

ORDINANCE NO. \_\_\_\_\_ - 2023

AN ORDINANCE AMENDING CHAPTER 17B OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, RELATING TO STREET TREES, AS FOLLOWS: AMENDING SUBSECTIONS 17B-1(2), (3), (4), AND (6) TO AMEND THE DEFINITIONS OF LARGE TREE, MEDIUM TREE, SMALL TREE, AND TREE PLANTING EASEMENT; AMENDING SECTION 17B-2 TO DESIGNATE THE DIVISION OF ENVIRONMENTAL SERVICES AS THE AUTHORITY RESPONSIBLE FOR ISSUING TREE PLANTING PERMITS AND TO PROVIDE REQUIREMENTS FOR TREE PLANTINGS RELATIVE TO REGULATORY SIGNS AND OVERHEAD UTILITIES; AMENDING SECTION 17B-3 TO DESIGNATE THE DIVISION OF ENVIRONMENTAL SERVICES AS THE AUTHORITY RESPONSIBLE FOR ISSUING TREE REMOVAL PERMITS; AMENDING SECTION 17B-4 TO PROHIBIT THE ATTACHMENT OF WIRE OR NAILS TO STREET TREES; AMENDING SECTION 17B-5 TO DESCRIBE JURISDICTION FOR APPEALS TO THE TREE BOARD AND TO THE INFRASTRUCTURE HEARING BOARD; AMENDING SECTION 17B-6 RELATING TO THE COMPOSITION, MEMBERSHIP TERM, MEETINGS, AND DUTIES OF THE TREE BOARD; AMENDING SECTION 17B-7 TO PROVIDE THAT TREE TOPPING SHALL ONLY BE PERMITTED BY WRITTEN APPROVAL OF THE URBAN FORESTER OR THEIR DESIGNEE; AMENDING SECTION 17B-9 TO REQUIRE REPLACEMENT TREES TO MEET STREET TREE REQUIREMENTS; REPEALING SECTION 17B-11 AND AMENDING SECTION 17B-10 TO DESCRIBE SUGGESTED TREE SPECIES AND UNACCEPTABLE TREE SPECIES; RENUMBERING SECTION 17B-12 AS SECTION 17B-11; RENUMBERING SECTION 17B-13 AS SECTION 17B-12 AND AMENDING SECTION 17B-12 TO PROVIDE THAT APPEALS FROM CITATIONS FOR VIOLATIONS OF CHAPTER 17B OF THE CODE SHALL BE TAKEN TO THE INFRASTRUCTURE HEARING BOARD, WITH ENFORCEMENT PROCEDURES TO CONFORM TO CHAPTER 2B OF THE CODE; AND AMENDING SECTION 16-76 OF THE CODE TO DESIGNATE THE INFRASTRUCTURE HEARING BOARD AS THE CODE ENFORCEMENT BOARD HEARING MATTERS RELATING TO ENFORCEMENT OF ORDINANCES BY THE DIVISION OF ENVIRONMENTAL SERVICES.

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

Section 1 – That Section 17B-1 of the 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 ~~full-grown~~ 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 street right-of-way or directly adjacent to the sidewalk, if applicable.
- (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.

Section 2 – That Section 17B-2 of the 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 recommended spacing between this and other trees is forty-five (45) feet (large tree), thirty-five (35) feet (medium tree), and twenty-five (25) feet (small tree).
  - (3) The minimum size of the planting area complies with the requirements of Article 6-10 of the Land Subdivision Regulations.
  - (4) If installed between the sidewalk and the street, the tree location is to be at least seventy-five (75) 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.

- (5) 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.
  - (6) 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.
  - (7) 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 Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-3. - Tree removal.

- (a) No person may 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, he can order the property owner to remove the hazardous tree 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 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.
- (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 Code of Ordinances be and hereby is amended to read as follows:

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

No person shall intentionally damage, cut, poison, carve, transplant or remove any tree without a permit as required by section 17B-3 of this chapter; nor shall any person attach any rope, wire, nails, advertising posters or other contrivance to any street tree; allow any gaseous liquid, herbicide or solid substance which is harmful to trees to come in contact with them; or 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-5 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-5. - Appeals.

Except as otherwise provided herein, any person adversely affected by any decision of the division of environmental services in the application or interpretation of any of the provisions of this chapter may appeal the decision of the division of environmental services to the tree board established by this chapter.

(a) The appeal provided herein shall be taken by filing written notice thereof with the clerk of the urban county council, with a copy thereof to be filed with the urban forester within ten (10) days from notification of the decision. The written notice provided for herein shall recite the reasons why the appeal is being taken.

(b) The appeal provided herein shall be heard at the first tree board meeting following the filing of this appeal. The urban forester, as a member of the tree board, shall abstain from voting on the appeal.

(c) Notwithstanding the foregoing, all appeals from civil citations issued pursuant to Section 17B-12 of the Code of Ordinances shall be taken by filing an appeal with the infrastructure hearing board, with the citations and civil process to conform to Section 17B-12 and Chapter 2B of the Code of Ordinances.

Section 6 – That Section 17B-6 of the 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 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 7 – That Section 17B-7 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-7. - Tree topping.

- (a) It shall be unlawful as a normal practice for any person to top any tree within the urban county right-of-way or designated tree planting easement. "Topping" is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or trees under utility wires or other obstruction where other pruning practices are impractical, can be exempted from this section only by written approval of the urban forester or their designee.
- (b) It shall be unlawful to prune any tree within the urban county right-of-way or designated tree planting easement in such a way as to remove the normal canopy or twenty-five (25) percent or more of the crown for the purpose of increasing visibility of outdoor signs or building facades.

Section 8 – That Section 17B-9 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-9. - Tree protection.

All street trees within ten (10) feet of any excavation or construction of any building, structure, street work, or sidewalk, shall be guarded with a protective barrier of at least eight (8) feet square. All building materials, dirt or other debris shall be kept outside the barrier. Any trees damaged or removed due to excavation or construction shall be replaced in the original location or as close to the original location as possible by the person doing the excavation or construction. Replacement trees shall at a minimum meet original street tree requirements.

Section 9 – That Section 17B-10 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 17B-10. – Suggested and unacceptable tree species.

Trees with characteristics that make them appropriate for use in the public right-of-way and which are recommended as suggested street trees can be found in the Planting Manual for the Lexington-Fayette Urban County Government. Characteristics that make trees unacceptable for use in public rights-of-way and are not permitted for street trees include, but are not limited to:

- (1) Disease or insect problems;
- (2) Dirty, drooping branches, objectionable fruit or bark;
- (3) Weak-wooded, apt to lose large branches in wind or with age;
- (4) Unpredictable or irregular habits that may develop;
- (5) Root problems, shallow and destructive roots; or
- (6) Unsafe, dangerously thorny or poisonous.

Section 10 – That Section 17B-11 of the Code of Ordinances be and hereby is repealed.

Section 11 – That Section 17B-12 of the Code of Ordinances be and hereby is renumbered as Section 17B-11 of the Code of Ordinances.

Section 12 – That Section 17B-13 of the Code of Ordinances be and hereby is renumbered as Section 17B-12, and 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) For violations of this chapter, the civil fines associated with the issuance of a civil citation are as follows:
  - (1) Upon issuance of the first citation within any 12-month period the civil fine shall be a maximum of two hundred dollars (\$200.00).
  - (2) The civil fine imposed upon the issuance of the second citation for violation of the same section of this chapter within any 12-month period shall be a maximum of three hundred dollars (\$300.00).

- (3) The civil fine imposed upon issuance of the third citation for violation of the same section of this chapter within any 12-month period shall be a maximum of four hundred fifty dollars (\$450.00).
- (4) The civil fine imposed upon issuance of the fourth or more citation for violation of the same section of this chapter within any 12-month period shall be a maximum fine of five hundred dollars (\$500.00).
- (d) 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 seventy-five dollars (\$75.00). The urban county government may file a lien for such abatement, in accordance with section 2B-9 of the Code of Ordinances and KRS 65.8835. 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.
- (e) Nothing contained herein shall prohibit the urban county government from enforcement of this chapter by any means authorized by law.

Section 13 – That Section 16-76 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 16-76. - Hearing boards; establishment; powers.

Two (2) hearing boards are hereby created pursuant to KRS 65.8801 through 65.8840, one (1) to be known and referred to as the infrastructure hearing board and one (1) to be known and referred to as the environmental hearing board. The infrastructure hearing board shall hear matters regarding enforcement of ordinances by the divisions of engineering, water quality, planning, traffic engineering, environmental services, and streets and roads, as specified in applicable code sections, and those portions of the zoning ordinance and subdivision regulations subject to enforcement through civil citations. The environmental hearing board shall hear matters regarding enforcement of

ordinances by the division of solid waste and shall also hear matters relating to the enforcement of section 14-105 of the Code which classifies littering as a civil offense. The boards shall operate under and be subject to the provisions of chapter 2B of the Code.

Section 14 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

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MAYOR

ATTEST:

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CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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