BILL NO. 6647 **ORDINANCE NO. 8446**

AN ORDINANCE AMENDING TITLE 15, "BUILDINGS AND CONSTRUCTION," OF THE CODE OF THE CITY OF NORTH KANSAS CITY, MISSOURI, BY CREATING CHAPTER 15.60, "VEGETATION."

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH KANSAS CITY, MISSOURI, AS FOLLOWS:

Section 1. Title 15, "Buildings and Construction," of THE CODE OF THE CITY OF NORTH KANSAS CITY, MISSOURI is hereby amended by adding the following chapter:

Chapter 15.60

VEGETATION

Article I.

Tree Preservation

15.60.010 Title.

This article shall be known and may be cited as the "City Tree Preservation/Tree Abuse Ordinance."

15.60.15 Purpose.

The purpose of this article is to establish rules and regulations governing the protection of trees and vegetation cover within the city, promoting the proliferation of trees and other vegetation in the city in recognition of their importance and meaningful contribution to a healthful, beautiful and aesthetically pleasing community.

15.60.020 Applicability.

The terms and provisions of this article shall apply to all real property located within the city limits, except as provided herein.

15.60.025 Definitions.

For the purpose of this article, the following terms shall have those meanings set forth herein:

Breast height means a height of four and one-half (4 1/2) feet above the natural grade.

Canopy coverage means the aerial extent of ground within the drip line of the tree.

Diameter breast height (DBH) means the diameter of the trunk of a tree measured at breast height. The DBH of trees with multiple trunks shall be the sum of the individual trunk diameters at breast height. Trees with less than four and one-half (4 1/2) feet of clear trunk shall be measured as the diameter of the largest vertical branch or leader at breast height.

Drip line means the peripheral limits of the horizontal crown of a tree spread vertically to the ground; provided, however, that the same shall not be less than a circle with a five-foot radius measured from the center of the tree.

Effectively destroy means to cause, suffer, allow or permit any act which will cause a tree to die or go into a period of unnatural decline within a period of one (1) year from the date of the act. Acts which may effectively destroy a tree include, but are not limited to, damage inflicted upon the root system by heavy machinery, excessive trimming, changing the natural grade above the root system or around the trunk, damage intentionally inflicted on the tree permitting infection or pest infestation, application of herbicides or other chemical agents, or intentional fire damage to the tree permitting infection or pest infestation, the infliction of a trunk wound that is fifty (50) percent or greater of the circumference of the trunk, or the removal of sufficient canopy to cause the unnatural decline of the tree.

Equivalent replacement means a tree(s) whose condition, size and location is determined by the city administrator, or designee, to be the equivalent of the tree, or trees, which it replaces. In some instances, the equivalent replacement may be more than one (1) tree.

Equivalent value means an amount of money which reflects the cost of replacing a dicot, monocot or conifer tree. This amount shall be determined based on the market value of an equivalent replacement plus installation.

Grubbing means the clearing of stumps and roots.

Hatracking means to flat-cut the top of a tree, severing the leader or leaders; or pruning a tree by stubbing off mature wood larger than three (3) inches in diameter; or reducing the total circumference or canopy spread not in conformance with the "American National Standards Institute." Notwithstanding this definition, "hatracking" will not include such necessary tree cutting by authorized utilities providers around power lines or utility lines to prevent disruption of utility service or for safety reasons.

Land clearing means the clearing of vegetation and soils. This includes, but is not limited to, construction for buildings, rights-of-way, utility easements or access, drainageways, parking lots and other structures, rock mining, agricultural activities and any other activities that involve the removal of trees as defined by this article.

Off-site for tree relocation and tree replacement, means any location in excess of one (1) mile from the tree's original location.

On-site, for tree relocation and tree replacement, means any location within the city one (1) mile or less from the tree's original location.

Protective barrier means fences or like structures at least four (4) feet in height that are conspicuously colored and prevent or obstruct passage.

Removal means to cut down, dig up, destroy, effectively destroy, or the unlicensed relocation of any tree.

Replacement tree means any tree used to replace a removed tree. Replacement trees shall have a minimum caliper of two (2) inches at the time of planting.

Specimen tree means any native tree which has a DBH of eighteen (18) inches or greater for conifers and native hardwoods, which is well-shaped and in good health as verified by the public works department; non-native trees which have a DBH of eighteen (18) inches for conifers and hardwoods shall also be considered specimen trees; provided, however, that the following trees are not specimen trees:

(1) Non-native fruit trees that are cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to, apples, pears or species of citrus.

(2) Trees that are in poor condition or form as determined by the City of North Kansas City.

Structure means anything built or constructed on, below or above the land.

Substantial deviation means any proposed modification or modifications to a development, a permit, or a permit application which, either individually or cumulatively with other changes, creates a reasonable likelihood of additional environmental impact, as covered by the scope of this article, or any change or proposed change that may result in any impacts on trees not previously reviewed by the code compliance division as covered by the scope of this article.

Tree means any living, self-supporting, dicotyledonous or monocotyledonous woody perennial plant which has a DBH of no less than three (3) inches and normally grows to an overall height of no less than ten (10) feet in Northwest Missouri.

Tree canopy means the upper portion of the tree consisting of limbs, branches, and leaves.

Tree survey means a document that provides, at a minimum, the following information:

(1) The location, plotted by accurate techniques, of all existing trees numbered in consecutive order.

(2) The common and scientific name of each tree.

(3) The DBH of each tree or, if a multiple-trunk tree, the sum DBH for all trunks.

(4) Canopy coverage.

15.60.030 Tree removal permit—required.

A. At the time a developer makes application for preliminary site plan approval, the developer shall submit a tree survey or tree location plan designating all trees with a caliper inch greater than 3 inches in size, for review by the city.

B. A person shall not cause, suffer, permit or allow the removal of any tree without first obtaining a permit from the city as herein provided. The property owner, owner of an easement and/or person removing a tree without a permit shall be responsible for the violation. The removal of trees in violation of this article is a public nuisance.

C. Land clearing, where such activities may result in the removal of trees, shall not occur until a tree removal/tree relocation or clearing and grubbing permit has been obtained.

D. No site development shall be undertaken without first obtaining site plan approval from the city. Clearing of exotic vegetation shall be permitted through the issuance of a clearing and grubbing permit.

E. Re-landscaping of existing property which propose to remove greater than twenty (20) percent of the existing trees shall, prior to the issuance of a tree removal/relocation permit, be subject to the site plan review process of the city.

15.60.035 Same—Other tree removal permits.

A. Any person who possesses, on the effective date of this article, a valid city tree removal permit will not be required to obtain a tree removal permit under this article.

B. Any land activities that do not require a site plan or building permit shall obtain a tree removal permit.

15.60.040 Same—Exceptions.

For the purpose of the licensing requirements of this article, the following are exempt:

1. Any property owned by the City of North Kansas City, Missouri;

2. Any property owned by the state highway department or upon any right-of-way of the state highway department;

3. Any public utility operating in the city and within the public utility's easement or right-of-way;

4. Removal of any tree that is diseased, injured or in danger of falling, to the extent that its continued existence threatens the health or safety of contiguous persons or property, provided that the owner of the property can document that such condition(s) existed prior to the removal of the tree;

5. During emergency conditions caused by a tornado or other disaster, the provisions of this article may be suspended by the direction of the mayor.

15.60.045 Same—Tree removal permit application.

A. An owner of a fee simple title may apply for a tree removal permit after submitting verified documentation of the fee simple ownership; the agent of the owner, the lessee of the property, optionee, contract purchaser, or holder of an easement may apply for a tree removal permit. A holder of an easement may obtain a permit only when the proposed tree removal is consistent with the use granted by the easement. The city shall require that any tree survey or site plans be prepared by any person qualified to do so under the laws of the state.

B. Application for a tree removal permit shall be made on city forms and be, at a minimum, accompanied by the following documents:

1. A complete and signed application form;

2. A map showing the size and location of the site where the permitted activities are to be conducted;

3. A starting date and duration of the proposed permitted activities;

4. A brief description of the work to be performed, including a drawing of the proposed work or a certified site plan as determined by the city, showing the location of all existing or proposed buildings, structures, and site uses;

5. A certified tree survey and site plan of identical scale designating those trees which are proposed to be preserved, relocated, or removed, unless not required by the city; however, in no case shall a tree survey be required when five (5) or less trees are to be removed from the property within any twelve (12) month period; and

6. The legal description of the site.

C. Application filing fee.

1. Before any application for a permit required under this article is accepted for review, a permit application fee shall be tendered. There is established an application fee under this article as follows:

FEE	COST OF WORK UP TO AND INCLUDING
$20.00	$5,000
$40.00	$5,001 and up

2. When a certified tree survey and site plan are required, a plan review fee shall be paid. Said plan review fee shall be fifteen percent (15%) of the cost it would have been for the work being done under this article had such work required a building permit fee as set out in section 15.04.010, paragraph A.

3. The permit application filing fee is not refundable and may not be applied to any permit application other than the one (1) for which it was originally paid.

4. For any substantial deviation from the original application, there shall be an additional fee. The amount of the fee shall be established by resolution of the city council.

D. Application for a tree removal permit constitutes consent by the property owner or applicant for the city to conduct site inspections in furtherance of this article on the subject property.

15.60.050 Same—Tree removal consideration by city; validity.

A. With respect to any property adjacent to any levee, drainage ditch, stream, creek or tributary thereof, a tree may be removed only when an applicant has demonstrated to the city that the proposed development cannot be located on the site without the removal of the tree, and that there is no practical way to avoid tree removal. In determining if the applicant may remove trees pursuant to a tree removal permit, the city shall consider, at a minimum, the following:

1. The applicant has made every reasonable effort, consistent with the plan of development, to incorporate existing trees and to minimize the number of trees removed.

2. The trees proposed to be removed are the minimum number necessary; and

3. The trees proposed to be removed are of poor quality and appearance, are damaging any existing improvements, are creating ongoing problems for existing development, or are growing in too close a proximity to other trees to permit normal growth and development of affected trees consistent with good forestry practice.

4. The applicant must relocate the trees to be removed. If relocation is not a viable solution, an applicant shall replace removed trees.

5. Whether a tree proposed to be removed is obstructing safe vehicular cross visibility.

B. A determination of the extent of environmental impact by the proposed removal of trees, as covered by the scope of this article, shall be performed by the city. This determination shall be based upon drawings or site plans and a completed tree removal permit application form submitted to the city by the applicant.

C. The applicant shall be responsible for the relocation of trees removed for utilities, roads, drainage and other services constructed to benefit the property for which the application was filed.

D. The permittee shall only remove those trees so specified in the permit. Any damage to any other tree shall be a violation of this article.

E. A permit shall only be valid for the property on which trees are to be removed for not more than one (1) year from the date of issuance. A one-time extension of up to six (6) months may be issued, provided there is no substantial deviation from the original application and the permit extension complies with all standards in effect at the time of the permit extension. Additional conditions may be imposed in the permit extension when there is a change in site conditions that may affect trees. Where any activity regulated by the tree removal permit has occurred, the permittee must comply with all conditions of the permit even though the permit has expired.

15.60.055 Tree relocation.

A. Before the city issues a tree removal permit that allows the replacement of any tree, the applicant must demonstrate that relocation is not a viable alternative. Relocation shall occur either within the site or off-site with the concurrence of the city, where the site is public property, or with the concurrence of the property owner, where the site is private property. If any tree is to be located either on-site or off-site, a relocation plan shall be submitted. Relocation plans, as required by this section, must first be reviewed and approved prior to granting the tree removal permit.

B. The following guidelines shall be utilized to ensure successful transplanting or trees designated for relocation:

1. Trees shall not be unnecessarily damaged during removal, transport or replanting of the tree.

2. If the tree has a dormant period, they should be transplanted during that time. Trees should not be transplanted during periods of strong winds, dry winter winds or during drought.

3. Adequate spaces for root and crown development shall be provided.

4. Trees shall be root and canopy pruned in accordance with sound arboricultural standards prior to transplanting.

5. During and following transplanting, the root ball and trunk shall be protected. The root ball must be kept moist at all times.

6. Transplanted trees shall be braced for a minimum of one (1) year.

7. Transplanted trees shall not be fertilized at planting time, but shall be watered sufficiently until the tree growth is reestablished.

8. All crown pruning shall be done in accordance with "The American National Standards Institute".

15.60.060 Tree replacement.

A. *Replacement criteria.* Trees that are removed and not relocated shall be replaced so that there is, at a minimum, no loss of total caliper inches at the time of replacement. Performance bonds may be required to be posted. The following procedures shall be used to determine the tree replacement requirements:

1. Existing caliper inches shall be determined by measuring the tree(s) to be removed at a height of fifty-four (54) inches above grade.

2. Relocation of trees on-site will be counted towards equivalent replacement. Relocation of trees off-site shall be counted as half credit towards equivalent replacement. Guidelines in this article shall be followed for any trees to be relocated.

3. A determination of the number of trees to be replaced shall be performed. This determination shall be based upon the total caliper inches of trees to be removed. The caliper inches shall at least equal the caliper inches to be removed.

4. Shade/canopy tree(s) shall only be replaced with a shade/canopy tree(s) with a minimum DBH of two and one-half (2 1/2) inches and with an overall minimum height of twelve (12) to fourteen (14) feet depending upon the species.

5. Pine trees shall only be replaced with pine trees such that the overall height of the pine tree(s) shall be replaced by one (1) or more pines. Replacement pine trees shall be a minimum of seven (7) feet in overall height.

6. For tree replacement requirements of one (1) to five (5) trees, a minimum of one (1) species shall be utilized as a replacement tree. For six (6) to ten (10) replacement trees required, a minimum of two (2) species shall be utilized. For eleven (11) to twenty (20) replacement trees required, a minimum of three (3) species shall be utilized. For twenty-one (21) to fifty (50) replacement trees required, a minimum of four (4) species shall be utilized. For fifty-one (51) or more replacement trees required, a minimum of five (5) species shall be utilized.

B. *Minimum standards for tree replacement.*

1. All trees to be used as replacement trees shall be a minimum quality of No. 1 grade or better as applied to trees growing in Missouri.

2. Only trees acceptable to the city shall be used as replacement trees.

3. Replacement trees shall not be removed or effectively destroyed unless approval has been granted by a valid tree removal permit. The original permittee and owner of any property on which trees have been replaced or relocated shall place on record a notice that shall inform subsequent purchasers, assigns and occupants of the replacement site that trees on the replacement site may not be removed without a valid tree removal permit.

15.60.065 General relocation and replacement conditions.

A. Any tree remaining on-site shall not be unnecessarily damaged while relocating trees, planting or preparing the site for any replacement trees.

B. Replacement or relocated trees shall not be placed where they will interfere with existing or proposed utilities above or below ground. Acceptable trees are those approved by the city.

C. Where practicable, replacement tree species, installation methods and maintenance methods shall follow xeriscape principles.

D. The permittee shall replace each tree specified in the permit within a time period of up to six (6) months with city approval. A time extension may be granted if future construction will endanger the replacement trees; however, where an extension has been granted, each tree specified in the permit must be replaced prior to approval of a certificate of occupancy or completion.

15.60.070 Maintenance and monitoring.

A. The permittee shall be responsible for maintaining the health of any replacement or relocated tree for one (1) year from planting.

B. Determination of success.

1. The permittee shall determine the condition of each tree one (1) year after the tree was relocated or planted. This determination shall be submitted to the city for approval within thirty (30) days of being made.

2. Should any tree die or be in a state of unnatural decline within one (1) year of being planted or relocated, the permittee shall be required to replace the tree within sixty (60) days of that determination. The one-year monitoring and approval period shall begin anew whenever a tree is replaced. If that replacement tree is found not to be viable at the end of the second-year monitoring period, the permittee may pay the appropriate amount into the tree preservation fund in lieu of planting a third replacement tree. If the permittee fails to replace the tree or to pay the appropriate amount into the tree preservation fund within sixty (60) days, then the permittee shall be in violation of this section.

15.60.075 Protection from construction work.

During construction, land development, or lot clearing, the contractor and the owner shall adhere to the following requirements:

1. Place and maintain protective barriers around the drip line of all trees to be retained on the site to prevent their destruction or damage. The protective barriers shall be conspicuous enough and high enough to be seen easily by operators of trucks and other equipment. Protective barriers shall be constructed of sturdy material, not flagging or ribbons.

2. Do not store or use materials or equipment within the drip line of any tree to be retained on-site.

3. Do not discharge or contaminate the soil within the drip line of any tree to be retained on-site with any construction materials that may cause adverse impacts.

4. Clearing of vegetation within the drip line of trees designated for preservation shall only be done by hand or light-rubbered wheeled equipment that will not damage tree roots.

5. Utilize retaining walls and drywells where needed to protect trees to be preserved from severe grade changes.

6. Pruning of trees to be preserved shall be in accordance with the standards for pruning established by the "American National Standards Institute."

7. Make no attachments, other than those of a protective and non-damaging nature, to any tree to be retained on-site.

8. Do not change the natural grade above the root system within the drip line of any tree to be retained on-site unless it can be demonstrated to the city that it will not damage any tree.

9. Any tree designated to be preserved which is damaged during construction shall be repaired or replaced by.

a. Corrective pruning for damage done to tree canopy.

b. Measures such as corrective root pruning, fertilization and soil enhancements for damage to tree roots.

Article II.

Clearing and Grubbing of Land

15.60.100 Title.

This article shall be known and may be cited as the "North Kansas City Clearing and Grubbing Ordinance."

15.60.105 Purpose.

The purpose of this article is to establish rules and regulations governing the clearing and grubbing of land within the city and to ensure the protection of natural resources valuable to the city. These resources include the protection of wildlife, protection of levees, protection of drainage ways and preservation of trees.

15.60.110 Applicability.

The term and provisions of this article shall apply to all real property located within the city limits.

15.60.115 Definitions.

The definitions of "grubbing", "land clearing", and "removal", as stated in section 15.60.025, shall also apply to clearing and grubbing of land.

15.60.120 Permit—required.

A. All clearing and grubbing of land shall require a clearing and grubbing permit prior to commencement of said work.

B. A clearing and grubbing permit shall not be issued prior to site plan approval, except as stated in section 15.60.120.

C. A clearing and grubbing permit shall be obtained from the code compliance division with review by both the public works department and the code compliance division. The applicant shall include the following information:

1. Tree preservation plan, prepared by a registered landscape architect or licensed arborist, to include the information as required by section 15.60.045.B., and the following:

a. Trees to be preserved in place, trees to be relocated, and trees to be removed, including their replacement canopy calculations.

b. Trees which will be relocated or allowed to remain on site must be evaluated by a certified arborist who is trained in tree hazard assessment. Details for each tree must be included along with recommendations for required remediation.

c. A tree removal/relocation permit will be required for all trees which will be removed from or relocated on the property according to guidelines set forth in sections 15.60.030 through 15.60.055. Mitigation will be required as described in sections 15.60.060 through 15.60.075.

2. Wildlife protection plan to include at the minimum the following:

a. A submittal demonstrating that said site does not serve as habitat for rare, threatened or endangered species or species of special concern or a mitigation plan shall be provided.

b. A list, prepared by a licensed animal relocation specialist, of all animal species identified on site and methods of relocation.

3. Levee identification: In order for the city to ensure the protection, retention and preservation of all levees protecting the city, as well as any drainage ways, licenses and/or permits from the appropriate governmental entities must be submitted to the city for review, prior to the issuance of clearing and grubbing permit, as follows:

a. In the event no levee and/or drainage way would be affected, a conceptual review letter or binding letter is required from the North Kansas City Levee District stating there are no levees affected by the proposed work.

b. In the event any levee and/or drainage way may be affected, a permit from the North Kansas City Levee District shall be required to ensure the protection of any affected levee both during and after the clearing of land. For any clearing of lands greater than one-half (1/2) acre in size affecting a levee, the applicant shall also provide evidence of permit approvals from the Army Corps of Engineers.

4. Sediment and erosion control plan shall include the following: Prior to the issuance of a clearing and grubbing permit a sediment and erosion control plan shall be submitted as part of the permit application. Said plan shall be prepared by a registered engineer and shall indicate how and by which mechanism, all sediment and erodible land will be controlled during and after the clearing of the land so as not to impact roadways, bridges, waterbeds, levees and/or other water control devices.

5. Water runoff velocity and volume: Prior to the issuance of a clearing and grubbing permit a water runoff velocity and volume analysis shall be submitted as part of the permit application. Said analysis shall be prepared by a registered engineer and shall indicate any increase in water runoff velocity and water runoff volume created by the removal of trees and other vegetation from the property. If the analysis shows any increase in water runoff velocity and/or water runoff volume, prior to a permit being issued, a plan must be submitted, for approval by the city, showing steps to be taken to reduce such water runoff to preexisting velocity and volume.

6. In the event that the city reasonably finds it necessary and/or desirable to have the applicant's plans and/or information and/or property reviewed and/or investigated by an expert and/or experts in connection with the applicant's plans and/or information submitted by the applicant, then in that event, as part of the application process, the applicant shall be obligated to pay the city the costs and fees of the expert and/or experts utilized by the city in reviewing, investigating, reporting, consulting and attending meetings concerning the plan(s) and/or information and/or property reviewed and/or investigated before receiving a permit under this section.

15.60.025 Permit—exemptions.

At the request of the city administrator or designee upon a determination that the site creates a nuisance as defined in section 8.24.010, a clearing and grubbing permit may be issued prior to site plan approval provided all the information is included as stated above, and upon the approval of the chief code compliance officer of the city.

15.60.130 Permit—application.

A "clearing and grubbing permit" shall be applied for through the code compliance division. The cost of the permit shall be five hundred dollars ($500.00) per acre, or fraction thereof.

Section 2. This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

PASSED this 23rd day of February, 2010.

Mayor

ATTEST:

City Clerk

APPROVED this 23rd day of February, 2010.

Mayor

APPROVED AS TO FORM:

City Attorney

City Counselor