ORDINANCE NO. 2158

AN ORDINANCE AMENDING ARTICLE THREE, CHAPTER 15, TREE BOARD; TREES AND SHRUBS, OF THE CITY CODE OF THE CITY OF BELOIT, KANSAS.

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

Section 1: Article Three, Chapter 15 is hereby amended and restated as follows:

15-301. Tree Board.

A. The City Tree Board for the city shall consist of seven members, at least five of whom shall be citizens and residents of this city, and, at the mayor's discretion, no more than two may be citizens and residents of Mitchell County, but residing outside the city limits of the City of Beloit. All members shall be appointed by the mayor with the approval of the governing body.
B. The term of the seven persons to be appointed by the mayor shall be three years. Board members may be reappointed for successive terms. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.
C. Members of the Board shall serve without compensation.

15-302. Board Duties, Functions.

A. It shall be the responsibility of the Board to study, investigate, counsel and develop and/or update periodically, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees within the City of Beloit. Such plan will be presented to the governing body and upon their acceptance and approval shall constitute the official comprehensive City Tree Plan.
B. The Board shall report potential violations of this Chapter to the City Code Enforcement Officer for further action, if necessary.
C. The Board, when requested by the governing body, shall consider, investigate, make a finding, report and recommend upon any special matter of question coming within the scope of its work.
D. The Board shall support the city with programs and events that meet qualifications for National Arbor Day Foundation's Tree City USA status.
E. The Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of its members shall be a quorum for the transaction of business.
F. The City Director of Parks and Recreation shall serve as the staff coordinator for the Tree Board.

15-303. Tree Species. The Tree Board shall keep a list of recommended species for planting. The list will be on file in the City Parks and Recreation office.

15-304. Street Trees.

A. Street trees are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the city.

B. Street trees shall be planted at least four (4) feet from any street, curb, or sidewalk.

C. No street tree shall be planted closer than thirty (30) feet of any street corner, measured from the point of nearest intersecting curb or curblines. No street tree shall be planted closer than ten (10) feet of any fireplug.

D. No street tree is to be planted where it will interfere with overhead utility lines. Any tree located under overhead utility lines shall be of such a species that it will not grow taller than fifteen (15) feet. No street tree is to be planted within seven (7) lateral feet of any underground water line, sewer line, electrical line or other utility line.

15-305. Definitions. For purposes of this Chapter the following definitions shall apply:

A. Diseased Tree – means a tree or shrub that has been determined by any competent city, state, or federal authority based upon a laboratory test or other supporting evidence to be infected or infested with or harbor any tree or plant disease or insect or larvae, the uncontrolled presence of which may constitute a hazard to or result in damage or extinction of other trees or shrubs in the community.

B. Maintenance - means, without limitation, the protecting, spraying, fertilizing, treating, pruning, abatement of infestation and trimming of trees or shrubs.

C. Nuisance – means the doing of an act, failure to perform a legal duty, or the allowance or creation of a condition which injures, endangers, hinders or unreasonably interferes with the public health, safety or welfare in the use and enjoyment of right-of-way or other public property by the general public. Examples include, but are not limited to, brush and limbs, trees and shrubs which are dead, diseased or infested which present a harmful or dangerous condition to the public, and encroachments of trees and shrubs in the right-of-way or other public property which create a safety hazard.

D. Owner – means any person, agent, operator, firm or corporation having a legal or equitable interest in the (real) property; or recorded in the official records of the Mitchell County Register of Deeds office as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

   1. Abutting Owner – means an Owner of property that directly abuts the right-of-way where the tree or shrub requiring maintenance or removal is located.

E. Right-of-way – means the area on, below or above the present and future city streets, alleys, bridges, bikeways, parkways and sidewalks dedicated or acquired as right-of-way.

F. Shrub – means a low, usually several-stemmed, woody plant. For the purposes of this Chapter, it shall also include ornamental and native grasses used in place of shrubs.

G. Tree – means a woody plant having a well-defined stem or trunk, a more or less definite crown, a height at maturity of at least eight feet, and the trunk diameter exceeds two inches.

15-306. Trees and Shrubs on Private Property.

A. Maintenance or Removal. Whenever the City Code Enforcement Officer determines that any tree or shrub on private property endangers, hinders or obstructs the use of public or private property, is a nuisance, is diseased, or in any other way endangers the public health, safety and welfare, the Code Enforcement Officer shall issue a notice of violation to order the maintenance or removal of the tree or shrub by the Owner as set forth in Section 15-309.

B. Emergency Action. In the event the City Code Enforcement Officer, with assistance from the Tree Board and/or a forester, determines that the existing condition of any tree or shrub on private property constitutes an immediate hazard to the public health, safety and welfare or otherwise endangers persons or property, then the city shall proceed, without delay, to take steps to abate the situation and without prior notice to or hearing of the Owner, occupant or agent. The cost of such action shall be assessed as set forth in Section 15-310.

C. Right to Inspect. The City Code Enforcement Officer, or other designee, is hereby authorized to enter on private property for the purpose of inspecting trees or shrubs where there appears to be a nuisance or a threat to public or private property or to the public, health, safety and welfare. This entry and inspection may be done without the prior permission of the Owner, occupant or agent if the threat is imminent and if such notification is not feasible under the circumstances. If any person prevents such entry and inspection, the city may seek an appropriate court order to make such entry and inspection possible.

15-307. Trees and Shrubs in Right-of-Way; Abutting Owner's Duties.

A. Maintenance. Abutting Owners are responsible for maintaining the trees and shrubs within or encroaching within the abutting right-of-way in a manner which promotes safe and healthy trees and shrubs and which protects the health, safety, and welfare of the public with respect to the same. The Abutting Property Owners shall not allow such trees and shrubs to hinder or obstruct the right-of-way, create a nuisance, be diseased, or threaten life or property within the right-of-way. Any tree overhanging any right-of-way shall be pruned and trimmed so as not to obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of at least fifteen (15) feet above the surface of the right-of-way. Notwithstanding, the city shall always maintain the right to perform any necessary maintenance of any tree or shrub in right-of-way and the city staff or the city's contractor may perform the maintenance.

B. Removal. When applicable, this duty of the Abutting Owner shall also include the responsibility to remove trees and/or shrubs within the abutting right-of-way when any tree or shrub endangers, hinders or obstructs the use of the right-of-way, is a nuisance, is diseased or in any other way endangers the public health, safety and welfare, and such Abutting Owner has received a notice in accordance with Section 5-311.

C. Notice to Owner. Whenever the City Code Enforcement Officer determines that any such tree or shrub endangers, hinders or obstructs the use of the right-of-way, is a nuisance, is diseased, or in any other way endangers the public health, safety and welfare, the Code

Enforcement Officer shall issue a notice of violation to order the maintenance or removal of the tree or shrub by the Owner in accordance with Sections 15-309 and 15-310.

D. City Assistance. An Abutting Owner may contact the city to request the city's assistance with the removal of a diseased, hazardous, or dead tree in the right-of-way. An Abutting Owner may also request the city's assistance with the removal of storm damage from right-of-way trees to ensure that the right-of-way is kept clear for vehicular and pedestrian traffic and that public safety, health and welfare is maintained. The city may assess the costs of such work against the Abutting Owner in accordance with Section 15-310.

15-308. Trees and Shrubs on Public Property. Whenever the Tree Board, City Code Enforcement Officer, or Director of Parks and Recreation determine that maintenance or removal of any trees or shrubs located on any public property other than right-of-way is necessary, the city staff or the city's contractor may perform such maintenance or removal.

15-309. Notice of Violation; Hearing; Notice to Appear.

A. A notice of violation issued pursuant to Section 15-306 or 15-307 shall be sent to the Owner, occupant or agent by certified mail, return receipt requested, or by personal service. If the property is unoccupied, the notice of violation shall be sent by certified mail, return receipt requested, to the last known address of the Owner.

B. The notice of violation shall state:

1. The common or legal description of the property, or both;
2. That the property is in violation of this Chapter;
3. A description of the violation that would reasonably allow the Owner, occupant or agent to determine the nature of the violation to allow for self-abatement;
4. That the violation must be abated by the Owner, occupant or agent within 30 days from the date of the notice of violation, provided that extensions of the time period shall be granted if the Owner, occupant or agent demonstrates that due diligence is being exercised in abating the violation;
5. That within ten (10) days of the date of service of the notice, the Owner, occupant or agent may request in writing a hearing before the governing body;
6. That failure to comply with the notice of violation shall result in the city abating the violation, with the assessment of costs (including the cost of all notices) made against the property and the Owner, occupant or agent;
7. That failure to pay such assessments within thirty (30) days of the notice of costs shall result in the filing of a special assessment against the property; and
8. That separate and independent of any abatement of the violation by the city, such violation is subject to prosecution in Beloit Municipal Court.

C. If the recipient of the notice of violation makes a written request for hearing within ten (10) days of the date of service of the notice, then the city shall immediately schedule a hearing before the governing body. The governing body shall receive evidence, review the investigation, and prepare a written order. The order shall be sent to all relevant parties within ten (10) days of the hearing, unless otherwise stated at the hearing and

prior to the city taking any action to abate the violation. The order shall state the relevant facts and the specific code provisions relied upon, and any other stipulations, methods of abatement, or orders as deemed necessary by the governing body.

D. If the Code Enforcement Officer determines that a violation of this Chapter exists, the public officer may issue a Notice to Appear in Municipal Court for such violation. Such prosecution shall be separate and independent of any abatement action, and no other procedures are required as a prerequisite to the issuance of a Notice to Appear.

15-310. Abatement by City; Notice of Costs; Assessment and Collection.

A. If the Owner, occupant or agent fails to request a hearing and to self-abate the violation within the specified period, then the city may go onto the property to abate the violation in a reasonable manner. The city shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to abate the violation. The city may use its own employees or contract for services to abate the violation.

B. If the city abates the violation, it shall provide a notice of costs to the Owner, occupant or agent by certified mail, return receipt requested, at the last known mailing address. If the property is vacant or unoccupied, the notice of costs shall also be posted on the property in a reasonable manner. The notice of costs shall state:

1. The common or legal description of the property, or both;
2. The nature of the violation, including relevant ordinances;
3. The nature of the work performed to abate the violation;
4. The costs incurred for the abatement in either a lump sum or in itemized form;
5. That the notice of costs is a demand for payment within thirty (30) days from the date of the notice;
6. That failure to pay the entire amount within thirty (30) days shall allow the city to file a special assessment against the property;

15-311. Penalties and Violation; Civil Actions.

A. It shall be unlawful for any person to plant or otherwise maintain trees or shrubs in an area where such planting or maintenance is prohibited by this Chapter.

B. It shall be unlawful for any person, including an Abutting Owner, to abuse, damage, mutilate, destroy or remove without the prior written permission from the city (i) any Street Tree, (ii) any shrub in the right-of-way that was planted or is maintained by the city, or (iii) any tree or shrub on any other public property. Persons in violation of this provision may be required to provide a replacement tree or shrub of a species and caliper approved by the city.

C. It shall be unlawful for any Owner, occupant or agent to permit any tree or shrub on their property to remain in violation of this Chapter after receipt of a notice of violation from the city.

D. It shall be unlawful for any person to prevent, hinder or otherwise interfere with authorized employees, officials or contractors of the city in the performance of their official duties

pursuant to the provisions of this Chapter.

E. Any person who violates any of the provisions of this Chapter is guilty of a public offense and upon conviction shall be punished by fine of at least $50 but no more than $500.

F. The city may further enforce this Chapter by filing an action in the appropriate court for an injunction to enforce the provisions of this Chapter; to cause correction of any such violation; for assessment and recovery of a civil penalty for such violation; or to pursue any other appropriate civil remedy.

15-312. Removal of Diseased Tree or Shrub. No diseased tree, tree materials or shrubs which have been cut down shall be permitted to remain on the premises, but shall be immediately treated, removed and burned to prevent the spread of tree disease.

15-313. Removal by City; Wood and Tree Materials. If, after notice to the Owner, the Owner fails to self-abate the violation and the city or its contractor removes a tree from the Owner's property, all wood and tree materials will be removed from the premises by the city, at a cost to the Owner.

Section 2: This Ordinance shall take effect and be in full force from and after its passage and one publication in the official city newspaper.

PASSED and ADOPTED by the Governing Body and signed by the Mayor this 21st day of October, 2014.

Tom Naasz

Tom Naasz, Mayor

ATTEST:

Amanda J. Lomax

Amanda J. Lomax, City Clerk