

Approved: April 12, 2002 Carl Dean Holmes  
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:12 a.m. on March 20, 2002 in Room 526-S of the Capitol.

All members were present except: Representative Ward Loyd  
Representative Ray Merrick

Committee staff present: Robert Chapman, Legislative Research  
Dennis Hodgins, Legislative Research  
Mary Torrence, Revisor of Statutes  
Jo Cook, Administrative Assistant

Conferees appearing before the committee: none

Others attending: See Attached List

Chairman Holmes announced the committee could possibly hold hearings on **SB 296** and **SB 547** next week.

**SB 546 - Natural gas supplier, termination of franchises**

Chairman Holmes opened the debate on **SB 546**. Representative Dillmore moved to report SB 546 favorably for passage. Representative Lightner seconded the motion. Motion carried. Representative Toelkes will carry the bill.

**SB 545 - Public utilities, public right-of-way, fees**

Representative Sloan distributed a copy of the City of Wichita ordinance regarding the tree pruning permit requirements (Attachment 1). A proposed substitute for **SB 545** was distributed (Attachment 2). Representative Sloan moved to adopt the substitute. Representative Kuether seconded the motion. The motion carried. Representative Dillmore moved to amend the first line of the second page of the adopted substitute by replacing the word 'shall' with 'may.' Representative Goering seconded the motion. The motion failed. Representative Myers moved to recommend **Substitute for SB 545** favorable for passage. Representative Dreher seconded the motion. The motion carried. Representative Huy requested her 'no' vote be recorded in the minutes. Representative McLeland requested his 'abstain' vote be recorded in the minutes. Representative Sloan will carry the bill.

Chairman Holmes announced the committee would not meet on Thursday.

The meeting adjourned at 9:57 a.m.

The next meeting will be March 22, 2002.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADDING SECTION 9.08.025 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TREE PRUNING.

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

**SECTION 1. Section 9.08.025 of the Code of the City of Wichita, Kansas shall read as follows:**

**“Section 9.08.025 - Tree Pruning Permit Required.**

- (a) Purpose. It is the purpose of this section to promote and protect the public health, safety and welfare by providing for the regulation of the pruning of trees, shrubs and other plants standing or growing, wholly or partly, in or on any street right-of-way, park, parkway, boulevard or on any public property of the city, board of park commissioners, library board, art museum board, or other board or commission that may own, lease or be responsible for the maintenance of property located within the City of Wichita.
- (b) Definitions. For the purpose of this section the following terms, phrases, words and their derivations shall have the meaning given herein.
- (1) *Superintendent, Landscape & Forestry* is the superintendent of landscape and forestry of the Park Department
  - (2) *City Forester* is the City arborist.
  - (3) *General Supervisor* is the general supervisor of tree maintenance.
  - (4) *Person* is any person, firm, partnership, association, corporation, company or organization of any kind, including utilities.

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(5) *Street* is the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

(6) *Parks* shall include any city public spaces designated for recreation and/or conservation.

(7) *Public Property* is inclusive of all areas constituting City of Wichita property.

(c) Permit Required.

(1) It shall be unlawful for any person to spray, trim, prune or remove any tree, upon any public street, parkway, boulevard, park or on any public property of the city without first securing a permit from the Superintendent, Landscape and Forestry. A permit may be issued subject to such conditions and to such supervision by the City as the welfare of the public may require.

(2) Any act without the permit required by this section or in violation of any condition in a permit or in violation of the orders made by the city in supervising the work is hereby declared unlawful. In any case of such work being done, it shall be unlawful to leave leaves, trimmings, branches, stumps, trash or other material upon the premises. For any violation of this section or of the rules and conditions of the permit, such permit may be revoked and an order to cease and desist issued by the Superintendent, Landscape and Forestry, City Arborist or General Supervisor. In addition to any other penalty, the City Attorney is authorized to seek injunctive relief in district court to enforce the provisions of this section in the interests of the public health and welfare.

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(d) Emergency. In the case of officially declared emergencies, such as windstorms, ice storms, or other disasters, the requirements of pruning procedures shall be waived so that the requirements of this section would in no way hinder private or public work to restore order in the city. The removal of tree debris must be scheduled in a reasonable, timely manner and accomplished according to standard requirements. This work shall follow maintenance standards as outlined by the Superintendent, Landscape and Forestry, City Arborist or General Supervisor.

(e) Appeal

- (1) Any person may appeal a denial of a tree removal or pruning permit, or the conditions imposed pursuant thereto, by filing a written appeal with the Park Board. The appeal shall
  - (a) Be signed by the appealing party,
  - (b) State the basis for the appeal: and
  - (c) Be received by the Park Board within fifteen (15) calendar days of the City's decision on the permit application or of notification by first class mail to the applicant or property owner of same, whichever occurs later.
- (2) Upon receipt of a timely appeal, the Park Board shall send, or cause to be sent, a notice of hearing to the appealing party by first class mail which states the date, time and location of a hearing on the appeal. The hearing shall not be set sooner than ten (10) calendar days from the date the appeal was received.
- (3) Upon consideration of all evidence and testimony of the appealing party, any City officials and any other interested parties, the Park Board shall:
  - (a) Affirm, modify or reverse the decision or action of the Superintendent, Landscape and Forestry, City Arborist or General Supervisor.

(b) Refer the matter back to the Superintendent, Landscape and Forestry, City Arborist or General Supervisor.

(4) The decision of the Park Board shall supersede the decision of the Superintendent, Landscape and Forestry, City Arborist or General Supervisor. This decision can be appealed to the City Council on the record. The decision of the Council shall be final and conclusive in all respects.

(f) Specific Requirements Pertaining to Pruning of Trees

(1) No tree shall be cut back in such a manner that its health will be impaired. An exception to this may occur in tree removal or emergency relief of an immediate danger to persons or property. Any such emergency procedures must be reported promptly to the City Forester (or other authority) with plans for completion or follow-up work submitted for approval.

(2) Authority to prune street trees does not include the cutting back of sound, healthy tree branches in excess of 6 inches in diameter (outside bark) unless specifically described and written into the permit form by the City Arborist (or other authority) or if required by accepted arboricultural standards in the course of utility line clearance work and approved by the City Arborist.

(3) When tree pruning cuts are made to a side branch, such remaining branch must possess a basal thickness of at least 1/3 of the diameter of the wound so affected. Such cuts shall be considered proper only when such remaining branch is vigorous enough to maintain adequate foliage to produce woody growth capable of healing the cut within a reasonable period of time.

(4) All final tree pruning cuts shall be made in such a manner as to favor the earliest possible covering of the wound by natural callus growth. Excessively deep flush cuts, which produce large wounds or weaken the tree at the cut, shall not be made. Tree pruning cuts should be made just outside the branch collar.

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- (5) Tree branches shall be removed and controlled in such a manner as not to cause damage to other parts of the tree or to other plants or property
- (6) All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately after completing work in such a tree.
- (7) All cutting tools and saws used in making tree pruning cuts shall be kept sharpened adequately to result in final cuts with a smooth surface and secure bark remaining adjacent thereto.
- (8) Whenever pruning cuts are to be made while removing branches too large to hold securely in one hand during the cutting operation, the branches shall be cut off first one to two feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent unnecessary tearing back of the bark and wood.
- (9) Any cutting of tree roots, other than when in the process of tree removal, shall give due consideration to the future welfare of the tree. Proper action shall be taken, utilizing the latest scientific techniques, to implement flexible sidewalk systems, boring equipment, and other techniques eliminating or significantly reducing all forms of root pruning.

(g) Standards of Workmanship for Pruning and Removal

- (1) Cleanup of branches, logs or any other debris resulting from any tree pruning or removing shall be promptly and properly accomplished. The work area shall be kept safe at all times until the cleanup operation is completed. Under no condition shall the accumulation of brush, branches, logs or other debris be allowed upon a public property in such a manner as to result in a public hazard.
- (2) The use of climbing spurs or spike shoes in the act of pruning trees is prohibited, with the exception of trees that are designated for complete removal.

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- (3) Under no condition shall it be considered proper to leave any severed or partially cut branches in the upper portion of any tree being worked on after the tree workers leave the scene of the operation.
- (4) Whenever large tree sections are being cut in a treetop that may endanger the public or property such sections shall be secured by ropes and lowered safely in a controlled manner.
- (5) Unless the tree work area is totally barricaded or otherwise kept safe while pruning or removing trees, at least one responsible tree worker shall serve to coordinate safe operations on the ground at all times when work operations are in progress.
- (6) All removal of public trees shall be done in a manner so that the remaining stumps will be at least 8 inches below ground level unless special exemption is granted by the City Forester.
- (7) Excavations resulting from tree or shrub removal must be promptly filled in to normal ground level with a clean earth, the fill properly compacted, and free of debris.
- (8) Public trees or utility poles shall not be used as an anchor for winch trucks in the process of removing other trees.
- (9) When removing a tree, the act of cutting tree roots and then leaving the work scene with a standing tree having little or no support is prohibited.

(h) Authorized Types of Tree Pruning

(1) "Medium Prune"

(A) Description of "Medium Pruning": This operation of tree pruning shall consist of the total removal of those dead or living branches as may menace the future health, strength and attractiveness of the tree.

(B) Specifications for "Medium Prune":

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- i) Properly remove all dead and dying branches of  $\frac{1}{4}$  inch and over in diameter.
- ii) Remove all broken branches or any loose branches lodged in the tree.
- iii) Remove all dead and live stubs of previously broken or poorly cut branches.
- iv) Remove any live branches, which interfere with the tree's structural strength and healthful development, which will include the following:
  - (a) Branches that rub and abrade a more important branch.
  - (b) Branches of weak structure that is not important to the framework of the tree.
  - (c) Branches that, if allowed to grow, would wedge apart the junction of more important branches.
  - (d) Branches with twigs and foliage obstructing the development of more important branches.
  - (e) Branches forming multiple leaders in a single leader type tree.
  - (f) Branches near the end of a limb, which will produce more weight or offer more resistance to wind that the limb is likely to support.
  - (g) Undesirable sucker and sprout growths.
  - (h) Selective removal to one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
  - (i) Removal of branches that project too far outward beyond an otherwise symmetrical form.

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(j) Removal or severance of any exposed roots that restrict or act in a girdling manner and prevent proper expansion and growth of other major roots, or restrict the base of the tree trunk.

(c) All final cuts shall be made just outside the branch collar. Extremely deep cuts, which produce excessively wide wounds or weaken the tree, shall not be made.

(2) "Minimum or Safety Prune"

(A) Description of "Minimum" or "Safety Prune":

This operation of tree trimming shall consist of the minimum performance necessary to correct one or more extreme and undesirable conditions existing within a tree, which may be hazardous to persons or property.

(B) Specifications for "Minimum" or Safety Prune":

(i) Remove all dead and dying branches of 3 inches or more in diameter.

(ii) Remove all broken or loose branches 3 inches or more in diameter.

(iii) Reduce the length of branches, which extend excessively beyond the perimeter of an otherwise symmetrical form.

(iv) Cut back ends of branches and reduce weight where excessive overburden appears likely to result in breakage of supporting limbs. Such cutting back shall not include the removal of any live, healthy branches in excess of 6 inches in diameter unless a specific consent is given by the Superintendent, Landscape and Forestry, City Arborist or General Supervisor.

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(3) "Crown Reduction"

(A) Description of "Crown Reduction": This operation shall consist of reducing the height, spread or middle section of a tree canopy as needed in respect to reasonable tree health and shall only be applied to trees when such work is necessary. All work requiring "Crown Reduction" procedures must be approved by the Superintendent, Landscape and Forestry, City Arborist or General Supervisor. All utility line clearance pruning operations must adhere to the specific guidelines determined by the Superintendent, Landscape and Forestry, City Arborist or General Supervisor. Significant or substantial root pruning must be approved by the Superintendent, Landscape and Forestry, City Arborist or General Supervisor. "Crown Reduction" must be approved by the Superintendent, Landscape and Forestry, City Arborist or General Supervisor when a tree has sustained considerable crown damage and physical balance must be maintained.

(B) Specifications of "Crown Reduction":

(i) This form of pruning trees shall be done by means of a method called "drop crotching" which serves to shorten branch structure and thereby limits the extent of the foliage canopy to a natural appearing margin. This action consists of removing perimeter branches at their lower junction with shorter side branches.

(ii) No cuts on living branches shall be made in excess of 6 inches in diameter without first securing specific consent of the City Forester (or his appointed authority).

(iii) Extended perimeter branches shall be properly cut at their junction with lower branches having a basal diameter of at least 1/3 of the diameter of the cut so affected.

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- (iv) The remaining lower branches shall be retained intact if possible to form reduced foliage perimeter specific to all or any areas of the canopy.
- (v) This technique of tree pruning shall be applied only when a tree creates a specific hazard to persons or property, or when a canopy has sustained damage needing restoration for balance.
- (vi) "Crown Reduction" should not be attempted or used if the metabolism of a tree would be seriously unbalanced by the use of this technique or where the structure of the tree would be weakened by such action. Trees not repairable shall be removed rather than pruned with this method.

(4) "Spot Prune":

(A) Description of "Spot Prune": This operation of tree pruning shall consist of the removal of one or more branches localized in a particular area of the crown of a tree.

(B) Specifications for "Spot Prune":

- (i) Trees shall be pruned in such a manner as to prevent branch and foliage interference with requirements of safe public passage. Over street clearance shall be kept to a minimum of 14 feet above the paved surface of the street and 8 feet over the surface of the public sidewalk or pedestrian way.
- (ii) Individual or scattered dead or broken limbs shall be promptly and properly removed without the necessity of performing other work not immediately urgent for protection of the public or property, or the health of the tree.

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(i) Protection and Preservation Specifications

The following specifications are intended to prevent unnecessary damage and destruction to trees.

- (1) Authorization must be given by the City Forester before any one:
  - (A) Attaches or installs any metal materials, signs, cables, wires or other things foreign to the natural structure of the tree.
  - (B) Excavates into the root zone within the drip line of a tree.
  - (C) Treats the soil within the root zone with a soil sterilant.
- (2) All site or landscape plans involving public property should show all existing trees. Trees to be saved and removed should be indicated. Every effort should be made to preserve desirable trees.
- (3) Trees to be saved should be marked prominently. Where tree trunks are apt to be damaged, they should be protected with metal posts and snow fence.
- (4) Heavy equipment should not be allowed to compact the soil over the root zone of existing trees. Restricted equipment access routes should be established.
- (5) Curb cuts should not be closer than 5 feet from the trunk of the tree. Paving or asphaltting should not be done closer than 2 ½ feet from the tree trunk.
- (6) New sidewalks, paving or asphaltting must allow breathing space for tree roots. The following should be used as a guideline. For trees up to 4 inches in trunk caliper, 25 square feet of porous area is needed. For each additional 2 inches of tree caliper, 10 more square feet are needed.
- (7) Where grade change is required, the same area must be provided either by construction of a dry well where the level is to be raised or by building a retaining wall where the level is to be lowered.

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- (8) Avoid cutting surface roots wherever possible. Sidewalks and paving levels should be contoured sufficiently to avoid such cutting. Alternative flexible sidewalk systems must be considered before hand.
- (9) Excavation involving root cuts should be done rapidly. Make smooth, flush cuts on tree roots. Backfill before the roots have a chance to dry out, and water the tree immediately.
- (10) Where many roots have to be removed first, prune branches out of the top of the tree to restore a proper top to root balance.
- (11) If trees are in full leaf during the construction phase, to supply supplemental irrigation.
- (12) Avoid piling any form of debris near the tree trunk or within the inner 70% of the dripline. Avoid parking equipment or storing materials near the tree trunk or within the inner 70% of the drip line.

(j) Spray Application Specifications

The following specifications pertain to the spray application of fertilizers or pesticides to the above ground portions of trees.

- (1) The pesticide applicator should know and understand the characteristics of those spray materials used by either himself or his employees and be aware of those recommendations stipulated by the manufacturer.
- (2) Ineffectual control, damage, injury or death to plants, animals or persons resulting from the use of spray materials exceeding the limitation of the manufacturer's guarantee shall be considered the responsibility of the licensed operator.

- (3) Spray machines should provide spray coverage to all portions of the infested or infected tree being treated or it shall be considered inadequate to perform such operation.
- (4) Spray equipment shall be kept clean and in good working order. The City Forester or his representative may inspect same at any time and take samples of spray materials being applied.
- (5) Operation with dirty tanks or equipment or unsanitary, unsafe methods of washing out or draining of same in public sewers and gutters is prohibited.
- (6) No spray application shall be carried out when there is sufficient wind to make pesticide control ineffectual or create a hazard to persons, plants or property.
- (7) No spraying of pesticides shall be done when air temperature is less than 40 degrees Fahrenheit. Exception: Certain growth regulators may be applied at lower temperatures.
- (8) All spray machines other than pump-up hand sprayers must have agitators capable of maintaining a uniform spray suspension at all times when spray application is in progress.
- (9) Adequate precautions shall be taken in all phases of spray application concerning factors of toxicity, phytotoxicity, chemical reaction or residual action pertaining to any spray materials used.
- (10) Applicators applying chemical pesticides to public trees shall adhere to all federal and state laws and regulations pertaining to pesticides and their application.

SECTION 2. This ordinance shall be included in the Code of the City of Wichita and shall be effective upon publication once in the official city paper.

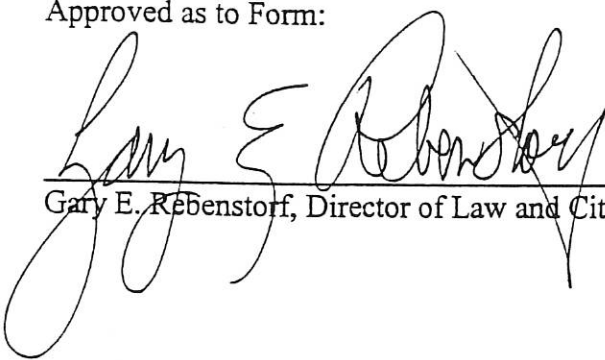
PASSED AND ADOPTED at Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Bob Knight, Mayor

ATTEST:

\_\_\_\_\_  
Pat Burnett, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law and City Attorney

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**Substitute for Senate Bill No. 545**

Draft March 18, 2002

~~KCC Proposed revision to section 2 (c)~~

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in sections 1 and 2, and amendments thereto:

(a) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the easements obtained by utilities, or private easements in platted subdivisions or tracts.

(b) "Public utility" shall mean all public utilities as defined in K.S.A. 66-104, and amendments thereto, except that it does not include any public utilities included in the definitions set forth in K.S.A. 66-1,187, and amendments thereto.

Section 2. (a) Without prejudice to a public utility's other rights and authorities, a public utility which is assessed by a city and collects and remits fees associated with the utility's use, occupancy or maintenance of such facilities in the public right-of-way may file a tariff with the state corporation commission to add to such utility's end-user customer's bill, statement or invoice a surcharge equal to the pro rata share of any such fees.

(b) Costs which are incurred by a public utility in excess of those normal and reasonable costs incurred by a public utility applying good utility practices due to actions of a city's governing body may file a tariff with the state corporation commission to add to the bill, statement or invoice of each end-use customer located within such city through a surcharge equal to a pro rata share of such costs.

(c) For purposes of this act costs shall not include expenses specifically covered by any other cost recovery mechanism in existence as of April 1, 2002, including but not limited to franchise fees and relocation expenses.

(d) The fees and costs incurred by the utility identified in subsections (a) and (b) in excess of the amount included in the utility's existing rates shall be subject to review by the state corporation commission upon filing for recovery of the costs a surcharge. **Upon a finding by the commission** that: (1) the fees included for recovery in such surcharge ~~that~~ were required to be paid by the utility as the result of action of the governing body of a city, (2) the costs were incurred as a result of action of the governing body of such city, (3) such costs were reasonably incurred to meet the requirements imposed by the governing body of such city and (4) the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in ~~expenses~~ fees and costs charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in fees and ~~added expense~~ costs incurred on the books

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and records of the utility, the commission shall approve such tariffs within 30 days of the filing. If the commission determines that the surcharge is not applied to bills in a reasonable manner, the costs or portions thereof do not meet the above requirements or that the calculation is not adequately supported by the documentation provided in the filing, the commission may, at its option, either disapprove such tariff within 30 days of the filing and require resubmission by the utility, suspend the effective date of the tariff for an additional 60 days to receive appropriate documentation from the utility and/or modify such tariff in a manner that recovers in a reasonable manner the costs or portions thereof which meet the above requirements. Any over or under collection of the actual fees and costs charged to expense on the books of the utility shall be either credited or collected through the surcharge in subsequent periods. The establishment of a surcharge under this section shall not be deemed to be a rate increase for purposes of this act.

(e) Upon the filing of a tariff with the corporation commission pursuant to this act, the utility shall deliver to the affected city a complete copy of the filing. Such copy shall be delivered within 10 days of the filing with the corporation commission.

Section 3. This act shall affect only such costs and fees, which are incurred between April 1, 2002 and June 30, 2003. The provisions of this act shall take effect and be in force from its publication in the register and be in effect only through June 30, 2003.

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