ORDINANCE NO. 19699

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, repealing Chapter 11.05, Forestry, in its entirety and adding a new Chapter 12.65, Forestry, to the Code of the City of Topeka concerning the City Forester.

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

Section 1. That Chapter 11.05 Forestry, § 11.05.010 through § 11.05.160, of The Code of the City of Topeka, Kansas, is hereby repealed in its entirety.

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

Duties and jurisdiction of city forester.

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

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

Function of forestry division.

The forestry division is a part of the department of public works. It shall be the function of the division of forestry under the administration and supervision of the city 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.
Section 5. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 12.65.040 in Article I “Generally” of Chapter 12.65 “Forestry”, which said section reads as follows:

**Protection of public trees.**

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

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

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

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

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

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

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

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

Utility wires.

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

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

Appeals; Prosecution

Any person cited for a violation of this chapter may appeal in accordance with chapter 2.145 of this Code. However, nothing in this chapter shall prevent the city from 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:

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Brenda Younger, City Clerk