

SUBSTITUTE BILL 10695

ORDINANCE 10539

AN ORDINANCE RESCINDING RESOLUTION 42-2003, AND AMENDING THE KIRKWOOD CODE OF ORDINANCES BY INSERTING A NEW CHAPTER 24, "TREE CODE" TO PROVIDE FOR THE REGULATION OF THE PLANTING, PROTECTING, PRESERVATION, MAINTENANCE, AND REMOVAL OF THE KIRKWOOD URBAN FOREST.

WHEREAS, the City Council approved Substitute Resolution 42-2003 on May 1, 2003 that established a Revised Public Tree Policy, and

WHEREAS, the Urban Forester in cooperation with the Kirkwood Urban Forestry Commission, in order to support, promote, encourage and define Kirkwood's commitment to the preservation and enhancement of Kirkwood's public urban forest, recommends the City adopt a Tree Code; and

WHEREAS, with adoption of this Ordinance Substitute Resolution 42-2003 will be rescinded, and

WHEREAS, a Tree Code will inform Kirkwood's residents of initiatives and practices intended to preserve the value and benefit of our community's public urban forest; and

WHEREAS, a Tree Code is intended to protect the value of Kirkwood's urban forest by establishing and enforcing tree preservation and enhancement standards; and

WHEREAS, a Tree Code will establish enforceable standards to proactively protect and manage the urban forest as a whole, achieving an appropriate balance of landowner rights and sustaining the standards to maintain a safe forested landscape for the City residents and visitors.

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

SECTION 1. Substitute Resolution 42-2003 is hereby rescinded.

SECTION 2. The City Code of Ordinances is hereby amended by inserting a new Chapter 24 as follows:

## CHAPTER 24

### TREE CODE

#### Article I. GENERAL TREE REGULATIONS

##### Section 24-1. Purpose.

The purpose of this Code is to promote and protect the preservation, safety, and general welfare of the City's interests by providing for the regulation of the planting, protection, maintenance, survival and removal of the trees within the City of Kirkwood, Missouri. All City Parks and Park Maintained spaces are exempt from this Ordinance.

##### Section 24-2. Definitions.

*Adjusted Diameter.* The DBH multiplied by the tree's condition rating. The Condition Rating is the numerical expression of a tree's condition expressed as a percentage from zero (a dead tree) to 100 (a perfectly healthy tree as described in the manual Guide for Plant Appraisal published by the International Society of Arboriculture). For example, if a tree has a DBH of 32 inches in diameter and is in relatively poor health with a condition rating of 40%, its adjusted diameter is 12.8 inches.

*Canopy Coverage Map.* A map required to meet tree protection guidelines that depict the total canopy coverage on a lot, as well as impacted canopy and remaining canopy post disturbance.

*Certified Arborist.* An individual with a valid "Certified Arborist" designation from the International Society of Arboriculture.

*DBH.* (Diameter at Breast Height) The diameter of a tree measured at four and one-half (4-½) feet above ground.

*Heading cuts.* A pruning cut made by reducing the trunk or branches of a tree to stubs or to lateral branches too small to assume the terminal role of the branch being cut.

*Invasive.* Any tree or shrub considered to be foreign or unnatural with the ability to overcome the natural vegetation and expand rapidly throughout the landscape.

*Public Trees.* Trees located within the City's paved right-of-ways, excluding trees within the Parks.

*Remove.* The actual removal or causing the need to remove through damaging, poisoning, or other direct or indirect actions resulting in the death or serious decline of a tree.

*Topping.* The pruning practice of reducing the height or spread of a tree using heading cuts.

*Tree.* A woody plant typically growing as a single stem or a multiple stem in an upright form that will attain a mature height of at least ten feet and a diameter (DBH) of at least two inches.

*Tree Manual.* A document containing the technical requirements for tree planting, tree selection, tree maintenance, and tree protection as dictated by the City of Kirkwood. This document is the *City of Kirkwood Tree Manual*.

*Tree Protection Plan.* (TPP) In reference to a plan written by a certified arborist who is registered with the City of Kirkwood, to protect the public and/or private trees impacted during new construction or site redevelopment.

### Section 24-3. Public Trees

#### 1. Property Owner Obligations

Trees shall be maintained to meet the City of Kirkwood clearance requirements as outlined in Section 16-2, Nuisances enumerated, subsection (d) of the Kirkwood Code of Ordinances. Permits for satisfying clearance requirements are not required, but no person shall damage, destroy, apply chemicals, remove or prune outside of the obligations contained in Section 16-2 without first obtaining a permit from the Urban Forester.

#### 2. Prohibited Acts

It shall be unlawful and an offense of this Code for any person to:

- a. Attach any rope, wire, nails, posters, or other contrivance to any public tree.
- b. Attach any permanent electrical conductor or apparatus to any public tree.
- c. Use tree spurs or climbing spikes on public trees, unless the tree is to be removed.
- d. Deposit, store, or maintain any equipment or material that reasonably may be expected to impede the free passage of water, air or fertilizer to the roots of any public tree.
- e. Cause any gaseous, liquid, or solid substance which because of the nature or amount reasonably may be expected to be toxic or otherwise harmful to public trees to be located where such substances reasonably may be expected to affect public trees.

f. Cause any fire to burn if such fire, or the heat, smoke, or ash there from reasonably may be expected to injure any portion of any public tree.

### 3. Required Permits

Any maintenance of Public Trees, outside of the obligations of property owners set forth above, shall require one of the following permits. Permit fees shall be set forth in accordance with Article VII, Fee Schedule, Section 5-100, Schedule on file.

#### a. Permit to Maintain

Permit to Maintain shall be required for maintenance of Public Trees other than set forth above, including, but not limited to, the following:

- 1) Injecting with chemical applications;
- 2) Applying Chemical applications;
- 3) Pruning (beyond the owner obligations of Section 24-3.1 Property owner obligations);
- 4) Cable and bracing; or
- 5) Adding lightning protection

A Permit to Maintain shall only be valid for 30 days after the date of issuance. Tree maintenance shall be performed with care as outlined in the Tree Manual to prevent destruction of structural integrity, health and vigor, and irreversible damage.

#### b. Permit to Remove

If a property owner desires to remove a Public Tree located in the right-of-way adjacent to their property, the property owner shall apply for a Permit to Remove. The Urban Forester, or appointed representative, shall review the application and inspect the tree.

- 1) If the tree requested for Removal is determined to be a hazard the City will manage the removal.
- 2) If the tree is determined not to be a hazard, the application will be presented to the Kirkwood Urban Forestry Commission for review.
  - i. If approved, the Kirkwood Urban Forestry Commission may recommend to the Urban Forester that the adjoining property owner may remove the tree at his/her sole expense. Such recommendations shall be made in writing to the Urban Forester and property owner applying for the permit, and the Urban Forester shall make the final determination.
  - ii. As a condition for removal, the Kirkwood Urban Forestry Commission may recommend to the Urban Forester that the permit applicant plant a tree of at least 2 inches caliper of an approved species to be found in the Tree Manual, and the Urban Forester shall make such final determination for removal and the species.

- iii. The Urban Forester shall determine if the property owner may remove the tree.
- iv. If denied, the tree shall not be removed.

c. Permit to Plant

If a property owner desires to plant a tree in the City right-of-way adjacent to their property, the property owner shall file a Permit to Plant Application.

- (1) Upon approval, the applicant shall follow all laws and regulations pertaining to excavation by the state of Missouri;
- (2) By obtaining a Permit to Plant, the permittee shall be exempt from obtaining an excavation permit from the City of Kirkwood on the basis of tree planting; and
- (3) All trees planted shall be selected and planted in accordance with the Tree Manual.

4. Permit Conditions

The Urban Forester may deny the issuance of any permit authorized under this Section if, in the sole discretion of the Urban Forester, the issuing of the permit is not in the best interest of the City in maintaining the sustainability and health of the urban forest.

All maintenance performed on Public Trees shall be completed by a Certified Arborist, other than maintenance to comply with clearance requirements as set forth above, unless the requirement of a Certified Arborist is waived by the Urban Forester.

Closure of any street or public right-of-way for performance of work shall be completed in accordance with Chapter 20 of this Code.

In the event of severe storms or other emergency situations resulting in extraordinary situations, the Director of Public Services with the coordination of the Urban Forester, may waive any or all parts of this Chapter as deemed necessary.

ARTICLE II.  
TREE PRESERVATION AND PROTECTION

Section 24-4. Tree Preservation and Protection

- 1. A Tree Protection Plan approved by the Urban Forester, or designee, shall be required on all new construction, demolition, excavation, and site redevelopment requiring permits from the Building and/or Engineering Department. All Tree Protection Plans shall be completed by a Certified Arborist and must follow the protocols outlined in the Tree Manual. Approval shall be determined upon

reasonable efforts to preserve trees on the site as determined by the guidelines listed in the Tree Manual.

Tree Protection Plans shall contain:

**(a) Tree Study**

All tree studies shall be completed in accordance with the Tree Manual.

**(b) Canopy Coverage Requirements**

All single family lots shall have minimum tree canopy coverage of 350 square feet per 1000 square feet of lot area (35% coverage).

A Canopy Coverage Map shall be included showing the following;

- (i) Current canopy coverage
- (ii) Proposed site plan
- (iii) Proposed canopy coverage post site disturbance; Including all trees to be planted to reach minimum coverage requirements
- (iv) Trees marked and numbered;
- (v) Species name
- (vi) Numerical indicators

All trees designated to be protected or included in the canopy requirements shall be of an approved species listed in the Tree Manual. Existing trees shall be live, healthy trees over 8 inches in diameter and in good or fair condition of health. New deciduous trees shall be a minimum of 2.5 inches in caliper and evergreen trees shall be a minimum of 6 feet in height.

**2. Tree Replacement**

Tree Replacement shall be required when compliance with the approved Tree Protection Plan cannot be achieved to satisfy Canopy Coverage Requirements.

The tree replacement value shall be such to meet or exceed the minimum Canopy Coverage Requirements. If the site does not allow sufficient space for replanting the required number of trees to meet these requirements, it shall be considered a failure to comply with the approved Tree Protection Plan.

**3. Failure to Comply with Tree Protection Plans**

Any failure to comply with an approved Tree Protection Plan shall be deemed as to be an offense, and the owner and developer shall be subject to the Penalties set forth herein.

The failure to protect multiple trees on one site shall constitute a separate and distinct offense for each affected tree.

ARTICLE III.  
PENALTIES AND DAMAGES

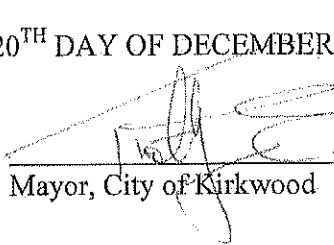
Section 24-5. Penalties

Failure to comply with the provisions of this Chapter shall be considered a municipal offense, and the City may take actions in accordance with Chapter 1, Article I, Section 1-8 "Violations and Penalties." of the Code of Ordinances of the City.

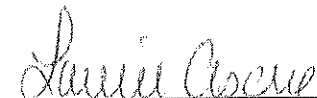
Appraised value for damages and violations of any provision of this Chapter shall be determined by the Urban Forester using the latest revision of the "Guide for Plant Appraisal" as published by the International Society of Arboriculture.

SECTION 3. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF DECEMBER 2018.

  
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Mayor, City of Kirkwood

ATTEST:

  
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City Clerk

1<sup>st</sup> Reading: December 6, 2018

2<sup>nd</sup> Reading: December 20, 2018

BILL 10696

ORDINANCE 10540

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 13, ARTICLE III. DIVISION 2, "CONTRACTOR'S BUSINESS LICENSES."

WHEREAS, a Tree Code has been drafted and upon adoption other Chapters and Sections of the Kirkwood Code of Ordinances will need to be amended to fall in line with the new Tree Code, and

WHEREAS, it is recommended that the amendments include adding a subsection (b) to Section 13-101. "Business license required for contractors" and adding a subsection (d) to Section 13-104. "Fee, requirements for issuance" regarding arboriculture contractor's license.

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

SECTION 1. The Kirkwood Code of Ordinances, Chapter 13, Article III, Division 2 "Contractor's Business Licenses", Section 13-101 "Business license required for contractors" is hereby amended as follows:

**Section 13-101. Business license required for contractors.**

*No contractor or builder engaged in work requiring City permits, including arboricultural work, shall do business within the City until such contractor shall obtain a contractor's business license from the City. "Contractor" shall include sign erectors, general contractors, electrical contractors, mechanical contractors, plumbing contractors, and other businesses performing work within the City which require a permit from the Building Commissioner. "Arboricultural contractors" shall include any person or entity for hire; performing pruning, removals, cutting, spraying, injecting, protection, appraisals, or assessments requiring a permit from the Building Commissioner or Urban Forester.*

SECTION 2. The Kirkwood Code of Ordinances, Chapter 13, Article III, Division 2 "Contractor's Business Licenses", Section 13-104 "Fee, requirements for issuance" is hereby amended as follows:

**Section 13-104. Fee; requirements for issuance.**

A contractor's business license, allowing the name holder to perform contracting in the City of Kirkwood, shall be issued by the Building Commissioner upon:

(a) Payment of a fee as set by the Council by resolution from time to time; and[1]

[1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

(b) Receipt of an original certificate of insurance issued to the City of Kirkwood certifying the contractor has coverage as follows:

<b>Workers Compensation (if more than one employee)</b>	<b>State Requirements</b>
General commercial liability, per occurrence	\$300,000
Products/completed operations, aggregate	\$300,000

and



(c) Review by the Building Commissioner that applicant has not committed any act defined herein as a prohibited act or unlawful act.

(d) *An arboricultural contractor's business license, allowing the name holder to perform contracting in the City of Kirkwood, shall be issued by the Building Commissioner upon:*

(1) *Payment of a fee of fifty US dollars (\$50.00); and*

(2) *Receipt of an original Certificate of Insurance issued to the City of Kirkwood certifying the contractor has coverage as follows:*

***Workers Compensation***

***(if more than one employee)***

*General commercial liability, per occurrence*

*Products/completed operations, aggregate*

***State Requirements***

***\$2,000,000***

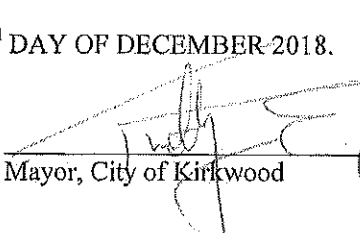
***\$1,000,000***

(3) *Certificate of professional accreditation from the International Society of Arboriculture and*

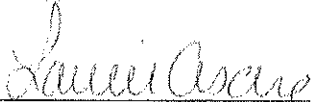
(4) *Review by the Building Commissioner that applicant has not committed any act defined herein as prohibited act or unlawful act.*

SECTION 3. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF DECEMBER 2018.

  
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Mayor, City of Kirkwood

ATTEST:

  
\_\_\_\_\_  
City Clerk

City Clerk

1<sup>st</sup> Reading: December 6, 2018

2<sup>nd</sup> Reading: December 20, 2018

BILL 10697

ORDINANCE 10541

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 2, ARTICLE VII, DIVISION 6, "KIRKWOOD URBAN FORESTRY COMMISSION", SECTION 2-569. "CREATED; PURPOSE."

WHEREAS, a Tree Code has been drafted and upon adoption other Chapters and Sections of the Kirkwood Code of Ordinances will need to be amended to fall in line with the new Tree Code, and

WHEREAS, it is recommended that Section 2-569 be deleted in its entirety and a new Section 2-569 be inserted.

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

SECTION 1. The Kirkwood Code of Ordinances, Chapter 2, Article VII, Division 6 "Kirkwood Urban Forestry Commission", is hereby amended by deleting Section 2-569 entirely and inserting a new Section 2-569 as follows:

**Section 2-569. Created; Purpose.**

A Kirkwood Urban Forestry Commission is hereby created and established for the purpose of promoting high standards of long-term planning, maintenance, and perpetuation of Kirkwood's publicly owned trees and encouraging responsible management and maintenance of privately owned trees. The Commission shall review current City ordinances and practices that affect planting, maintenance, protection, and removal of trees on public and private property and advise the Urban Forester on suggested amendments, provided however, the scope of the Commission's review of tree management practices on private property shall be strictly limited to issues of public health, safety, public nuisance, or the protection of trees during construction. The Commission shall advise the City Council, Urban Forester, and the public of the current state of the City's urban forest and recommend to the Urban Forester any needed action on the part of the City to improve or preserve it.

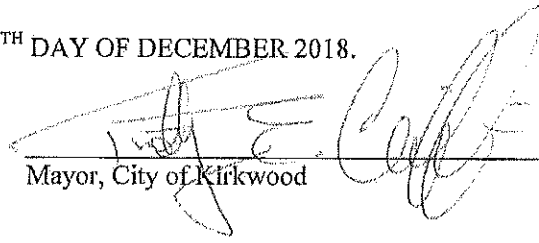
The Commission shall perform the following duties:

- Annually organize with the assistance of city staff as required, an annual Arbor Day celebration.
- Advocate urban forestry activities at the Greentree Festival and other similar events.
- Prepare an annual report designated the *Kirkwood Urban Forest Report* that details urban forest activities for the past year and suggests activities for the coming year. Said report shall be made to the City Council by October 31 of each year.
- Assist the Urban Forester in updating and maintaining the Kirkwood Tree Manual.
- The Commission is empowered, upon approval of the City Council, to assist the Urban Forester in preparing grant applications to obtain funds for urban forestry activities.
- The Commission shall make recommendations to the Urban Forester on a Permit to Remove in accordance with Section 24-3.3(b) of the Kirkwood Code of Ordinances.
- The Commission may serve as an additional conduit for technical information or advice as requested by city staff, other city boards or commissions, citizens, and developers regarding appropriate strategies of long-term planning, maintenance, and perpetuation of Kirkwood's publicly owned trees.

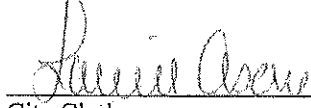
- The Commission shall work with the Urban Forester to develop and promote an appropriate tree planting program for trees on City property, excluding however, property officially designated as public parks.
- The Commission may organize education programs for the benefit of Kirkwood citizens, and assist the Urban Forester in developing a cooperative program of coordinating utility easement maintenance with appropriate urban forestry strategies.

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF DECEMBER 2018.

  
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Mayor, City of Kirkwood

ATTEST:

  
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City Clerk

1<sup>st</sup> Reading: December 6, 2018  
2<sup>nd</sup> Reading: December 20, 2018

BILL 10698

ORDINANCE 10542

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 16 "NUISANCES", SECTION 16-2. "NUISANCES ENUMERATED."

WHEREAS, a Tree Code has been drafted and upon adoption other Chapters and Sections of the Kirkwood Code of Ordinances will need to be amended to fall in line with the new Tree Code, and

WHEREAS, it is recommended that Section 16-2 be amended by amending subsection (2) under subsection (d) by changing the vertical clearance from ten feet to twelve feet, deleting subsections (e) and (f) and inserting language as subsection (6) under subsection (d).

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

SECTION 1. The Kirkwood Code of Ordinances, Chapter 16 "Nuisances", Section 16-2. "Nuisances enumerated" is hereby amended as follows:

**Section 16-2. Nuisances enumerated.**

In addition to any other act declared to be a nuisance by Missouri law, this Code or other ordinances of the City, nuisances are hereby defined and declared to be as follows:

(a) Any pond or pool of stagnant water upon any premises. Stagnant water shall be any accumulation found in an improperly drained pool, pond, or collector that has not dispersed within five days.

(b) Any foul or dirty water or liquid when discharged through any drain, pipe or spout, or thrown into or upon any street, thoroughfare or premises to the injury or hazard of the public.

(c) Any carcass of a dead animal which the owner or keeper thereof permits to remain within the limits of this City for more than 24 hours after death.

(d) Trees, shrubbery, bushes, or vegetation on private property, including easements, and Public Trees as defined in Chapter 24 shall be trimmed as specified below to prevent obstruction of the view and movements of vehicles and pedestrians.

- (1) A vertical clearance of at least seven feet above any paved sidewalk, walkway, or public right-of-way used by the public as indicated by a worn path, or a walkway on a public easement.
- (2) A vertical clearance of at least ~~ten (10)~~ *twelve (12)* feet beyond the edge of the street and 14 feet above the center of any traffic lane.
- (3) To provide a clear line of sight for at least 75 feet on the approach side for all street traffic signals or traffic control postings.
- (4) To provide a visually clear triangular space at street intersections, determined by a diagonal line connecting two points measured 25 feet equidistant from the intersection of the edge of the intersecting streets.

(5) To provide easy and clear visibility, operation, and use of a fire hydrant or other utility or structure.

(6) *Any dead trees, limbs or shrubs which are hazardous or injurious to the public.*

~~(e) Any dead trees, limbs or shrubs which are hazardous or injurious to the public.~~

~~(f) Any trees or shrubbery which interfere with the operation or visibility of a fire hydrant.~~

~~(g)~~ (e) Any obstruction, including dirt, mud, snow, ice or filth, caused or permitted on any sidewalk to the danger of the public. Any stones, dirt, garbage, filth, vegetable matter or other articles allowed to remain on or in any street, alley, sidewalk or other public place or on any public premises. (As used herein, "public premises" includes any area open to the general public either privately or publicly owned.)

~~(h)~~ (f) Any stable, animal pen, poultry yard or coop permitted to be in such condition as to become offensive or injurious to the public.

~~(i)~~ (g) Any cellar, vault, private drain, pool, privy, sewer, cistern or sinkhole upon any premises permitted to become foul, offensive, hazardous or injurious to the public health.

~~(j)~~ (h) Leghold traps placed outdoors on public or private property for the capture of animals.

~~(k)~~ (i) Any weeds on private property over seven inches in height. As used herein, the term "private property" includes property owned privately but subject to a public easement, including dedicated street rights-of-way.

~~(l)~~ (j) Any vegetation on private property at any location whatsoever when such vegetation by direct contact or by proximity thereto can cause irritation or lesion to the skin of any person.

~~(m)~~ (k) Any area which is not covered by lawn or vegetation and not treated to prevent dust or the blowing and scattering of dust particles into the air. Any altered surface of the ground which would be liable to deposit mud or harmful silt, or create erosion or damage on public property.

~~(n)~~ (l) Any litter allowed to remain longer than one week on any occupied private property or any open or vacant private property within the City. As used herein, the term "litter" includes garbage, trash, refuse, junk, tree limbs or other putrescible or nonputrescible solid waste.

~~(o)~~ (m) Any substance, vegetable or mineral, which emits an offensive, noxious, putrid or unhealthy odor in the neighborhood.

~~(p)~~ (n) Each act or thing done or made, permitted, allowed or continued on any property, public or private, by any person or corporation, their agents or servants to the damage or injury of any of the inhabitants of this City, and not hereinbefore specified.

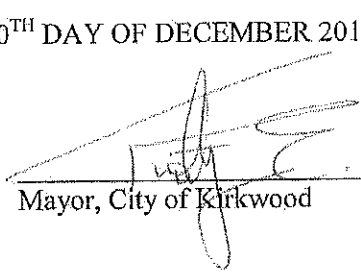
~~(q)~~ (o) Any lot or land if it has the presence of debris of any kind, including, but not limited to, weed cuttings, cut and fallen trees and shrubs, overgrown vegetation and noxious weeds that are seven inches or more in height, rubbish and trash, lumber not piled or stacked 12 inches off of the ground, rocks or bricks, tin, steel, parts of derelict cars or trucks, broken furniture, any flammable material that may endanger public safety, or any material which is unhealthy or unsafe and declared to be a public nuisance.

~~(r)~~ (p) Stagnant water and all items containing stagnant water. All stagnant water and items containing stagnant water which can serve as a breeding ground for mosquitoes are hereby declared to be a public nuisance. This includes, but is not limited to, bottles, cans, tires, buckets, birdbaths, clogged gutters or any other places or objects containing stagnant water. This subsection shall not apply to ditches, drainage ways, detention basins, lakes, streams and natural land formations where water may collect, nor apply to treated water such as swimming pools. "Stagnant water" is defined

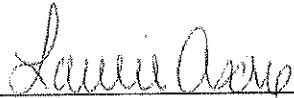
for this subsection as water, which is not moving, or not flowing, or is motionless; and may become foul, stale or promote the breeding of mosquitoes

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF DECEMBER 2018.

  
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Mayor, City of Kirkwood

ATTEST:

  
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City Clerk  
1<sup>st</sup> Reading: December 6, 2018  
2<sup>nd</sup> Reading: December 20, 2018