

SUBSTITUTE 2

INTRODUCED BY: Mr. Price

DATE: July 10, 2006

BILL NO. **8895**ORDINANCE NO. **6670**

AN ORDINANCE AMENDING TITLE 12 OF THE UNIVERSITY CITY MUNICIPAL CODE, RELATING TO STREETS, SIDEWALKS AND PUBLIC PLACES, BY REPEALING CHAPTER 12.08 THEREOF, RELATING TO STREET TREES AND SHRUBS, AND ENACTING IN LIEU THEREOF A NEW CHAPTER TO BE KNOWN AS "CHAPTER 12.08 TREES AND SHRUBS," THEREBY AMENDING SAID CHAPTER SO AS TO ESTABLISH NEW REGULATIONS ON TREES AND SHRUBS, ON BOTH PUBLIC AND PRIVATE PROPERTY; AND BY AMENDING THE HEADING TO TITLE 12 SO THAT IT SHALL BE KNOWN AS "TITLE 12 STREETS, SIDEWALKS AND PUBLIC PLACES, AND TREES AND SHRUBS;" CONTAINING A SAVINGS CLAUSE AND PROVIDING A PENALTY.

WHEREAS, at its meeting held at Screenz at 7:30 p.m. on July 10, 2006, the University City Plan Commission recommended an amendment of Chapter 12.08 of the University City Municipal Code so as to establish new regulations on trees and shrubs, on both public and private property; and

WHEREAS, due notice of a public hearing to be held by the City Council in the City Council Chambers at City Hall at 6:30 p.m. on August 28, 2006, was duly published in the St. Louis Countian, a newspaper of general circulation within said City on August 8, 2006, which was not more than thirty (30) days nor less than fifteen (15) days before the hearing date; and

WHEREAS, said public hearing was held at the time and place specified in said notice, and all suggestions or objections concerning said amendment were duly heard and considered by the City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY CITY, MISSOURI, AS FOLLOWS:

Section 1. Title 12 of the University City Municipal Code, relating to streets, sidewalks and public places, is hereby amended by repealing Chapter 12.08 thereof, relating to street trees and shrubs, and enacting in lieu thereof a new chapter to be known as "Chapter 12.08 Trees and Shrubs," thereby amending said chapter so as to establish new regulations on trees and shrubs, on both public and private property; and by amending the heading to Title 12 so that it shall be known as "Title 12 Streets, Sidewalks and Public Places, and Trees and Shrubs;" so that Chapter 12.08, as so amended, shall read as follows:

Section 12.08.010 Purpose and intent.

The citizens and elected officials of the City are concerned that use and redevelopment is putting the City's tree population in jeopardy. Aging, disease, larger homes, new road construction and many other changes in the City often result in the loss of trees and vegetation, thereby changing the character and ambiance of the City. The planting, maintenance and preservation of trees and vegetation in the course of land disturbance has been determined to be a significant issue for the public health and welfare, and the City's physical and aesthetic environment.

The planting, maintenance and preservation of trees and vegetation will have substantial positive effects on storm water management, air quality, quality of water from non-point sources, erosion, flood control, wildlife habitat, noise pollution, energy conservation, and property values. It will provide for positive aesthetic benefits consistent with the established character of the City.

The planting, maintenance and preservation of trees and vegetation help moderate the effects of sun, cold and wind, and pollution. It also has a beneficial impact on the overall well-being of the City. Therefore, the standards as set out in this Chapter apply to all properties within the City's boundaries.

Section 12.08.020 Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

Arborist Permit: Annual permit required for any person pruning, treating, maintaining or removing of any tree on Development Projects and any tree in the Public Community Forest; provided however that City employees are excluded from this requirement.

Adjusted Diameter at Breast Height (DBH defined below): The DBH of a tree. (e.g., a 20-inch diameter tree with a Condition Rating of 50% has an "adjusted DBH" of 10 inches.)

Caliper: The diameter of a tree 6" above ground.

Carrying Capacity: A level in which a site has the maximum number of trees. The land cannot support any more trees without jeopardizing the health of all the trees due to overcrowding.

City: The City of University City, Missouri.

City Forester: The forester of the City or his or her duly authorized agent. The City Forester is responsible for administration of this Chapter and a Community Forestry Plan.

Community Forestry Plan: A written document that guides the work of the City Forester and envisions a long-range plan for the maintenance and improvement of the community urban forest. The Community Forestry Plan contains the City-wide street tree plan.

Condition Rating: A numerical rating developed in accordance with the International Society of Arboriculture methodology will be utilized to gage a tree's overall health and form expressed as a percent. A healthy tree with good form may be rated at 90%, whereas a tree with many broken limbs and serious decline may be rated at 20%.

Development and/or Development Projects: The performance of any building activity; or the making of any material change to any structure; or to the natural surface of land including activities that disturb the natural surface of the land such as clearing, excavating, and filling; or any change in the use or appearance of any structure or land; or the division of land into two or more parcels. For the purposes of this Chapter, in reference to the need for a Forest Activity Permit, the terms "development" or "development projects" shall include but not be limited to the construction of **new** single family dwellings or **new** two-family dwellings and any other new construction that requires a special use permit such as Site Plan Review, Conditional Use Permit or Planned Development. The terms "development" or "development projects" shall specifically **exclude** additions to single family dwellings or two-family dwellings and the addition of accessory structures (as defined in Title 34 of the Zoning Code) including but not limited to landscaping, decks, porches, sheds, garages, fences and pools.

DBH: The diameter of a tree at breast height which shall be measured at 4 ½ feet above ground.

Forestry Activity Permit: Permit required to remove, prune or plant City Trees. It is also required when trees are to be removed from private property as part of certain development projects as set forth herein.

Maintain: To plant, mulch, fertilize, water, and/or prune as necessary, and remove if dead or diseased.

Park Trees: See Trees below.

Public Community Forest: All City Trees as a total resource.

Private Community Forest: All trees within the City's boundaries that are not City Trees.

Private Tree: See Trees below.

Site: Same as Tract (see below).

Street Trees: See Trees below.

Tract: The total area of a parcel, site, lot, or ownership of land upon which development or land disturbance is proposed irrespective of the actual limits or size of the proposed development or land disturbance activity.

Tree: A woody plant that grows mostly upright as a single stem (rarely multi-stem) that may eventually attain a height of 15 feet or more.

City Tree: Street Tree, Park Tree or other tree on property owned by the City, on City right-of-way, or to be planted on City property or City right-of-way and other trees owned by the City.

Park Tree: City Tree located in a City public park.

Private Tree: Tree located on privately-owned property (not a City Tree).

Street Tree: City Tree located in City right-of-way along a public street.

Tree Bank: An account set up within the City's financial system that will accept payments from tree replacement assessments imposed by this Chapter, or from other sources that may arise. The Tree Bank funds shall be used to plant and maintain City Trees.

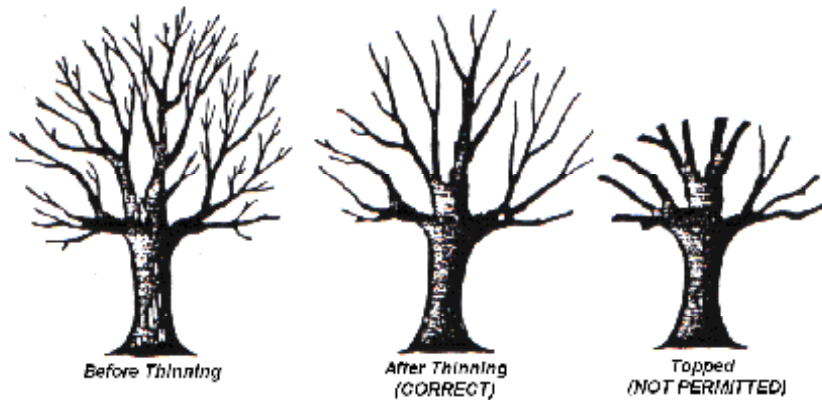
Tree Canopy Coverage: The area in square feet of a tree's branch spread. Existing tree canopy is determined by measuring the ground surface area that is covered by the branch spread of a single tree or clump or grove of trees.

Tree Lawn: A narrow band of soil-filled area typically located between the edge of the street pavement and an adjacent sidewalk or to the edge of the private property lot line.

Tree Manual: A manual prepared by the City Forester and that contains the technical information necessary to perform the work outlined in this Chapter.

Tree Survey: A comprehensive account by a certified arborist of all trees 6 inches or greater in DBH on the tract of land in question. A tree survey is required for Forest Activity Permits. This survey shall be prepared in map and in narrative form, and shall include: the species, size, condition (rated 1-100) and location of each tree relative to the proposed development. Tree protection measures and limits of disturbance shall be noted on the tree survey.

Tree Topping: The drastic removal, or cutting back, of large branches in mature trees leaving large, open wounds, which subjects the tree to disease and decay. Topping causes immediate injury to the tree and ultimately results in early failure or death of the tree.



Section 12.08.025 Jurisdiction.

The City shall have control of all trees, shrubs, and other plantings now or hereafter in any street, park, public right of way, or other public place within City limits, and shall have the power to plant, care for, maintain, remove and replace such trees, shrubs and other plantings. Jurisdiction shall also extend to trees, shrub and other planting as set forth in this Chapter.

Section 12.08.030 City Forester and Urban Forestry Commission - Appointment, Authority and Supervision.

A. City Forester

1. Duties include but are not limited to the following:
 - a. Implement this Chapter: The City Forester is authorized to adopt and promulgate rules and regulations necessary to interpret and implement the provisions of this chapter to secure the intent thereof and to promote the public health, safety and general welfare.
 - b. Authorize Permits and Supervise Permitted Work: The City Forester shall be authorized to issue and administer permits and supervise permitted work in accordance with this Chapter.
 - c. Implement the Community Forestry Plan: It shall be the responsibility of the City Forester to study, investigate, develop and annually prepare an update of the Community Forestry Plan, for the care, replacement, maintenance, and removal or disposition of City Trees and shrubs. Said update shall be presented to the Urban Forestry Commission for adoption *and forwarded to Council for approval.*

- d. Member of the Urban Forestry Commission: The City Forester shall also be an ex officio non-voting member of the Urban Forestry Commission.

B. Urban Forestry Commission

1. Creation of Commission: There is hereby established an Urban Forestry Commission. The Commission shall consist of the City Forester, and seven (7) members who shall be appointed by the City Council and who shall be and have been residents of the City for at least two years immediately prior to their appointment. The terms of such members shall be staggered. Two shall be designated to serve for a term of 1 year, three shall be designated to serve for a term of 2 years, and two shall be designated to serve for a term of 3 years from the date of such initial appointment. Members subsequently appointed by the City Council shall serve for a term of 3 years. Such members shall receive no compensation for their services as such. The City Council shall appoint a Councilmember as an ex officio member of the Commission to act as liaison between Council and the Commission. The City Council may remove any member of the Commission for the misconduct or neglect of duty. Vacancies on the Commission occasioned by removal, resignation or for any other cause shall be filled for the remainder of the term in like manner as in the case of original appointment.

2. Election of Officers: The Urban Forestry Commission shall as soon as practical after original appointment of its members, meet and elect a president and such other officers as it may deem necessary. Thereafter, elections of officers shall be had annually in the month of January.

3. Adoption of Rules and Regulations: The Commission shall make and adopt such rules and regulations for its guidance and proceedings as may be expedient and necessary for the carrying out of its duties, and not inconsistent with the Charter, the provisions of this Code or other ordinances of the City.

4. Performance of Duties: The Urban Forestry Commission shall upon advice and input from the City Council, City Forester, Director of Public Works, the Director of Parks, Recreation and Forestry, and the Director of Planning adopt and annually update a Community Forestry Plan, and shall perform such other duties as may be provided by this Code or by other ordinance. Such Plan shall, upon approval of City Council, constitute the official comprehensive Community Forestry Plan for the City.

5. Quorum for Transaction of Business: A majority of the Commission members shall constitute a quorum for the transaction of business.

6. Annual and Regular Meetings: The annual meeting of the Commission shall be held in January, for the purpose of electing a President and such other officers, and for the transaction of such other business as may come before the Commission. The Commission may fix the time and place for holding of additional regular meetings with notice of such meetings to be delivered or mailed to all Commission members. The Commission shall hold a minimum of six (6) regular meetings per calendar year. Additionally, the Commission shall meet within thirty (30) days of notice to act upon any appeal.

7. Special Meetings: Special meetings of the Commission may be called or at the request of the President, or two (2) Commission members.

8. Appeals: Any person directly affected by an order, decision or determination of the City Forester shall have the right to appeal to the Urban Forestry Commission. All appeals shall be filed within 10 days after the order, decision or determination is rendered by the City Forester; provided however that appeals of special assessments pursuant to Section 12.08.080.d shall be filed within 30 days after notice of the special assessment is mailed to the property owner. All appeals shall be in writing and filed with the Director of Parks, Recreation and Forestry and City Manager for placement on the Commission's agenda. An appeal shall be based on a claim that the true intent of this Chapter or the regulations or rules adopted there under have been incorrectly interpreted or applied, and shall specify the reasons. The Commission may reverse, affirm or modify the order, decision or determination of the City Forester. The Commission shall render its decision by majority vote after an appeal hearing.

Section 12.08.040 Forest Activity Permit.

A. Private Trees on Development Projects

Prior to removal of any tree six (6) caliper inches in diameter or greater, a Forest Activity Permit shall be required on all Development Projects on private property within the City. A Forestry Activity Permit shall be obtained from the City Forester. The fee charged for each Forestry Activity Permit shall be \$50 per Development Project. The removal of diseased or dead trees, and trees which have been declared a public nuisance by the City Forester is exempt.

A tree survey of the site must be provided to the City Forester, and approved by the City Forester, prior to any excavation, grading or land clearance and also prior to the issuance of a building permit by the Building Commissioner, in connection with the development. The City Forester shall provide the Building Commissioner written notification of any approval within twenty (20) work days. In the tree survey, each tree will be rated and assigned a condition factor (expressed as a percentage) depending on its current health. The condition factor will be assigned per guidelines accepted by the International Society of Arboriculture. Multiply the actual measured DBH of each tree by the condition factor to calculate the adjusted DBH.

The preservation of trees on lots is encouraged. If complete preservation is not possible, any trees six (6) caliper inches in diameter or greater being removed from the site must be replaced with trees of comparable species, so that the combined caliper inches of the replacement trees will be equal to that of the cumulative adjusted DBH being removed. The time of replacement shall be directed by the City Forester. If the carrying capacity of the site can not support the number of trees required for this mitigation, a payment of \$120 per caliper inch not so replaced shall be made by the developer to the City Tree Bank within thirty (30) days of the City Forester making such determination; provided however that the maximum amount payable shall be \$10,000 per acre; provided further that the City Forester shall make all reasonable effort

to utilize a sum equivalent to the amount so paid into the City Tree Bank for planting of City Trees near or surrounding the Development Project.

For Development Projects subject to this Chapter, should any preserved tree die or become damaged within one year of the later of the date all building permit work is finally approved by the City, or date an occupancy permit is issued, or date of actual occupancy, as a result of Development Project activity, the developer shall, at the direction of the City Forester, replace the tree(s), or pay an assessment equal to the value of the trees that died, were damaged, or were removed. Payment shall be due within thirty (30) days of the City Forester making such determination. The value of the trees will be determined using the International Society of Arboriculture's methodology of tree appraisal. (Copies available from ISA at PO Box 3129, Champaign, IL (www.isa-arbor.com)). The City shall not issue, shall withhold, or shall revoke, as the case may be, any occupancy permits until the assessment is paid.

In lieu of any payment required to be made to the City Tree Bank under this subsection, the developer may plant trees of equal value on City property or City right-of-way as directed by the City Forester, with preference to be given to the area near or surrounding the Development Project.

B. City Trees.

No person shall plant, prune, spray or remove any City Tree or City shrub without first obtaining a Forestry Activity Permit. A Forestry Activity Permit will be issued for appropriate planting spaces only. If a tree lawn exists, the planting site must be acceptable to the City Forester. Species selection must be made from the approved species list in the Tree Manual or a species approved by the City Forester.

A Forestry Activity Permit to prune, spray or remove City Trees will be issued if the City Forester finds that the desired actions or treatments are necessary and that the proposed method and workmanship are satisfactory. If a tree is approved to be pruned or removed, the activity shall follow the American National Standard Institute A300 Standard Practices and the root stump must be grubbed out, when so required by the City Forester. The fee charged for each Forestry Activity Permit for City Tree planting, pruning and removal shall be \$50.

Maintenance activities that include mulching, watering and fertilizing do not require a Forestry Activity Permit.

C. Regulations for Planting in Public Places:

Work performed in public places under a Forestry Activity Permit shall be in strict conformance with the terms of this Chapter, and the regulations set forth in the Tree Manual and further set forth below:

1. Trees must not be less than 1¾ caliper inches.

2. No tree shall be placed so as, in the opinion of the City Forester, Director of Public Works or Chief of Police, to cause a traffic hazard.
3. Application for planting will specify which trees currently located in public right-of-way shall be removed, if any. Stumps and exposed roots will be removed if any tree is approved for removal. No tree in public right-of-way shall be removed unless clearly authorized as part of the Forest Activity Permit.
4. Trees shall be planted at least 30 feet apart except where a special permit is obtained from the City Forester.
5. No tree shall be planted where the soil is too poor to insure the growth of such tree unless the owner incorporates a suitable loam or top soil.
6. No tree shall be planted nearer than one and one-half feet from the curb line or the sidewalk unless a special permit is granted by the City Forester.
7. No tree shall be planted along any street except of the species, cultivar, or variety selected by the City Forester for that street.
8. All pruning must follow the American National Standard Institute A300 Standard Practices.

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Section 12.08.070 Annual Arborist Permits.

Any person pruning, treating, and/or removing any tree in a Development Project and/or any tree in the Public Community Forest must first obtain an Arborist Permit to be issued by the City Forester. An Arborist Permit shall be obtained from the City Forester upon showing proof of liability insurance in the amount of \$500,000 and workmen's compensation insurance as required by State law and shall be valid for a period of one year. Issuance of a permit also requires that such person (or if a business entity, that a minimum of one person within the business entity) be recognized by the International Society of Arboriculture as a Certified Arborist or Tree Worker. All permitted work on City Trees and trees in a Development Project will be consistent with American National Standard Institute A300, Standard Practices for Woody Plant Maintenance.

Fines for pruning, treating, or removing any tree within the City without the required Arborist Permit shall be \$500 per separate offense and shall double for the second separate offense, in addition to any other penalty provided in Section 1.12.010.

Section 12.08.080 Duty of private property owners relating to decayed, diseased or hazardous trees and shrubs; appeals.

- A. Every owner of any Private Tree overhanging any street or right of way within the City shall prune such tree so that branches shall not severely obstruct the light from a street light or obstruct the view of any street intersection. The minimum clearance of any overhanging portion of a tree shall be nine (9) feet, except where greater clearance is designated by the City Forester. Every owner shall remove all dead, decayed, diseased or hazardous Private Trees which may endanger any person or adjacent property.
- B. When there is a threat of danger from any dead, decayed, diseased or hazardous Private Trees, the City Forester shall have the right to:
- i. prune any tree or shrub when it interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign or sight triangle at intersections;
 - ii. remove or cause to be removed any dead or diseased tree when such tree constitutes a hazard to life and/or property, or harbors insects or disease which constitutes a potential threat to other trees within the City; or
 - iii. notify in writing the owners of such dead, decayed, diseased or hazardous trees and require the owners to perform the work within the time frame directed by the City Forester.
- C. Pruning or removal, as the case may be, shall be done at the owners' expense. In the event of failure of owners to comply with this provision, the City shall have the authority to remove or prune such trees and the cost of said removal or pruning shall be assessed to the owner as provided by law in the case of special assessments. Such a special assessment shall be certified by the City Forester to the Director of Finance and shall thereupon become and be a lien upon the property until paid.
- D. No tree or tree limb which has been cut down or which has fallen or been broken down, shall be permitted to be removed to, to remain in, or upon any public property, or so near thereto as to endanger any person thereon, and it shall be the duty of the private property owner to cause the same to be promptly removed, and it shall be unlawful for any such owner to fail so to do.
- E. Emergencies: When in the opinion of the City Forester there is an actual and immediate danger from a decayed, diseased or hazardous tree or shrub which would endanger any person or property, or when any tree or part thereof has fallen and any person or property is endangered thereby, the City Forester is authorized and empowered to take such action as may be necessary to render the tree, shrub, or part thereof temporarily safe whether or not the notice procedure in this section has been instituted. The cost incurred in the performance of any such emergency procedures shall be assessed to the property owner as provided by law in the case of special assessments. Such a special assessment shall be certified by the City Forester to the Director of Finance and shall thereupon become and be a lien upon the property until paid.

F. Appeal to special assessment: Any special assessment may be appealed pursuant to Section 12.08.030(B)(8), provided that the appeal shall be filed within 30 days after notice of the special assessment is mailed to the property owner.

Section 12.08.090 Abuse or mutilation.

- A. No unauthorized person on any City property or right-of-way shall:
1. Damage, cut, carve, transplant or remove any tree, shrub or plant or injure the bark or roots.
 2. Pick flowers or seeds of any tree, shrub or plant.
 3. Attach any nail, staple, rope, wire or any other contrivance to any tree, shrub or plant.
 4. Dig or otherwise disturb the root area, or in any other way injure or impair the flow of oxygen and water to the roots.
 5. Cause or permit any wire charged with electricity to come in contact with any tree, shrub or plant or allow any gaseous, liquid, or solid substance, which is harmful to such trees, shrubs or plants to come in contact with them.
- B. Tree topping of any City Tree or tree in a Development Project is unlawful and shall result in an immediate revocation of the Arborist Permit for a period of one year, in addition to any other penalty provided in Section 1.12.010.

Section 12.08.100 Interference with City Forester or other employees.

It shall be unlawful for any person to interfere with the City Forester or any other City employee while engaged in his or her duties herein set forth in this Chapter.

Section 2. This ordinance shall not be construed so as to relieve any person, firm or corporation from any penalty heretofore incurred by the violation of Chapter 12.08, nor bar the prosecution of any such violation.

Section 3. Any person, firm, or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be subject to the penalty provided in Chapter 1.12, Section 1.12.010 of the University City Municipal Code.

Section 4. This ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED this 6th day of November, 2006.

MAYOR

ATTEST:

CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:

CITY ATTORNEY