

## ARTICLE 5: ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

### Sec. 5-1. Administration and enforcement.

The Directors of the Divisions of Planning, ~~and~~ Building Inspection, ~~and~~ Environmental Services, and the Directors' authorized agents of the Lexington-Fayette Urban County Government, shall administer and enforce this Zoning Ordinance, except where other Divisions of the Lexington-Fayette Urban County Government have been assigned such responsibility as provided herein. The Director of Building Inspection, or the Director's authorized agent, shall promptly investigate all written complaints of violations and record all findings and actions in the official records, which shall be available in the Offices of the Division holding enforcement responsibility. The Directors shall use the best efforts to prevent violations. If the Directors, or the Directors' agent, finds any of the provisions of this Zoning Ordinance are being violated, the Director of Building Inspection, or the Director's agent, may cite the violator to district court, may assess civil penalties through an administrative process, may seek a restraining order or injunctive relief, may order the stoppage of work which is determined to have created or contributed to conditions that pose a threat to the public health, safety or welfare, or may order the action necessary to correct the violation and to enforce the provisions of this Zoning Ordinance. The Directors of Planning, ~~and~~ Building Inspection, ~~and~~ Environmental Services shall make records of all official actions relating to the administration and enforcement of the provisions of this Zoning Ordinance, including, but not limited to, written records of all complaints and actions taken with regard thereto, all violations discovered with actions taken thereto, and the final disposition of all such matters.

- (a) *Right of Entry.* The Director of Building Inspection ~~and~~ Environmental Services, or their authorized agent is authorized to enter upon property, land, structures or buildings, at reasonable times for the purpose of inspecting, ascertaining and causing to be corrected any violation of this Zoning Ordinance. The Director, ~~or their authorized agent~~, is hereby empowered to prescribe, adopt, promulgate, and enforce reasonable rules, regulations, and/or guidelines pertaining to administrative inspections of properties for zoning violations which are not otherwise inconsistent with the Zoning Ordinance and constitutional restrictions of unreasonable searches and seizures. Whenever the Director or their authorized agent is denied entrance to any property, land, structure or building, they may apply to the district court for a warrant allowing entrance and inspection. This authority shall apply to the interior of occupied, private dwellings only when the inspecting agent has reason to believe that a zoning violation exists in the dwelling.

(Code 1983, § 5-1; Ord. No. 263-83, § 1, 12-15-1983; Ord. No. 371-2000, § 1, 12-14-2000; Ord. No. 268-2004, § 1, 11-4-2004; Ord. No. 122-2011, § 3, 9-29-2011; Ord. No. 53-2013, § 1, 5-23-2013; Ord. No. 005-2023, § 1, 1-31-2023)

### Sec. 5-8. Penalties for violations.

Unless otherwise provided herein, violations of the provisions of this Zoning Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants or variances or conditional uses) shall constitute an offense for which the penalty shall be as follows:

- (a) Any person who so violates this Zoning Ordinance or fails to comply with any of its requirements, except as provided in Subsection 5-8(b) of this section, herein below, shall upon conviction thereof be fined not less than \$10.00 but no more than \$500.00 for each conviction. Each day of violation shall constitute a

separate offense.

- (b) Any person shall, upon conviction, be fined not less than \$100.00 but no more than \$500.00 for each lot or parcel which was the subject of sale or transfer or a contract for sale or transfer, where such sale or transfer, or contract therefor, constitutes a violation of this Zoning Ordinance.

(Code 1983, § 5-8; Ord. No. 263-83, § 1, 12-15-1983; Ord. No. 268-2004, § 1, 11-4-2004)

## Sec. 5-9. Civil citations and civil penalties.

To the extent allowable by law, any violations of this Zoning Ordinance may be enforced through the issuance of a civil citation pursuant to KRS 65.8801 et seq., as an additional or supplemental means of obtaining compliance. All citations issued pursuant to this Zoning Ordinance shall be issued by the citation officers cited in Section 14-10 of the Code of Ordinances and referred to the Infrastructure Hearing Board with the citations and the civil process to conform to Sections 16-76 through 16-83 of the Code of Ordinances.

- (a) *Issuance of a Civil Citation.* Prior to the issuance of the first civil citation for a violation of a section of this Zoning Ordinance, 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) *Appeals of Civil Citations.* Appeal of the civil citation may be made to the Infrastructure Hearing Board as provided in Section 16-79~~8~~ of the Code of Ordinances.
  - (c) *Civil Penalties.* ~~For violation of this Zoning Ordinance, the civil fines associated with the issuance of a civil citation are as follows: A civil citation and associated civil penalty shall not exceed \$500.00 per violation of this Zoning Ordinance. The compliance history of the violator, the degree of violation, and whether the violation demonstrates a willful and knowing disregard for the requirements of the Zoning Ordinance, shall be considered when determining the amount of the civil fine.~~
    - ~~(1) Upon issuance of the first citation within any twelve-month (12-month) period shall be a maximum of \$200.00, but shall be \$75.00 if the person committing the offense does not appeal the citation in accordance with Section 16-79 of the Code of Ordinances.~~
    - ~~(2) The civil fine imposed upon the issuance of the second citation for the same section of this Zoning Ordinance within any twelve-month (12-month) period shall be a maximum of \$300.00, but shall be \$150.00 if the person committing the offense does not appeal the citation in accordance with Section 16-79 of the Code of Ordinances.~~
    - ~~(3) The civil fine imposed upon issuance of the third citation for the same section of this Zoning Ordinance within any twelve-month (12-month) period shall be a maximum of \$450.00, but shall be \$225.00 if the person committing the offense does not appeal the citation in accordance with Section 16-79 of the Code of Ordinances.~~
    - ~~(4) The civil fine imposed upon issuance of the fourth or more citation for the same section of this Zoning Ordinance within any twelve-month (12-month) period shall be a maximum of~~
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~~\$500.00, but shall be \$300.00 if the person committing the offense does not appeal the citation in accordance with Section 16-79 of the Code of Ordinances.~~

- (d) *Abatement.* When there is reason to believe that the violation poses a serious threat to the public health, safety or welfare; or in situations where damage resulting from continuation of the violation would be irreparable or irreversible; or if the violation represents a continuing public nuisance, the government may, without further notice, proceed to abate the conditions. In the case of a continuing public nuisance, abatement involving the removal of structures or materials shall only take place after a civil citation has been issued and has not been appealed to the Infrastructure Hearing Board, or after an appealed civil citation has been upheld by the Infrastructure Hearing Board. The government may, in addition to any fine imposed herein, charge the responsible person, persons or entities with the cost of abatement, including equipment expense, disposal fee, if any and an administrative fee of ~~\$75.00~~ 150.00. The Urban County Government may file a lien for such abatement, in accordance with Section 16-81 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) *Enforcement.* Nothing contained herein shall prohibit the Urban County Government from enforcement of this Zoning Ordinance by any means authorized by law.

(Code 1983, § 5-9; Ord. No. 268-2004, § 1, 11-4-2004; Ord. No. 98-2011, § 1, 8-25-2011; Ord. No. 105-2013, § 1, 9-12-2013)

## ARTICLE 18: LANDSCAPE AND LAND USE BUFFERS

### Sec. 18-1. Intent.

The intent of this Article is to improve the appearance of vehicular use areas (VUAs) and property abutting public rights-of-way; to require buffering between incompatible land uses; and to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature, and artificial light glare. This Article is established in accordance with the Goals, Objectives, and Policies of the Comprehensive Plan.

(Code 1983, § 18-1; Ord. No. 113-2022, § 12, 10-27-2022)

### Sec. 18-2. Sites affected.

- (a) *New Sites.* No new site development, building, or structure shall hereafter be constructed or vehicular use area created or used unless landscaping is provided as required by the provisions of this Article.
- (b) *Existing Sites.* Any development that expands, moves, removes, or reconstructs the building, structure, or vehicular use area (VUA) by thirty (30%) percent or more of a previously approved development plan by the Planning Commission shall comply with the provisions of this Article. No building, structure, or vehicular use area (VUA) shall be expanded, moved, or removed and/or reconstructed unless the minimum landscaping required by the provision of this Article is provided for the property to the extent of its alteration or expansion, but not for the entire property.
- (c) *Change of Use.* ~~No use shall be changed to another use for which the Zoning Ordinance requires additional parking over and above that required for the previous use, unless vehicular use area perimeter landscaping as required by this Article is provided for such additional parking. The provisions of this section shall be effective regardless of whether or not new construction is necessary to meet the parking requirements for the new uses. Where new construction will not be necessary to meet the parking requirements, such additional required parking shall be deemed to be on the perimeter for as much as possible of the existing vehicular use area. Where the previous use had no required parking, perimeter landscaping shall be provided for the entire vehicular use area serving the new use.~~ Interior landscaping shall not be required where only the use of the property is changed and no new construction or reconstruction is proposed.
- (d) *Change of Zone.* No use of an existing building, structure, or vehicular use area shall be commenced subsequent to a change in zoning unless property perimeter landscaping as required herein has been provided.

(Code 1983, § 18-2)

### Sec. 18-3. Where landscape materials required.

This section describes the minimum requirements that shall be met in regard to interior and perimeter landscaping for vehicular use areas, perimeter landscaping for incompatible land use areas, and landscaping for service areas.

- (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 in Subsection (a)(1) of this section or adjacent to the vehicular use area as shown ~~in the chart~~ in Subsection (a)(2) of this section. A "Planting Manual" ~~and a "Plant Materials List"~~ shall be maintained by the Division of Planning Environmental Services and available in the offices of the Division of Environmental Services and the Division of Planning, to provide more detailed information on the acceptable plant material.

(1) *Property Perimeter Requirements* ~~:-~~ :

	A.	B.	C.	D.
	<b>When the following...</b>	<b>Adjoins the following...</b>	<b>A minimum buffer area<sup>1</sup> of this average width (with <del>eight</del> <del>three</del> feet as the least dimension) is required.<sup>3 4</sup></b>	<b>Which will contain this material, to achieve opacity required.<sup>5 4 6 8</sup></b>
1.	Any M-1P zone.	Any property in any zone other than M-1P.	Ten feet adjacent to all common boundaries, including street frontage.	One tree/40 feet of linear boundary, OFT <sup>2</sup> , from Group A, B, or C of Plant List plus continuous six feet high planting, hedge, fence, wall or earth mound.
2.	Any office or business zone (except P-2).	Any residential zone.	15 feet adjacent to all common boundaries (located behind the building line) except street frontage <sup>7</sup> .	One tree/40 feet of linear boundary, OFT, from Group A or B only, plus, 1) a double <u>staggered</u> row of six feet high hedge or 2) a six feet high fence, wall or earth mound.
3.	Any industrial or P-2 zone.	Any residential, office, or business zone.	15 feet adjacent to all common boundaries except street frontage <sup>7 9 7</sup> .	Same as 2D.
4.	Any double frontage lot (as defined by the Subdivision Regulations) in any zone <del>except A-U, A-R, A-N and A-B</del> unless the lot is used for a vehicular sales facility <del>or a service station</del> .	Any state maintained freeway or arterial ( <u>major or minor</u> ) street not providing direct access to the property.	20 feet for residential zones and ten feet for all other zones adjacent to freeway or arterial ( <u>major or minor</u> ).	<u>Double staggered row of trees One tree/30 feet, every 30 feet</u> OFT, Group A or B, plus continuous six (6) feet high planting, hedge, wall, fence (not to exceed eight feet in height at street grade) or earth mound. Such plantings are to be shown on a unified plan for the development.
5.	Any zone except agricultural and industrial zones.	Railroads (except spur tracks and along sight triangles)	Same as 6C, adjacent to railroad boundaries.	Same as 2D.

6.	Utility substation, junk yards, landfills, sewage plants, sewage pump stations, transfer stations or similar uses.	Any property boundary, including street rights-of-way.	15 feet adjacent to all boundaries, except only five feet for utility substations and sewage pump stations measured adjacent to the enclosure. <sup>7</sup>	Same as 2D.
7.	Any R-1T, R-3, R-4 or R-5 zone except when developed as buildings for single-family or two-family occupancy.	Any R-1A, R-1B, R-1C, R-1D, or R-2 zone.	<del>Six</del> <u>Eight</u> feet adjacent to all common boundaries except street frontage.	One tree/40 feet of linear boundary, OFT <sup>2</sup> , from Group A, B, or C of Plant List plus a continuous six feet high planting, hedge, fence, wall, or earthmound.
8.	Any <del>business, office, or industrial non-agricultural</del> zone.	Any A-R, <u>A-B, and A-N</u> zone.	15 feet adjacent to all common boundaries except street frontage.	<del>Double row staggered of trees every 30 feet of linear boundary. One tree/40 feet of linear boundary, OFT<sup>2</sup>, of native species from Group A, B, or C, a of Plant List plus continuous six feet high planting or hedge or, 1) one evergreen tree/15 feet of linear boundary, OFT, planted 15 feet o.k.; or 2) one tree/20 feet of linear boundary, OFT, that is a combination of 50 percent deciduous, native species trees from Group A and 50 percent evergreen trees or small flowering trees.</del>
9.	Any residential, business, office, or industrial zone.	Urban Service Area boundary.	<del>Five</del> <u>Ten</u> feet adjacent to all common boundaries except street frontage. <sup>6,5</sup>	Same as 1D, except use <u>only native tree</u> species from Group A.
10.	Any cemetery use, whether private or public.	Any property boundary, including street rights-of-way.	50 feet adjacent to all boundaries, as shown on a development plan or subdivision plan.	One tree/40 feet of linear boundary, <del>OFT, from Group A or one tree/30 feet</del> from Group <u>A or B</u> , plus continuous six feet high planting, or hedge, in addition to a wall or fence a minimum of three feet in height.

~~1.~~ 1. Grass or ground cover shall be planted on all portions of the landscape buffer area not occupied by other landscape material.

~~2.~~ 2. OFT means "or fraction thereof." Unless otherwise specified, trees do not have to be equally spaced,

but may be grouped.

~~3-3.~~ To determine required area of landscape buffer area, multiply required averaged width by length of common boundary. Using item 1C as an example, the ten (10) -foot average required width times an assumed one hundred (100) feet of common boundary equals one thousand (1,000) square feet of required landscape area. Thus, if some sections of the landscape buffer area are only three feet in width, other sections will have to be greater than ten feet in width in order to attain the required one thousand (1,000) square feet of landscape area.

~~4.~~ Five feet shall be the least dimension for any P-1, B-1, B-2, B-2A, B-2B, B-3, B-4, I-1, or I-2 zone with three feet as the least dimension for any other zone.

~~5-4.~~ A continuous planting of evergreen trees fifteen (15) feet o.c. shall be deemed to meet the requirements for trees and a continuous planting provided the trees meet the requirements of Section 18-4(c) and an opacity of seventy (70) percent is achieved.

~~6-5.~~ No map amendment request, major subdivision plan, or development plan shall be approved by the Planning Commission except in compliance with this section. However, the Planning Commission shall not require such landscaping adjoining the Urban Service Area boundary where any of the following conditions exist: major railroad lines, major water bodies (not including streams or farm ponds), publicly owned parks or open space, public property with a low intensity of use, or existing urban development along the Urban Service Area boundary.

~~7-6.~~ The 15-foot Landscape Buffer Area (LBA) may be reduced to five eight feet when used in conjunction with a six-foot high wall or fence.

~~8-7.~~ In situations where a slope occurs along a boundary, the required landscaping shall be placed (in relation to the slope) where it will most effectively screen the more intensive use from the adjoining property.

~~9-8.~~ In conjunction with the required development plan in a P-2 zone, the Planning Commission may permit portions of required perimeter planting to be reallocated to areas interior to the site, as per Article 8-24. This shall be permitted for areas where the Commission finds that such solid screening is not necessary or desirable to screen the P-2 uses from adjoining properties or right-of-way. For example, where such uses as open space areas, outdoor recreation areas, large open yards, and the like adjoin the abutting rights-of-way or adjoining properties, the Commission should consider utilizing the reallocation provision of this section.

(2) Vehicular Use Area Perimeter:

- (a) A vehicular use area (VUA) is any paved area, which is not exclusive to pedestrian use, containing more than eighteen hundred (1,800) square feet of area or used by five or more of any type of vehicle; whether moving or at rest, including, but not limited to, parking lots; loading and unloading areas; drive-through or drive-up window facilities; and sales and service areas. A driveway is considered part of a vehicular use area when adjacent to public streets or other vehicular use elements. Intervening curbs, sidewalks, or landscaping strips, etc., do not eliminate adjacency of VUA.
- (a) (b) A Vehicular Use Area Perimeter buffer shall be located between vehicular use areas containing 1,800 sq. ft. of area and/or used by five or more of any type of vehicle and any adjacent streets and adjacent properties excluding required sight clearances at driveways and ingress/egress locations. A vehicular use area perimeter buffer shall not be required when a vehicular use area is contiguous to a required property perimeter buffer and the screening intent of this Article is met.

(c) The Vehicular Use Area Perimeter requirements are in addition to the vegetative open

space requirements in Article 20.

~~(b)~~ (d) Vehicular Use Area Perimeter Requirements shall be required for all zones as follows:

1. The vehicular use area perimeter buffer shall be located along the perimeter of a vehicular use area and maintain a minimum average width of eight (8) feet, as measured from the outer edge of the vehicular use area. The buffer shall contain:
    - (i) A continuous hedge, fence, wall, or earthen mound, except where trees require breaks.
      - (a) Hedges shall be composed of a double staggered row of evergreen shrubs, or deciduous shrubs, ~~and/or warm season grasses~~ with a minimum planting height of twenty-four (24) thirty (30) inches.; All plants shall conform to opacity, minimum height of thirty-six (36) inches, and other requirements of the development plan within three (3) years after the date of the final approval of each planting or replanting.
        - (1) Up to ~~25~~ twenty-five percent (25%) may be deciduous.
        - (2) Plant material other than groundcover shall be located at least three (3) feet from the back edge of the curb where cars overhang.
      - (b) Fences or walls shall be opaque and shall be a minimum of four (4) feet in height.
    - (ii) One (1) canopy tree (Group A or B) per twenty-five (25) linear feet of the total perimeter of the parking area.
      - (a) Trees shall be located at least ~~four (4) six (6)~~ feet from the back edge of the curb where cars overhang.
      - (b) In areas where overhead utilities prevent the use of canopy trees (Group A or B), understory trees (Group C) may be substituted.
  - (3) *Who Provides Landscape Buffer Area.* The landscape buffer area and material required adjacent to any vehicular use area under Subsection (a) (2) of this section 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) Shall be placed on the property with the vehicular use area 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 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. A note indicating the maintenance of the shared boundary shall be included on the approved landscape plan.
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- (4) *Requirement Conflicts.* Whenever a parcel or activity falls under two (2) or more of the landscape requirements listed, the most stringent requirements will be enforced.
  - (5) *Landscaping in Easements.* The required landscape buffer area may be combined with a utility or other easements as long as all of the landscape requirements can be fully met, otherwise, the landscape buffer area shall be provided in addition to, and separate from, any easement. Trees to be planted in utility easements containing overhead lines shall be only those specified in the Plant List. Cars or other objects shall not overhang or otherwise intrude upon the required landscape buffer area more than three (3) feet, and wheel stops or curbs will be required.
  - (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. 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 vehicular use area 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 vehicular use area perimeter landscaping. The Division of Environmental Services shall permit the required vehicular use area perimeter trees to be located in the right-of-way only if there is sufficient area for such trees to grow to maturity.
  - (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 six-inch to twelve (12)-inch 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 twelve (12)-inch to twenty-four (24)-inch 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 twenty-four (24)-inch 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.
  - (8) *Landscaping at Driveway and Street Intersections.* To ensure that landscape materials do not constitute a driving hazard, a "sight triangle" will be observed at all street intersections or intersections of driveways with streets as required by Section 3-2 herein.
  - (9) *Joint Driveways and Common Vehicular Use Areas.* Vehicular use area screening shall not be required between a vehicular use area and the adjoining property where a property line divides a driveway used for common access to two (2) or more properties nor when a final development plan for the properties has been approved by the Planning Commission.
- (b) *Interior Landscaping for Vehicular Use Areas.* Any open vehicular use area containing five thousand (5,000) or more square feet of area, or fifteen (15) or more vehicular parking spaces, shall provide interior landscaping in addition to the previously required perimeter landscaping. Interior landscaping shall be peninsular or island types. Where a vehicular use area is altered or expanded to increase the size to five thousand (5,000) or more square feet of area, or fifteen (15) or more vehicular parking spaces, interior landscaping for the entire vehicular use area shall be provided and not merely to the extent of its alteration or expansion.
- (1) *Minimum Interior Landscape Area.* The minimum interior landscape area shall be ten (10%)
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percent of the total vehicular use area, excluding loading, unloading and storage areas in a Wholesale and Warehouse Business (B-4), Light Industrial (I-1), Heavy Industrial (I-2), or Economic Development (ED) zone.

- (2) *Minimum Interior Vehicular Use Area Tree Canopy.* Tree canopy equal to or exceeding thirty (30%) percent of the total vehicular use area shall be provided, including loading, unloading, and storage areas in a Wholesale and Warehouse Business (B-4), Light Industrial (I-1), Heavy Industrial (I-2), or Economic Development (ED) zone. In areas where overhead utilities prevent the use of canopy trees (Group A or B), understory trees (Group C) may be substituted. Mature trees shall have a clear trunk of at least eight (8) feet above the ground. Clustering is permitted within the interior landscape areas.
  - (3) *Alternative Tree Locations for loading/unloading zones or storage areas in the Wholesale and Warehouse Business (B-4), Light Industrial (I-1), Heavy Industrial (I-2), or Economic Development (ED) zones –* where required tree canopy cannot be accommodated within the required vehicular use area interior landscape areas the remaining trees shall be planted elsewhere on the site.
  - (4) *Location for Interior Landscape Areas.*
    - a. A maximum distance of ninety (90) feet between interior landscape areas.
    - b. At the end of every row of parking there shall be an interior landscape area.
    - c. Every other row of double-loaded parking requires a continuous interior landscape area.
  - (5) *Interior Landscape Area without Trees.*
    - a. Minimum Area - Seventy-two (72) square feet as measured from front of curb.
    - b. Plant Material Required - Low shrubs, ground cover, herbaceous cover or native warm season grass to cover at least seventy-five (75%) percent at maturity.
    - c. Vehicle Overhang – Plant material other than groundcover shall be located at least three (3) feet from the back edge of curb, where vehicles overhang.
  - (6) *Interior Landscape Area with Trees.*
    - a. Minimum Area – One Hundred and forty-four (144) square feet per tree as measured from front of curb.
    - b. Minimum Top Soil Depth – Three (3) feet.
    - c. Plant Material Required - At least one canopy tree from Group A or Group B; in areas where overhead utilities prevent the use of canopy trees (Group A or B), understory trees (Group C) may be substituted. Trees shall be under planted with low shrubs, ground cover, herbaceous cover or native warm season grass to cover at least seventy-five (75%) percent at maturity.
    - d. Vehicle Overhang – Trees shall be located at least four (4) feet from the back edge of curb, where vehicles overhang.
  - (7) *Landscaping for Service Structures.* All service structures shall be fully screened except when located in an R-1, R-2, B-4, I-1 or I-2 zone or when located more than thirty-five (35) feet above the established grade. Service structures in the B-4, I-1 or I-2 zone shall be fully screened when located within one hundred (100) feet of any zone except B-4, I-1 or I-2. For the purpose of this Article, service structures shall include propane tanks, air-conditioning units and condensers, electrical transformers and other equipment or elements providing service to a building or a site.
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- (a) *Location of Screening.* A continuous planting, hedge, fence, wall, or earth mound shall enclose any service structure on all sides unless such structure ~~must shall~~ be frequently moved, in which case screening on all but one (1) side is required. The average height of the screening material shall be one (1) foot more than the height of the enclosed structure, but shall not be required to exceed eight (8) feet in height. Whenever a service structure is located next to a building wall, perimeter landscaping material, or vehicular use area landscaping material, such walls or screening material may fulfill the screening requirement for that side of the service structure if that wall or screening material is of an average height sufficient to meet the height requirement set out in this section. Whenever service structures are screened by plant material, such material may count towards the fulfillment of required interior or perimeter landscaping. No interior landscaping shall be required within an area screened for service structures.
- (b) *Protection of Screening Material.* Whenever screening material is placed around any trash disposal unit or waste collection unit which is emptied or removed mechanically on a regularly occurring basis, a fixed barrier to contain the placement of the container shall be provided within the screening material on those sides where there is such material. The barrier shall be at least eighteen (18) inches from the material and shall be of sufficient strength to prevent possible damage to the screening when the container is moved or emptied. The minimum front opening of the screening material shall be twelve (12) feet to allow service vehicles access to the container.
- (8) *Screening of Outdoor Storage Areas.* All outdoor storage areas in the Wholesale and Warehouse Business (B-4), Light Industrial (I-1), and Heavy Industrial (I-2), or Economic Development (ED) zones shall be screened by a solid wall or fence not less than six (6) feet in height.
- (9) *Innovative Design Landscape Plan.* Interior landscaping requirements for vehicular use areas may be modified on a development plan without a variance in accordance with an Innovative Design Landscape Plan. An Innovative Design Landscape Plan shall be ~~prepared and sealed~~ certified by ~~an architect, landscape architect or engineer~~ licensed to practice in the State of Kentucky.

The plan may include, but is not limited to:

- a. Green infrastructure elements above and beyond existing requirements,
- b. Provisions for solar or alternative energy production,
- c. Vegetated areas that do not meet one or more of the above regulations, but still achieve the basic objectives of these regulations.

The plan shall be reviewed and approved by the Landscape Review Committee; and a finding shall be made by the Planning Commission and noted on the Final Development Plan. Such finding shall state that the proposed interior landscaping for the vehicular use area utilizes innovative landscape design elements to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature, and artificial light glare in accordance with Article 18-1.

(Code 1983, § 18-3; Ord. No. 201-86, § 1, 10-2-1986; Ord. No. 228-86, § 1, 10-21-1986; Ord. No. 153-87, § 1, 7-9-1987; Ord. No. 198-87, § 1, 8-27-1987; Ord. No. 7-88, § 1, 1-28-1988; Ord. No. 73-89, § 1, 5-4-1989; Ord. No. 248-90, § 1, 11-27-1990; Ord. No. 292-95, § 1, 12-7-1995; Ord. No. 211-99, § 1, 7-8-1999; Ord. No. 156-2004, § 1, 7-2-2004; Ord. No. 29-2006, § 3, 2-9-2006; Ord. No. 5-2010, § 2, 1-14-2010; Ord. No. 124-2017, § 3, 8-31-2017)

#### **Sec. 18-4. Landscape materials.**

The landscaping materials shall consist of the following, ~~and are as described in more detail~~ in the Planting Manual ~~and Plant Materials List~~ available at the Division of Planning and the Division of Environmental Services.

- (a) *Walls and Fences.* Walls shall be constructed of natural stone, brick or other weatherproof materials arranged in a linear, serpentine, or other alignment; while fences shall be constructed of wood or other weatherproof, durable materials generally used in the exterior construction of buildings. Fence posts shall be structurally stable based on the material used, and shall have a maximum spacing of 8' on center (o.c.). If wood is used, the posts shall be ~~four by four (4" x 4")~~ minimum. Posts shall be set in or anchored to crowned concrete footers at least six (6) inches larger in each direction than the post it supports. The base of the footer shall be at least twenty-four (24) inches below finished grade. If wood is used for any member, it shall be softwood treated with water-borne preservative to the American Wood Preservers Institute standard LP-2 for above ground use or LP-22 for ground contact use, or all heart redwood, or all heart cedar. All cut surfaces of pressure treated lumber shall be waterproofed. If another material is used, it shall be weatherproof. Slats are to be minimum one-half (~~.5~~ ½) inch in thickness and are to be placed on the outside of the fence unless the design is two-sided (shadow-box, etc.). All hardware is to be galvanized or otherwise rust-proofed. Wood horizontal members shall be installed bark-side up. Chain link fencing may not be used to meet the requirements of this Article. Chain link fencing may be installed in the required landscape area only if it is in addition to the required continuous planting, hedge, fence, wall or earth mound. ~~Unless otherwise specified, a~~All walls or fences shall have a minimum opacity of eighty (80) percent. Walls and fences allowed to meet the requirements of this Article shall not be used for the erection or display of any sign or other advertising device. Height limitations for walls and fences are regulated by zone and land use in Article 15-4(b).
- (b) *Earth Mounds.* Earth mounds shall be physical barriers which block or screen the view similar to a hedge, fence, or wall. Mounds shall be constructed with proper and adequate plant material to prevent erosion. A difference in elevation between areas requiring screening does not constitute an earth mound.
- (c) *Plants.* All plant materials shall be living plants ~~(artificial plants are prohibited)~~ and shall meet the following requirements:
- (1) *Quality.* Plant materials used in conformance with provision of this Zoning Ordinance shall conform to the ~~standards of the American Association of Nurserymen~~ Planting Manual and shall have passed ~~any~~all inspections required under State ~~and Local~~ regulations. Bare root plants, with the exception of shrubs and hedges, vines and ground covers shall be prohibited.
- (2) *Prohibited Plant Material.* ~~The use of invasive species, as listed in the Planting Manual, are prohibited. Artificial and other non-living materials shall not be considered acceptable to meet the landscaping requirements of this ordinance.~~
- (3) ~~(2).~~ *Deciduous Trees.* (Trees which normally shed their leaves in the Fall) - ~~Shall be species having an average mature crown spread of greater than fifteen (15) feet in Fayette County and having trunk(s) which can be maintained with over five (5) feet of clear wood in areas which have visibility requirements. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by grouping of the same so as to create the equivalent of a fifteen (15) crown spread.~~ A minimum of ten (10) feet overall height or a minimum caliper (trunk diameter, measured 6 inches above ground for trees up to 4 inches caliper) of at least one and three-fourths (~~1.75~~ ¾) inches immediately after planting shall be required. ~~Trees of species whose roots are known to cause damage to public roadways or other public works shall not be planted closer than fifteen (15) feet to such public works, unless the tree root system is completely contained within a barrier for which the minimum interior container dimensions shall be five feet square and five feet deep and for which the construction requirements shall be four (4) inches thick,~~

~~reinforced concrete. Columnar variety trees of any species are prohibited for all required landscaping per Article 18. may only be permitted upon the express approval of the Division of Environmental Services in accordance with Section 18-6. Any columnar variety tree shall be considered as a small tree and be granted new canopy credit of 100 square feet according to Article 26-5(e).~~

- (4) ~~(3).~~ *Evergreen Trees.* Evergreen trees shall be a minimum of five (5) feet high with a minimum caliper of one and one-half (1.5 ½) inches immediately after planting.
- (5) ~~(4).~~ *Shrubs and Hedges.* Shall be at least twenty-four (24) inches in height when installed. ~~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-inch plants, shrubs and hedges may be pruned to one-half (½) the height in accordance with accepted horticultural practices. All plants shall conform to opacity, mature a minimum height of thirty-six (36) inches, and other requirements within three four (34) 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.~~
- ~~(5) Vines. Shall be at least twelve (12) or fifteen (15) inches high at planting, and are generally used in conjunction with walls or fences.~~
- (6) *Grass or Ground Cover.* Grass of the fescus (Gramineae) or Bluegrass (Poaceae) family shall be planted in species normally grown as permanent lawns in Fayette County, and may be sodded, plugged, sprigged, or seeded; except in swales or other areas subject to erosion, where solid sod, erosion reducing net, or suitable mulch shall be used, nurse-grass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. Ground cover such as organic material shall be planted not more than fifteen (15) inches on center and in such a manner as to present a finished appearance and have seventy-five (75) percent of complete coverage after two (2) complete growing seasons. In certain cases, ground cover also may consist of rocks, pebbles, ~~sand,~~ and similar approved materials. when used in islands with trees. These materials are prohibited in all other areas.
- ~~(7) Mulch. Mulch use around trees, shrubs and other planting materials shall be placed at a depth of two (2) to four (4) inches and installed per the Planting Manual.~~
- (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 (1) 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 Subsection (c) (2) of this section. 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~~ are in violation of this Article. Except as provided above, the removal of required landscape materials ~~requires shall be approved the approval of by~~ the Division of Environmental Services. When trees are removed, other than as permitted above, such trees shall either be replaced with the necessary number two and one-half (2.5 ½)-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.

(Code 1983, § 18-4; Ord. No. 201-86, § 1, 10-2-1986; Ord. No. 198-87, § 1, 8-27-1987; Ord. No. 100-96, § 1, 6-27-1996; Ord. No. 11-2011, § 1, 2-3-2011; Ord. No. 124-2017, § 4, 8-31-2017; Ord. No. 45-2019, § 1, 2, 7-2-2019)

## Sec. 18-5. Plan submission and approval.

~~Whenever~~ When any property is affected by ~~these landscape requirements this Article,~~ the property owner or developer shall submit a landscape plan to the Division of Environmental Services and reviewed in coordination with Article 26 and Article 30 requirements. ~~For any property where a vehicular use area for twenty (20) or more vehicles or six thousand (6,000) or more square feet is provided, the landscape plan shall be prepared and sealed by an architect, a landscape architect or an 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, t~~The landscape plan shall be ~~prepared and sealed~~ certified 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 shall be submitted as part of in conjunction with any final 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.

- (a) Plan Content. ~~The contents~~ All landscape plans shall be legible and of the a size and scale not exceeding one (1) inch equals sixty (60) feet. A landscape plan shall include the following: information at a minimum:
- (1) Plot A title block containing the plan, drawn to an easily readable scale, showing and labeling by name and dimensions, name and address of developer and plan preparer, written and graphic scale, date, and north arrow 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);
  - (2) Existing and proposed contours at two foot intervals The boundary of the subject property, its record plan designation (if available), and the record plan name or owner's name of all adjoining property;
  - (3) Typical elevations and/or cross-sections as may be required All existing landscaping, locations of all existing trees, labeled using common and botanical plant names, and canopy and DBH size, environmentally sensitive areas, and natural features;
  - (4) 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 Proposed tree removal areas, including justification for removal and any mitigation measures to be taken;
- (5) ~~Requirements or an approved tree protection plan applicable to the site, per Article 26, Tree Protection Standards.~~ Topography with contour intervals not greater than five (5) feet;
  - (6) Location and arrangement of all existing and proposed buildings, structures, vehicular use areas (including driveways, service areas, parking areas and arrangement of spaces, point of ingress and egress, etc.) and pedestrian rights-of-way;
  - (7) Screening, landscaping and buffering, as required by this Article, recreational and other open space areas as required by Article 20;
  - (8) Location of blue-line or first-order streams and other water bodies, storm drainage areas, floodplains, conceptual drainage controls and stormwater retention and any other designated environmentally sensitive or geologic hazard area.
  - (9) A Tree Inventory Map (TIM) and an approved Tree Protection Plan (TPP) as required by Article 26.
  - (10) Site data table to include at a minimum:
    - a) Existing and proposed contours at two-foot intervals zone (if applicable);
    - b) Total site area in acres and square feet;
    - c) Total VUA in square feet;
    - d) Required and proposed VUA interior landscape area in square feet;
    - e) Required and proposed VUA interior trees;
    - f) VUA perimeter total length in linear feet;
    - g) Existing canopy coverage expresses in square feet and as a percentage of the property;
    - h) Required and proposed VUA perimeter trees;
    - i) Required and proposed VUA tree canopy in square feet and as a percentage;
    - j) Required and proposed total tree canopy in square feet, and
    - k) Total number of Group A, Group B, and Group C trees proposed to meet tree canopy area.
  - (11) Plant schedule:
    - a) A key matching the plant being specified (may be plant symbols or written);
    - b) Quantities of plants being specified;
    - c) Common plant and botanical plant names; and
    - d) Plant specifications including planting height, caliper, and spacing.
  - (12) Proposed limits of grading, cut and fill areas, equipment storage areas, retaining walls, proposed detention areas, lot locations and similar activities.
  - (13) All existing and proposed easement and location for utilities and other purposes shall be denoted clearly.
  - (14) Vegetation and Tree Protection Barriers (TPB).
  - (15) Applicable detail drawings, including but not limited to:
-

- a) Tree protection barrier;
- b) Plant installation to include trees, shrubs, perennials and ground covers; and
- c) Details for specialized installations.

(16) All conditions of a Board of Adjustment or Planning Commission action shall be denoted.

(17) Typical notes:

- a) Screening and landscaping shall be provided as required by Article 18 of the Zoning Ordinance.
- b) All plant material shall be installed according to the planting specifications of the Planting Manual.

- (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 Zoning 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~~.
- (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.

(Code 1983, § 18-5; Ord. No. 201-86, § 1, 10-2-1986; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 124-2017, § 5, 8-31-2017)

#### **Sec. 18-6. Planting manual ~~and plant materials list.~~**

The Urban County Government Planting Manual, as revised, modified, or amended from time to time, is incorporated herein by reference provided that in the event of any conflict between the Manual and this Article the provisions of this article shall apply. Developers shall refer to the Planting Manual ~~and Plant Materials List~~, which ~~are is~~ 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, as defined within the Planting Manual, 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.

(Code 1983, § 18-6; Ord. No. 124-2017, § 6, 8-31-2017)

### Sec. 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.

- ~~(a) — *Landscape Review Committee.* To aid the Board of Adjustment in the performance of the duties imposed by this Article, there is hereby created a Landscape Review Committee.~~
- ~~(b) — *Membership.* The Landscape Review Committee shall consist of five (5) members, to be appointed by the action of the Board of Adjustment. One member shall be a nurseryman or horticulturist, one (1) shall be a landscape architect, one (1) shall be a member of the Lexington Homebuilder's Association, one (1) shall be a member of the Urban County Tree Board and one (1) shall be a member of the Board of Adjustment. The term of the Board of Adjustment member shall be the same as his Board of Adjustment appointment. For others, at the initial appointment, one (1) shall be appointed for four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year. Subsequent appointments shall be for four (4) years.~~
- ~~(c) — *Organization and Meetings.* The Landscape Review Committee shall elect a chairman and any other officers deemed necessary, and keep official minutes of its meetings and recommendations. The Division of Planning shall perform staff service for the committee. Meetings shall be held at regularly scheduled times, or at the call of the chairman, or by joint action of two (2) members. In any case, notification shall be given to all members at least six (6) days prior to any meeting. A quorum shall consist of three (3) members, and official recommendations may be decided by the vote of two (2) members when a quorum is present.~~
- (a) ~~(d)~~ *Reviewing Variance Requests.* The Division of Planning shall review the plan in consultation with the Division of Environmental Services committee, in its review of said recommendations on a variance request, shall base its recommendations on all of the following criteria:
- (1) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone.
  - (2) The strict application of the provisions of this Zoning Ordinance would deprive the applicant of a reasonable use of the land or would create unnecessary hardship on the applicant.
  - (3) Such special circumstances are not the result of actions of the applicant subsequent to the adoption or amendment of this Zoning Ordinance.
  - (4) Reasons that the variance will adversely ~~effect~~ affect the public health, safety and welfare, and will not alter the essential character of the general vicinity, and will not cause a hazard or a nuisance to the public.
- ~~(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.~~

(Code 1983, § 18-7; Ord. No. 201-86, § 1, 10-2-1986; Ord. No. 124-2017, § 7, 8-31-2017)

### Sec. 18-8. Enforcement.

Violations of this Article 18 are subject to the penalty provisions in Section 5-8 and may be enforced through the issuance of a civil citation pursuant to Section 5-9.

(Code 1983, § 18-8; Ord. No. 11-2011, § 2, 2-3-2011)

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## ARTICLE 26: TREE PROTECTION STANDARDS

### Sec. 26-1. Purpose.

~~The Urban County Government recognizes the importance of trees as a vital component in counterbalancing the effects of an urban setting by providing cooling shade, by reducing noise and glare, by significant contribution to urban aesthetics, by improving air quality through carbon dioxide reduction and replenishing oxygen to the atmosphere, by improving surface drainage and reducing the effects of storm drainage flooding, by filtering non-point source pollution from area streams, by stabilizing soil thereby minimizing erosion, and providing habitat for wildlife. The purpose of this Article is to establish standards and procedures for countywide tree protection and planting in new developments and re-developments subject to review by the Planning Commission.~~

Lexington recognizes the importance of trees in urban environments, and their benefits, such as providing shade, reducing noise and glare, improving aesthetics and improving air quality. This Article establishes standards for tree protection and planting, particularly in new developments and re-developments subject to review by the Planning Commission. This Article also outlines minimum standards for tree protection and preservation, as well as the mitigation of environmental impacts caused by tree removal. The objective of this Article, is to bolster the urban environment by prioritizing tree protection and preservation, implementing measures to safeguard trees during and after development, and establishes guidelines for afforestation and reforestation.

(Code 1983, § 26-1; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 11-2011, § 3, 2-3-2011)

### Sec. 26-2. Interpretation and definitions.

The provisions of this Article shall be construed so as to liberally carry out its purpose in the creation and enhancement of an urban forest ~~in Lexington Fayette County~~. Words used in this Article shall be construed as having their common meaning or, when specified, as defined in other Articles in this Zoning Ordinance except as they may be defined herein below:

*Approved Tree List* means the list of replacement and landscape trees defined in the Planting Manual available at the Division of Planning and the Division of Environmental Services.

~~*Best Management Practices* means a practice or usually a combination of practices that are determined by the Division of Engineering regulations to be the most effective and practicable means of controlling point and nonpoint source pollutants at levels compatible with environmental quality goals.~~

*Bole* means the main stem of the tree structure also considered the trunk of the tree up to where main branches begin to stem.

*Buffer* means a vegetation strip or management zone of varying size, shape, and character maintained ~~along a stream, wetland, lake, road, recreation site, boundary, or different vegetative zone~~ to mitigate the impacts of actions on adjacent lands, ~~to enhance aesthetic effects, or use as a best management practice.~~

*Critical Root Zone (CRZ)* means a circular area surrounding a tree of which the center is the center of the bole of the tree. ~~and The radial measurement is one (1) foot per inch DBH of trees up to twenty-four (24) inches DBH and one and one-half (1½ .5) feet per inch DBH of trees over twenty-four (24) inches DBH.~~

*DBH (Diameter at Breast Height)* means the total cross-sectional diameter in inches of a tree measured at a height of four and one-half (4  $\frac{1}{2}$  .5) feet.

- (a) In case the trunk is at an angle, the trunk is measured perpendicular to the trunk four and one-half (4.5) feet along the center of the trunk axis.
- (b) When the trunk is on a slope, the trunk is measured four and one-half (4.5) feet up the trunk of the tree on the uphill side of the tree.
- (c) When the trunk branches or splits less than four and one-half (4.5) feet from the ground, the trunk is measured at the smallest cross-sectional diameter below the lowest branch.
- (d) For multi-stemmed trees, all the trunks are measured, adding the total diameter of the largest trunk to one-half (.5) the diameter of each additional trunk.

*Developable Area* means net acreage as defined at the time of preliminary subdivision plat and which may count ~~any and all~~ treed portions of designated Scenic Resource or Special Design Areas toward the tree canopy requirements herein.

*Distressed Tree* means a tree that has been weakened from disease, insect infestation, lightning or ~~wind-storm~~ ~~windstorm~~ injury, mechanical injury, or rotted wood and the prospect for long time survival is diminished. The distressed condition could be either visible, or not visible as ascertained by the Urban Forester or documented in writing by an ISA ~~e~~ Certified ~~a~~ Arborist.

*Drip line* means a vertical line from the horizontal extremity of the canopy of a tree to the ground. For trees with canopies set off-center, the drip line will be projected based upon the average diameter of the existing drip line using the tree trunk as its point of origin.

*Greenway* means a lineal open space system, as described and shown on the Comprehensive Plan or depicted in the Greenway Master Plan, that is designed to conserve floodplains, abandoned railroads, and ~~other-linkage opportunities~~ various connection spaces for use purposes such as stormwater management, safeguarding natural resources protection, supporting alternative transportation, facilitating recreation, wildlife corridors, adapting to climate changes, mitigating urban heat, promoting biodiversity, enhancing air quality, ensuring clean water, and nurturing healthy soils. This will contribute to the sustainable well-being of the urban community by fostering social, health, and economic benefits.

*Grubbing* means the effective removal of understory vegetation from the site.

*Healthy Tree* means a tree that does not exhibit any serious structural defects in the roots, bole or major branches, or does not exhibit any disease or insect infestation resulting in a structural defect, which under the normal range of environmental conditions at the site, may cause the tree to fail. ~~is relatively free from disease, insect infestation, lightning or windstorm injury, or rotted wood and that has prospects for long time survival.~~

*ISA Certified Arborist* means a professional certified by the International Society of Arboriculture (ISA).

*Perimeter Tree* means any tree bole located within fifteen five (15) feet of the outer property line of a parcel to be developed.

*Planting Manual* means the listing of acceptable plant materials and their planting specifications as referenced in Article 18 of this Zoning Ordinance.

*Remove or Removal* means the actual removal of a tree by digging up, cutting down, knocking down, or causing mortality by chemical or other artificial means, or through damaging by girdling, knicking, topping, root cutting, trenching, grading within the critical root zone, filling, soil compaction, or any other means which lead to a weakened or mortal state.

~~Residual Tree means a tree retained in its original state and left on site after development.~~

Riparian Buffer means the vegetative strip of land influenced by and surrounding a water body or wetland composed of overstory and understory vegetation which serves to maintain the integrity of the water system through shading, sediment filtration, aquatic habitat enhancement, erosion control, and groundwater flow regulation.

Riparian Species Trees means ~~that the vegetative species of~~ trees and understory which have adapted to conditions which constitute root systems surviving where there are ~~shallow high~~ water tables, and can exist adjacent to streams, creeks, rivers, lakes, and in wetlands or other saturated soil conditions. ~~Some examples of riparian species are Green Ash, Willow, Sycamore, Boxelder, and Cypress.~~

Significant Tree means a healthy tree, not identified as an invasive species in the Planting Manual that qualifies under one (1) or more of the following criteria:

- ~~a) a) The tree has a minimum DBH of four (4) inches and~~ is an American Elm, Bur Oak, Blue Ash, Buckeye, Chinkapin Oak, Kentucky Coffeetree, Shellbark Hickory, Shumard Oak, or Yellowwood;
- ~~b) b) The tree has a minimum DBH of thirty-six (36) twelve (12) inches;~~
- ~~c) The tree is one (1) of the following genera (closely related species) with a minimum DBH of twelve (12) inches: Carpinus (Hornbeam), Carya (Hickory), Fraxinus (Ash), Ostrya (Hophornbeam), Quercus (Oak), or Ulmus (Elm);~~
- ~~d) The tree is listed as a State or National Champion; or~~
- ~~e) c) Any Tree which is determined by the Division of Environmental Services to be of unique and intrinsic value to the public because of its size, age, historic association or ecological value or any tree designated a State Champion, United States Champion or World Champion. A record of all specimen trees so designated and their location shall be kept; or~~
- d) The tree is investigated and determined by Urban Forester the Division of Environmental Services or other appropriate state or federal governmental official to provide unique habitat for any endangered or threatened wildlife species protected by law.

~~Silviculture means the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis.~~

~~Stocking Level means the number or density of vegetative plants, either in numerical terms or percentage levels of area, which are located on site or planted. Tree canopy coverage can be used as an indicator of a stocking level.~~

Tree means any live upright woody plant with one (1) main stem and a minimum DBH of four (4) inches. or more well-defined perennial trunk(s) bearing lateral branches at some distance from the ground.

Tree Canopy means the effective radial circumference area of a mature tree's vegetative cover including all branches and leaves. ~~The canopy can be conveyed in values of percentage area of total land space being assessed or by numerical measurement.~~

Tree Canopy Coverage means the proportion of area on the ground or water covered by the spread of the outermost perimeter of foliage ~~and commonly expressed in square feet or a percentage of the total ground area of the site.~~

Tree Protection Area (TPA) means ~~generally,~~ a circular area surrounding zone around a tree, ~~of which the center is the~~ centered at the of the bole, of the tree clearly marked, and fenced off, where the storage or dumping

~~of any materials or waste, parking or movement of vehicles, and disturbance of the soil or grade are prohibited. The radius of the TPA is established by selecting the greater value obtained from: and the radial measurement is one (1) foot per inch up to twenty-four (24) inches DBH and 1.5 feet per inch DBH of trees over twenty-four (24) inches DBH or a lesser distance provided it will not adversely effect the health of protected tree(s) as determined by the Urban Forester.~~

- a) ~~The distance from the center of the bole of the tree to the outermost drip line, plus ten (10) feet buffer from the drip line; or~~
- b) ~~The Critical Root Zone (CRZ).~~

~~Tree Preservation Plan (TPP) means a plan, which may be in either written and/or graphic format, describing and identifying existing trees, tree stands, and TPAs. The TPP will outline, with description and/or maps, the natural condition of the proposed development, proposed alteration of the wooded area with justification for said removal, protection measures for remaining trees, environmentally sensitive areas, geologic hazard areas and any riparian areas, before, during, and after construction. The TPP will also contain replanting plans with locations.~~

~~Tree Protection Barrier (TPB) constitutes a physical enclosure designed to protect trees and their root systems from potential damage during construction or associated activities, positioned beyond the Critical Root Zone (CRZ).~~

~~Tree Protection Plan (TPP) is a plan certified by an ISA Certified Arborist or a Landscape Architect licensed to practice in the State of Kentucky which outlines specific measures to protect trees during construction or other site disturbance.~~

~~Tree Stand means a grouping of at least three fifteen (3 15) trees, each with a minimum DBH of four (4) inches, and continuing canopy coverage, ~~or any other grouping of less than fifteen (15) trees as determined by the Urban Forester to be ecologically interdependent.~~~~

~~Urban Forester means the individual or authorized agent employed and directed by the Lexington-Fayette Urban County Government to be responsible for carrying out the duties described in this ordinance and for administration, implementation, and overseeing of the various urban forestry and/or related duties.~~

~~Wetland means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and of a minimum size area as determined by Federal regulations.~~

(Code 1983, § 26-2; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 133-2016, § 3, 7-7-2016; Ord. No. 45-2019, § 3, 7-2-2019)

### **Sec. 26-3. Applicability of standards.**

The standards in this Article shall be applied to all major subdivision and development plans. All developments shall be required to demonstrate compliance with these standards through either preservation of healthy trees present on the site or, if sufficient existing trees to be preserved do not meet these standards, through planting of new trees in accordance with this Article. No development plan or subdivision plan shall be approved unless it is in compliance with the standards herein. (See Section 26-5(c), Agricultural Standard Exemptions.) Any areas that qualify as Environmentally Sensitive Areas and/or Geologic Hazard Areas herein (and under Section 6-11 of the Subdivision Regulations) will be subject to the more restrictive regulations under the Subdivision Regulations.

(Code 1983, § 26-3; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 133-2016, § 3, 7-7-2016)

## Sec. 26-4. Procedures.

The following procedures are required as an adjunct to review of proposals for development:

- (a) On-Site Meeting. Prior to the submission of an initial planning application (i.e., development plan or subdivision plan), the owner/developer shall contact the Urban Forester who will determine if an on-site meeting with the developer's design professional and/or pertinent LFUCG staff is necessary.
  - (b) Preliminary Development Plan Requirements. A Tree Inventory Map (TIM), in a number of copies specified by the Division of Planning, shall be required to be filed as a part of any initial application for approval of a preliminary development plan. TIMs shall be conducted by an International Society of Arboriculture (ISA) Certified Arborist or by a registered Landscape Architect. TIMs conducted by an ISA Certified Arborist shall have their certification number provided and those prepared by a registered Landscape Architect shall have their stamp or registration number provided on the map. If a TIM is not provided at the time of filing in a full and complete form, the plan application shall not be considered as properly filed and may be rejected for submittal by the Division of Planning. This map shall be provided at the same scale as the preliminary development plan and shall contain the following information at a minimum:
    1. The locations of any tree clusters or stands, including perimeter fence line trees, fences, and any significant trees (showing the full canopy (ies) on both sides of a property line in accordance with Section 26-6(d), Perimeter Trees).
    2. The species of trees noted above in Section 26-2. This information can be generalized as a single note calling out any significant trees ~~(four (4) inches plus DBH trees' genus, sizes, etc.)~~.
    3. Existing canopy coverage (location and extent expressed as a percentage of the property) to be included in the site statistics on the subdivision or development plan.
    4. Location of blue-line or first-order streams and other water bodies.
    5. Soil type and location.
    6. Existing topographic contours in at least five-foot intervals.
    7. Location of Environmentally Sensitive Areas and features such as sinkholes, slopes greater than fifteen percent (15%), floodplains, springs, wetlands, or other Environmentally Sensitive Areas (ESAs) as defined under the Land Subdivision Regulations.
    8. Existing easements for utilities and other purposes.
  - (c) Final Development Plan and Preliminary Subdivision Plan Requirements. A Tree Preservation Plan (TPP) shall be required to be filed as a part of any initial application for approval of a preliminary subdivision or final development plan. If the TPP is not provided at the time of filing in a full and complete form, the plan application shall not be considered as properly filed and may be rejected for submittal by the Division of Planning. This report shall contain the following map and text information at a minimum:
    1. The information contained in the Tree Inventory Map, in a final form based upon field review information obtained since the preliminary development plan.
    2. Proposed tree protection areas, including required buffers.
    3. Proposed tree removal areas, including justification for removal and any mitigation measures to be taken.
    4. Generalized planting plan and location for new trees as required in this Article, including trees required to satisfy other LFUCG landscaping requirements. (See Sections 26-5(a) and 26-7.) Sites
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not required to prepare a landscape plan per Article 18 of this Zoning Ordinance shall show planting requirements per the LFUCG Planting Manual ~~and~~/or the LFUCG Stormwater Manual for Riparian Planting Areas.

5. Sufficient information on proposed limits of grading, cut and fill areas, equipment storage areas, retaining walls, and, where appropriate, proposed detention areas, lot locations and similar activities, so that the impact on tree areas can be assessed.
  6. Existing and preliminary easement locations for utilities and other purposes including type, i.e., above or underground.
  7. Post-development canopy coverage and the methodology used under Section 26-5(e).
- (d) Review of Development Design. The basis for review of a TPP shall be the design of a development so as to protect and preserve the greatest number of trees as is reasonable and practical. Individual trees should be removed only as necessary to carry out permitted development under the approved zoning of the site ~~and~~/or to achieve the objectives of the Comprehensive Plan such as to provide continuity in the design of collector streets, stormwater facilities, or similar infrastructure elements; and provided that the design of the development has maximized the preservation of tree stands and significant individual trees. Consideration should be given by the Planning Commission to alternative street cross-sections, street geometrics, or site design in accordance with Section 1-5, Variances, of the Subdivision Regulations, where the developer has established that trees will be properly preserved as a result of such alternative designs and/or techniques. The Planning Commission may approve waivers of street layout and grade requirements based on a thorough examination of alternative site concepts and a finding that the proposed waiver is the minimum necessary in achieving a safe and reasonable design.

(Code 1983, § 26-4; Ord. No. 289-2000, § 1, 9-14-2000)

### **Sec. 26-5. Tree canopy standards.**

It is a part of the intent of this Article to establish the minimum tree canopy to be achieved during development for different categories of land use. The following are those standards, expressed as a minimum percentage of the total developable area of a parcel of land:

- (1) All residential and nonresidential uses in agricultural zones: Thirty percent (30%) of existing only. See Subsection (c) of this section, Agricultural Standard Exceptions.
  - (2) All residential zones, including PUD-1, M-1P: Thirty percent (30%).
  - (3) B-2, B-2A and B-2B zones: zero ~~(0)~~ percent **(0%)**.
  - (4) P-1, P-2, B-1, B-3, B-5P, B-6P and CC zones: Twenty percent (20%).
  - (5) B-4, I-1, I-2 and ED zones: Ten percent (10%).
  - (6) All mixed use zones: Ten percent (10%).
- (a) *Sites with Insufficient Trees.* It is recognized that some sites do not have a sufficient number of trees to meet the tree canopy standards established above. In those situations, the existing trees on the site are to be retained to the maximum extent feasible, and additional trees are to be planted to meet the minimum canopy requirements. Any trees required to be planted and maintained by any other Article of this Zoning Ordinance and Land Subdivision Regulations shall be counted in determining compliance with the provisions of this section. Street trees required by the Subdivision Regulations, trees required by Article 18 of this Zoning Ordinance, and other trees planted on the property may be counted toward the canopy coverage requirements with the credit



to be as provided in Subsection (d) of this section, as well as trees planted in and adjoining retention basins when done in accordance with the LFUCG Stormwater Manual. Floodplain reforestation, when done in accordance with said Stormwater Manual may be fully counted as the actual square footage of the land area to be reforested.

- (b) *Sites Which Exceed the Standard.* It is further recognized that in some situations, the site may have a tree canopy in excess of the minimum tree canopy established above. In those instances the development ~~must~~ shall ensure that the total canopy coverage shall not be reduced below the standards provided above. If existing trees are removed below that standard, new trees per Subsection (e) of this section ~~must~~ shall supplement the loss to achieve the required canopy.
- (c) *Agriculture Standard Exceptions.* The standards contained for the agricultural zones are intended to be applied only to existing tree canopies to be retained where the site is below the minimum canopy requirements on new development sites. New trees ~~must~~ shall be planted per Subsection (d) of this section to replace any loss in the existing canopy in such cases. The standard shall not be considered as applicable to bona fide agricultural and silvicultural uses exempted from zoning restrictions by state statute.
- (d) *Fencing Along Agricultural Land.* The location of any required boundary fencing per Section 6-3 of the Land Subdivision Regulations may be located off the property line to protect designated trees in an approved TPP.
- (e) *Calculation of Tree Canopy Cover.* Tree canopy coverage may be determined by one (1) of the following:

1. *Existing Canopy Area.*

- a. By calculating the percent of cover in relation to developable area using aerial photography interpretation.
- b. By field measurement of the square footage of the existing tree canopy using the following formula:

$$C = \pi R^2, \text{ where:}$$

C = canopy area in square feet; and

R = the radius of the canopy measured in feet.

- c. By field measurement of the square footage of the existing tree stand canopy using the following formula:

$$C = (\pi R^2)1.25$$

2. *New Canopy Credit.* In areas where the predevelopment canopy is less than the canopy required by this section, a landscape credit shall be used to determine post development canopy for trees that are to be planted. Trees shall be planted in accordance with the landscaping requirements set forth in Section 18-4(c), Plants, of this Zoning Ordinance and the LFUCG Planting Manual for the following sizes of the trees. Landscape credit is given for planted trees only. The following credits represent categories of trees only, not installation sizes:

- a. Each Small Tree = one hundred (100) square feet.
- b. Each Medium Tree = four hundred (400) square feet.
- c. Each Large Tree = seven hundred fifty (750) square feet.

Mass or grouped plantings of trees are encouraged in all cases. In the case of single-family detached residential or similar fee simple lot development, the total number of required tree credits shall be reduced ten (10%) percent of the portion of new tree credits planted in a common or public area.

~~Mass or grouped plantings of trees are encouraged in all cases. In the case of single family detached residential or similar fee simple lot development, the total number of required tree credits shall be reduced ten (10) percent of the portion of new tree credits planted in a common or public area.~~

Any planting materials that are not on the Plant Material List in the Planning Manual shall be considered on an individual basis to determine the suitability of the specific tree 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. If any columnar tree variety, regardless of species, is permitted by the Division of Environmental Services, the tree shall be considered as a small tree and be granted new canopy credit of one hundred (100) square feet according to the table above.

- (f) *Waiver of Standards.* Permission to waive the required canopy from the standards of this section shall reside solely with the Planning Commission as a part of the plan approval process. Such waiver shall only be made by the Commission upon finding of one (1) or more of the following:
- 1) The full application of the standards would constitute an undue hardship on the property by not allowing a reasonable use of the property. Restriction of some use of the property in order to preserve the trees shall not be deemed to be an undue hardship on the property.
  - 2) The full application of the standards would constitute a safety hazard or other danger to the public welfare.
  - 3) The full application of the standards would preclude necessary public facilities and that no other reasonable alternative exists.
- (g) *Treatment of Distressed Trees.* Any tree meeting the definition of a distressed tree shall not be permitted to be utilized for the purposes of meeting the requirements of this Article.

(Code 1983, § 26-5; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 129-2009, § 34, 7-2-2009; Ord. No. 45-2019, § 4, 7-2-2019)

## **Sec. 26-6. Requirements for trees in special locations.**

The provisions of the following sections are designed to provide special conditions for trees intended to meet the overall site requirements of Section 26-5 above. The following are listed in their order of priority based on the intent to maximize environmental integrity.

- (a) *Riparian Trees.* It is recognized that riparian areas constitute unique habitat that require special treatment to protect and not impair the stream and its associated buffer. It is the intent of this Article to promote the conservation of riparian buffers. Due to their special benefits in managing flooding, enhancing water quality, filtering point and non-point source pollutants, cooling water by shading, providing habitat, and providing important aesthetic and recreational benefits, existing riparian trees shall be afforded the highest preservation and protection priority. The designation, size, and design of riparian buffers shall be in accordance with the provisions of the LFUCG Stormwater Manual. Construction and/or disturbance will not be permitted in the designated riparian buffer except for the following activities and only when deemed necessary and contained within an approved TPP:

1. Roadways and utilities.
2. Sanitary sewer, sewer manholes, and other utility access facilities.
3. Storm sewer pipe outlets.
4. Flood control basins and related practices or facilities.
5. Water quality practices that do not disturb below the normal top of the bank of the stream.
6. Pedestrian and bicycle paths and crossings.

The TPP shall provide written justification for removal of any existing trees or tree stands in a riparian buffer area designated on the TPP. Unless permitted for the above listed exceptions, grubbing is not permitted in any riparian area unless contained in an approved TPP. Water retention/detention areas already containing trees may be applied towards fulfilling the applicable canopy coverage requirements provided drainage conditions will not be significantly altered and the trees are riparian species. In developments where a stream area exists and the overall residual canopy is less than the required amounts, plantings in the riparian buffer may be used to meet the canopy requirements. Any proposed reforestation shall be annotated in the TPP and carried out in accordance with LFUCG reforestation procedures and under the direction of the Urban Forester. Riparian buffer areas that are made available to the LFUCG for tree planting shall have appropriate notes and/or easements for that purpose added to the applicable subdivision and development plans and shall count the designated ground area toward canopy coverage requirements.

- (b) *Trees in Steep Slope Areas or Sinkholes.* The next highest priority for preservation shall be trees located in areas of steep slope or within sinkholes where the sinkhole is to be left as open space. No trees shall be removed from any area with a slope exceeding fifteen percent (15%) or a sinkhole without the prior approval of the Urban Forester.
- (c) *Greenway Trees.* No tree in an existing or planned greenway shall be removed without the prior approval of the Urban Forester. Trees shall be removed only if dead or distressed, or as necessary to achieve required sight distance for streets or similar safety related reasons.
- (d) *Perimeter Trees.* Perimeter trees shall be eligible for inclusion in the calculation of required canopy only where a developer can demonstrate ownership of such trees and the ability to protect them during construction. The existing tree canopy of perimeter trees shall be retained. The actual tree canopy area covered shall count toward the requirements for the post-development canopy retention, even though portions of the canopy may lie outside the property boundary, provided that a private easement or similar instrument can be executed assuring the natural life of any off-site tree canopy(s) counted for the requirements here. If the development plan and the TPP indicates that disturbance near the perimeter trees is proposed, the canopy of the perimeter trees shall not be counted toward the requirements of Section 26-5 unless the disturbance will be located at or beyond the Tree Protection Area.

- (e) *Tree Stand Areas.*

(Code 1983, § 26-6; Ord. No. 289-2000, § 1, 9-14-2000)

## **Sec. 26-7. Trees adjoining designated historic turnpikes.**

There are road and road segments in the Rural Service Area which have been designated as "historic turnpikes" in the adopted ~~Rural Service Area Land Management Plan (1999)~~ [Rural Land Management Plan \(2017\)](#). For any such road or designated segment, no tree located within twenty (20) feet of the edge of pavement shall be removed without the following approvals: Trees shall be removed only if dead or distressed as determined by the Urban Forester, or as necessary to achieve required sight distance for driveways or similar safety related reasons as determined by the Urban County Engineer or designee.

(Code 1983, § 26-7; Ord. No. 289-2000, § 1, 9-14-2000)

### **Sec. 26-8. Approval of Tree Protection Plan (TPP).**

The proposed TPP shall be reviewed by the Urban Forester and ~~his~~ their 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 this Article 26. No grading, filling, or other construction activity shall commence on the property until the TPP has been approved by the Planning Commission. Changes to a TPP shall be reviewed by the Urban Forester and their recommendation sent to the Planning Commission for approval. 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."

- (a) Landscape Plans. Where landscape plans under Article 18 of this 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 Urban Forester and the Division of Environmental Services, and shall thereby be subject to all provisions and requirements under Article 18.
- (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 Urban Forester and 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.

(Code 1983, § 26-8; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 124-2017, § 8, 8-31-2017)

### **Sec. 26-9. TPP field adjustments.**

The Urban Forester may permit removal of up to five percent (5%) of the total canopy coverage required under an approved TPP provided that there are unique physical features such as environmentally sensitive areas, stream crossing limitations, rock outcroppings, or historically significant sites that were not anticipated in TPP approval process. Written documentation of the Urban Forester's approval is required. Any trees removed ~~must~~ shall be replaced in conformance with Section 26-5. Any removal in excess of five percent (5%) shall require a waiver under Section 26-5(e).

(Code 1983, § 26-9; Ord. No. 289-2000, § 1, 9-14-2000)

### **Sec. 26-10. Utilities.**

All utilities or infrastructure, including the location of storm drainage and sanitary sewer systems, shall be designed so as to minimize disturbance of any Tree Protection Area, especially those associated with riparian areas. Where required, the reasonable removal of existing trees and/or location of new trees shall accommodate the placement and installation of such utilities. Where such utilities are located within the Tree Protection Area of such tree stands that their existence is threatened, such trees shall not count for compliance to the provisions of Section 26-5 above.

(Code 1983, § 26-10; Ord. No. 289-2000, § 1, 9-14-2000)

### **Sec. 26-11. Tree protection during construction.**

All areas designated for existing tree preservation on the Tree Preservation Plan shall be protected during construction activity. The boundary of the TPA shall be designed to protect each tree, tree stand, and riparian zone

before and during construction. The landowner is responsible for ensuring the physical layout of the TPAs shown in the TPP are installed as approved. TPAs shall be added to all applicable plan drawings and amendments including construction drawings submitted to the Division of Engineering. A TPA may vary widely in shape, but ~~must~~ shall extend a minimum of ten (10) feet beyond the existing tree canopy along the outer edge of the tree stand. The TPA shall provide for the following protection measures:

1. Fencing at least three (3) feet tall, clearly visible with signage posted every one hundred (100) feet, and lettered with three-inch-high letters clearly identifying the TPA shall be used to surround all tree protection areas. The tree protection fencing will be placed at a distance equal to or greater than the critical root zone of the tree(s) to be protected. Any proposed TPA areas less than the minimal standards can only be delineated by approval of the Urban Forester. Written approval by the Urban Forester that the TPA requirements have been installed shall be provided to Division of Engineering prior to approval of an erosion control plan ~~and~~ or the issuance of any land disturbance permit or other construction activity. The fencing shall be maintained and remain standing until issuance of the Certificate of Occupancy or until the Urban Forester has determined that construction activity has ceased to the point that the fencing may be removed or that the fence may be relocated to permit final grading provided the activity will not adversely affect the health of protected tree(s).
2. No vehicles, construction materials, equipment, fuel, or temporary or permanent earth fill shall be placed within a TPA. There shall not be any movement of any vehicles into nor within a TPA. No nails, rope, cable, signs, or fencing is to be attached to a tree within a TPA.
3. Where construction activity is permitted within a TPA, the Urban Forester shall be notified before the starting date of the work so that the Division of Planning may be present to ensure minimal disturbance and compliance with provisions of the Tree Protection Plan.
4. Alternative protection methods may be used if determined by the Urban Forester to provide equal or greater tree protection.

(Code 1983, § 26-11; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 1-2011, § 12, 1-13-2011)

### **Sec. 26-12. Penalties.**

Penalties are set forth under Section 5-8, Penalties for Violations, of this Zoning Ordinance, and Section 5-9, Civil Citations and Civil Penalties. Each act or each healthy tree removed or damaged, except as described in the approved TPP, shall constitute a separate violation.

(Code 1983, § 26-12; Ord. No. 289-2000, § 1, 9-14-2000; Ord. No. 98-2011, § 4, 8-25-2011)