

ORDINANCE NO. 260

AN ORDINANCE PROVIDING FOR THE REGULATION OF TREES AND SHRUBBERY LOCATED UPON THE STREETS, ALLEYS, AVENUES, AND OTHER PUBLIC WAYS OF THE CITY OF WATHENA AND THE MAKING OF SPECIAL ASSESSMENTS FOR THE LEVY OF A TAX AND EXPENDITURE OF CITY FUNDS THEREFORE; PROVIDING OR ELIMINATION DISEASED AND INFESTED TREES WITHIN THE CITY AND TO PAY THE COSTS THEREOF FROM TAXES AUTHORIZED HEREIN OR FROM OTHER FUNDS; TO REQUIRE THE TREATMENT OR REMOVAL OF DISEASED AND INFECTED TREES AND SHRUBS ON PRIVATE PROPERTY CONSTITUTING A HAZARD TO OTHER TREES AND SHRUBS AND TO ASSESS THE COST AGAINST THE PROPERTY CONCERNED WHEN SUCH WORK IS DONE BY THE CITY; AND DEFINING THE INTEREST OF PROPERTY OWNERS IN TREES LOCATED IN THE STREETS ABUTTING THEIR PROPERTY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WATHENA:

SECTION I. PLANTING, MAINTENANCE, TREATMENT AND REMOVAL OF TREES AND SHRUBBERY UPON STREETS, ALLEYS, AVENUES, AND OTHER PUBLIC WAYS. The Governing Body hereby elects to regulate by this Ordinance, the planting, maintenance, treatment and removal of trees and shrubbery upon all streets, alleys, avenues and other public ways within the City. Upon the failure of the owner of property abutting streets, alleys, avenues and other public ways to comply with such regulations and after reasonable notice, which shall not be less than ten (10) days, the City may trim and maintain or, where necessary, remove such trees and shrubbery and assess the cost of such work against the abutting property as a special assessment (KSA 12-3210)

SECTION II. MUNICIPAL FUNCTION. The Governing Body does hereby provide for the regulation of planting, maintenance, treatment or removal of trees and shrubbery upon all street, alleys, avenues and other public ways of the City as a municipal function.

SECTION III. PAYMENT OF COSTS; TAX LEVY. The Governing Body is hereby authorized and empowered to pay the cost of providing for the planting, maintenance, treatment, or removal of trees and shrubbery in the streets, alleys, avenues and other public ways and in parks within the City from the General Fund or other fund of the City or by the levy of an annual tax of not to exceed one (1) mill upon the taxable tangible property in the City or both. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be

subject to the aggregate tax levy prescribed in Article 19 of Chapter 79, KSA and Acts Amendatory thereof or supplemental thereto, (K.S.A. 12-3203)

SECTION IV. INFECTED OR INFESTED TREES ON PRIVATE PROPERTY; STATEMENT; HEARING; NOTICE; ORDER FOR TREATMENT OR REMOVAL; FAILURE TO COMPLY; CITY MAY DO WORK AND CHARGE COSTS AS SPECIAL ASSESSMENT. Whenever any competent city authority or competent state or federal authority, when requested by the Governing Body of the City, shall file with the Governing Body a statement in writing based upon a laboratory test or other supporting evidence that tree materials or shrubs located upon private property within the City are infected with or harboring any tree or plant 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 in the community, describing the same and where located, the Governing Body shall direct the City Clerk to forthwith issue notice requiring the owner or agent of the owner of the premises to treat or remove any such designated tree, tree material or shrub within a time specified in such notice. Said notice shall be served by the City Clerk or his duly authorized representative or by the City Marshall by delivering a copy thereof to the owner or agent of such property or if the same be unoccupied and the owner a non-resident, then the City Clerk shall notify the owner by mailing a notice to his last known address. If the owner or agent shall fail to comply with the requirements of said notice within the time specified in the notice, then the duly authorized officer of the City shall proceed to have the designated tree, tree material or shrub treated or removed and report the cost thereof to the City Clerk and the cost of such treatment or removal shall be paid by the owner of the property or shall be assessed and charged against the lot or panel or ground on which the tree, tree material or shrub was located. The City Clerk at the time of certifying other City taxes to the County Clerk shall certify the unpaid costs and the County Clerk shall extend the same on the tax roll of the county against said lot or parcel of ground. The cost of such work shall be paid from the

General Fund or other fund of the City or from monies derived from the levy authorized by Section III of this Ordinance and such funds shall be reimbursed when payments therefor are received or when such assessments are collected and received by the City. (K.S.A. 12-3204)

SECTION V. INFECTION OR INFESTATION WITHIN CITY; PREVENTATIVE MEASURES AND TREATMENT. The Governing Body of the City, when it appears that there is or is likely to be a general infection or infestation of trees or shrubs within the City by tree or plant disease or insect pest or larvae resulting in damage to or the death of many trees or shrubs, may provide such preventative measures or treatment as may be necessary, and may pay the cost from the general fund or other funds or from moneys derived from the levy provided in Section III of this Ordinance. (K.S.A. 12-3205)

SECTION VI. ABUTTING PROPERTY OWNER RIGHTS. The owners of property abutting upon streets, avenues and other public ways in the City shall have such title to and property in growing trees and shrubbery and a parking situated in front of such real estate between the curb line and the property line as to enable the owners in case of injury to or destruction of such trees, shrubbery and parking, to recover from the person, company or corporation causing said injury or destruction the full damages which the abutting property in front of which they are situated may sustain by reason thereof, and such abutting property owners shall also have the right of action in any Court of competent jurisdiction to enjoin injury to or destruction of such trees, shrubbery and parking, except that no recovery or injunction shall be had against the City in the making of public improvements or in any other reasonable exercise of its authority over such streets, alleys, avenues and other public ways or over the trees and shrubbery located thereon. (K.S.A. 12-3207)

SECTION VII. GROWING, CULTIVATION, REMOVAL AND TRIMMING OF TREE: It shall be unlawful for the owner or occupant of any lots abutting upon a street, avenue, alley or public way in the City to plant, care for, grow, keep or culti-

vate any trees, shrubbery, or hedge on such adjoining property or upon the parking abutting upon or adjacent thereto in a manner in which the same shall interfere with public travel, public safety, or use of the streets and public ways or so as to constitute a menace or danger by reason of the location of any such trees, shrubbery or hedge to any person or persons using or upon the sidewalks or traveling upon the streets or public ways by vehicle; provided, however, that if any tree in the parking be cut down, it shall be the duty of the person doing such work to take out the entire tree to the level of the natural grade and to burn or otherwise properly dispose of the trees removed all subject to the approval of the City Clerk or his duly authorized representative, and provided further, that if any tree, hedge or shrubbery in the parking be trimmed, it shall be the duty of such person trimming the same to perform such work in a careful and workmanlike manner so as not to unreasonably injure or damage such tree, hedge or shrubbery, and to remove the debris from the premises and parking all subject all subject to the approval of the City Clerk or his representative.

SECTION VIII. DUTY OF PROPERTY OWNER. It shall be the duty of every owner or occupant of Lots abutting upon any sidewalk or public way of the City or adjacent to the street parking to cultivate trees, shrubbery or hedge in such a manner that the same shall not interfere with the persons or travel upon or along said streets, sidewalks or public ways and it shall further be the duty of all such persons to cut or trim any such trees, shrubbery or hedge so that the branches or limbs thereof shall not extend out over the sidewalk lower than ten (10) feet from the surface thereof, or over the portion of any street, avenue, or alley used for vehicles lower than fourteen (14) feet from the surface thereof; provided, that every owner or occupant of any Lot shall remove all dead trees or branches thereof which shall be in the parking or close enough thereto to fall on any portion of any street, avenue, alley or public way or sidewalk. Provided further, that all limbs or branches of dead trees overhanging any public way of the City contrary to the provisions of this Section or close enough to be dangerous to public travel thereon may be removed as hereinafter provided.

SECTION IX. PLANTING AND TRIMMING. It shall be unlawful to plant or grow any trees or any vegetative growth which by reason of their nature will grow so high as to interfere with the use or safety of the streets, public ways and parking of the City for electric lighting or power wires or telephone wires or which will litter the sidewalks or streets adjacent to such parking where the same are grown and be or become a nuisance by reason of fruit or other substance falling therefrom upon the sidewalks or streets: Provided, that all streets or shrubbery shall be planted, as nearly as may be, an equal distance between the curb line of any street and the outside of the sidewalk line where any sidewalk may be located or where any space is reserved for any sidewalk. Provided further, that where any tree or growth now exists which, by reason of the lay of the land or the location of any tree or shrub, the same shall be a safety hazard or shall obstruct the view of drivers to observe traffic entering such street from an intersecting street, the City Clerk or his authorized representative may order such obstructions cut down and removed.

SECTION X. WHEN PROPERTY OWNER NEGLECTS DUTY. Whenever any property owner or occupants whose duty it is to keep trees, shrubbery and hedges trimmed or cut, as provided in this Ordinance, shall fail to do so, the City Clerk, upon receipt of notice of such fact, shall forthwith serve notice or cause notice to be served on such owner or occupant requiring the obstructions to be trimmed or cut forthwith. When the owner or occupant shall fail to remove, trim or cause such trees or other obstructions to be trimmed or cut in accordance with the notice within ten (10) days after the same shall be served by the City Clerk or his authorized representative, then the City Clerk or his duly authorized representative shall trim such trees, shrubbery or hedge or cut down or remove such part of the same as may be necessary to remove such obstruction. All such work shall be done by the City in a careful and workmanlike manner so as not to unreasonably injure or destroy any such trees, shrubbery or hedge: Provided, that in the event that the owner of the property is unknown or the property is un-

occupied, the notice hereinbefore required shall be published once in the official City Paper requiring that the obstruction be removed within ten (10) days and a copy of such notice shall be mailed to the owner of record at his last known address within three (3) days after the publication of the notice; and provided further, that if there exists any great danger to life or property by reason of any such obstruction, the same shall be removed forthwith by the City Clerk or his authorized representative without any notice.

SECTION XI. COST OF WORK. Whenever any provision of this Ordinance has been violated, the City, after proper notice has been given and in the event the City shall have performed the work required to be done, may assess the cost of such work against the abutting property as a special assessment.

SECTION XII. AUTHORITY TO TRIM AND OTHER VEGATATION ON PUBLIC RIGHTS OF WAY. The Governing Body hereby declares it to be lawful and hereby authorized any person, Firm or Corporation which has the lawful right to use public utility easements, street, alleys, or other public rights-of-way (either by authority of a franchise from the City of Wathena or by reason of any other lawful source of authority) to cut or trim any trees, vegetation or any other growths in any street, alley, highway, public utility easement or other public easement or public rights-of-way without the necessity of procuring the verbal or written consent of the contiguous property owner, if there be one.

SECTION XIII. PENALTY. Any person, Firm or Corporation violating any of the provisions of this Ordinance shall, upon conviction thereof, be fined in any sum not exceeding One Hundred and No/100 (\$100.00) Dollars, or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

SECTION XIV. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after its publication once in the Official City Paper.

Passed by the Council and Approved by the Mayor on the 21st day of May, 1968.

(CITY SEAL)

ATTEST:

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City Clerk

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Mayor, City of Wathena, Kansas