

AN ORDINANCE AMENDING ARTICLES 5, 8, 18 AND 26 OF THE ZONING ORDINANCE AND ARTICLE 6 OF THE LAND SUBDIVISION REGULATIONS TO TRANSFER DUTIES RELATING TO THE ADMINISTRATION OF LANDSCAPE REGULATIONS FROM THE DIVISION OF BUILDING INSPECTION TO THE DIVISION OF ENVIRONMENTAL SERVICES.

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Articles 5, 8, 18 and 26 of the Zoning Ordinance and Article 6 of the Land Subdivision Regulations to transfer duties relating to the administration of landscape regulations from the Division of Building Inspection to the Division of Environmental Services; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on June 22, 2017; and

WHEREAS, the Planning Commission did recommend APPROVAL of the text amendment by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

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

Section 1 – That Article 5-7 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

5-7 COMPLAINTS REGARDING VIOLATIONS – Whenever a violation of the provisions of this Zoning Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Director of the Division of Planning or the Director's authorized agent. The Director shall initiate an investigation of each case. Complaints involving building code matters shall be referred to the Divisions of Building Inspection or Code Enforcement, depending upon appropriate jurisdiction; or, in the case of landscape matters regulated under Article 18 of this Zoning Ordinance, the complaint shall be referred to the Director of the Division of Environmental Services for investigation and, if warranted, enforcement action; or, in the case of land disturbance permits authorized under Chapter 16 of the Code of Ordinances, the complaint shall be referred to the Urban County Engineer or the Urban County Engineer's authorized agent for investigation and, if warranted, enforcement action. The Directors of the Divisions of Planning, Building Inspection, Environmental Services, or the Urban County Engineer, or their authorized agents (as appropriate) shall record properly such complaint, immediately

investigate, and take action thereon as provided by this Zoning Ordinance.

Section 2 – That Article 8-1(d)5.a of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

8-1(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

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5. Commercial greenhouses, but only when all of the following conditions are met:

- a. A 20-foot wide landscape easement shall be provided around all buildings and parking areas or at the perimeter of the tract of land, containing one tree per thirty (30) feet of length or fraction thereof, plus a continuous 6-foot high planting, hedge, fence, wall or earth mound. Plantings shall be both deciduous and non-deciduous. A detailed site plan showing proposed screening shall be provided, and a performance bond or letter of credit shall be posted with the Division of Environmental Services to ensure completion of screening. New screening shall not be required to be planted when existing screening is substantially similar to the screening mentioned above.

Section 3 – That Article 18-3(a) of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended, in part, to read as follows:

18-3(a) PERIMETER LANDSCAPING REQUIREMENTS – Unless otherwise provided, landscape materials shall be installed to provide a minimum of fifty percent (50%) winter opacity and a seventy percent (70%) summer opacity, between one (1) foot above finished grade level to the top of the required planting, hedge, fence, wall, or earth mound within four (4) years after installation. The required landscaping shall be provided along the property perimeter in designated landscape buffer areas (LBAs) as shown in the chart Section 18-3(a)(1) or adjacent to the vehicular use area as shown in the chart Section 18-3(a)(2). A "Planting Manual" and a "Plant Materials List" shall be maintained by the Division of Planning and available in the offices of the Division of Environmental Services, to provide more detailed information on the acceptable plant material.

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18-3(a)(3) WHO PROVIDES LANDSCAPE BUFFER AREA – The landscape buffer area and material required adjacent to any vehicular use area under Section 18-3(a)(2) shall be provided by the person in charge of or in control of the property whether as owner, lessee, tenant, occupant or otherwise (hereinafter referred to as "owner"), unless the authority building the street has fully met all requirements on the street right-of-way. When adjacent to other common boundaries, the landscape buffer area and materials (a) may be placed on either adjoining parcel, or astride the boundary, if both are owned and being processed by the same owner; or (b) generally shall be placed on the activity listed under Column A of 18-3(a)(1) and 18-3(a)(2) when adjoining parcels have different owners; or (c) may be placed astride the boundary of adjoining parcels having different owners if a

written agreement, signed by both owners, is filed with the Division of Environmental Services as a public record; or (d) shall be placed on the activity or parcel being processed when adjoining property is already developed with the exception of 18-3(a)(1) lines 4 and 5; or (e) shall not be required along the common boundary if the requirements of this Article have been fully complied with on the adjoining property, in fulfillment of the requirements of this ordinance.

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18-3(a)(6) STREET TREES IN THE RIGHT-OF-WAY – Trees required as a part of the vehicular use area perimeter landscaping may be placed on the right-of-way adjoining such vehicular use area when approved by the Division of Environmental Services and the Street Tree Coordination Committee. Where street trees required by the Subdivision Regulations have already been planted in the right-of-way, such trees may be substituted for an equal number of VUA perimeter trees. Written permission from the authority having jurisdiction over the right-of-way shall be submitted by the developer prior to the approval of a landscape plan which utilizes the right-of-way for VUA perimeter landscaping. The Division of Environmental Services shall permit the required VUA perimeter trees to be located in the right-of-way only if there is sufficient area for such trees to grow to maturity.

18-3(a)(7) EXISTING LANDSCAPE MATERIAL – Existing landscape material which is proposed to be used to fulfill landscape requirements shall be shown on the required plan, and any material in satisfactory condition may be used to satisfy these requirements in whole or in part when, in the opinion of the Division of Environmental Services such material meets the requirements and achieves the objectives of this Article. Existing healthy trees from Group "A" or "B" of the Plant List may be substituted for trees required for property or vehicular use area perimeter landscaping, or for interior landscaping by using the following criteria: a 6" to 12" caliper tree surrounded by a minimum of one hundred fifty (150) square feet of landscape area may be substituted for two (2) new trees of the required minimum size; a 12" to 24" caliper tree surrounded by a minimum of two hundred fifty (250) square feet of landscape area may be substituted for three (3) new trees of the required minimum size; a 24" or greater caliper tree surrounded by a minimum of three hundred (300) square feet of landscape area may be substituted for four (4) new trees of the required minimum size.

Section 4 – That Article 18-4 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government be and hereby is amended, in part, to read as follows:

18-4 LANDSCAPE MATERIALS – The landscaping materials shall consist of the following, and are described in more detail in the Planting Manual and Plant Materials List available at the Division of Planning and the Division of Environmental Services.

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18-4(c) PLANTS – All plant materials shall be living plants (artificial plants are prohibited) and shall meet the following

requirements:

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18-4(c)(4) SHRUBS AND HEDGES – Shall be at least twelve (12) inches with three (3) canes for Section 18-3(a)(2) lines 3 and 5, at least two (2) feet with three (3) canes for all other lines of Section 18-3(a)(2), and three (3) feet with four (4) canes for Section 18-3(a)(1) in average height when installed. After approval by the Division of Environmental Services and with the exception of the 12" plants, shrubs and hedges may be pruned to one-half the height in accordance with accepted horticultural practices. All plants shall conform to opacity, mature height, and other requirements within four (4) years after the date of the final approval of each planting or replanting. Privet (*Ligustrum* species) cannot meet the opacity requirements and may not be used to satisfy the requirements of this Article. The height of the planting shall be measured from the level of the surface of the vehicular use area at the edge closest to the screening.

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18-4(d) MAINTENANCE AND INSTALLATION – All landscaping required by this Article shall be installed and maintained by the owner in compliance with the standards specified in Section 4 of the Planting Manual and the American National Standards (ANSI A300) and, as applicable, the requirements specified in Lexington-Fayette Urban County Government Ordinances No. 1-91 and No. 34-92 (Man o' War Boulevard), No. 134-89 (Old Frankfort Pike), No. 133-89 (Georgetown Road), No. 213-83 and No. 266-87 (Richmond Road), No. 42-98 (Downtown Street Trees), and No. 85-2008 (Newtown Pike), all available in the offices of the Division of Environmental Services; or any other future amendments to these ordinances. Any landscape material that fails to meet the minimum requirements of this Article at the time of installation shall be removed and replaced with acceptable materials. The person in charge of, or in control of, the property, whether as owner, lessee, tenant, occupant, or otherwise, shall be responsible for the continued proper maintenance of all landscaping materials and shall keep them in a proper, neat and orderly appearance, free from refuse and debris, at all times. All unhealthy or dead plant materials shall be replaced within one year, or by the next planting period, whichever comes first; while other defective landscape material shall be replaced or repaired within three (3) months. Sizes for the above-mentioned replacements shall be as provided in Section 18-4(c)(2). Topping trees or the severe cutting of limbs to stubs larger than three (3) inches in diameter within the tree crown to such a degree as to remove the normal canopy shall not be considered proper or permitted for the maintenance of trees as required by this Article. Except as provided above, the removal of landscape materials requires the approval of the Division of Environmental Services. When trees are removed, other than as permitted above, such trees shall either be replaced with the necessary number of 2½-inch caliper trees to equal the total caliper of trees removed, or with trees of the same caliper as those that were removed. All replacement trees shall be planted in the

original location unless an alternate location is approved by the Division of Environmental Services. Violation of these installation and maintenance provisions shall be grounds for the Division of Building Inspection to refuse a building occupancy permit, or for the Division of Environmental Services to require replacement of landscape material or institute legal proceedings to enforce the provisions of this Article.

Section 5 – That Article 18-5 of the Zoning Ordinance of the Lexington-Fayette

Urban County Government be and hereby is amended to read as follows:

18-5 PLAN SUBMISSION AND APPROVAL – Whenever any property is affected by these landscape requirements, the property owner or developer shall submit a landscape plan to the Division of Environmental Services. For any property where a vehicular use area for twenty (20) or more vehicles or 6,000 or more square feet is provided, the landscape plan shall be prepared and sealed by an architect, landscape architect or engineer licensed to practice in the State of Kentucky. For any property, where a vehicular use area for fifty (50) or more vehicles is provided, the landscape plan shall be prepared and sealed by a landscape architect licensed to practice in the State of Kentucky. The requirements of this Article shall be followed in approving or disapproving any landscape plan required by this Article. Landscape plans also may be submitted as part of any development plan required by the Planning Commission. Such "combination plans", however, shall be first submitted to the -Division of Environmental Services for its approval or disapproval of the landscape portion of the plan.

18-5(a) PLAN CONTENT – The contents of the plan shall include the following: (a) plot plan, drawn to an easily readable scale, showing and labeling by name and dimensions, all existing and proposed property lines; easements; buildings and other structures; vehicular use areas (including parking stalls, driveways, service areas, square footage, etc.); water outlets and landscape material (including botanical name and common name, installation size, on center planting dimensions where applicable, and quantities for all plants used); (b) existing and proposed contours at 2-foot intervals; (c) typical elevations and/or cross-sections as may be required; (d) title block with the pertinent names and addresses (property owner, person drawing plan, and person installing landscape material), scale, date, north arrow (generally orient plan so that north is to top of plan), and zone; (e) requirements or an approved tree protection plan applicable to the site, per Article 26, Tree Protection Standards.

18-5(b) BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY – Where landscaping is required, no building permit shall be issued until the required landscaping plan has been submitted and approved; and no Certificate of Occupancy shall be issued until the landscaping is completed as certified by an on-site inspection by the Division of Environmental Services. If the required landscaping has not been completed and a Temporary Certificate of Occupancy is issued under Section 5-4(a) of this Ordinance, a full cash bond or irrevocable letter of credit from a banking institution with offices in Fayette County shall be posted at that time. The amount of the bond or letter of credit shall be based upon the

cost of the proper installation of the uninstalled landscape material shown in the submitted plan, with the cost certified by a landscape contractor. The amount of the bond or letter of credit shall also include an inflation factor and/or administrative contingency cost of no more than twenty-five percent (25%) of the base cost, as determined by the Division of Environmental Services, to complete the work in the event of the foreclosure of the bond or letter of credit.

18-5(c) POSTING OF A FULL CASH BOND OR IRREVOCABLE LETTER OF CREDIT – After a full cash bond or irrevocable letter of credit has been posted, the landscaping material required in the approved landscaping plan shall be installed within three (3) months after the date of posting the full cash bond or irrevocable letter of credit. A one-month extension of the planting period may be granted by the Division of Environmental Services upon a demonstration by the property owner or developer that such an extension is warranted because of adverse weather conditions or unavailability of required plant materials. No more than three (3) such one-month extensions may be granted. The full cash performance bond or irrevocable letter of credit shall be called if the required landscaping has not been installed by the end of the approved planting period, and the Division of Environmental Services shall apply the proceeds of the bond or letter of credit to have the work completed.

Section 6 – That Article 18-6 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

18-6 PLANTING MANUAL AND PLANT MATERIALS LIST – Developers shall refer to the Planting Manual and Plant Materials List, which are available at the offices of the Division of Planning and the Division of Environmental Services for minimal requirements to use in meeting the provisions of this Article. Any materials that are not on the Plant Materials List shall be considered on an individual basis to determine the suitability of the specific plant in the proposed location. A plant not on the Plant Materials List shall be permitted only upon the expressed approval of the Division of Environmental Services.

Section 7 – That Article 18-7 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended, in part, to read as follows:

18-7 VARIANCES – Any landscape plan submitted to, and disapproved by the Division of Environmental Services because it does not meet the requirements of this Article, may be appealed within sixty (60) days of such action to the Board of Adjustment.

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18-7(e) RECORDING – Whenever the committee makes a recommendation, such recommendation shall be forwarded to the Board of Adjustment, the Division of Environmental Services, and be properly described in the committee's minutes.

Section 8 – That Article 26-8 of the Zoning Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended, in part, to read as follows:

26-8 APPROVAL OF TREE PROTECTION PLAN (TPP) – The proposed TPP shall be reviewed by the Urban Forester and his recommendation sent to the Planning Commission prior to their action of the related major Subdivision or Final Development Plan and any requested waivers in connection with Article 26. No grading, filling, or other construction activity shall commence on the property until the TPP has been approved by the Planning Commission. The following note shall be shown on all final plats: “In accordance with plans approved by the Lexington-Fayette Urban County Government, ‘x number’ of trees or tree canopy (whichever is more applicable) is/are required to be planted on this property per the approved tree protection plan specifications.”

26-8(a) LANDSCAPE PLANS – Where landscape plans under Article 18 of the Zoning Ordinance are required for a site with an approved TPP, the TPP requirements and specifications shall be incorporated into the required Landscape Plan and under the supervision of the Division of Environmental Services, and shall thereby be subject to all provisions and requirements under Article 18.

26-8(b) NO LANDSCAPE PLANS – Where TPPs do not involve a required landscape plan, the TPP shall be the controlling document for the location of TPAs, tree installations, and specifications contained therein. The same Planning Commission review and approval procedure shall apply to any proposed amendments of an approved TPP not involving a required landscape plan under Article 18.

Section 9 – That Article 6-10(c)(1) of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

6-10(c) STREET PLANTINGS ON ARTERIAL STREETS - Street plantings shall be required for any double frontage lot in any zone, except A-R, A-B, A-N and A-U, that adjoins an arterial street not maintained by the state and which does not provide direct access to the adjoining property.

6-10(c)(1) TYPE, NUMBER, AND LOCATION – A continuous 6' high hedge shall be required with the same species to be used for the entire frontage of the development. Where possible, the hedge should be planted in the right-of-way, and 3' from the right-of-way fence. Trees should be planted in the right-of-way with the exact location to be approved by the Traffic Engineer and the Commercial Landscape Examiner. All trees are to be planted a minimum of 10' from the right-of-way fence. Where there is less than 10' between the right-of-way fence and the sidewalk, or where there is no sidewalk, less than 10' feet between the right-of-way fence and the curb line of the arterial street, no trees are required. No street tree shall be located in the right-of-way within fifty (50) feet of the intersection. Trees shall be required as described in Table B. (The Planting Manual and Plant Materials List shall be used to meet the minimum requirements set forth herein).

Where, due to site restrictions, the planting cannot be placed in the right-of-way, the Commission may allow the landscaping to be placed on the adjacent property.

Section 10 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

Clerk of Urban County Council

PUBLISHED:

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