

# ***LFUCG Greenway Encroachment Agreement***

*Environmental Quality & Public Works Committee  
December 7, 2021*



**LEXINGTON**



# **Encroachment Agreement**

- History
- What
- Why
- Areas of Coverage
- Why Update Application / Agreement
- Process Followed for the Update
- Process for Obtaining Encroachment Permit



## **History of Encroachment Agreements**

- Division of Engineering
  - Simple form of notification
- Division of Environmental Services (2016-2021)
  - One page application & permit
  - Stream Buffers, Pollinator Gardens, Play Sets, Fire Pits, etc.
- Division of Environmental Services (2020-2021)
  - Updated application and permit
    - to be consistent with other divisions and departments (DWQ's Easement Encroachment Request; Parks' Garden Request)
    - to address past concerns



## **What is a Greenway Encroachment?**

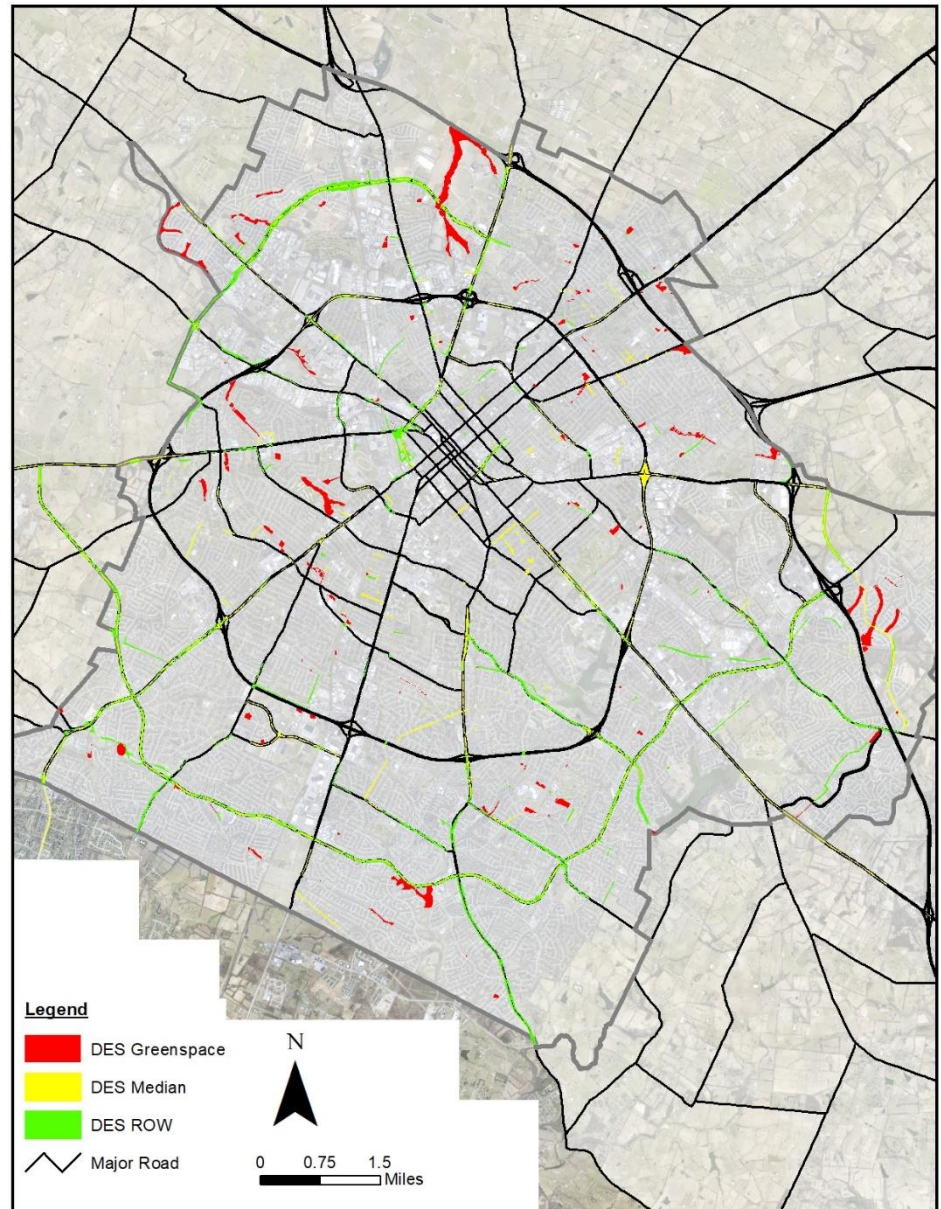
- A greenway encroachment is anything being placed within or on LFUCG property which is maintained by DES.
  - Gardens (community, pollinator, etc.)
  - Tree Plantings
  - Stream Buffer Plantings
  - Play Structures
  - Fire Pits
  - Construction Staging Areas
- A greenway encroachment is not general maintenance of or on these properties, clean-up activities, day use / event activities (e.g., family reunions, HOA / NA functions, recreational uses), etc.



## **Why Have Encroachment Agreements?**

- DES manages / maintains approximately:
  - 500 acres of Greenways / Greenspace
  - 165 acres of Medians
  - 388 acres of Right-Of-Way
- Having Encroachment Agreements in Place
  - Allows tracking of how LFUCG's properties are being used
  - Provides an opportunity to review the condition of encroachments via their 2-year permit term
  - Reduces LFUCG's liability risk by having a signed agreement between both parties
  - Improves communication with other LFUCG departments / divisions
  - Improves communication with outside utilities (if encroachments occur within a utility easement)
  - Provides clearer expectations to the applicant

## Areas of Coverage





## **Why Update the Encroachment Agreement?**

- To address communication issues between agreement holders, utilities, and LFUCG
  - RMP conflicts with trees, stream buffers, and gardens.
  - Utilities accessing overhead lines and damaging stream buffers.
  - Utility conflicts with trees and play structures.
  - Gardens within medians too tall and creating line of sight issues.
- To allow coordination with FEMA on water quality lots
  - Placement of items not specifically allowed must be approved by FEMA (e.g., wrong fence type, permanent structures, construction staging areas)
- To provide Council and neighborhood notification
  - Median garden maintenance
  - Construction staging areas
- To inform the correct placement of items
  - Right Tree, Right Place (Planting Manual)
  - Permanent Structures



## **Process Followed for the Update**

- DES drafted an updated application and permit to achieve consistency with other depts. / divisions
- Reviewed by Law, EQPW Commissioner, Directors (DES, DWQ) and directly involved staff (DWQ, DES, Parks & Recreation).
- Changes incorporated:
  - Applicant to provide site drawings / sketches / plans
  - Applicant to review plat information and obtain
    - Utility Sign-Off (if needed – within a utility easement)
    - FEMA Sign-Off (if needed – within a water quality buy-out lot)
    - Traffic Engineering Sign-Off (if needed – within a median, right-of-way)
  - Applicant to provide Councilmember and neighborhood notification
  - Agreement provides more information on maintenance expectations





## Additional Information About the Update

- Legal Hold Harmless & Indemnity Updated
  - Original Application / Permit
    - **Application: Hold Harmless and Indemnity.** If this application is approved I \_\_\_\_\_ agree to hold harmless LFUCG from any damage caused in whole or in part by the encroachment into LFUCG greenway areas.
    - **Permit: Hold Harmless and Indemnity.** Applicants, their successors, heirs and assigns, hereby agree to indemnify and hold harmless LFUCG from any damage caused to the subject property in whole or in part by the encroachment into LFUCG greenway areas.
  - Updated Application / Permit
    - **Hold Harmless and Indemnity.** Applicant acknowledges and agrees, on behalf of himself and his heirs, successors, and assigns, that Applicant shall make no claim against LFUCG for any losses or damages, of whatsoever natures, sustained by them, in any way connected to the greenway encroachment project, and Applicant, his heirs, successors, and assigns shall indemnify and hold harmless LFUCG from any and all claims for personal injury or property damages or other damages made by on behalf of all persons, firms or corporations, arising from or growing out of the encroachment upon the subject property from the encroachment described herein.



## Additional Information About the Update

- Termination of Agreement Updated
  - Original Application / Permit
    - **Termination of Agreement.** LFUCG may, at its sole discretion, withdraw its permission to encroach into the LFUCG greenway area at any time, with or without notice. If LFUCG withdraws its permission, the applicant shall remove the encroachment with 15 days. If the applicant fails to do so LFUCG may remove and charge the cost of removal back to the applicant for reimbursement.
  - Updated Application / Permit
    - **Termination of Agreement.** Permit for encroachment only valid for two (2) years from date of issuance. Reapplication must be filed at least 30 days before permit expires (with new utility release forms). Failure to file a reapplication may result in the encroachment being removed. In addition, LFUCG may, at its sole discretion, withdraw its permission to encroach into the LFUCG greenway area at any time, with or without notice. If LFUCG withdraws its permission, the Applicant shall remove the encroachment within 30 days. If the Applicant fails to do so, LFUCG may remove the encroachment. Except for encroachments that are easily removable and/or which are removable at *de minimis* cost (e.g., plantings, picnic benches, chairs, etc), LFUCG may charge the costs of any such removal back to the Applicant for reimbursement.



## **Process for Obtaining Encroachment Permit**

- Encroachment Application Online:  
[LexingtonKY.gov/greenways](https://LexingtonKY.gov/greenways)
- Contact DES to obtain the following:
  - Parcel Plat
  - Scaled Map with LFUCG Utilities, Property Boundaries, etc.
  - Council District Contact Information
- Gather sign-off(s), as needed
- Submit to DES for review & approval
- Receive permit

Currently permitted encroachments will have 90 days from notification by DES to submit the new application form.

# Questions?



**LEXINGTON**