

COMPARED VERSION
THIRD COMMITTEE SUBSTITUTE TO SECOND COMMITTEE SUBSTITUTE

~~SECOND~~THIRD COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 220961

Amending Chapter 88, Code of Ordinances, by enacting new Sections 88-424-01 through 88-424-11, Tree Preservation and Protection, and amending Section 88-810 by adding and inserting definitions applicable to this new code section.

WHEREAS, this purpose of this legislation is to support and complement other City development requirements, with a focus on achieving baseline tree preservation and total tree canopy on a site, considering the anticipated use and level of development; and

WHEREAS, the intent of this ordinance is to preserve and advance the aesthetic, economic, and environmental benefits of the urban forest, by protecting trees and mitigating any unnecessary removal of trees; and

WHEREAS, trees provide multiple benefits such as stormwater management, runoff infiltration, and air quality improvement that will take replacement trees decades to match, making them critical to retain; and

WHEREAS, a healthy tree canopy cover enhances the City's natural beauty and improves health, safety, and general welfare of Kansas City residents; and

WHEREAS, to further the intent of this ordinance is to preserve and enhance the City's tree canopy cover and ensure that certain criteria are followed including the Urban Forest Master Plan, adopted by City Council Resolution No. 200143 on May 21, 2020, which established a goal of 35 percent tree canopy cover for the City; and this is affirmed by Kansas City's Climate Protection and Resiliency Plan.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 88, Code of Ordinances, is hereby amended by enacting new sections 88-424-01 through 88-424-13, Tree Preservation and Protection to read as follows:

88-424 - TREE PRESERVATION AND PROTECTION

88-424-01 - SCOPE AND PURPOSE

The intent of this section is to preserve and advance the aesthetic, economic, and environmental benefits of a high-quality urban forest, by protecting trees and mitigating any unnecessary removal of trees. Trees provide multiple benefits such as stormwater management, runoff infiltration, and air quality improvement that will take replacement trees decades to match, making them critical to retain. Further, a healthy tree canopy cover enhances the city's natural beauty and improves health, safety, and general welfare of Kansas City residents.

To further the intent of this section which is to preserve and enhance the city's tree canopy cover, certain criteria are followed. The Urban Forest Master Plan, adopted by City Council Resolution No. 200143 on May 21, 2020, established a goal of 35 percent tree canopy cover for the city. This is affirmed by Kansas City's Climate Protection and Resiliency Plan. Additionally, this section furthers other proposed and city council approved plans including the Climate Protection and Resiliency Plan, the IBC Energy Code, and the proposed KC Spirit Playbook.

This section sets forth regulations for the preservation, protection, planting, maintenance, and removal of trees within the city, to accomplish the following objectives:

88-424-01-A. Preserve the character of Kansas City's existing tree canopy cover by preventing indiscriminate removal or destruction of trees.

88-424-01-B. Acknowledge the environmental benefits of site design that retains existing tree canopy cover and requires additional landscaping during development.

88-424-01-C. Retain protected trees and limit unnecessary removal prior to and during development by establishing tree protection measures during development.

88-424-01-D. Allow mitigation or payment to the Capital Improvement Sales Tax Fund-Tree Planting as required by 88-424-02, Applicability, while emphasizing the difficulty in replacing trees.

88-424-01-E. Support ecosystem services and natural environments, protect riparian banks and beds to prevent erosion and sedimentation, filter and control stormwater, reduce carbon sequestration, and improve energy conservation through tree canopy shade.

88-424-01-F. Encourage walking and activities and enable activity in neighborhoods to provide "eyes on the street" to assist with crime mitigation.

88-424-01-G. Enhance transition to and enable compatibility between varying land uses, buffer noise, and provide visual screening.

88-424-01-H. Protect and enhance property values, maintain investment by the private sector and the city, further stimulate economic activity, and encourage beautification.

88-424-02 - APPLICABILITY

Requirements of this section are applicable to requests for the following permits and approvals in conjunction with land disturbance and development, as follows:

88-424-02-A. Any permit for land/site disturbance, including utility plans, which involves clearing, cutting, grubbing, or grading on one acre or more. No permit shall be issued prior to approval of the tree preservation and protection plan.

88-424-02-B. Development of property requiring development plan (including UR,

MPD, and major amendments), project plan, special use permit, or preliminary plat, as defined in this chapter.

88-424-02-C. Application for building permit (site plan approval, per 88-530) disturbing more than 10,000 sq. ft. of property but not requiring a development plan, project plan, preliminary plat, or final plat approval, unless a tree preservation and protection plan has been approved for a larger area that includes the subject site.

88-424-02-D. This section does not supersede and shall be implemented in accordance with other provisions of this chapter including 88-415 Stream Buffers and 88-425 Landscaping, and 88-410 Open Space Developments and Conservation Developments.

88-424-03 - EXEMPTIONS

88-424-03-A. Application for building permit for a single family detached house on a single previously platted lot.

88-424-03-B. Projects not listed in the Applicability section above.

88-424-03-C. Projects in which no tree canopy cover will be impacted or removed, certified by a statement submitted by an SAF certified forester, ISA certified arborist, professional landscape architect, or a professional engineer registered in the State of Missouri. The statement shall be placed on required plans and plats.

88-424-03-D. City capital improvement projects which are subject to provisions of (Administrative Regulation) AR 5-7 Tree Canopy Preservation & Expansion.

88-424-03-E. Emergency tree removal due to storm damage, accidental causes, or to ensure public safety when pruning is impractical, as determined by the city forester.

88-424-03-F. Tree removal on properties owned by the Kansas City Aviation Department, where such removal is required by Federal Aviation Administration or Transportation Security Administration regulations.

88-424-03-G. Pruning or removal by public utilities of trees that encroach upon electric, telephone, or cable television transmission lines, or gas, sewer, or water pipes; as specified by Federal or State regulations, or by agreements with the City.

88-424-03-H. Existing orchards, nurseries, or tree farms, where product is removed for sale and replaced, unless such use is ceased for future development.

88-424-03-I. Properties with existing agricultural uses for at least one planting season.

88-424-03-J. Owners and occupants of premises containing a dwelling structure, performing regular maintenance and cultivation of trees on the premises as required by 48-29 and 48-30 of the Kansas City Code of Ordinances.

88-424-03-K. Owners and occupants of non-residential premises performing regular maintenance and cultivation of trees on the premises as required by 56-433 of the Kansas City Code of Ordinances.

88-424-03-L. A development plan (including rezoning to UR or MPD), project plan, special use permit, or preliminary plat that has been previously approved; or an application for approval of such that has been deemed complete and is proceeding through the approval process.

88-424-03-M. Mitigation within the stream buffer as required by 88-415.

88-424-04 - PROTECTED TREE CANOPY COVER

Areas of contiguous tree canopy cover of one acre or more on the entire development site shall be preserved and protected. However, if proposed development of the property cannot be designed to allow preservation of all or portions of the existing tree canopy cover, mitigation per 88-424-05 or payment of money in lieu per 88-424-12 shall be required.

88-424-05 – MITIGATION

Preservation of tree canopy cover is prioritized. If preservation cannot be achieved, mitigation shall be required.

88-424-05-A. Mitigation may be achieved either through on-site planting of trees at the rate specified in 88-424-07 or by payment to the Capital Improvement Sales Tax Fund-Tree Planting at a rate per caliper inch of tree as determined by the city forester, per 88-424-13. Any combination of on-site planting of trees or payment may be utilized.

88-424-05-B. Offsets to required mitigation are as follows:

1. Trees planted as required by 88-425 Landscaping and Screening may be counted toward caliper inches required for mitigation.
2. Undisturbed acreage of stream buffer area per 88-415.
3. Undisturbed acreage of all contiguous tree canopy cover of one acre or more.

88-424-05-C. Trees planted to meet mitigation requirements shall be species native to the region or native cultivars, when available, or selected from the city's list of approved tree species. Species selection shall be based upon the amount of space available for proper growth on the site and provide desired diversity. Beyond trees to be planted as required by 88-425 Landscaping and Screening, trees planted to achieve mitigation shall be planted in areas of the site where they will achieve the highest environmental benefits of tree canopy cover, such as within stream buffers, riparian areas, detention areas, or areas of steep slope that cannot be developed.

runoff curve number (CN) in mitigation areas on the site. The runoff curve number used for a specific location on a specific project will be determined by the cover type and the hydrologic soil group for that site from the SCS TR-55 tables and reviewed by the director of water services.

88-424-06 - REQUIRED PLANS

88-424-06-A. Plan Preparation

The plan must be prepared by an ISA certified arborist, an SAF certified forester, a professional engineer, or a professional landscape architect registered in the State of Missouri. The two plans required – Existing Conditions Tree Plan and Tree Preservation and Mitigation Plan – may be combined.

88-424-06-B. Plan Content for Existing Conditions Tree Plan

The plan shall portray and denote areas of existing tree canopy cover, specifically:

1. Cloud showing all existing and contiguous tree canopy cover of one acre or greater across the entire development site area.

88-424-06-C. Plan Content for Tree Preservation and Mitigation Plan

The plan shall include information as required above, with additional information regarding mitigation (if mitigation is required). This information shall also be shown on the landscaping plan required per 88-425 Landscaping and Screening.

1. Site layout.
2. Areas of existing tree canopy cover to remain.
3. Areas of existing tree canopy cover to be removed, denoting contiguous tree canopy acreage to one decimal point.
4. Note stating that no mitigation shall be required if contiguous tree canopy cover is less than one acre.
5. Information regarding any required mitigation per 88-424-07, including:
 - a. chart showing acreage of contiguous tree canopy of one acre or greater to be removed and preserved, and required caliper inches for mitigation;

location of trees to be planted, denoting trees required to meet 88-425 Landscaping and Screening and those planted to further meet required mitigation;

location and acreage of all stream buffer zones and areas to be disturbed;
and

- b. payment to the Capital Improvement Sales Tax Fund-Tree Planting when used for full mitigation efforts or in combination with planting mitigation.
6. Any additional information, such as the intent to apply for alternative compliance per 88-424-10.

88-424-06-E. Plan Approval

If the decision-making body for any development plan per 88-517, project plan per 88-518, master planned development per 88-520, special use permit per 88-525, urban redevelopment district per 88-260, and site plan per 88-530 finds that trees were removed prior to application filing or approval of said plan as a means of circumventing the requirements of this ordinance, such action shall be grounds for disapproval of said application unless otherwise exempt per 88-424-03.

88-424-07 - MITIGATION RATE

88-424-07-A. The following mitigation rate is applicable to tree canopy cover removed. Required mitigation shall be calculated as follows:

1. First, calculate the total acreage of contiguous canopy cover to be removed on the entire development site. Subtract total acreage of all areas of contiguous tree canopy cover of one acre or more preserved outside of any stream buffers.
2. Second, subtract all undisturbed acres of stream buffer
3. Third, multiply the acreage calculated in step two by 0.35
4. Fourth, multiply the acreage calculated in step three by ~~240~~150 caliper inches
5. Fifth, subtract the total caliper inches of trees provided for required landscaping per 88-425
6. The final result is the number of caliper inches required for mitigation. Caliper inches of trees planted shall satisfy this requirement, meaning, a two-inch caliper tree shall satisfy two inches of required mitigation. Payment in-lieu calculation can be found in 88-424-12.

88-424-07-B. Open Space Developments and Conservation Developments

Mitigation rates shall be reduced by 50% for trees removed if a development plan is approved pursuant to 88-410 Open Space Developments and Conservation Developments.

88-424-08 - COMPLIANCE

Prior to issuance of a final certificate of occupancy, all trees shown on the approved tree preservation/mitigation and landscape plans for the completed phase of development must be in

place and in vigorous growing condition, as certified by a sealed letter submitted by an SAF certified forester, an ISA certified arborist, or a professional landscape architect licensed in the State of Missouri. Further, if any easements are platted or dedicated, copies of the recorded easements and as-built drawings shall be submitted, showing location of the stream buffer and all preserved tree areas.

88-424-09 – IMPLEMENTATION OF PLANS AND AGREEMENTS

88-424-09-A. Preservation and Protection Under Approved Plan

Trees planted or preserved in accordance with the approved preservation and protection plan, mitigation plan, and landscape plan per 88-425 are protected in perpetuity. Platting of tree preservation tracts or easements is required with preliminary plat submittal. Location of these tracts or easements and language shall be shown on all approved plans, preliminary plat, and final plat. Adjustments to the final plat are permitted in conformance with 88-555-04.

1. Areas within which tree canopy cover is to be preserved shall be platted as “tree preservation tracts or easements.” These tracts or easements may also include stream buffer corridors.
2. Areas within which trees are to be planted to meet required mitigation shall be platted as “tree preservation tracts or easements” and shown on approved plans and on the final plat. Individual trees to be planted per an approved landscape plan per 88-425 are not required to be in tracts or easements.

88-424-10 – ADMINISTRATIVE ADJUSTMENTS FOR ALTERNATIVE COMPLIANCE

88-424-10-A. The city planning and development department director is authorized to approve an administrative adjustment allowing for alternative compliance with the tree preservation and protection standards of this article.

88-424-10-B. Alternative compliance may be approved when the city planning and development department director determines that the proposed alternative would be at least as effective as strict compliance in meeting the overall intent of the standards.

88-424-10-C. Alternative compliance may also be approved when the city planning and development department director determines that:

1. Conditions and circumstances upon which the waiver or modification is sought are not caused by the applicant; and
2. That alternative preservation will be provided to off-set the waiver or reduction in otherwise applicable standards.

88-424-10-D. The city planning and development director is expressly authorized to approve such alternative mitigation treatments as:

1. restored natural prairie, wetlands, or oak savanna on a one for one acre basis
2. green roofs on a minimum of 75% of structures
3. enhanced green infrastructure beyond minimum BMP requirements on a one for one acre basis
4. installation of renewable energy resources that serve a minimum of 50% of the development area
5. removal of one or more acres of invasive species replaced with native species
6. conservation of tree canopy area on other properties owned by the same developer, with the implementation of tree preservation tracts or easements, to be used to satisfy mitigation requirements for a maximum of one other entitlement project
7. other alternatives that directly support the Scope and Purpose of this ordinance

88-424-11 – TREE PROTECTION MEASURES AND PROHIBITIONS

A preliminary site inspection at the time of site disturbance permit approval will be conducted by the city planning and development department to ensure compliance with the tree preservation and protection plan.

88-424-11-A. Tree Protection Measures

All trees to remain, per the approved tree preservation and protection plan, shall be protected during construction by fencing and barriers as shown on the approved tree preservation and protection plan and on construction documents. All measures shall be erected and in place prior to commencement of any land disturbance, demolition, or construction activity. Protective/temporary fencing shall be required for all protected trees to remain to prevent infringement on the root system from any construction-related activities.

1. Construction fencing shall be placed at the outer edge of the delineated tree preservation area. This fencing shall be maintained throughout the construction process.

88-424-11-B. Prohibited Activities

The following activities are prohibited within the tree preservation easements and tracts:

1. Storage of materials for construction.
2. Collection of waste accumulated due to excavation, demolition, or construction activities.

to paint, solvents, asphalt, concrete, or mortar.

~~5.4.~~ Attachment of signs, wires, nails, or similar materials to a protected tree.

~~6.5.~~ Vehicular and construction equipment traffic or parking.

~~7.6.~~ Grade changes, including filling or excavating, or other land disturbance unless authorized by 88-415.

~~8.7.~~ Soil compaction within the drip line of the area resulting from vehicular traffic or storage of equipment.

88-424-12 - Payment in Lieu of Planting Trees as Required with Mitigation

88-424-12-A. Notwithstanding anything contained in 88-424, the developer may elect, at the time of preliminary plat application, to pay money to the Capital Improvement Sales Tax Fund-Tree Planting in lieu of, or in combination with planting trees on-site. The payment rate at the time of preliminary plat approval shall remain in effect until the money in lieu is deposited.

88-424-12-B. When a developer elects to pay money in lieu of planting for mitigation, the required payment must be deposited prior to recording the subdivision plat or minor subdivision or (if platting or minor subdivision is not required) receiving a certificate of occupancy.

88-424-12-C. Calculation of payment to meet mitigation requirements shall be as follows:

1. The payment for trees removed is based upon the number of tree caliper inches required for mitigation, multiplied by the average cost per caliper inch for trees, including planting and maintenance, per acre of tree canopy cover removed.
2. The tree replacement cost per caliper inch is established by wholesale tree prices and the average costs of current tree planting contract rates, and will include all costs for materials, labor, maintenance, and warranty. The tree replacement cost per caliper inch shall be a maximum of \$185.
3. The average tree cost per caliper inch, and the maximum cost per inch, will be reviewed annually by the city forester and adjusted ~~accordingly~~according to changes in the market price for trees and the consumer price index.

88-424-13 - Capital Improvement Sales Tax Fund-Tree Planting

88-424-13-A. Purpose

The purpose of the Capital Improvement Sales Tax Fund-Tree Planting is to facilitate tree planting, to ensure mitigation or tree replacement when tree preservation or tree

mitigation standards are not met on a particular development site, and to advance the City's goals for the urban forest and intent to achieve equitable distribution of tree-related benefits across the City.

88-424-13-B. Expenditures

Money in the Capital Improvement Sales Tax Fund-Tree Planting may be used only as follows:

1. To plant trees and maintain newly established trees on public property, including within street rights-of-way. Planting trees includes the cost of materials and labor necessary to install and maintain a tree during the warranty period.
2. Expenditures may include but are not limited to labor, materials, maintenance, administration, education, and outreach for both City staff and contracted services.

88-424-13-C. Payment

Payment to the Capital Improvement Sales Tax Fund-Tree Planting may occur through a number of means, including:

1. Payment made in lieu of tree mitigation as part of a permit issued as stated in Section 88-424-10;
2. Payment made in lieu of preservation or planting where site or street characteristics or development requirements make it infeasible to meet the requirements of Section 88-424.
3. Payment of restoration fees for enforcement actions for trees; and
4. Voluntary contribution.

88-424-13-D. Administration of the Capital Improvement Sales Tax Fund-Tree Planting

The Capital Improvement Sales Tax Fund-Tree Planting is administered by the director of parks and recreation, shall be maintained in a dedicated separate account, and is independent of the general fund. Any balance in the Tree Planting Fund will be carried forward into subsequent fiscal years. Funds collected must be used within 15 years of the date payment is received as listed in 88-424-13-B.

Section 2. That Section 88-810, Definitions, is hereby amended by adding and inserting definitions applicable to the new code section set forth in Section 1 as follows:

88-810 - DEFINITIONS

88-810-275 - CANOPY

The combined crowns of all trees on a tract of land.

88-810-351 - COMPACTION

The densification of a fill by mechanical means.

88-810-385 - CONTIGUOUS CANOPY COVER

Trees having crowns that touch or having trunks within 50 feet of another. Shall be a minimum of 35 feet wide.

88-810-431 - CUTTING

Chopping, shearing, or shredding a tree, beyond removal of the crown, often performed with the intent of destroying the tree to remove roosting habitat of certain species in advance of development. Does not include trimming or pruning.

88-810-513 - DIAMETER BREAST HEIGHT (DBH)

The diameter of a tree measured at a point 4.5 feet above the ground. If a tree splits into multi-trunks, the trunk is measured at its narrowest point below the split.

88-810-523 - DRIP LINE

The area encircling the base of a tree, the minimum extent of which is delineated by a vertical line extending from the outermost tips of the tree branches down to the ground.

88-810-682.1 - GRADING

Any excavating or filling of earth materials or any combination thereof.

88-810-708 - ISA

International Society of Arboriculture

88-810-715 - LAND DISTURBANCE

Any activity that changes the physical conditions of landform, vegetation, and hydrology. Such activities include, but not limited to clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging, and storing of materials.

88-810-885.1 - MITIGATION

The replacement of trees removed during development to lessen the loss of tree canopy cover. Mitigation may be met by planting of trees on-site or by payment to the Capital Improvement Sales Tax Fund-Tree Planting, or a combination thereof.

88-810-935 - NATIVE SPECIES

Any plant occurring naturally in within the region and not introduced by man; indigenous.

88-810-1335 - PROTECTED TREE

A tree intended for preservation, as identified on the approved tree preservation and protection plan.

88-810-1336 - PRUNING

Removal of tree limbs to standards set forth by ANSI A300. At no time shall topping, tipping or flush cutting of trees be deemed a form of "pruning."

88-810-1478 - SAF

Society of American Foresters.

88-810-2161 - TOPPING

The cutting back of limbs to stubs within the tree's crown, to such a degree as to remove the normal tree canopy cover and disfigure the tree; or the cutting back of limbs or branches to lateral branches that are less than one-half of the diameter of the limb or branch that is cut. Also referred to as stubbing, dehorning, pollarding, and heading.

88-810-2166 - TREE

Any self-supporting woody perennial plant, usually having a main stem or trunk and several branches, and at maturity normally attaining a trunk diameter greater than 3 inches at DBH and a height of over 10 feet.

88-810-2166.1 - TREE CANOPY COVER

Grouping of trees of one acre or larger in area.

88-810-2166.2 - TREE PRESERVATION AND PROTECTION PLAN

A plan that delineates areas of the site and identifies protected trees to be preserved or be removed. The plan sets forth measures to be taken to ensure protection and survivability of trees to be saved, prior to and during construction.

88-810-2166.3 - TREE PROTECTION

Fencing, barriers, or other measures intended to protect those trees to remain, including soil and root structure below, per the approved tree preservation and protection plan, construction documents, and ANSI A300 Construction Management Standard – Part 5 (2019).

88-810-2166.4 - TREE REMOVAL

Removal of a tree(s), through either direct or indirect actions including, but not limited to, clearing, topping, or cutting, causing irreversible damage to the health of the tree(s).

Section 3. That Section 88-425-10-G. related to credits for landscaping requirements from existing vegetation be repealed.

Section 4. That 88-425-13-D-15. be added to read “payment into the Capital Improvement Sales Tax Fund-Tree Planting”.

Section 5. That the mitigation rates described in 88-424-05 shall be reduced by half for ~~six~~twelve months following the effective date of this ordinance. After this period the mitigation rates shall be applied to their full extent.

Section 6. That any property owner that purchased property in the past five (5) years prior to the effective date of this Ordinance shall have twelve months after the effective date of this

Ordinance to submit a development plan, project plan or other like plan for development of the property and shall not be subject to the mitigation requirements of this Ordinance if filed within this twelve (12) month period of time.

Section 6. That the Council finds and declares that before taking any action on the proposed amendment to Chapter 88 hereinabove, all public notices have been given and hearings have been held as required by law.

Section 7. The City Manager is hereby directed to report back to the Neighborhood Planning and Development Committee one year after the passage of this ordinance to review the impact of this ordinance.

Approved as to form:

Sarah Baxter
Senior Associate City Attorney