

Chapter 17B - STREET TREES ^[71]

⁽⁷¹⁾ **Editor's note**— Ord. No. 70-94, § 1, adopted May 5, 1994, amended former chapter 17B, §§ 17B-1—17B-11, to read as herein set out. Former chapter 17B, pertained to similar subject matter and derived from the following:

Sec. 17B-1. - Definitions.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section:

- (1) Street tree shall mean any tree within the urban county government right-of-way or designated tree planting easement, excepting those trees regulated pursuant to Article 18 of the Zoning Ordinance or the Downtown Street Tree Ordinance.
- (2) Large tree shall mean any tree species which normally attains a full-grown height in excess of fifty (50) feet.
- (3) Medium tree shall mean any tree species which normally attains a full-grown height between twenty-six (26) and fifty (50) feet.
- (4) Small tree shall mean any tree species which normally attains a full-grown height of under twenty-six (26) feet.
- (5) Person shall mean any person, corporation, partnership, company, contracting firm or other entity, including those employed under a contract with the urban county government.
- (6) Tree planting easement shall mean a planting area with a minimum width of five (5) feet located immediately adjacent and parallel to the street right-of-way or directly adjacent to the sidewalk, if applicable.
- (7) Hazardous tree shall mean any street tree that is dead, diseased, or insect infested such that it poses a health threat to neighboring trees or creates a threat to the public safety or to property.

(Ord. No. 70-94, § 1, 5-5-94; Ord. No. 30-2005, § 1, 2-10-05)

Sec. 17B-2. - Tree planting.

- (a) Any person may plant a tree within the urban county government right-of-way immediately adjacent to his property upon obtaining a permit from the urban forester or his designated arborist.
- (b) The permit shall be granted providing the following conditions are met:
 - (1) The tree to be planted is not an undesirable tree species, as provided in section 17B-10 of this chapter.
 - (2) The minimum spacing between this and other trees is forty-five (45) feet (large tree), thirty-

five (35) feet (medium tree), and twenty-five (25) feet (small tree).

(3) The minimum size of the planting area complies with the requirements of section 6-10 of the Land Subdivision Regulations.

(4) The tree location is to be at least fifty (50) feet in advance of stop or yield signs, twenty-five (25) feet in advance of any other standard regulatory or warning signs, ten (10) feet from fire hydrants or utility poles, and fifteen (15) feet from driveway entrances if installed between the sidewalk and the street.

(5) A small tree is to be used when planting within ten (10) lateral feet of overhead utility wires. A small or medium tree is to be used when planting within ten (10) to twenty (20) lateral feet of overhead utility wires.

(6) The property owner shall check proposed planting sites for compliance with requirements relating to utilities, obstructions and potential interference with future construction, including but not limited to compliance with KRS 367.4901.

(7) The property owner shall maintain the tree after the tree is planted. Maintenance shall include as necessary, watering, pruning, removal of dead or diseased limbs and insect control. The property owner also shall be responsible for any damage to existing utilities caused by the tree installation.

(c) The urban forester or his designated arborist may waive any of the conditions in granting a permit where such action would promote the preservation of the health, integrity or appearance of an area's tree population. Further, where such action would promote the public welfare, the urban forester or his designee may condition the granting of a permit upon the applicant's agreement to plant only a certain species of tree.

(d) The urban forester or his designated arborist may deny a permit although all conditions have been met, but only for just cause based on circumstances unique to the property affected which would create a threat to public welfare and/or safety if the proposed planting were permitted.

(e) The decision of the urban forester or his designee shall be made within fourteen (14) days after an application is filed. Failure to issue such decision within said time period shall have the same effect as approval of the application.

(Ord. No. 70-94, § 1, 5-5-94; Ord. No. 113-2000, § 1, 4-20-00; Ord. No. 328-2001, § 1, 12-13-01; Ord. No. 30-2005, § 1, 2-10-05)

Sec. 17B-3. - Tree removal.

(a) No person may remove a tree larger than three (3) inches in diameter, measured at a point four and one-half (4½) feet above the ground within the urban county government right-of-way without obtaining a permit from the urban forester or his designated arborist.

(b) The permit shall be granted provided the tree to be removed is dead or dying.

(c) The urban forester or his designee may issue permits for the removal of live trees only in special circumstances. Instances where a permit for the removal of a live tree may be issued include, but are not limited to, the following:

- (1) The tree is a threat to the public safety;
- (2) The tree is a threat to the health of other trees in the community; or
- (3) The tree is to be replaced by a more desirable tree.

(d) If the urban forester or his designated arborist determines that a street tree is a hazardous tree, he can order the property owner to remove the hazardous tree in a timely manner, as determined by the urban forester or his designated arborist at the property owner's expense.

(e) The urban forester or his designated arborist can order the property owner to remove any street tree planted without a permit, or in violation of permit conditions.

(f) Nothing contained in this chapter is intended to infringe on the authority of the urban county engineer, pursuant to KRS 179.090, to remove trees from the right-of-way of any publicly dedicated road when the trees become a hazard to traffic.

(g) Except as provided in subsection (e) above, any person who removes a tree within the urban county government right-of-way shall replace the removed tree in accordance with the requirements set forth in section 17B-2(b). This requirement may be waived by the urban forester or his designated arborist where replacement would be inappropriate under the standards set forth in section 17B-2(b).

(Ord. No. 70-94, § 1, 5-5-94; Ord. No. 113-2000, § 2, 4-20-00; Ord. No. 328-2001, § 2, 12-13-01; Ord. No. 30-2005, § 1, 2-10-05)

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

No person shall intentionally damage, cut, poison, carve, transplant or remove any tree without a permit as required by section 17B-3 of this chapter; nor shall any person attach any rope, wire nails, advertising posters or other contrivance to any street tree; allow any gaseous liquid, herbicide or solid substance which is harmful to trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.

(Ord. No. 70-94, § 1, 5-5-94)

Sec. 17B-5. - Appeal from the denial or permit.

Any person adversely affected by any decision of the urban forester or his designated arborist in the application or interpretation of any of the provisions of this chapter may appeal the decision of the urban forester or his designee to the tree board established by this chapter. The appeal provided herein shall be taken by filing written notice thereof with the clerk of the urban county council, with a copy thereof to be filed with the urban forester within ten (10) days from notification of the decision. The written notice provided for herein shall recite the reasons why the appeal is being taken. The appeal provided herein shall be heard at the first tree board meeting following the filing of this appeal. The urban forester or his representative, as a member of the tree board, shall abstain from voting on the appeal.

(Ord. No. 70-94, § 1, 5-5-94; Ord. No. 113-2000, § 3, 4-20-00; Ord. No. 328-2001, § 3, 12-13-01; Ord. No. 30-2005, § 1, 2-10-05)

Sec. 17B-6. - Tree board.

(a) A tree board, appointed by the mayor, shall be established. The tree board shall consist of fifteen (15) members including the following:

- (1) Five (5) concerned and interested citizens of Lexington, Fayette County;
- (2) Two (2) members shall be professionals in a tree field, one (1) of whom shall be a landscape architect and the other shall be actively engaged in horticulture;
- (3) The commissioner of public works, or his representative;
- (4) The director of parks and recreation, or his representative;
- (5) The director of building inspection, or his representative;
- (6) The director of engineering, or his representative;
- (7) A member of the urban county council, or his representative;
- (8) The environmental planner of the division of planning;
- (9) The urban forester or his representative; and
- (10) An urban county government arborist designated by the director of streets, roads and forestry.

(b) The membership of the commissioner of public works, the director of parks and recreation, the director of building inspection, the director of engineering, and the urban forester, or their respective representatives, the environmental planner, and the designated urban county government arborist shall be ex officio. The urban county council member or his representative shall serve for the duration of his term in office. All other tree board members shall serve terms of four (4) years.

(c) In the event a vacancy shall occur during the term of any appointed member, a successor shall be appointed for the unexpired portion of the term. All members of the tree board shall serve without pay.

(d) The tree board shall establish the board's rules, regulations and procedures and arrange for the holding of meetings on a regular basis, with not less than eleven (11) meetings per calendar year.

(e) The duties of the tree board shall be as follows:

- (1) To hear all appeals from any decision of the urban forester or his designated arborist in the application or interpretation of any of the provisions of this chapter and to adopt rules for the conduct of such hearings, which rules shall uniformly apply to all such appeals and shall provide that both the appellant and the appellee shall have the right to:
 - (i) Offer and examine witnesses and present evidence in support of their cases;
 - (ii) Cross-examine witnesses and offer evidence to refute evidence offered in opposition; and
 - (iii) Following the hearing of such appeals, receive the board's decision reduced to writing, such decision to contain the findings of fact based upon evidence produced at the hearing.

(2) To advise appropriate municipal agencies on matters of care, preservation, planting, removal, replacement or disposition of trees in parks, along streets and in public areas as needed.

(3) To promote urban forestry.

(Ord. No. 70-94, § 1, 5-5-94; Ord. No. 113-2000, § 4, 4-20-00; Ord. No. 328-2001, § 4, 12-13-01; Ord. No. 30-2005, § 1, 2-10-05)

Sec. 17B-7. - Tree topping.

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

(b) It shall be unlawful to prune any tree within the urban county right-of-way or designated tree planting easement in such a way as to remove the normal canopy or twenty-five (25) percent or more of the crown for the purpose of increasing visibility of outdoor signs or building facades.

(Ord. No. 70-94, § 1, 5-5-94; Ord. No. 79-2004, § 1, 4-22-04; Ord. No. 110-2005, § 1, 5-5-05)

Sec. 17B-8. - Tree maintenance, public rights-of-way or designated tree planting easement.

Owners of street trees shall provide reasonable care and maintenance to trees within the urban county government right-of-way or tree planting easement, including as appropriate, watering, pruning, insect control and removal of dead or diseased limbs, and removal of any vine or other invasive plant or growth that masks potential defects of the tree.

It shall be unlawful for the owner or occupant of any building or lot to permit any tree, including street trees, to grow in a manner which interferes with a normal sidewalk located on such lot or within an urban county government right-of-way adjoining such lot, or street traffic, or to grow so as to pose a threat to safety or public rights-of-way due to obstruction of view, obstruction of passage, or in any other manner.

The minimum clearance of any overhanging portion thereof shall be seven (7) feet over sidewalks and twelve (12) feet over all streets except truck routes which shall have a clearance of fourteen (14) feet.

(Ord. No. 70-94, § 1, 5-5-94; Ord. No. 30-2005, § 1, 2-10-05; Ord. No. 194-2010, § 2, 11-18-10)

Sec. 17B-9. - Tree protection.

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

(Ord. No. 70-94, § 1, 5-5-94)

Sec. 17B-10. - Undesirable tree species.

Some trees have characteristics which make them unacceptable for use in public rights-of-way and are not recommended for street trees. (See plant manual for specific information. Plant manuals are available from the division of planning.)

Undesirable traits for street tree plantings include:

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

(Ord. No. 70-94, § 1, 5-5-94)

Sec. 17B-11. - Suggested tree species.

Trees with characteristics which make them acceptable for use in public rights-of-way and which are recommended for street trees are in the plant manual available from the division of planning.

(Ord. No. 70-94, § 1, 5-5-94)

Sec. 17B-12. - Penalty.

Any person violating any provision of this chapter shall be, upon conviction or a plea of guilty, subject to a fine of not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500.00).

(Ord. No. 70-94, § 1, 5-5-94)

Sec. 17B-13. - Violation.

Any violation of this chapter may be enforced through the issuance of a civil citation. Such civil citations shall be construed to provide an additional or supplemental means of obtaining compliance with this chapter. All citations issued pursuant to this chapter shall be issued by the citation officers authorized to issue such citations by section 14-10 of the Code of Ordinances and shall be referred to the Infrastructure Hearing Board with the citations and the civil process to conform to sections 16-76 through 16-83 of the Code of Ordinances.

- (a) Prior to the issuance of the first civil citation for a violation of a section of this chapter, the Urban County Government shall issue a notice of violation, which shall specify a time period of at least twenty-four (24) hours for the correction of the violation. The time period specified shall not impose unrealistic requirements under prevailing weather and site conditions. If the violation is not corrected as specified in the written notice, the Urban County Government may issue a civil citation. A notice of violation shall precede the issuance of the first civil citation for such offense unless the violation is deemed to be a serious threat to the public health, safety and welfare; or, if in the absence of immediate action, the effects of the continuation of the violation would be

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irreparable or irreversible. No notice of violation shall be required prior to the issuance of a citation for any offense which occurs after the first citation is issued to a person or entity.

(b) Appeal of the civil citation may be made to the Infrastructure Hearing Board, as provided in section 16-79 of the Code of Ordinances.

(c) For violations of this chapter, the civil fines associated with the issuance of a civil citation are as follows:

(1) Upon issuance of the first citation within any 12-month period the civil fine shall be a maximum of two hundred dollars (\$200.00), but shall be seventy-five dollars (\$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 violation of the same section of this chapter within any 12-month period shall be a maximum of three hundred dollars (\$300.00), but shall be one hundred fifty dollars (\$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 violation of the same section of this chapter within any 12-month period shall be a maximum of four hundred fifty dollars (\$450.00), but shall be two hundred twenty-five dollars (\$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 violation of the same section of this chapter within any 12-month period shall be a maximum fine of five hundred dollars (\$500.00), but shall be three hundred dollars (\$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) When there is reason to believe that the violation poses a serious threat to the public health, safety or welfare; or in situations where continuation of the violation would be irreparable or irreversible, the government may, without further notice, proceed to abate the conditions. In such cases, the government may, in addition to any fine imposed herein, charge the responsible person, persons or entities with the cost of the abatement, including equipment expense, disposal fee, if any, and an administrative fee of seventy-five dollars (\$75.00). The Urban County Government may file a lien for such abatement, in accordance with section 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) Nothing contained herein shall prohibit the Urban County Government from enforcement of this chapter by any means authorized by law.

(Ord. No. 247-2007, § 1, 11-1-07)

Ord. No.	Section	Date	Ord. No.	S e c t e

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1-79	2	1-11-79	74-87	1	4 - 3 0 - 8 7
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34-84	1	3- 8-84			

⁽⁷¹⁾ **Charter reference**— Authority to improve streets and walkways, § 3.02(7). (Back)

⁽⁷¹⁾ **Cross reference**— Streets and sidewalks generally, Ch. 17. (Back)

⁽⁷¹⁾ **State Law reference**— Trees near roads, KRS 179.220 et seq. (Back)