

ORDINANCE NO. _____ - 2024

AN ORDINANCE AMENDING SECTION 17B-1 OF THE LEXINGTON-FAYETTE URBAN COUNTY CODE OF ORDINANCES TO DEFINE "ROOT ZONE"; AMENDING SECTION 17B-2 OF THE CODE TO REMOVE THE RECOMMENDED SPACING BETWEEN STREET TREES AND OTHER TREES AND REDUCING THE REQUIRED DISTANCE BETWEEN STREET TREES AND STOP OR YIELD SIGNS; AMENDING SECTION 17B-3 OF THE CODE TO REMOVE GENDERED LANGUAGE AND INCLUDE REFERENCE TO THE STREET TREE'S STUMP IN THE REQUIREMENTS OF THE SECTION; AMENDING SECTION 17B-4 OF THE CODE TO INCLUDE PROHIBITIONS ON PARKING A VEHICLE OR OTHERWISE STORING MATERIALS ON THE ROOT ZONE OF A STREET TREE IN SUCH A WAY AS TO COMPACT THE SOIL; AMENDING SECTION 17B-6 OF THE CODE TO CLARIFY THAT APPEALS OF CIVIL CITATIONS ISSUED PURSUANT TO SECTION 17B-12 OF THE CODE ARE NOT HEARD BY THE TREE BOARD; REPEALING SECTION 17B-11 OF THE CODE; AND AMENDING SECTION 17B-12 OF THE CODE TO INCREASE THE ADMINISTRATIVE FEE AND PENALTY FOR VIOLATIONS OF CHAPTER 17B OF THE CODE TO ONE HUNDRED AND FIFTY DOLLARS (\$150.00) AND AN AMOUNT NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) PER VIOLATION, RESPECTIVELY, AND TO PROVIDE FACTORS FROM WHICH THE PENALTY DETERMINATION IS MADE; ALL EFFECTIVE UPON PASSAGE OF COUNCIL.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 17B-1 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-1. - Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section:

- (1) Street tree shall mean any tree within the urban county government right-of-way or designated tree planting easement, excepting those trees regulated pursuant to article 18 of the Zoning Ordinance or the Downtown Street Tree Ordinance.
- (2) Large tree shall mean any tree species which normally attains a height in excess of fifty (50) feet at maturity.
- (3) Medium tree shall mean any tree species which normally attains a height between fifteen (15) feet and fifty (50) feet at maturity.
- (4) Small tree shall mean any tree species which normally attains a height between ten (10) feet and fifteen (15) feet at maturity.
- (5) Person shall mean any person, corporation, partnership, company, contracting firm or other entity, including those employed under a contract with the urban county government.
- (6) Tree planting easement shall mean a planting area with a minimum width of ten (10) feet located immediately adjacent and parallel to the curb or edge of pavement or in a designated easement per an approved development plan.
- (7) Hazardous tree shall mean any street tree that is dead, diseased, or insect infested such that it poses a health threat to neighboring trees or creates a threat to the public safety or to property.
- (8) Root zone shall mean the circular area on the ground around the trunk of the tree extending to or just outside the dripline or the edge of the canopy that contains the majority of the tree's roots.

Section 2 – That Section 17B-2 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-2. - Tree planting.

- (a) Any person may plant a tree within the urban county government right-of-way immediately adjacent to their property upon obtaining a permit from the division of environmental services.
- (b) The permit shall be granted providing the following conditions are met:
 - (1) The tree to be planted is not an unacceptable tree species, as provided in section 17B-10 of this chapter.
 - (2) The minimum size of the planting area complies with the requirements of Article 6-10 of the Land Subdivision Regulations.
 - (3) If installed between the sidewalk and the street, the tree location is to be at least fifty (50) feet in advance of stop or yield signs, twenty-five (25) feet in advance of any other standard regulatory or warning signs, and ten (10) feet from fire hydrants or utility poles.
 - (4) Only small trees shall be permitted for planting in areas where overhead utility wires are located or where utility easements for overhead utility wires have been dedicated.
 - (5) The property owner shall call Kentucky 811 to locate utilities and check proposed planting sites for compliance with requirements relating to utilities, obstructions and potential interference with future construction, including, but not limited to, compliance with KRS 367.4901 et seq.
 - (6) The property owner shall maintain the tree after the tree is planted. Maintenance shall include watering, pruning, removal of dead or diseased limbs and insect control, as necessary. The property owner also shall be responsible for any damage to existing utilities caused by the tree installation.
- (c) The division of environmental services may waive any of the conditions in granting a permit where such action would promote the preservation of the health, integrity or appearance of an area's tree population. Further, where such action would promote the public welfare, the urban forester or his designee may condition the granting of a permit upon the applicant's agreement to plant only a certain species of tree.
- (d) The division of environmental services may deny a permit although all conditions have been met, but only for just cause based on circumstances unique to the property affected which would create a threat to public welfare and/or safety if the proposed planting were permitted.
- (e) The decision of the division of environmental services shall be made within fourteen (14) days after an application is filed. Failure to issue such decision within said time period shall have the same effect as approval of the application.

Section 3 – That Section 17B-3 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-3. - Tree removal.

- (a) No person shall remove a tree larger than three (3) inches in diameter, measured at a point four and one-half (4½) feet above the ground within the urban county government right-of-way without obtaining a permit from the division of environmental services.

(b) The permit shall be granted provided the tree to be removed is dead or dying.

(c) The division of environmental services may issue permits for the removal of live trees only in special circumstances. Instances where a permit for the removal of a live tree may be issued include, but are not limited to, the following:

- (1) The tree is a threat to the public safety;
- (2) The tree is a threat to the health of other trees in the community; or
- (3) The tree is to be replaced by a more desirable tree.

(d) If the division of environmental services determines that a street tree is a hazardous tree, the division can order the property owner to remove the hazardous tree, including the associated stump, in a timely manner, as determined by the division of environmental services at the property owner's expense.

(e) The division of environmental services can order the property owner to remove any street tree, including the associated stump, planted without a permit, or in violation of permit conditions.

(f) Nothing contained in this chapter is intended to infringe on the authority of the urban county engineer, pursuant to KRS 179.070, to remove trees from the right-of-way of any publicly dedicated road when the trees become a hazard to traffic. If a tree is removed from the right-of-way under the authority of the urban county engineer as provided in KRS 179.070, the adjacent property owner shall bear the cost and responsibility of removing any associated stump.

(g) Except as provided in subsection (e) above, any person who removes a tree within the urban county government right-of-way shall replace the removed tree in accordance with the requirements set forth in section 17B-2(b). This requirement may be waived by the division of environmental services where replacement would be inappropriate under the standards set forth in section 17B-2(b).

Section 4 – That Section 17B-4 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-4. - Abuse or damage of street trees.

No person shall:

- (a) intentionally damage, cut, poison, carve, transplant or remove any tree without a permit as required by section 17B-3 of this chapter;
- (b) park any motor vehicle or otherwise store materials of any kind, that may compact the soil in the root zone;
- (c) attach any rope, wire, nails, advertising posters or other contrivance to any street tree;
- (d) allow any gaseous liquid, herbicide or solid substance which is harmful to trees to come in contact with them; or
- (e) set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.

Section 5 – That Section 17B-6 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-6. - Tree board.

(a) A tree board, appointed by the mayor, shall be established. The tree board shall consist of fifteen (15) members including the following:

- (1) Eight (8) concerned and interested residents of Lexington, Fayette County, two (2) of whom shall be professionals in arboriculture;
- (2) The commissioner of environmental quality and public works, or their representative;
- (3) The director of parks and recreation, or their representative;
- (4) The director of engineering, or their representative;
- (5) A member of the urban county council, or their representative;
- (6) The director of planning or their representative;
- (7) The urban forester; and
- (8) The director of streets and roads or their representative.

(b) The membership of the commissioner of environmental quality and public works, the director of parks and recreation, the director of engineering, the director of planning, the urban forester, and the director of streets and roads, or their respective representatives shall serve ex officio. The urban county council member or their representative shall serve for the duration of their term in office. All other tree board members shall serve terms of four (4) years. All tree board members may only serve two (2) consecutive full terms. Members who have served two (2) consecutive full terms shall not be eligible for re-appointment to the tree board until the lapse of twelve (12) months from the end of their second consecutive full term.

(c) In the event a vacancy shall occur during the term of any appointed member, a successor shall be appointed for the unexpired portion of the term. All members of the tree board shall serve without pay.

(d) The tree board shall establish the board's rules, regulations and procedures and arrange for the holding of meetings on a regular basis, with not less than ten (10) meetings per calendar year.

(e) The duties of the tree board shall be as follows:

- (1) To promote urban forestry and advise appropriate municipal agencies on arboricultural matters.
- (2) To hear all appeals from any decision of the division of environmental services in the application or interpretation of any of the provisions of this chapter as authorized herein, notwithstanding appeals from civil citations issued pursuant to Section 17B-12 of the Code of Ordinances, and to adopt rules for the conduct of such hearings, which rules shall uniformly apply to all such appeals and shall provide that both the appellant and the appellee shall have the right to:
 - (i) Offer and examine witnesses and present evidence in support of their cases;
 - (ii) Cross-examine witnesses and offer evidence to refute evidence offered in opposition; and
 - (iii) Following the hearing of such appeals, receive the board's decision reduced to writing, such decision to contain the findings of fact based upon evidence produced at the hearing.

Section 6 – Section 17B-11 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is repealed but reserved.

Section 7 – That Section 17B-12 of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-12. - Violation.

Any violation of this chapter may be enforced through the issuance of a civil citation. Such civil citations shall be construed to provide an additional or supplemental means of obtaining compliance with this chapter. All citations issued pursuant to this chapter shall be issued by the citation officers authorized to issue such citations by section 14-10 of the Code of Ordinances and shall be referred to the infrastructure hearing board with the citations and the civil process to conform to Chapter 2B of the Code of Ordinances.

(a) Prior to the issuance of the first civil citation for a violation of a section of this chapter, the urban county government shall issue a notice of violation, which shall specify a time period of at least twenty-four (24) hours for the correction of the violation. The time period specified shall not impose unrealistic requirements under prevailing weather and site conditions. If the violation is not corrected as specified in the written notice, the urban county government may issue a civil citation. A notice of violation shall precede the issuance of the first civil citation for such offense unless the violation is deemed to be a serious threat to the public health, safety and welfare; or, if in the absence of immediate action, the effects of the continuation of the violation would be irreparable or irreversible. No notice of violation shall be required prior to the issuance of a citation for any offense which occurs after the first citation is issued to a person or entity.

(b) Appeal of the civil citation may be made to the infrastructure hearing board, as provided in sections 17B-5 and 16-76 of the Code of Ordinances.

(c) The maximum civil fine that may be imposed for a violation of this chapter is two thousand five hundred dollars (\$2,500.00), and each day on which any such violation shall continue shall be deemed a separate offense. The amount of the maximum civil fine for each violation shall be specified in a civil citation issued pursuant to this section.

(d) The compliance history of the violator, the degree of environmental harm caused by the violation, and whether the violation demonstrates a willful and knowing disregard for the environment or the requirements of chapter 17B shall be considered when determining the amount of the civil fine. The division of environmental services may consider a reduction in the assessed civil penalty amount considering the violator's good faith efforts to correct the violation as stipulated in the citation.

(e) When there is reason to believe that the violation poses a serious threat to the public health, safety or welfare; or in situations where continuation of the violation would be irreparable or irreversible, the government may, without further notice, proceed to abate the conditions. In such cases, the government may, in addition to any fine imposed herein, charge the responsible person, persons or entities with the cost of the abatement, including equipment expense, disposal fee, if any, and an administrative fee of one hundred fifty dollars (\$150.00). Citations, if issued, shall not preclude the government from abating the conditions and billing the responsible person, persons or entities for the cost of abatement.

(f) The urban county government may file a lien for civil fines, administrative fees, and abatements, in accordance with section 2B-9 of the Code of Ordinances and KRS 65.8835.

(g) Nothing contained herein shall prohibit the urban county government from enforcement of this chapter by any means authorized by law.

Section 8 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
PUBLISHED:
0671-24:EPT:4858-9357-2513, v. 6