

Introduced by: Council Present

**AN ORDINANCE CREATING A NEW SECTION IN THE ZONING CODE, ENTITLED
“TREE PRESERVATION AND RESTORATION” OF THE CITY OF BERKELEY**

Now, Therefore, Be it Ordained by the City Council of the City of Berkeley, Missouri, as follows:

TREE PRESERVATION AND RESTORATION

Short Title

This article shall be known and may be cited as the “Tree Preservation” of the City of Berkeley, Missouri.”

Section 1 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:

Caliper or diameter at breast height (DBH). A measurement of the size of a tree equal to the diameter of its trunk measurement at four and one-half (4 1/2) feet above natural grade. If a tree splits into two (2) or more trunks below four and one-half (4 1/2) feet, then the trunk is measured at its most narrow point below the split. For newly planted trees the caliper measurement will be taken six (6) inches above natural grade.

Chairman. The Chairman of the Commission.

Commission. The Planning and Zoning Commission of the City of Berkeley

Critical root zone (CRZ). An area drawn for each tree surveyed which represents the average root system. The average root system follows the crown drip line extending from the outer surface of a tree's branch tips to the ground. CRZs vary depending upon tree species, tree size, soils and moisture level, but shall always be deemed to incorporate a minimum distance of ten (10) feet beyond the defined boundary of the tree's root system.

Disturb. Shall include the intentional or unintentional removal, destruction or killing of any tree, other than as provided by this article.

Grand tree. A tree in fair or better condition which equals or exceeds the following diameter sizes: Large hardwoods (e.g., oaks, hickories, etc.) 24-inch DBH; large softwoods (e.g., pines, spruces, etc.) 20-inch

DBH; small trees (e.g., dogwood, redbud, etc.) 12-inch DBH. A tree in fair or better condition is defined as having a life expectancy of greater than fifteen (15) years, a relatively sound and solid trunk with no extensive decay, no more than one (1) major and several minor dead limbs (hardwoods only), and no major insect or disease problems.

Grove. Any grouping of eight (8) or more trees each having eighteen (18) inches or greater caliper with no tree trunk farther than thirty (30) feet from any other tree trunk in the group.

Specimen vegetation. A unique grouping of rare or unusual plants justifying preservation pursuant to any established federal, state or local guideline, including those established in the Tree Manual.

Timber sale. The cutting, removal or other disturbance of trees affecting seven thousand five hundred (7,500) square feet or more of tree canopy coverage area for the purpose of selling or harvesting such trees or maintaining the health of a wooded area.

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

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

Ultimate tree canopy, to be used where replanting is required, is determined by assigning the following values for planted trees: One thousand (1,000) square feet for a large shade tree or major street tree; seven hundred (700) square feet for each medium street tree and most conifers and three hundred (300) square feet for small flowering trees. The Tree Manual contains a list of approved restoration tree species and their categories.

Tree Manual. A document, adopted by this article and on file in the city offices, having detailed instructions for preparing and evaluating tree preservation plans, grading, planting and protection of all types of vegetation. The commission may make amendments to the specifications, standards and procedures in the Tree Manual for application of this article and such amendments shall become effective upon order, resolution or other approval of the council.

Tree preservation plan (TPP). A site plan prepared by an approved professional that delineates tree save areas and details measures to be taken to ensure protection and survivability of trees to be saved, prior to and during construction, and also complies with guidelines which are listed in the Tree Manual. A tree preservation plan should include a tree stand delineation.

Tree stand delineation (TSD). A detailed description and location of trees and other woody vegetation on the site prior to any proposed land disturbance, prepared in map form, as specified in the Tree Manual. The tree stand delineation is to be prepared using the proposed development plan as a base map so that decisions can be made with respect to preserving existing vegetation.

Section 2 Tree preservation plan required:

No grading permit, excavation permit, subdivision plat or subdivision sketch plan (if a sketch plan is submitted) shall be granted or approved by the city until a tree preservation plan has been filed with and approved by the commission in connection with the proposed land disturbance.

The tree preservation plan shall be included as part of a proposed grading plan, excavation plan, subdivision preliminary plat or subdivision sketch plan (if a sketch plan is submitted) or may be a supplement to such plan or plat. The tree preservation plan shall ensure the protection of remaining trees and vegetation on any site subject to authorized land disturbance and shall include such specifications, standards and precautionary measures as prescribed by the commission pursuant to the guidelines in the Tree Manual.

Section 3 Preservation of trees outside setback areas:

No grading permit, excavation permit, subdivision plat or subdivision sketch plan (if a sketch plan is submitted) shall be granted or approved unless at least thirty (30) percent of all tree canopy coverage on land not within any building setback area (required by applicable zoning or subdivision regulations) shall be retained and undisturbed. Where land disturbance is requested in conjunction with development of more than one (1) parcel of land, or where the development will require subdivision into more than one

(1) Parcel, the setback areas shall apply and be determined by lot according to the preliminary plat or sketch plan (if a sketch plan is submitted) for the proposed development. Redevelopment, Resubdivision or amended platting of land after the tree preservation plan has been implemented shall not be permitted to defeat or avoid the tree preservation requirements of this article first applied to the site, and approval of such redevelopment may be conditioned upon restoration of trees to equal the previous tree preservation plan. Where excavation is requested for an approved commercial use, the commission may allow replantings, or existing trees designated to remain after grading, anywhere on the site to count towards the required tree canopy coverage.

Section 4 Supplemental standards for land disturbance:

- (1) General standards-variances. In addition to all other standards for land disturbance established by law, all approved land disturbances on sites containing any trees shall also conform to the specifications and standards established by the Tree Manual, all requirements established by an approved tree preservation plan, and any other requirements or conditions imposed by the commission consistent with this article. The tree preservation standards required by this article may not be varied by any city officer or the commission except as necessary for construction pursuant to an approved final site plan, planned zoning development, conditional use permit, approved subdivision plat or approved final site plan (or section plan where applicable) specifically authorizing a modification of this standard. Any variance shall be no more than is necessary to complete the construction or use approved, and the commission or approving body may, when feasible, condition a permit upon the restoration or relocation of trees or vegetation on the site in an amount or quality sufficient to offset or ameliorate the variance. A variance shall not be deemed "necessary" where feasible changes in design or construction location or technique could reduce or eliminate the amount of variance.
- (2) Timber sales. Notwithstanding anything in this article to the contrary, timber sales shall be permitted as authorized by this subsection. Any person desiring to undertake a timber sale shall request a permit from the commission. Permit applications shall include a timber management plan from a professional forester or other approved professional indicating that the cutting of trees constitutes a thinning or harvesting that ensures continued health and existence of the woodland. The timber management plan shall specify an acceptable method of regeneration for the area to be harvested and shall conform to the standards established by the Missouri Department of Conservation, or such other designated agency, for proper management of tree farms and timber sales. Unless waived by the commission for good cause, no permit for a timber sale shall be granted for any area more than once every ten (10) years.
- (3) Exceptions. Nothing in this article shall apply to a disturbance of trees constituting forest crops regularly harvested (e.g., Christmas tree farms, nursery stock, etc.).

Section 5 Grand trees and specimen vegetation:

Grand trees and specimen vegetation shall not be disturbed except where it is necessary to permit construction or a use specifically authorized by a planned zoning, conditional use permit, approved subdivision plat or sketch plan, or approved final site plan (or section plan where applicable) granted by the commission, or as may otherwise be permitted by the Tree Manual.

Section 6 Restoration of trees bond:

- (1) Restoration required. Any tree disturbed in violation of this article or an approved tree preservation plan shall be replanted and restored within six (6) months according to the standards set forth in the Tree Manual. Any tree or tree areas identified to be retained on any tree preservation plan that do not remain alive for a period of at least thirty (30) months after the development of the site or stage ceases shall be rebuttably presumed to be "disturbed" in violation of this article and shall be restored or otherwise mitigated as required herein.
- (2) Supplemental bond. In determining the amount of any bond to be submitted to secure a grading permit, excavation permit, subdivision preliminary plat or subdivision sketch plan, the commission shall include such amount as to ensure restoration of trees and to compensate the site for such other losses, including loss of topsoil, as may occur from a disturbance of trees in violation of this article or an approved tree preservation plan. The additional bond amount established by the commission shall include the amounts set forth in the Tree Manual for the restoration or loss of trees. The commission may allow a reduction in the amount of the bond where the land disturbance is subject to stages, provided that no new stage is commenced until all restoration of the precedent stage is completed. If the restoration required by this section is not completed within the time allowed, the commission may cause the bond to be used for such restoration. Upon completion of all construction and development within the site, any unused portion of the bond not used for restoration or unrestorable losses shall be returned to the permittee; provided, however, that not less than fifteen (15) percent of the original amount shall continue to be held by the City of Berkeley, for a period of thirty (30) months to guarantee

survival or restoration for such period of any replanted trees or trees required to have been preserved. Any net amounts retained due to violations causing loss of trees in size or character that cannot be similarly replaced shall be transferred to a trust fund established for tree preservation and replacement to mitigate improper tree disturbance, or returned to the permittee if no such appropriate fund exists or is established within thirty (30) months from the effective date of this article. Notwithstanding any expenditure of the bond by the City of Berkeley, the person obtaining the land disturbance permit shall remain responsible for remedying any uncured violations of this chapter. The director of public works, with the consent of the chairman, shall have the authority to increase or decrease the bond amounts and release provisions of this article where under the circumstances such alteration would comply with the intent of this article.

- (3) Authorization for action by city attorney. The city attorney shall be authorized to take any other action to enforce the provisions of this article or to remedy any violation including seeking injunctive action or damages for such violations.

Section 7 Unlawful acts on public property:

It shall be unlawful for any person to do any of the following acts on public property or a public right-of-way:

- (1) Attach any sign, advertisement, notice or any other object, except for normal installation and maintenance devices or objects installed by the City of Berkeley, or any authorized agent of the city, to any tree or shrub or in any flower bed in the public right-of-way, parks or any other public property in the city.
- (2) Damage, cut, deface, destroy, top or injure any tree, shrub or plant by placing salt, brine, petroleum products, weed killers, concrete washout or any other substance in such an amount as to be injurious to any tree or shrub growth planted in the public right-of-way or upon any park or public property. This provision shall not apply to any ordinary care and maintenance or removal of hazardous trees by a governmental entity authorized to exercise jurisdiction over the public right-of-way, parks or other public property.
- (3) Place or store cement, asphalt, soil or any other substance in the public right-of-way or on any public place which impedes access of air and water to the critical root zone of any tree or shrub planted in the public right-of-way or any other public place.
- (4) Permit any tree, shrub, plant or other item on any person's property to hang over or branch in such a way as to obstruct or obscure street lights, traffic signs, traffic signals or pedestrian or vehicular access on public rights-of-way, or obstruct the view of any street intersection.
- (5) Cause damage to any trees or shrubs in the public right-of-way due to excavation or construction without replacement as prescribed by Section 6 restoration required.

Section 8: Protection or removal of trees on public property remedies:

The director of public works may cause to be removed or may order the property owner to remove any trees, limbs or other items encroaching on or over any public property or public right-of-way in violation of any ordinance. Should the property owner fail to remove the encroaching trees, limbs or other items, the director shall order such property owner to so remove such trees, limbs or other items, within ten (10) days after receipt of written notice. The failure by such property owner to remove such trees, limbs or other items within ten (10) days after receipt of the written notice shall be a violation of this article. In the event that the director causes the encroachment to be removed after notice and failure of the property owner to voluntarily remove it, the director shall send the property owner a bill for the costs of such removal, and the property owner shall be responsible for payment of such bill. Any person damaging, cutting, defacing or injuring any tree or shrub on any public property or public right-of-way shall be responsible to pay for any remedial costs in addition to such penalties as may be imposed.

Section 9: Nuisances.

The director of public works shall have the authority to order the removal of trees or vegetation on private

property that endanger the life, health, safety or property of the public and thereby constitute a nuisance. If such order is not complied with within thirty (30) days, the director may cause the nuisance to be removed, and the property owner shall be responsible to pay the costs of such removal.

Section 10: Conflicts with other provisions of the Code:

To the extent any provision of this article conflicts with any provision of section 215.010(7) of the Code, regarding noxious growths, the provisions of section 215.010(7) shall govern.

Section 11: Penalty for violation of article:

Any person violating any of the provisions of this Article or the Code adopted in this Article shall be deemed guilty of a misdemeanor where the court may impose fines or penalties.

Section 12: Appeals.

Any appeal from application of this article shall be made directly to the council of the City of Berkeley, unless the appeal is within the scope of the administrative review procedure of the city, whereby such procedure shall be followed. Upon compliance with the applicable review procedure, the council may modify application of the Code where such application would be arbitrary or constitute an unconstitutional taking of property without compensation, or is otherwise determined to be unlawful.

Section 13: Codification: This Ordinance shall be codified and made part of the City of Berkeley Code of Ordinances.

Section 14: Effective Date: This Ordinance shall be in full force and effect upon and immediately upon its passage and adoption.

Section 15: Severability: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional may the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance the City Council declares that would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion would be declared invalid or unconstitutional.

Section 16: The Ordinance shall be in full force and effect from and after the date of its passage.

1st Reading this 07th day of November 2016

2nd Reading this _____ day of _____ 2016

3rd Reading, PASSED and APPROVED, this _____ **day of** _____ **2016**

Theodore Hoskins, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved As To Form:
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Kirkland	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Mathison	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman-at-Large McDaniel	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Mitchell	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Williams	Aye ___	Nay ___	Absent ___	Abstain ___