
ORDINANCE NO. - Effective in 90 days

**AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF ROELAND PARK,
KANSAS AMENDING MUNICIPAL CODE CHAPTER 13, ARTICLE 5 “TREES
SHRUBS AND GROWTH”**

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WHEREAS, the City of Roeland Park desires to promote and preserve the general welfare of Roeland Park citizens and visitors by ensuring trees on the City’s property are protected.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK, KANSAS AS FOLLOWS:

Section 1. Chapter 13, Article 5 of the Roeland Park Municipal Code is hereby amended to read as follows:

“Sec. 13-501. Maintenance.

The City shall have the right to plant, maintain, treat and remove trees and shrubbery within the right-of-way abutting streets, alleys, avenues and boulevards within the City. It shall be the duty of the owners of property abutting any sidewalk, street, avenue, alley or parking to cut and trim the branches and limits of any trees or shrubbery as provided in section 8-904 of this Code. It shall also be the duty of the owner or occupant of any property abutting any street, avenue, alley or parking to cut and remove any dead tree, dead branches, dead limbs or dead shrubbery upon their property which extends over any street, avenue or alley.

Sec. 13-502. Traffic Hazard.

If the Chief of Police, Public Works Director, or their designee, determines that any tree or shrubbery located on any private property abutting any sidewalk, street, avenue, alley or parking constitutes a traffic or pedestrian hazard, by dangerously obstructing the view of drivers of vehicles or traffic entering a street from an intersecting street, they 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.

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Sec. 13-503. Trimming or Removal by City.

If the Governing Body determines that the owner of property abutting any sidewalk, street, avenue, alley or parking has failed to comply with the requirements of Sections 13-501 and 13-502, the City may proceed to order abatement of the nuisance in accordance with Article 3 of Chapter 8 of the Code.

Sec. 13-504. Diseased or Infected Trees Upon Private Property.

It shall be unlawful to harbor any tree or plant or shrubs infected or infested with disease or insect pest or larvae. It shall also be unlawful to store or otherwise harbor on any property in the City, the material from any diseased or infected trees. Upon failure of the owner to remove such infected, infested or diseased trees, shrubs or other growth, the City may order abatement of the nuisance in accordance with Article 3 of Chapter 8 of the Code.

Sec. 13-505. Saving Clause.

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

Sec. 13-506. Public and Private Tree Protection Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in Section 13-506 *et seq.*, except where the context clearly indicates a different meaning:

City Arborist means a professional certified by the International Society of Arboriculture (ISA), or registered with the American Society for Consulting Arborists (ASCA), or their qualified designee.

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Covered property means the front yard of privately owned lots or parcels as well as all right of ways, parkland, green space and City owned property within the incorporated boundaries of the City.

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.

Front Yard means the portion of privately owned land running the full width of a lot or parcel between the public street right of way line and the exterior elevation of the main building.

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 twelve inches (12") or more located on Covered Property. Trees that have received special care provided by the City for the treatment or prevention of disease or infestation may also be considered protected.

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 having a total height of not less than seven feet (7') when planted.

Tree removal authorization means permission granted by the City to remove a protected tree.

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Sec. 13-507. Enforcement and Penalty.

The Public Works Director or their designee shall serve as City Arborist and have 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 provisions of this Section, or the Roeland Park Tree Fund. If any administrative fine or assessment to the Roeland Park 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.

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Sec. 13-508. Appeal Process.

Any person, firm, corporation, agent, or employee thereof may submit a written appeal of a decision of the City Arborist or designee to the Roeland Park Municipal Judge 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 hearing before the Roeland Park Municipal Judge at the next regularly scheduled municipal court date. 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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Sec. 13-509. Applicability of Section.

The terms and provisions of this Section shall apply to all Covered Property.

Sec. 13-510. Roeland Park Tree Fund.

There is established a Roeland Park Tree Fund, which shall be a special account administered by the City. The Roeland Park Tree Fund shall be used only for purchasing, planting and maintaining of trees on covered property. The amount of payment for the required Mitigation fee shall be established by the City Council and set in the City's Fee Schedule.

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Commented [MP1]: Use to assist qualifying property owners w/ removal/replacement/trimming?

If approved by the City Arborist, an applicant or owner may make a \$1,000.00 payment into the Roeland Park Tree Fund in lieu of planting replacement trees, this would be an exception to the norm as the intent of the policy is to encourage the preservation of the tree canopy within the City by adding Replacement trees when mature trees are removed.

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A property having 3 or more "Protected trees" combined in the front yard or in the public right of way adjacent to the front yard may remove a "Protected tree" and replace it with a "Replacement tree" without need to contribute to the tree fund.¶

A property having fewer than 3 "Protected trees" combined in the front yard or in the public right of way adjacent to the front yard may remove a "Protected tree" and replace it with-¶
One "Replacement tree" and pay \$500 to the tree fund¶
Two "Replacement trees" and pay \$250 into the tree fund¶
Three "Replacement trees" and pay no fee

Any tree that is authorized for removal due to disease or health of the tree, or other public safety reason(s), may have the Mitigation fee waived provided at least one replacement tree is planted; the property owner may request reimbursement of the cost of removing said tree from the City Council. The decision to use Tree Fund resources to cover the removal costs of said tree shall be based upon the property owner's ability to pay.

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Sec. 13-511. 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 their

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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:

(a) 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);

(b) 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);

(c) 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 City Arborist, 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.

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(g) *Exceptions.* Notwithstanding anything contained in this Section shall not prohibit work that is necessary to install, maintain, repair, replace or remove utility lines or activity that merely disrupts the surface of the ground.

Sec. 13-512. Tree Removal.

Authorization. No person, directly or indirectly, shall cut down, destroy, move or remove, or effectively destroy, any protected tree located on covered property without first obtaining tree removal authorization. Generally, if a tree removal authorization is granted, the applicant shall replace each protected tree removed with a replacement tree unless an exception is afforded in Section 13-510 above. If, for whatever reason, planting replacement trees is deemed infeasible, the owner shall make payment to the Roeland Park Tree Fund subject to the provisions of Section 13-510.

Process. Owners must request tree removal authorization in writing to the City Arborist. 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.

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Authority to review; approval. The City Arborist 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 City Arborist may take one (1) of the following actions:

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(1) *Deferral of decision.* The City Arborist may defer the approval of a tree removal authorization to the Board of Zoning Appeals for any reason. All decisions made by the Board of Zoning Appeals shall be final.

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(2) *Approval.* The City Arborist shall issue tree removal authorization provided the owner has agreed in writing to either meet the tree replacement criteria or make payment to the Roeland Park Tree Fund.

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(3) *Replacement Tree List.* The City Arborist shall determine which species are eligible as replacement trees based on size at maturity, appropriateness for this region, and the context of a specific site. The City Arborist may maintain a list of required or preferred species based on any reputable or professional tree resources applicable to this region.

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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.

Authorization for removal of a protected tree with DBH > 30". A protected tree with a DBH > 30" may only be removed with approval from the City Council provided that at least one (1) of the following criteria is met. The burden of proof that a criteria has been met falls upon the applicant:

(1) The tree is dead. Commonly an expert such as a licensed arborist would provide confirmation to satisfy these criteria.

(2) The tree is diseased or dying and constitutes a threat to healthy trees, to property, or to public safety. Commonly an expert such as a licensed arborist would provide confirmation to satisfy these criteria.

(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."

Section 2. This Ordinance shall become effective 90 days following the date of approval and after publication in the City's newspaper.

Passed by the Governing Body of the City of Roeland Park, Kansas this _____

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Michael Poppa, Mayor

ATTEST:

Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

Steven E. Mauer, City Attorney