

**SECTION 4.** That existing Section 11-56 for the Code of the City of Fairway is hereby repealed.

**SECTION 5.** That Section 11-90 of the code of the City of Fairway is hereby amended to read as follows:

**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

**SECTION 6.** That existing Section 11-90 of the Code of Fairway, Kansas is hereby repealed.

**SECTION 7.** That Section 11-90a of the Code of the City of Fairway, Kansas is hereby adopted to read as follows:

**Sec. 11-90.a – 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.

**SECTION 8.** That Section 11-93 of the Code of the City of Fairway, Kansas is hereby amended to read as follows:

**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 28 inch DBH- must have a fence to encompass a perimeter 20' from center of tree or 75% of drip line (whichever is lesser)*

*Trees between 20 inch and 28 inch DBH-must have a fence to encompass a perimeter 15' from center of tree or 75% of drip line (whichever is lesser)*

*Trees less than 20 inch DBH- must have a fence to encompass a perimeter 10' from the center of the tree or 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 Sec. 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.

**SECTION 9.** That if any portion or section of this Article is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, the decision shall in no manner affect the remaining portions or sections of this Article, which shall remain in full force and effect.

**SECTION 10.** That this Ordinance shall become effective upon adoption and publication of its summary in the official City newspaper.

**PASSED** by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2016. **APPROVED** by the Mayor.

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Jerry Wiley, Mayor

ATTEST:

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Kim Young, City Clerk

APPROVED AS TO FORM:

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Stephen P. Chinn, City Attorney