

Summary of Ordinance No. 616
City of Bel Aire, Kansas

On March 21, 2017, the City of Bel Aire, Kansas, adopted Ordinance No. 616, regarding updates to Chapters 2 and 10 of the Bel Aire Municipal Code in association with establishment of Tree Board. A complete copy of this ordinance is available online at <http://www.belaireks.org> under documents or during normal business hours at City Hall, located at 7651 East Central Park Ave., Bel Aire, KS 67226. The ordinance is not subject to a protest petition. Questions pertaining to this ordinance may be directed to Mr. Ty Lasher, City Manager, at (316) 744-2451. This summary has been reviewed and certified by Alison McKenney Brown, City Attorney.

(First published in The Ark Valley News on March 23, 2017.)

ORDINANCE NO: 616

AN ORDINANCE CONCERNING THE ADOPTION OF CHAPTER 2, ARTICLE 12, OF THE MUNICIPAL CODE OF BEL AIRE, KANSAS, IN CONNECTION WITH THE ESTABLISHMENT OF THE BEL AIRE TREE BOARD, AND THE AMENDMENT OF CHAPTER 10, ARTICLE 3, OF THE MUNICIPAL CODE OF BEL AIRE, KANSAS, IN CONNECTION WITH REMOVAL OF REFERENCE TO THE TREE BOARD AND ASSOCIATED UPDATES, ALL WITHIN THE CITY OF BEL AIRE, SEDGWICK COUNTY, KANSAS.

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

SECTION 1. ESTABLISHING CHAPTER TWO, ARTICLE TWELVE OF THE MUNICIPAL CODE, ENTITLED “TREE BOARD”.

SECTION 1. Chapter Two, Article Twelve of the Bel Aire Municipal Code, entitled “Tree Board”, is hereby adopted, and shall read as follows:

Article 12 TREE BOARD

Section 2.12.1 Establishment of a Tree Board

1. There is hereby created and established a seven member Tree Board. The Board shall be comprised of residents of the City of Bel Aire, Kansas and shall be appointed by the Governing Body. The meetings shall be open to all interested individuals.
2. The term of the seven persons shall be four years except that the initial term of one of the two new members appointed to the Board pursuant to this Article shall be for only three years and the initial term of the other new member appointed to the Board pursuant to this Article shall be for only one year to concur with the staggered appointment terms of the existing five members of the Board. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.3. Members of the Board shall serve without compensation.
4. The Board shall prepare, administer and update a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks and in other public areas. Such plan and any subsequent updates shall be presented to the Governing Body for approval. Said plan shall constitute the official City tree plan.
5. The Board, when requested by the Governing Body, shall consider, investigate, make findings, report and recommend upon any special matter coming within the scope of its work.

6. The Board shall choose its own officers, make its own procedural rules and provide the City clerk with copies of the minutes of its proceedings. A majority of the members shall constitute a quorum for the transaction of business.

7. A member shall hold office on the board until:

- (a) the end of his or her appointment;
- (b) the member resigns from the Board;
- (c) the member fails to attend at least 3 consecutive meetings;
- (d) the member moves out of the City; or
- (e) the Tree Board is terminated by the governing body.

8. When there is one or more vacancy on the Board, each member of the governing body may submit a recommendation for appointment to the board. The governing body will vote by ballot for the selection of the person(s) to serve on the Board. Each member of the governing body shall have one vote for each position to be filled. The person(s) that receive the highest number of votes are thereby appointed to the Board. If the votes result in a tie, additional ballots shall be taken until one or more persons receive sufficient votes to be appointed.

9. The Board may make recommendations to the City Manager regarding the trimming or removal of trees for public safety or to protect public utilities.

10. The Board may provide for training and/or information to be available regarding the planting and care of trees. (Ord. 305)

Section 2.12.2 Arbor Day

The Board shall annually plan, promote, and celebrate an official Arbor Day ceremony specific to the Bel Aire community. The ceremony should be of a type to encourage citizens of the community to join together to celebrate the benefits of community trees and the work accomplished to plant and maintain them. By passing and reciting an official Arbor Day proclamation, public officials demonstrate their support for the community tree program and complete the requirements for becoming and remaining a Tree City USA.

Section 2.12.3 Review

The City Manager shall have the right to review the conduct, acts, and decisions of the Tree Board. (Ord. 257)

SECTION 2. Chapter Ten, Article Three of the Bel Aire Municipal Code, entitled “Tree Planting and Care”, is hereby amended, and shall read as follows:

Article 3 TREE PLANTING AND CARE

Section 10.3.1 Purpose

This Article is in recognition of the value of trees to a community. Trees add beauty and character to a City, encourage the presence of birds, provide shade, reduce the velocity of winds, help prevent soil erosion and add to the world's supply of oxygen.

This Article is established to promote trees in the City and to provide guidance, through education and technical assistance, in the planting, growing and maintenance of trees. The purpose of this Article is to:

1. promote the planting and maintenance of trees in the City;
2. provide for the care of trees on public property; and
3. allow for the trimming or removal of trees for public safety or to avoid damage to public utilities. (Ord. 257)

Section 10.3.2 Enforcement; Enforcing Officer

The provisions of this Article shall be enforced in conformance with the terms of this Article and Chapter 9 of the Bel Aire Municipal Code: Nuisance Enforcement Code.

Violation of any provision of this code which 1) creates a condition injurious to health, 2) is a potential health or safety hazard, or 3) is an obstruction to the free use of abutting property so as to interfere with the comfortable enjoyment of life or property by an entire community or by a majority of persons subjected to the condition, shall be deemed a nuisance.

The Public Works Director, or designee, or the City's Code Enforcement Officer shall be responsible for the enforcement of all provisions contained in this Article and are hereby authorized to make investigations, to issue notices and orders, to issue citations for prosecution in the Bel Aire Municipal Court, to bring legal action in courts of competent jurisdiction, and to take other measures as are necessary for the enforcement of said provisions.

Section 10.3.3 Definitions

1. "Park Trees" are defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all areas owned by the City, or to which the public has free access as a park.

2. A "Vision Triangle" is a triangular area at the intersection of streets maintained in such a manner as to provide a safe and open line of vision for drivers of vehicles approaching the intersection. Within the vision triangle, no one shall install, construct, plant, park or maintain any sign, fence, hedge, shrubbery, tree, natural growth or other obstruction which would materially impede vision between the heights of 24 inches and eight feet above the street level. Such restrictions shall not apply to official traffic signs, signals and utility poles. (See Subdivision Regulations for regulations concerning Vision Triangle.)

3. "Street Trees" are trees, shrubs, bushes and all other woody vegetation with a mature height in excess of 18 inches located upon land lying between property lines on either side of all streets, avenues or ways within the City.

4. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. (Ord. 257)

Section 10.3.4 Street Trees

A list of preferred and recommended street trees species is available at the following URL:
<http://www.sedgwick.k-state.edu/gardening-lawn-care/documents/SC%20Pref%20Trees-2016%20Final.pdf>. (Ord. 257)

Section 10.3.5 Trimming Required

The owner or occupant of any premises abutting on any street, avenue or alley in the City shall cut, trim or remove, in accordance with the provisions of this Article, all trees and shrubbery growing in the City which may constitute any physical hazard or any sight obstruction within a vision triangle to any vehicular or pedestrian traffic upon the streets and sidewalks. (Ord. 257)

Section 10.3.6 Minimum Height

The limbs of trees or shrubbery abutting on any street, avenue or ally in the City shall be trimmed or cut so that the same shall not be less than eight (8) feet above the sidewalks and not less than twelve (12) feet above the streets or avenues over which they hang. (Ord. 257)

Section 10.3.7 Distance from Light Poles and Fire Hydrants

All trees and shrubbery which are greater than 18 inches in height are prohibited within ten (10) feet of street lighting poles or within five (5) feet of fire hydrants. (Ord. 257)

Section 10.3.8 Notice

A. The enforcing officer shall provide written notice to the owner, occupant or agent in charge of any premises in the city upon which a nuisance condition exists in violation of this Article. Such notice shall be served upon such owner, occupant or agent in charge by certified mail, return receipt requested, or by personal service, door hangers, conspicuously posting notice of such order on the property, personal notification, communication by telephone, or first class mail.

B. Notice shall also be provided to non-residential owners as provided by this Chapter, if applicable. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

C. If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice sent pursuant to this section during the preceding twenty-four month period, notice of the issuance of any further orders to abate or remove a nuisance from such property may be effected by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

D. All notices sent shall include the following information:

1. A common or legal description of the premises.
2. Specific notice that the owner, occupant or agent in charge of the property is in violation of any provision of this Article, specific citation to the applicable provision(s) deemed to be violated, and specifically describing the violation either in clear written form or by photograph.
3. An administrative order directing the owner, occupant, or agent in charge of the property to abate the violation of this Article within thirty (30) days of the date of the notice, such compliance date to be stated on the face of the notice.
4. Notice that the administrative order may be appealed provided such request for appeal is submitted to the City Clerk prior to the date provided within that notice.
5. Notice that failure to comply with the notice of abatement shall result in the City abating the violation with the assessment of costs made against the property or by filing for judgment against the recipient.
6. Notice that failure to pay such assessments within 30 days of the notice of costs shall result in the filing of a tax lien against the property; or the filing for judgment against the recipient, or both.
7. Notice that such violations are subject to criminal prosecution, in addition to any such administrative action.
8. Notice that the Enforcing Officer may, upon request, provide information regarding possible methods of abatement, but that correct and timely abatement is the responsibility of the individual named in the notice.

Section 10.3.9 Abatement

If such owner shall not within thirty (30) days after said notice cause such obstructing trees, boughs, shrubbery or limbs to be removed as provided in accordance with the provisions of this Article, then the City shall remove them. This section, however, shall not be construed as waiving the rights of the City to prosecute under the provisions of this Article or Chapter 9. (Ord. 257)

Section 10.3.10 Assessment, Funding and Payment of Costs

A. Mailing and Publication Costs. All costs of mailing or publication within the City's newspaper shall be assessed against the individual named in such mailed or published notice.

B. Abatement Costs. The costs incurred by the City for any action undertaken by the enforcing officer pursuant to or incidental to this Code shall be reported in detail and in writing by said officer to the city clerk. The city clerk shall keep an account of such costs, as well as any and all costs of notices, required by this Article. The city clerk shall immediately cause the reporting and accounting required by this section to be entered in the appropriate city record and shall report the same to the City Manager.

C. Notice of Abatement Costs. The city clerk shall, within the ten (10) days of receipt of the enforcing officer's report of costs, give notice by restricted mail to the owner of the structure of the costs required to be reported by subsection (a) of this section, and such notice shall include a statement requiring payment of the costs to the city within thirty (30) days following receipt of the notice. Should the owner refuse to take delivery of the notice and return is made to the city indicating such refusal, the city clerk shall 1) publish such notice in the City's official newspaper, and 2) send to the owner, by first class mail, the notice previously sent. Receipt by the owner shall be deemed to have occurred upon the date of publication in the newspaper. The city clerk shall make and maintain records detailing the method and time of sending and receipt of such notice.

(K.S.A. 12-1,115; K.S.A. 12-49-3901; K.S.A. 79-2940)

Section 10.3.11 Collection of Costs

Should the costs of abatement remain unpaid thirty (30) days after of receipt of the notice by the owner, the city clerk shall, at the time required by law for the certification of the other city taxes, certify the unpaid portion of said costs to the Sedgwick County Clerk for extension of the same on the county tax rolls against the property upon which the structure was located. In addition to levying a special assessment against the property upon which the structure was located, the city may also elect to collect the unpaid portion of the costs provided for herein in the manner provided by K.S.A. 12-1,115 and amendments thereto, and may pursue such remedy without limiting its ability to levy the special assessment, but only until such time as the full costs and any applicable interest has been paid in full.

(Ord. 257; K.S.A. 12-1,115; K.S.A. 12-49-3901; K.S.A. 79-2940)

Section 10.3.12 Street Tree Spacing

1. To promote the healthy growth of trees, the City encourages the new planting of Street Trees so that the spacing between trees shall be in accordance with the size of the trees to be planted. The spacing of new street trees is approximately 30 feet between small trees, approximately 40 feet between medium trees and approximately 50 feet between large trees, or as otherwise provided by the Kansas Extension Service and Kansas Forests.

2. The distance trees may be planted from curbs or curb lines and sidewalks shall be a minimum of three feet. The City encourages trees which will grow to be large in size (greater than 20' in height) be planted at least four feet from curb lines and sidewalks, as property owners are responsible for replacing curbs and sidewalks damaged by tree growth or tree roots originating upon such owner's property. (Ord. 257)

Section 10.3.13 **Vision Triangle**

No street trees shall be planted within the Vision triangle of an intersection as defined in Section 10.3.3. and as defined within the City’s adopted Sign Code. (Ord. 257)

Section 10.3.14 **Utilities**

No street trees other than those species anticipated to grow to less than 20 feet in height (see:

<http://www.sedgwick.k-state.edu/gardening-lawn-care/documents/map%20insert%20April%209%202015.doc>)

may be planted under or within (ten) 10 lateral feet of any overhead utility wire, or over or within five (5) lateral feet of any underground municipal water line, sewer line, transmission line or other public utility. The City, a utility company, or their designee shall have the right to prune any tree or shrub on private property when it obstructs the view of drivers to observe traffic, traffic control devices, or signs, or interferes with the operation or maintenance of a utility. (Ord. 257)

Section 10.3.15 **Public Tree Care**

The City shall have the right to plant, prune, maintain and remove trees, plants, shrubs and tree stumps, within the right-of-way of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to avoid damage to public utilities. (Ord. 257)

Section 10.3.16 **Tree Topping**

Tree topping of trees located upon public property shall be at the direction of the City’s Arborist. (Ord. 257)

Section 10.3.17 **Corner Clearance**

Every owner of premises or other property with any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall have a clear space of eight (8) feet above the surface of the sidewalk and twelve (12) feet above the surface of the street. The owner shall remove all dead, diseased or dangerous trees. The owner shall also remove any broken or decayed limbs which constitute a menace to the safety of the public. It shall be unlawful to permit any hedge or shrub to grow over any sidewalk, street or alley. (Ord. 257)

Section 10.3.18 **Tree Protection**

It shall be unlawful for any person to attach wire, rope, chain, sign or any other material to any tree on any public street, alley or public property without the approval of the City’s arborist. (Ord. 257)

Section 10.3.19 Inspection

The City's arborist may inspect the work of all commercial, private or contracting arborists performing tree pruning on public property to insure that proper pruning practices are being followed. Inspections shall be random and without notice.

Arborists found in violation of proper pruning practices shall be notified verbally and in writing by the City by certified mail, return receipt requested. (Ord. 257)

Section 10.3.20 Prosecution; Penalty

A complaint may be filed in the Municipal Court of Bel Aire, Kansas against any person found to be in violation of the provisions of this Article in accordance with the provisions of Chapter 9 of the Bel Aire Municipal Code, regarding nuisance abatement. (Ord. 257)

SECTION 3. This Ordinance shall take effect and be in force from and after publication of its summary in the Ark Valley News, an official city newspaper.

Passed by the City Council this 21 day of March, 2017.

Approved by the Mayor this 21 day of March, 2017.



MAYOR David Austin

ATTEST:



CITY CLERK, Stacey Cook

SEAL