

ORDINANCE NO. _____ - 2016

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 12 OF THE CODE OF ORDINANCES, RELATING TO RIPARIAN AREAS, RIPARIAN BUFFER ZONES, AND RIPARIAN BUFFER PERMITS, AS FOLLOWS: AMENDING SECTION 12-71(1) OF THE CODE TO INCLUDE NATURALIZED DETENTION BASIN BOTTOMS IN THE DEFINITION OF RIPARIAN AREA; AMENDING SECTION 12-71(3) OF THE CODE TO AUTHORIZE A MAXIMUM BUFFER ZONE OF TWENTY-FIVE (25) FEET FROM THE EDGE OF NATURALIZED DETENTION BASIN BOTTOMS; AND AMENDING SECTIONS 12-71, 12-72, AND 12-73 OF THE CODE TO PROVIDE THAT THE DIVISION OF ENVIRONMENTAL SERVICES OR ITS DESIGNEE SHALL HAVE THE AUTHORITY TO ISSUE RIPARIAN BUFFER PERMITS, APPROVE RIPARIAN VEGETATION, AND INSPECT RIPARIAN AREAS FOR COMPLIANCE WITH THE TERMS AND CONDITIONS OF RIPARIAN BUFFER PERMITS.

WHEREAS, the Urban County Council recognizes the importance of and benefits conferred by riparian areas in improving surface drainage and reducing the effects of storm water flooding, filtering non-point source pollution from area streams, enhancing water quality, stabilizing soil and thereby minimizing erosion, and providing habitat for wildlife; and

WHEREAS, in recognition of the benefits of riparian areas, the Urban County Council has previously established a riparian buffer permit process, codified in Article III of Chapter 12 of the Code of Ordinances, Sections 12-71 through 12-76, setting forth the terms and conditions for the issuance of riparian buffer permits for riparian area buffer zones; and

WHEREAS, the Urban County Council desires to amend Article III of Chapter 12 of the Code of Ordinances to include naturalized detention basin bottoms in the definition of riparian area, to authorize the issuance of riparian buffer permits for buffer zones adjoining or including naturalized detention basin bottoms, subject to the terms and conditions for riparian buffer permits set forth in Section 12-71 through 12-76 of the Code of Ordinances, and to provide that the Division of Environmental Services shall have the authority to issue riparian buffer permits, to approve riparian vegetation, and to inspect riparian areas for compliance with the terms and conditions of riparian buffer permits.

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

Section 1 – That Section 12-71 of the Code of Ordinances be and hereby is amended in part to read as follows:

Sec. 12-71. - Permit.

Any person whose property contains a riparian area, as defined herein, may create a buffer area bordering the riparian area upon obtaining a permit from the ~~urban forester~~ **Division of Environmental Services** or his **its** designee. Such a buffer area shall be exempt from the nuisance provisions of chapter 12 provided that the area is properly maintained as defined herein and acceptable species of vegetation are utilized. Upon application, the ~~urban forester~~ **Division of Environmental Services or its designee** shall inspect the area and determine whether a permit should be granted. The permit shall be granted providing the following conditions are met:

- (1) The property must contain a riparian area, hereby defined as real property related to or located in conjunction with a wetland, river or stream, **naturalized detention basin bottom**, or along the edge of a lake, which real property is influenced by and influences the neighboring body of water.

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- (3) The maximum area for a buffer zone shall be twenty-five (25) feet from the edge of the wetland, river, stream, ~~or lake~~, **or naturalized basin bottom**, unless a larger area is approved by the ~~urban forester~~ **Division of Environmental Services** and so designated on the permit.

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- (5) The ~~urban forester~~ **Division of Environmental Services** or his **its** designee may deny a permit although all conditions have been met, for just cause based on circumstances unique to the property affected which would create a threat to public welfare and/or safety if the proposed planting were permitted.
- (6) The decision of the ~~urban forester~~ **Division of Environmental Services** or his **its** designee shall be made within thirty (30) days after an application is filed. Failure to issue such decision within said time period shall have the same effect as approval of the application.

Section 2 – That Section 12-72 of the Code of Ordinances be and hereby is amended in part to read as follows:

Sec. 12-72. - Maintenance; species; compliance.

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- (2) Riparian species shall be approved by the ~~urban forester~~ **Division of Environmental Services** prior to planting. Riparian species include vegetative species of trees and understory which have adapted to conditions that constitute root systems surviving where there are shallow water tables, and can exist adjacent to streams, creeks, rivers, lakes and in wetlands or other saturated soil conditions. Examples of riparian species are green ash, willow, sycamore, boxelder and cypress.
- (3) The ~~urban forester~~ **Division of Environmental Services** or his **its** designee shall check proposed planting sites for compliance with requirements under this article. The ~~urban forester~~ **Division of Environmental Services** or his **its** designee may waive any of the conditions in granting a permit where such action would promote

the preservation of the health, integrity or appearance of an area's riparian characteristics. Further, where such action would promote the public welfare, the ~~urban forester~~ **Division of Environmental Services** or his **its** designee may condition the granting of a permit upon the applicant's agreement to plant only a certain species of vegetation.

Section 3 – That Section 12-73 of the Code of Ordinances be and hereby is amended in part to read as follows:

Sec. 12-73. - Revocation of permit.

If a buffer area for which a permit has been issued is not properly maintained or has not met the conditions set forth in the permit, the ~~urban forester~~ **Division of Environmental Services** or his **its** designee may revoke the permit by providing written notice of the revocation to the permit holder. If a permit is revoked, the buffer area shall become subject to the nuisance provisions of chapter 12.

Section 4 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
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