

## Chapter 7

### PARK AND RECREATION

#### ARTICLE 5. TREES AND SHRUBBERY

##### **7-501 STATEMENT OF INTENT**

The selection, planting, maintenance, and removal of trees and ornamental plantings along public ways within the City of Kearney substantially affect such matters as pedestrians and vehicle safety, the location and maintenance of utility services, tree maintenance costs, the incidence of tree diseases and the general appearance of the cityscape; therefore, it is hereby found and determined that such selection, planting, maintenance, and removal are matters of city-wide concern over which the City must exercise the control set forth in this chapter.

*(Ord. No. 7352, 5-8-2007)*

##### **7-502 APPROVED AND PROHIBITED TREES LIST**

The Director shall prepare and maintain an "Approved and Prohibited Trees List" for the City, showing thereon the genus, species and variety of trees which may hereafter be planted in or upon any street, parkway, sidewalk space, or other public way within the City, as well as trees that may not be planted in such areas, and all such tree planting shall conform to this list. A current copy of said list shall be made available for inspection by the public at the office of the Director.

The term "Director" whenever used in this Article shall mean the Director of Park and Recreation of the City of Kearney, Nebraska or his authorized agent or representative.

*(Ord. No. 7352, 5-8-2007; Ord. No. 7903, 6-10-2014)*

##### **7-503 LANDSCAPE PLANTING THE RIGHT-OF-WAY SPACE**

The space between the lot line and existing or projected curb line on each side of every street in the City (hereafter known as the right-of-way space) shall be used only for the location of approved street trees in accordance with Section 7-502 of this Article, turf grass, shrubs, perennial and annual flowering plants, ornamental grasses, vegetable gardens, and ground covers. Shredded wood mulch may be placed around street trees and landscape plantings within the sidewalk space.

*(Ord. No. 7352, 5-8-2007)*

##### **7-504 STREET TREES ON PRIVATE PROPERTY**

The Director may, subject to approval of the City Manager, request permission to enter upon and plant one or more street trees on property adjacent to public right-of-way pursuant to an easement agreement when there is insufficient land available for the planting and proper growth of the street tree or trees in the public right-of-way. Such easement agreement shall be conditioned upon the owner of the property agreeing to assume ownership and liability for the street tree and the responsibility for its proper maintenance which shall include watering as often as required by necessity, cultivating, mulching, and trimming or its removal if dead, dying, diseased, or hazardous.

The determination of insufficient of available land shall be based upon existing roadway width, except in those cases where design work is underway or completed for a roadway project to be constructed within the next year, in which case the new curb location shall control. A List of where such trees have been planted and the reasons for such plantings shall be available at the Park and Recreation Office upon request.

*(Ord. No. 7352, 5-8-2007; Ord. No. 7903, 6-10-2014)*

##### **7-505 MAINTENANCE OF STREET TREES**

Except as may otherwise be provided by the City Council for Council-created street tree planting/care programs, the trimming, spraying, removing, and destroying of all trees now existing, the selecting, planting, trimming, spraying, removing, and destroying of all street trees hereafter planted in or upon any street, parkway, sidewalk space, or other public right-of-way within the City, shall be done by and at the

expense of the property owner; provided, the Director may, in accordance with the provisions of this Article, issue a permit to any applicant therefore, allowing such person to plant, remove, or destroy any such tree.

*(Ord. No. 7352, 5-8-2007)*

**7-506 MAINTENANCE OF LANDSCAPE PLANTING WITHIN RIGHT-OF-WAY SPACE**

The owner of the property abutting the sidewalk space shall be responsible for the routine care of such landscape plantings within the sidewalk space, including watering, mowing, raking and disposing of leaves, twigs, and other debris, weed control in accordance with Section 7-502 of this Article, and trimming and pruning of shrubs and other ornamental landscape plantings.

*(Ord. No. 7352, 5-8-2007)*

**7-507 APPLICATION FOR PERMIT**

Any person desiring to plant, remove, or destroy any street tree in or upon any street, parkway, sidewalk space, or other public way within the City shall first make a written application to the Director so to do, upon forms furnished by the City. Such application shall set forth the name and address of the applicant, the name and address of the person, firm, or corporation doing the work, and such other information as the Director may require. At the time of making such application, the applicant shall agree in writing to save the City harmless and to protect the City and the public at all times in connection with such work under such permit, and to do such work in conformance with specifications set forth by the City. Also, at the time of making such application, the applicant shall furnish the Director with the written consent to the issuance of such permit from the owner of the property abutting the public property upon which such work is proposed to be done.

*(Ord. No. 7352, 5-8-2007)*

**7-508 ISSUANCE OF PERMIT, REQUIREMENT PERTAINING TO PLANTING, MAINTAINING, REMOVAL AND DESTRUCTION**

After inspection of the location in question, if in his opinion it is desirable that such tree be planted, removed, or destroyed, the Director shall issue a permit therefore. Such permit shall set forth the name and address of the owner of the property abutting the public property upon which such work is to done; the name and address of such person who will perform such work; and the location at which such work will be performed. The permittee shall furnish any such street tree to be planted. After planting, such street tree shall be and remain the property of the City, and subject to the provisions of this chapter. The cost of any such street tree and the cost of all such permitted planting, removing, and destroying shall be and remain the permittee's. Failure to obtain a permit may result in removal of the tree by the owner. Such permit shall be subject to the following conditions, which shall be made a part of said permit, and failure to comply therewith shall constitute a violation of this Article:

a. Any street tree to be planted shall be planted at the location designated by the Director. All trees when planted shall be not less than one (1) inch in diameter at six (6) inches above the ground surface. No whips shall be planted;

b. When a street tree is being removed or destroyed, the stump shall also be removed. All removed trees, including limbs and debris therefrom, shall be removed from the street, parkway, sidewalk space, or other public way within forty-eight (48) hours after being cut, and the ground shall be raked clean of all chips, branches, and debris;

c. When a street tree is being felled, it shall be felled away from the roadway or parallel with the roadway, when possible, and the sidewalk and street shall be guarded as to protect pedestrians and vehicles thereon;

d. All damage to curbs, sidewalks, and other public property occurring in the performance of such work shall be promptly and properly repaired at the permittee's expense.

*(Ord. No. 7352, 5-8-2007; Ord. No. 7903, 6-10-2014)*

**7-509 WORK ORDERED OR DONE BY THE CITY OF KEARNEY**

No permit shall be required for any such tree, shrub, or ornamental landscape planting, removing, or destroying ordered or done by the City; however, all such work shall be done in conformance, with the requirements of subparagraphs (a), (b), (c), and (d) of Section 7-508 of this Chapter. Further, the City may trim all trees in or upon any street, parkway, sidewalk space, or other public way so that there is a

clearance of seven (7) feet over sidewalks and fourteen (14) feet over the portion of public streets and alleys used for vehicular traffic.  
(Ord. No. 7352, 5-8-2007; Ord. No. 7464, 9-9-2008)

*Cross Reference – Streets and Sidewalks, Section 9-1222*

**7-510 TREES; DUTY TO TRIM AND MAINTAIN TREES IN RIGHT-OF-WAY**

The owner(s) or owner's duly authorized agent in charge of any lot, block, piece or parcel of land in the City, are hereby required to maintain, trim or remove any dead, diseased or dangerous limbs, trees or branches that interfere with the health, safety, convenience property use or pleasure of person using the right-of-way space. The City of Kearney Developmental Services Division shall serve as the main point of contact for citizens who have concerns regarding dead, diseased or dangerous branches, limbs or trees that are immediately impacting right-of-way areas. The City of Kearney will follow its policy (DS-11) regarding the maintenance of obstructive or diseased landscape in right-of-way areas.  
(Ord. No. 7352, 5-8-2007; Ord. No. 7903, 6-10-2014)

**7-511 TREES; NUISANCE**

The Council does hereby declare the permitting, allowing or maintaining of any damaged, dangerous, dead or diseased branches, limbs or trees to be and constitute a nuisance.  
(Ord. No. 7352, 5-8-2007)

**7-512 TREES; NOTICE TO PROPERTY OWNERS**

The City Clerk shall, on the first Monday of February, May and September of each year cause to be published, in a newspaper of general circulation in the City, a notice in substantially the following form:

## NOTICE

Notice to Property Owners, Owner's Duly Authorized Agents, and Persons in Possession of Property pursuant to Chapter 7, Article 5 of the Kearney City Code, all property owners, owner's duly authorized agents, and persons in possession of any tract, lot, block, piece or parcel of land in the City of Kearney are hereby notified that all dead, diseased, damaged or dangerous branches, limbs, or trees now growing in the public rights-of-way in the City of Kearney, Nebraska, must be treated, trimmed or removed within thirty (30) days of publication of this Notice.

The permitting, allowing or maintaining of any dead, diseased, damaged or dangerous branches, limbs or trees has been declared to constitute a nuisance. The maintenance of a tree nuisance is punishable as an infraction.

If the owner or owner's duly authorized agent in possession of any real estate shall fail, neglect or refuse to treat, trim, or remove thereon and abate and remove the nuisance as directed, the City will give notice by personal service or certified mail to the owner or agent. Within five (5) days after the receipt of such notice, the owner or agent may request a hearing with the City to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within fourteen (14) days after the filing of the appeal and shall be conducted by the Tree Appeal Committee as appointed by the City Manager. The Committee shall render a decision on the appeal within five (5) business days after the conclusion of the hearing. If the appeal fails, the City may have work done to abate and remove the dead or diseased tree(s). If the owner/agent does not request a hearing with the City within five (5) days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the City may have such work done. The City may levy and assess all or any portion of the costs and expenses of the work upon the lot so benefitted as a special assessment. The City shall charge an hourly fee as set forth in the City of Kearney Comprehensive Fee Schedule required to do the work, with a minimum charge as set forth in the Comprehensive Fee Schedule. In addition, an administrative fee as set forth in the Comprehensive Fee Schedule shall be charged for each tract of land, lot, block or parcel of real property where the tree work was completed by the City and the total of all costs and expenses shall be reported to the Council for levy and assessment or for recovery in a civil action as the Council directs. If unpaid for two (2) months after such work is done, the City may either (a) levy and assess the cost and expenses of the work upon the lot or piece of ground so benefitted in the same manner as other special taxes for improvements are levied and assessed, or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

BY ORDER OF THE KEARNEY CITY COUNCIL  
City Clerk

*(Ord. No. 7352, 5-8-2007; Ord. No. 7358, 6-12-2007 effective October 1, 2007; Ord. No. 7903, 6-10-2014; Ord. No. 8119, 11-22-2016)*

### **7-513 TREES; REMOVAL OF TREES OR PORTIONS OF TREES; AUTHORIZATION**

If the owner or owner's duly authorized agent in charge of any lot, block, piece or parcel of ground, including abutting or adjoining streets, alleys and parkings, within the City rights-of-way fails, neglects or refuses to treat, trim, remove dead, diseased, damaged or dangerous trees or portions thereof and maintain a tree nuisance, the City may give notice to abate and remove such nuisance to each owner or owner's duly authorized agent, if any, by personal service or certified mail. Within five (5) days after the receipt of such notice, the owner or agent may request a hearing with the City to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within fourteen (14) days after the filing of the appeal and shall be conducted by the Tree Appeal Committee as appointed by the City Manager. The Committee shall render a decision on the appeal within five (5) business days after the conclusion of the hearing. If the appeal fails, the City may have work done to abate and remove the dead or diseased tree(s). If the owner/agent does not request a hearing with the City within five (5) days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the City may have such work done. The City may levy and assess all or any portion of the costs and expenses of the work upon the lot so benefitted as a special assessment. The City shall charge an hourly fee as set forth in the City of Kearney Comprehensive Fee Schedule required to do the work, with a minimum charge as set forth in the Comprehensive Fee Schedule. In

addition, an administrative fee as set forth in the Comprehensive Fee Schedule shall be charged for each tract of land, lot, block or parcel of real property where the tree work was completed by the City and the total of all costs and expenses shall be reported to the Council for levy and assessment or for recovery in a civil action as the Council directs.

*(Ord. No. 7352, 5-8-2007; Ord. No. 8119, 11-22-2016)*

**7-514 TREES; REMOVAL OF TREES OR PORTIONS THEREOF BY CITY MAINTENANCE AFTER INITIAL TREE WORK**

In the event a property owner or owner's agent fails, neglects or refuses to maintain the right-of-way property and healthy trees after initial City tree maintenance during the calendar year, the City may re-notify the owner or owner's duly authorized agent, if any, by personal service or certified mail, to abate and remove the nuisance and may, if said owner or owner's duly authorized agent neither requests a hearing nor removes and abates the nuisance within five (5) days after receipt of such notice, the City may re-enter the property treat, trim or remove nuisance trees which costs and expenses may be assessed against the property, if not paid by the owner, or the City may file a civil action against the owner to recover costs and expenses of the work upon the property and adjoining street and alleys.

*(Ord. No. 7352, 5-8-2007; Ord. No. 8119, 11-22-2016)*

**7-515 TREES; REMOVAL OF TREES BY CITY; FEES**

If trees are treated, trimmed or removed by the City, and/or if any refuse, debris, litter or other obstructions are caused to be removed to permit such cutting, the City shall charge an hourly fee as set forth in the City of Kearney Comprehensive Fee Schedule required to do the work, with a minimum charge as set forth in the Comprehensive Fee Schedule. In addition, an administrative fee as set forth in the Comprehensive Fee Schedule shall be charged for each tract of land, lot, block or parcel of real property where the tree work was completed by the City and the total of all costs and expenses shall be reported to the Council for levy and assessment or for recovery in a civil action as the Council directs.

*(Ord. No. 7352, 5-8-2007; Ord. No. 7358, 6-12-2007 effective October 1, 2007)*

**7-516 TREES; REMOVAL OF TREES BY CITY; ASSESSMENT OF COSTS**

Development Services/Code Enforcement shall keep an accurate record of the cost of tree maintenance from each specific lot, block, piece or parcel of land and he/she shall report the same to the City Clerk, whereupon the City Clerk shall mail a statement of such cost to the last known address of the owner or owner's duly authorized agent in charge of such property, and if such costs are not paid within two (2) months from the mailing of such notice, the Council may proceed to levy and assess the costs and expenses thereof against the property as a special assessment, and the City Clerk shall certify such assessment to the County Clerk for collection of payment to the City the same as other assessments and taxes are collected, or the Council may direct the City Manager to file a civil action against the owner to recover costs and expenses of the work upon the property and adjoining streets and alleys.

*(Ord. No. 7352, 5-8-2007; Ord. No. 7903, 6-10-2014)*

*Cross Reference – Streets and Sidewalks, Section 9-1225*

**7-517 TREES; PENALTY**

Any owner, owner's duly authorized agent, or person in charge of any lot, block, piece or parcel of land within the City right-of-way who creates, allows, permits or maintains a tree nuisance or violates the provisions of this Article shall be guilty of an infraction. Each distinct violation, and each day any such violation of the Article continues, shall constitute a separate offense.

*(Ord. No. 7352, 5-8-2007)*

**7-518 TREES; DESTRUCTION, ETC. OF STREET TREES, PLANTINGS, ETC.**

It shall be unlawful for any person to cut down, destroy, deface, cut off limbs or in any manner interfere with or molest any trees or to injure any grass, shrubbery or other planting provided for by this Article in the City rights-of-way.

*(Ord. No. 7352, 5-8-2007)*

**7-519 TRIMMING BRANCHES OVERHANGING STREETS AND SIDEWALKS**

The owner or owner's duly authorized agent of any lot, piece or parcel of ground abutting or adjacent to any street or sidewalk over which extend the branches of any trees shall at all times keep the branches or limbs thereof trimmed to the height of at least fourteen (14) feet above the surface of the street and at least seven (7) feet above the surface of the walk. Whenever the limbs or branches of any tree extends over street or sidewalk contrary to the provisions of this section so as to interfere with the convenience of the public using the street or sidewalk they are in violation and must take corrective action subject to Sections 7-512, 7-513 and 7-514 of this Article.

*(Ord. No. 7352, 5-8-2007; Ord. No. 7464, 9-9-2008; Ord. No. 7903, 6-10-2014)*

**7-520 VISION CLEARANCE**

No shrubs, trees, bushes or other plant material shall be planted, maintained, allowed to grow and no structure shall be erected so as to hinder vision in the vicinity of an intersection of two (2) streets, within a sight distance triangle bounded by the edges of the roadway or the curb on the two (2) sides and a line diagonally across the corner lot meeting the edges of the roadway or the curb forty (40) feet from their intersection at the corner. No shrubs, trees, bushes or other plant material shall be planted, maintained, allowed to grow and no structure shall be erected on public property so as to hinder vision in the vicinity of an intersection of a driveway and a street or an alley and a street. To hinder vision shall be taken to mean that such plant material has leaves, needles, branches or other foliage during any period of the year, and structures of any type as defined in the zoning ordinance, exist between levels two (2) feet and eight (8) feet above the crown of the street adjacent. Structures in Zoning District C-2 shall be exempt from this regulation.

*(Ord. No. 7352, 5-8-2007)*

**7-521 OBSTRUCTION OF VIEW**

Landscaping or screening installed in any landscaped area shall not obstruct the view from or to any driveway approach, street, alley, or sidewalk, and shall be consistent with the provisions of Section 7-520 of this Article.

*(Ord. No. 7352, 5-8-2007)*