

Farmer, Chair
Ellinger, Vice Chair
Gorton
Kay
Ford
Blues
Lawless
Beard
Martin
Henson

AGENDA PLANNING & PUBLIC WORKS COMMITTEE

November 1, 2011
1:00 P.M.

1. Re Paving Program Update – Martin/Environmental Quality Link
2. 2012 Comprehensive Plan Goals & Objectives – Farmer (14)
3. Street Tree & Tree Protection Ordinance – Martin (5.20)
4. Items Referred to Committee (25)

"Planning & Public Works Committee, to which should be referred matters relating to the Division of Planning and including, but not limited to, matters relating to housing, infill & redevelopment, purchase of development rights and historic preservation, and any related partner agencies and the Department of Public Works and its related divisions, including capital improvement projects and any related partner agencies."

-Council Rules & Procedures, Section 2.102(1)

Committee Schedule

October 4
November 1
December 6

2012 Comprehensive Plan Mission Statement and Goals and Objectives

Adopted by Planning Commission on September 22, 2011
Under review by Urban County Council beginning October 2011

Mission Statement

The 2012 Comprehensive Plan seeks to provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves the quality of life, fosters regional planning and economic development, and aids in the attraction and retention of companies and creative entrepreneurial professionals. This will be accomplished while protecting the environment, promoting successful neighborhoods, and preserving the unique bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

Goals and Objectives

A. Growing Successful Neighborhoods

Goal

1. Expand housing choices.
 - a. Pursue incentives and regulations that encourage creativity and sustainability in housing development.
 - b. Plan for housing that addresses the market needs for Lexington, including mixed-use, housing near employment and commercial areas, and housing for older citizens, while providing safe and affordable housing for Lexington's vulnerable citizens.
 - c. Create and implement housing incentives that promote higher density and affordable housing that will strengthen the opportunity for economic development, new businesses, and jobs, including the creative class.
2. Support infill and redevelopment throughout the Urban Service Area as a strategic component of growth.
 - a. Identify areas of opportunity for appropriate infill and redevelopment utilizing adaptive reuse and design features whenever possible while preserving historic structures and streetscapes.
 - b. Develop a land bank that facilitates sustainable new development, including affordable housing, commercial and economic development.
 - c. Create educational materials that explain the benefits and process for infill and redevelopment.
3. Provide well-designed neighborhoods and communities.
 - a. Enable existing and new neighborhoods to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expanded options for mixed-use and mixed-type housing throughout Lexington.
 - b. Strive for positive and safe social interactions in neighborhoods, including neighborhoods that are connected for pedestrians and various modes of transportation.
 - c. Minimize disruption to natural features when building new communities.

2012 Comprehensive Plan Mission Statement and Goals and Objectives

Adopted by Planning Commission on September 22, 2011
Under review by Urban County Council beginning October 2011

B. Protecting the Environment

Goal

1. Continue to implement the Consent Decree, including the capacity assurance program, as directed by the Environmental Protection Agency.
2. Reduce Lexington's carbon footprint.
 - a. Implement the adopted Climate Action Plan.
 - b. Anticipate the community's needs within the capacity of available natural resources.
 - c. Provide incentives for green building, sustainable development, and transit-oriented development, and lead by example to encourage the construction of civic buildings using green building standards.
3. Support the funding, planning, and management of a green infrastructure program.
 - a. Identify and protect natural resources and landscapes before development occurs.
 - b. Incorporate green infrastructure principles in new plans and policies, including land use and transportation.

C. Creating Jobs and Prosperity

Goal

1. Support and showcase local assets to further the creation of a variety of jobs.
 - a. Strengthen efforts to propel all positive aspects of our economy with the intent of providing opportunities for prosperity for all our citizens and businesses.
 - b. Strengthen regulations and policies that propel the agricultural economy, including local food production and distribution, agritourism, and the equine industry that showcases Lexington as the Horse Capital of the World.
 - c. Collaborate with institutions of higher learning to foster a capable and skilled work force while engaging agencies that address the lack of prosperity for citizens by reducing joblessness.
 - d. Foster the success and growth of large employment sectors, protect and provide readily available economic development land to meet the needs for jobs, and enable infill and redevelopment that creates jobs where people live.

2012 Comprehensive Plan Mission Statement and Goals and Objectives

Adopted by Planning Commission on September 22, 2011
Under review by Urban County Council beginning October 2011

2. Attract the world's finest jobs, encourage an entrepreneurial spirit, and enhance our ability to recruit and retain a talented, creative workforce by establishing opportunities that embrace diversity with inclusion in our community.
 - a. Identify and promote sectors of the economy that will flourish in Lexington, including improving opportunities for small business development and workers who rely on personal technology.
 - b. Review and improve regulations and policies that attract and retain high paying jobs through close collaboration with agencies that focus on economic development.
 - c. Provide entertainment and other quality of life opportunities that draw young professionals to Lexington.

D. Improving a Desirable Community

Goal

1. Encourage an effective and comprehensive transportation system.
 - a. Implement the Complete Streets program, which includes but is not limited to the design and full use of the right-of-way for cars, bicycles, and pedestrians.
 - b. Develop viable transportation alternatives for residents and commuters.
 - c. Improve traffic operation strategies.
2. Provide accessible community facilities and services to meet the needs of Lexington's citizens.
 - a. Encourage public safety and social sustainability by providing incentives for Secure by Design-certified developments, and lead by example to encourage the use of Secure by Design principles in the construction of civic buildings and improvements, which include standards for the built and natural environments of neighborhoods that help deter crime.
 - b. Provide a range of community facilities and services for improved health, safety, and quality of life.
 - c. Work closely and cooperatively with educational and health care institutions.

2012 Comprehensive Plan Mission Statement and Goals and Objectives

Adopted by Planning Commission on September 22, 2011
Under review by Urban County Council beginning October 2011

E. Planning for Lexington; Planning with the Bluegrass

Goal

1. Engage the citizens of Lexington in the Planning process.
 - a. Pursue all venues of communications, including electronic and social networking, to involve citizens.
 - b. Establish early and continuous communication with citizens.
 - c. Develop a network of diverse contacts and a means to engage them.
 - d. Collaborate with other agencies in Fayette County to meet local standards in order to achieve compatible developments and accomplish the community's vision as articulated in *Destination 2040*.
2. Implement the *2012 Comprehensive Plan*.
 - a. Develop and update a work program for the *2012 Comprehensive Plan* that can be measured and analyzed.
 - b. Provide a public report about the progress of implementation.
3. Increase regional planning.
 - a. Set the standard through leadership and engagement to identify and resolve regional issues.
 - b. Support legislative efforts and cross-border actions that improve regional planning.
4. Maintain a balance between planning for urban uses and safeguarding rural land.
 - a. Continue to monitor the absorption of vacant and underutilized land within the Urban Service Area.
 - b. Encourage compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area, as guided by market demand, to accommodate future growth needs.
 - c. Maintain the current boundaries of the Urban Service Area and Rural Activity Centers unless and until a community need is documented in future Comprehensive Plan updates.
 - d. Update, reaffirm, and readopt the Rural Service Area Land Management Plan to continue as the community's framework for preserving and enhancing rural resources.
 - e. Protect and enhance the natural, cultural, historic, and environmental resources of Lexington-Fayette County's Rural Service Area and Bluegrass farmland to help promote the general agriculture brand and ensure this area remains the Horse Capital of the World.
 - f. Support the Purchase of Development Rights Program and private sector farmland conservation programs to protect, preserve, and enhance our signature agricultural industries, historic structures and cultural landscapes, natural environment, and community welfare.

Street Tree Ord
17bLexington-Fayette County, Kentucky, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter
17B - STREET TREES >>**Chapter 17B - STREET TREES** [701]Sec. 17B-1. - Definitions.Sec. 17B-2. - Tree planting.Sec. 17B-3. - Tree removal.Sec. 17B-4. - Abuse or damage of street trees.Sec. 17B-5. - Appeal from the denial or permit.Sec. 17B-6. - Tree board.Sec. 17B-7. - Tree topping.Sec. 17B-8. - Tree maintenance, public rights-of-way or designated tree planting easement.Sec. 17B-9. - Tree protection.Sec. 17B-10. - Undesirable tree species.Sec. 17B-11. - Suggested tree species.Sec. 17B-12. - Penalty.Sec. 17B-13. - Violation.**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 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)

FOOTNOTE(S):

⁽⁷⁰⁾ 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: (Back)

Ord. No.	Section	Date	Ord. No.	Section	Date
1-79	2	1-11-79	74-87	1	4-30-87
159-82	1	9- 9-82	192-92	1	10-29-92
34-84	1	3- 8-84			

⁽⁷⁰⁾ Charter reference— Authority to improve streets and walkways, § 3.02(7). (Back)

⁽⁷⁰⁾ Cross reference— Streets and sidewalks generally, Ch. 17 (Back)

⁽⁷⁰⁾ State Law reference— Trees near roads, KRS 179.220 et seq. (Back)

ARTICLE 18

LANDSCAPE AND LAND USE BUFFERS

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 protect, preserve and promote the aesthetic appeal, character and value of the surrounding neighborhoods; to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature, and artificial light glare.

18-2 SITES AFFECTED

18-2(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.

18-2(b) EXISTING SITES - 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.

18-2(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.

18-2(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.

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.

18-3(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 Section 18-3(a)(1) or adjacent to the vehicular use area as shown in the chart Section 18-3(a)(2). A "Planting Manual" and a "Plant Materials List" shall be maintained by the Division of Planning and available in the offices of the Division of Building Inspection, to provide more detailed information on the acceptable plant material.

//

18-3(a)(1) PROPERTY PERIMETER REQUIREMENTS

A. When the following.	B. Adjoins the following.	C. a minimum buffer area *1 of this average width (with 3' as the least dimension) is required *3 *4	D. which will contain this material, to achieve opacity required. *5 *8
1. Any M-1P zone.	Any property in any zone other than M-1P.	10' adjacent to all common boundaries, including street frontage.	1 tree/40' of linear boundary, OFT *2, from Group A, B, or C of Plant List plus continuous 6' high planting, hedge, fence, wall or earth mound.
2. Any office or business zone (except P-2).	Any residential zone.	15' adjacent to all common boundaries (located behind the building line) except street frontage. *7	1 tree/40' of linear boundary OFT, from Group A or B only, plus 1) a double row of 6' high hedge, or 2) a 6' high fence, wall or earth mound.
3. Any industrial or P-2 zone.	Any residential, office, or business zone.	15' adjacent to all common boundaries except street frontage. *7, *9	Same as 2D.
4. Any double frontage lot (as defined by the Sub- division Regulations) in any zone except A-U, A- R, A-N and A-B, unless the lot is used for a vehicular sales facility or a service station.	Any state maintained free- way or arterial street not providing direct access to the property.	20' for residential zones and 10' for all other zones adjacent to freeway or arterial.	1 tree/30', OFT, Group A or B, plus continuous 6' high planting, hedge, wall, fence (not to exceed 8' 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 agri- cultural 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 sta- tions, transfer stations or similar uses.	Any property boundary, including street rights-of- way.	15' adjacent to all bound- aries, except only 5' for utility substations and sew- age pump stations measured adjacent to the enclosure. *7	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.	6' adjacent to all common boundaries except street frontage.	1 tree/40' of linear boundary, OFT *2, from Group A, B, or C of Plant List plus a continuous 6' high planting, hedge, fence, wall, or earth mound.

(Continued next page)

18-3(a)(1) PROPERTY PERIMETER REQUIREMENTS (Cont'd)

8. Any business, office, or industrial zone.	Any A-R zone.	15' adjacent to all common boundaries except street frontage.	One tree/40' of linear boundary, OFT *2, from Group A of Plant List, plus continuous 6' high planting or hedge; or 1) one evergreen tree/15' of linear boundary, OFT, planted 15' o.c.; or 2) one tree/20' of linear boundary, OFT, that is a combination of 50% deciduous trees from Group A and 50% evergreen trees or small flowering trees.
9. Any residential, business, office or industrial zone.	Urban Service Area boundary.	5' adjacent to all common boundaries except street frontage. *6	Same as 1D, except use only tree species from Group A.
10. Any cemetery use, whether private or public.	Any property boundary, including street rights-of-way.	50' adjacent to all boundaries, as shown on a development plan or subdivision plan.	1 tree/40' of linear boundary, OFT, from Group A; or 1 tree/30' from Group B, plus continuous 6' high planting or hedge, in addition to a wall or fence a minimum of 3' in height.

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

*2 O.F.T. means "or fraction thereof". Unless otherwise specified, trees do not have to be equally spaced, but may be grouped.

*3 To determine required area of landscape buffer area, multiply required average width by length of common boundary. Using item 1C as an example, the 10' average required width times an assumed 100' of common boundary equals 1,000 sq. ft. of required landscape area. Thus, if some sections of the landscape buffer area are only 3' in width, other sections will have to be greater than 10' in width in order to attain the required 1,000 sq. ft. of landscape area.

*4 Five (5) 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 3' as the least dimension for any other zone.

*5 A continuous planting of evergreen trees 15' on center (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(3)(c) and an opacity of seventy percent (70%) is achieved.

*6 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 The 15' Landscape Buffer Area (LBA) may be reduced to 5' when used in conjunction with a 6' high wall or fence.

*8 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 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. 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.

18-3(a)(2) VEHICULAR USE AREA PERIMETER REQUIREMENTS

A. When the following.....	B. Adjoins the following....	C. a minimum landscape buffer area of this width is required *1	D. which will contain this material, *3 to achieve opacity required
1. Any vehicular use area *2 (VUA) on any property.	Any property in any zone except industrial (I-1, I-2), downtown business core (B-2), Downtown business frame (B-2A), Lexington Center Business (B-2B), or agricul- tural (A-U, A-R, A-N or A-B).	5' to edge of paving where vehicles overhang, 4' mini- mum from edge of paving and 3' (that prohibits any vehicular overhang) for other areas, adjacent to portion of vehicular use area that faces adjacent property.	1 tree/40' of boundary of vehicular use area OFT *4, from group A, B, or C, plus a 3' average height continuous planting, hedge, fence, wall or earth mound or a 3' decrease in elevation from the adjoining property to the vehicular use area.
2. Any vehicular use area in any zone outside the B-2, B-2A, or B-2B zones, except vehicle sales facilities or service stations.	Any public or private street right-of-way, access road or services road (except express- ways).	Same as 1C above except applies to VUA portion facing public or private street right- of-way, access road, or service road.	Same as 1D, except use only Group A or B.
3. Any vehicle sales facility or service station.	Any public or private street right-of-way, access road, service road, expressway or arterial street.	Same as 2C above.	1 tree/50' OFT from Group A or B, plus an 18" average height continuous planting, hedge, fence or wall.
4. Any vehicular use area (except loading and unloading in areas) B-2, B-2A or B-2B zones.	Same as 2B.	6' adjacent to portion of vehicular use area that faces a public or private street right- of-way, access road or service road.	3' average height continuous planting, hedge or wall.
5. Financial institutions with drive-in facilities or night deposits.	Same as 2B.	Same as 1C.	1 tree/40' of boundary OFT from Group A or B (deciduous only) with 5' of clear trunk, plus an 18" average height continuous planting, hedge, fence or wall adjoining a public or private right-of-way and a 3' average height planting, hedge, fence or wall adjacent to all other property.
			(continued next page)

- *1 These provisions may be included within the property perimeter landscaping required by Section 18-3(a)(1) where landscape buffer areas are also applicable.
- *2 A vehicular use area (V.U.A.) is any open or unenclosed area containing more than 1,800 sq. ft. of area and/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; mobile home parks; and sales and service areas. Driveways are considered to be vehicular use areas whenever they are adjacent to public streets or other vehicular use elements described previously in this paragraph (and intervening curbs, sidewalks landscape strips, etc., do not eliminate adjacency).
- *3 Grass or ground cover shall be planted on all portions of the landscape buffer areas not occupied by other landscape material.
- *4 OFT means "or fraction thereof".
- *5 In the B-2, B-2A, and B-2B zones, when a wall is used, it is to be constructed of natural stone, brick or pre-cast concrete.

18-3(a)(3) WHO PROVIDES LANDSCAPE BUFFER AREA

The landscape buffer area and material required adjacent to any vehicular use area under Section 18-3(a)(2) 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) generally shall be placed on the activity listed under Column A of 18-3(a)(1) and 18-3(a)(2) 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 Building Inspection as a public record; or (d) shall be placed on the activity or parcel being processed when adjoining property is already developed with the exception of 18-3(a)(1) lines 4 and 5; or (e) 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.

18-3(a)(4) REQUIREMENT CONFLICTS - Whenever a parcel or activity falls under two or more of the landscape requirements listed in the table of Section 18-3(a)(1) or 18-3(a)(2) the most stringent requirements will be enforced.

18-3(a)(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 two and one-half (2½) feet, and wheel stops or curbs will be required.

18-3(a)(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 Building Inspection and the Street Tree Coordination Committee. 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 VUA 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 VUA perimeter landscaping. The Division of Building Inspection shall permit the required VUA perimeter trees to be located in the right-of-way only if there is sufficient area for such trees to grow to maturity.

18-3(a)(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 Building Inspection 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 6" to 12" 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 12" to 24" 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 24" 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.

18-3(a)(8) LANDSCAPING AT DRIVEWAY AND STREET INTERSECTIONS

- To assure 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.

18-3(a)(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 both of the following conditions exist: a) the vehicular use areas are for the required parking for the properties or the common use of the properties (as substantiated by a reciprocal parking and access agreement), b) a final development plan for the properties has been approved by the Planning Commission.

18-3(b) INTERIOR LANDSCAPING FOR VEHICULAR USE AREAS - Any open vehicular use area (excluding loading, unloading, and storage areas in an industrial zone [I-1 or I-2] or warehouse business zone [B-4]) containing 6,000 or more sq. ft. of area, or twenty (20) 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 6,000 or more square feet of area, or twenty 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.

18-3(b)(1) LANDSCAPE AREA - For each one hundred (100) square feet, or fraction thereof, of vehicular use area, five (5) square feet of landscaped area shall be provided in all zones except the P-2 zone. In the P-2 zone, ten (10) square feet of landscaped area shall be required for each one hundred (100) square feet of vehicular use area.

18-3(b)(1)(a) MINIMUM AREA - The minimum landscape area permitted shall be sixty-four (64) square feet, with a four (4) foot minimum dimension to all trees from edge of pavement where vehicles overhang.

18-3(b)(1)(b) MAXIMUM CONTIGUOUS AREA - In order to encourage the required landscape areas to be properly dispersed, no required landscape area shall be larger than three hundred fifty (350) square feet in vehicular use areas under 30,000 square feet in size, and no required area shall be larger than 1,500 square feet in vehicular use areas over 30,000 square feet. In both cases, the least dimension of any required area shall be four (4) feet minimum dimension to all trees from edge of pavement where vehicles overhang. The maximum distance between landscape areas shall be one hundred twenty (120) feet measured from the

closest perimeter landscape area curb edge or the closest curb edge of each required interior area. Landscape areas larger than above are permitted as long as the additional area is in excess of the required minimum.

18-3(b)(1)(c) MINIMUM TREES - A minimum of one (1) tree shall be required for each two hundred fifty (250) square feet or fraction thereof of required landscape area. Trees shall have a clear trunk of at least five (5) feet above the ground. The remaining area shall be landscaped with shrubs, or ground cover, not to exceed two (2) feet in height.

18-3(b)(1)(d) VEHICLE OVERHANG - Parked vehicles may hang over the interior landscaped area no more than two and a half (2½) feet, as long as concrete or other wheel stops are provided to insure no greater overhang or penetration of the landscaped area.

18-3(c) LANDSCAPING FOR SERVICE STRUCTURES - All service structures shall be fully screened except when located in a 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.

18-3(c)(1) LOCATION OF SCREENING - A continuous planting, hedge, fence, wall, or earth mound shall enclose any service structure on all sides unless such structure must 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.

18-3(c)(2) 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.

18-3(d) SCREENING OF OUTDOOR STORAGE AREAS - All outdoor storage areas in the I-1 and I-2 zones shall be screened by a solid wall or fence not less than six (6) feet in height.

18-4 LANDSCAPE MATERIALS - The landscaping materials shall consist of the following, and are described in more detail in the Planting Manual and Plant Materials List available at the Division of Planning and the Division of Building Inspection.

18-4(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 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 (1/2) 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. In industrial zones, there shall be no height limitation on walls or fences; in all other zones, however, there shall be a six (6) foot height restriction for walls or fences in front yards and side street side yards, and an eight (8) foot height restriction in side and rear yards. 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.

18-4(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.

18-4(c) PLANTS - All plant materials shall be living plants (artificial plants are prohibited) and shall meet the following requirements:

18-4(c)(1) QUALITY - Plant materials used in conformance with provision of this Ordinance shall conform to the standards of the American Association of Nurserymen and shall have passed any inspections required under State regulations. Bare root plants, with the exception of shrubs and hedges, vines and ground covers shall be prohibited.

18-4(c)(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 3/4) 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.

18-4(c)(3) EVERGREEN TREES - Evergreen trees shall be a minimum of five (5) feet high with a minimum caliper of one and one-half (1 1/2) inches immediately after planting.

18-4(c)(4) SHRUBS AND HEDGES - Shall be at least 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 Building Inspection and with the exception of the 12" plants, shrubs and hedges may be pruned to one-half the height in accordance with accepted horticultural practices. All plants shall conform to opacity, mature height, and other requirements within four (4)

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.

18-4(c)(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.

18-4(c)(6) GRASS OR GROUND COVER - Grass of the fescue (*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 percent (75%) of complete coverage after two complete growing seasons. In certain cases, ground cover also may consist of rocks, pebbles, sand, and similar approved materials.

18-4(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 Building Inspection; 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 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 Section 18-4(c)(2). 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 this Article. Except as provided above, the removal of landscape materials requires the approval of the Division of Building Inspection. When trees are removed, other than as permitted above, such trees shall either be replaced with the necessary number of 2½-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 Building Inspection. Violation of these installation and maintenance provisions shall be grounds for the Division of Building Inspection to refuse a building occupancy permit, require replacement of landscape material or institute legal proceedings to enforce the provisions of this Article.

18-5 PLAN SUBMISSION AND APPROVAL - Whenever any property is affected by these landscape requirements, the property owner or developer shall submit a landscape plan to the Division of Building Inspection. For any property where a vehicular use area for twenty (20) or more vehicles or 6,000 or more square feet is provided, the landscape plan shall be prepared and sealed by an architect, landscape architect or 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, the landscape plan shall be prepared and sealed 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 be submitted as part of any development plan required by the Planning Commission. Such "combination plans", however, shall be first submitted to the Division of Building Inspection for its approval or disapproval of the landscape portion of the plan.

18-5(a) PLAN CONTENT - The contents of the plan shall include the following: (a) plot plan, drawn to an easily readable scale, showing and labeling by name and dimensions, 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); (b) existing and proposed contours at 2-foot intervals; (c) typical elevations and/or cross-sections as may be required; (d) 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; (e) requirements or an approved tree protection plan applicable to the site, per Article 26, Tree Protection Standards.

18-5(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 Building Inspection. If the required landscaping has not been completed and a Temporary Certificate of Occupancy is issued under Section 5-4(a) of this 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 Building Inspection, to complete the work in the event of the foreclosure of the bond or letter of credit.

18-5(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 Building Inspection 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 Building Inspection shall apply the proceeds of the bond or letter of credit to have the work completed.

18-6 PLANTING MANUAL AND PLANT MATERIALS LIST - Developers shall refer to the Planting Manual and Plant Materials List, which are available at the offices of the Division of Planning and the Division of Building Inspection for minimal requirements to use in meeting the provisions of this Article. Any materials that are not on the Plant Materials List 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 Building Inspection.

18-7 VARIANCES - Any landscape plan submitted to, and disapproved by the Division of Building Inspection 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.

18-7(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.

18-7(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 shall be a landscape architect, one shall be a member of the Lexington Homebuilder's Association, one shall be a member of the Urban County Tree Board and one shall be a member of the Board of Adjustment. The term of the Board of Adjustment member shall be the same as his/her Board of Adjustment appointment. For others, at the initial appointment, one shall be appointed for four years, one for three years, one for two years, and one for one year. Subsequent appointments shall be for four years.

18-7(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 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.

18-7(d) REVIEWING VARIANCE REQUESTS - The committee, in its review of said recommendations on variance requests, 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 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.

18-7(e) RECORDING - Whenever the committee makes a recommendation, such recommendation shall be forwarded to the Board of Adjustment, the Division of Building Inspection, and be properly described in the committee's minutes.

18-8 ENFORCEMENT - Violations of Article 18 are

subject to the penalty provisions in Article 5-8, and may be enforced through the issuance of a civil citation, pursuant to Article 5-9.

ARTICLE 5

ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

5-1 ADMINISTRATION AND ENFORCEMENT - The Director of the Division of Building Inspection, and the Director's authorized agent of the Lexington-Fayette Urban County Government, shall administer and enforce this Zoning Ordinance, except as otherwise provided herein. The Director, 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 of Building Inspection. The Director shall use the best efforts to prevent violations. If the Director, or the Director's agent, finds any of the provisions of this Zoning Ordinance are being violated, the Director, 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 the Zoning Ordinance. The Director 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.

5-2 PERMITS REQUIRED FOR CONSTRUCTION, DEMOLITION, AND LOCATION OF STRUCTURES - Permits shall be required for the following activities and shall be issued by the Division of Building Inspection in conformity with the provisions of this Zoning Ordinance.

5-2(a) BUILDING PERMITS - No building or other structures shall be erected, moved, added to, or structurally altered; nor shall any of said activities be commenced without a building permit therefore, issued by the Division of Building Inspection.

5-2(b) WRECKING PERMITS - No building or other structures shall be razed, demolished or removed, either entirely or in part; nor shall any of said activities be commenced without a wrecking permit, issued by the Division of Building Inspection, and any required land disturbance permit has been obtained from the Division of Engineering.

5-2(c) LAND DISTURBANCE PERMITS - Land Disturbance permits shall be required as provided in Chapter 16 of the Code of Ordinances.

5-2(d) MOBILE HOME LOCATION PERMITS - Prior to any placement or relocation of any mobile home, a location permit shall be required for determination of compliance with this Zoning Ordinance and the provisions of KRS 100.203(4)(a)(b).

5-2(e) SIGN PERMITS - No sign shall be created, erected, moved, added to, or structurally altered; nor shall any of said activities be commenced without a permit therefore, issued by the Division of Building Inspection.

5-2(f) PERMITS AUTHORIZED BY THE BOARD OF ADJUSTMENT - The Division of Building Inspection shall issue permits in conformance with the written authorization of the Board of Adjustment concerning administrative review appeals, conditional use permit appeals, variance appeals, or other appeals as authorized in this Zoning Ordinance.

5-2(g) OTHER PERMITS - Additional permits may be required by the Division of Building Inspection to enforce the provisions of this Ordinance.

5-3 COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS - Nothing in this section or other sections of the Zoning Ordinance shall be construed to exempt any applicant for a permit from compliance with all local, state and federal codes, statutes and regulations.

5-4 PERMIT APPLICATION REQUIREMENTS AND PROCEDURES - All applications for permits shall be accompanied by such plans and information as the Division of Building Inspection or the Division of Engineering deems to be necessary to determine compliance and provide for enforcement of this Zoning Ordinance. After reviewing the application materials, the Director of the Division of Building Inspection or the Director of the Division of Engineering shall mark the application either as "Approved" or "Disapproved" and attest to the same by signature on such copy. The original, similarly marked, shall be retained by the Division of Building Inspection.

5-4(a) BUILDING PERMITS FOR SINGLE FAMILY AND TWO-FAMILY DWELLINGS - All applications for permits for detached single family and two-family dwellings and their accessory buildings shall be accompanied by plans showing the location and dimension of any existing or proposed principal or accessory buildings on the lot; the location and dimension of all required yards; height of the building; and the location and dimension of the required parking, as well as any other information

deemed necessary by the Division of Building Inspection to determine compliance with this Zoning Ordinance.

5-4(a)(1) DIVISION OF ENGINEERING APPROVAL REQUIRED - The building permit shall not be issued unless and until the Division of Engineering has approved an erosion control plan.

5-4(b) BUILDING PERMITS FOR ALL OTHER BUILDINGS - All applications for building permits, including associated paving permits, other than those for single family or two-family dwellings and their accessory buildings, shall be accompanied by a site plan, drawn to scale, showing information with regard to the lot and neighboring lots as may be necessary to determine compliance with the Zoning Ordinance and the Code of Ordinances. No building permit shall be issued unless or until the Division of Building Inspection has approved the site plan, upon finding that the development proposed thereon complies with all applicable requirements of the Code of Ordinances, the Subdivision Regulations and the Zoning Ordinance. The following additional requirements shall be applicable to site plans required under this section:

5-4(b)(1) DIVISION OF ENGINEERING - The building permit shall not be issued unless and until all required information has been submitted to the Division of Engineering as it relates to storm drainage, erosion and sediment control, and sanitary sewers. Off-site improvements may be required if an adequate drainage outfall is not available to the site. The site plan shall include sufficient existing and proposed site elevations to demonstrate that damage to adjacent properties shall not occur, or that an existing off-site problem will not be aggravated. Storm drainage detention on the lot in conformance with the Stormwater Manual will be required, if not provided as a part of the subdivision development.

5-4(b)(2) DIVISION OF TRAFFIC ENGINEERING APPROVAL REQUIRED - The building permit shall not be issued unless and until the Division of Traffic Engineering has approved the site plan as it relates to access point design details and parking lot circulation layout.

5-4(b)(3) OTHER APPROVALS - If this Zoning Ordinance or the Code of Ordinances requires approval by another agency of certain site plan features, such approval shall be obtained prior to issuance of a building permit.

5-4(b)(4) DEVELOPMENT PLAN AS SITE PLAN - In any case, where the Planning Commission has approved a detailed final development plan showing essentially the same information as required above for the property seeking a building permit, no separate site plan

shall be required to be prepared. The applicant shall be required to supply such supplementary information as necessary to comply with all requirements of this Section 5-4(b).

5-4(c) MOBILE HOME LOCATION PERMITS - All applications for mobile home location permits shall be accompanied by plans showing the location of the mobile home, as well as any permanent structure on the lot, the location and dimension of all required yards, and the location and dimension of the required parking.

5-4(d) WRECKING PERMITS - Requirements for wrecking permits in Historic Districts shall be as provided in Article 13. Requirements for wrecking permits in all other zones shall be as provided in the Code of Ordinances.

5-4(e) LAND DISTURBANCE PERMITS - Requirements for land disturbance permits shall be as provided in Chapter 16 of the Code of Ordinances.

5-4(f) SIGN PERMITS - Requirements for sign permits shall be as provided in Article 17.

5-4(g) SATELLITE DISH ANTENNAS - In lieu of a permit to install a satellite dish antenna, the following regulations shall control the installation of satellite dish antennas:

- (1) Within ten (10) days of the completion of the installation of the antenna, the owner of the property shall submit a signed statement to the Division of Building Inspection, specifying the details of the installation so that compliance with this Zoning Ordinance can be determined. In addition, when the antenna is installed by an agent of the property owner, a signed statement of the owner shall be submitted, indicating that a copy of this Ordinance has been provided to the property owner.
- (2) It shall be the responsibility of the property owner to properly install the satellite dish antenna in compliance with all requirements of this Zoning Ordinance.

5-5 CERTIFICATE OF OCCUPANCY REQUIRED - No person shall use or permit the use of any structure or premises or part thereof hereafter created, erected, changed, converted, enlarged or moved, wholly or partly, until a certificate of occupancy shall have been issued by the Division of Building Inspection. Such certificates shall show that the structure or use, or both, or the premises, or the affected part thereof, are in conformity with the provisions of this Zoning Ordinance. It shall be the duty of the Division of Building Inspection to issue such certificate if it is found that all of the provisions of this Zoning Ordinance have been met, and to withhold such

certificate unless all requirements of this Zoning Ordinance have been met.

5-5(a) TEMPORARY CERTIFICATES OF OCCUPANCY - A temporary certificate of occupancy may be issued by the Division of Building Inspection for a period not exceeding six (6) months during alterations or partial occupancy of a building, pending its completion, in accordance with general rules or regulations concerning such temporary certificate; and with such additional conditions or safeguards as are necessary in the circumstances of the case to protect the safety of the general public.

5-5(b) CERTIFICATE OF OCCUPANCY FOR EXISTING USES OR STRUCTURES - Upon request from the owner or tenant, and upon inspection to determine the facts in the case, the Division of Building Inspection shall issue a certificate of occupancy for any building, premises or use that is in conformity with the provisions of this Zoning Ordinance or that is a legal non-conforming use as specified in the certificate.

5-6 STRUCTURES AND USES TO BE AS PROVIDED IN BUILDING PERMITS, PLANS AND CERTIFICATES OF OCCUPANCY - Building permits or certificates of occupancy, issued on the basis of plans and applications approved by the Division of Building Inspection, authorize only the use, arrangement and construction set forth in such permits, plans, and certificates, and no other. The use, arrangement or construction at variance with that authorized shall be deemed a violation of this Zoning Ordinance.

5-7 COMPLAINTS REGARDING VIOLATIONS - Whenever a violation of the provisions of this Zoning Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Director of the Division of Building Inspection or the Director's authorized agent or, in the case of land disturbance permits authorized under Chapter 16 of the Code of Ordinances, with the Urban County Engineer or the Urban County Engineer's authorized agent. The Director of the Division of Building Inspection, or the Urban County Engineer, or their authorized agents (as appropriate) shall record properly such complaint, immediately investigate, and take action thereon as provided by this Zoning Ordinance.

5-8 PENALTIES FOR VIOLATIONS - Unless otherwise provided herein, violation 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 of 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 Section 5-8(b) herein below, shall upon conviction thereof be fined not less than \$10, but no more than \$500, for each conviction. Each day of violation shall constitute a separate offense.
- (b) Any person shall, upon conviction, be fined not less than \$100, but no more than \$500, 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 therefore, constitutes a violation of this Zoning Ordinance.

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.

5-9(a) ISSUANCE OF A CIVIL CITATION - Prior to the issuance of the first civil citation for a violation of a section of the 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.

5-9(b) APPEALS OF CIVIL CITATIONS - An appeal of the civil citation may be made to the Infrastructure Hearing Board, as provided in Section 16-79 of the Code of Ordinances.

5-9(c) CIVIL PENALTIES - For violations of the Zoning Ordinance, 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 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 the same section of the Zoning Ordinance 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 the same section of the Zoning Ordinance 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 the same section of the Zoning Ordinance within any 12-month period shall be a maximum 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.

5-9(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 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.

5-9(e) ENFORCEMENT - Nothing contained herein shall prohibit the Urban County Government from enforcement of this Zoning Ordinance by any means authorized by law.

Planning & Public Works Committee Referrals

Item	Referred By	Date	Status
Oliver Lewis Way Project	Blues	4-9-09	Quarterly Update/ Moved from PS/PW Committee
Erecting Large Utility Poles in ROW	Martin	3-12-10	Moved from PS/PW Committee
Todds Road Widening Phase II	Stinnett	4-15-10	Quarterly Update/ Moved from PS/PW Committee
2012 Comprehensive Plan Goals & Objectives	Farmer	3-16-11	Moved from PS/PW Committee
Re Paving Program	Martin	4-13-11	
Fence Issue	Blues	5-24-11	
Renegotiate & Expand Paving Warranties	EQ Link	6-19-11	
Develop a Better Relationship with Madison & Jessamine Counties re Valley View Ferry Authority	EQ Link	6-19-11	
Working with Fayette County Public Schools to Sustain Road Salt Services	EQ Link	6-19-11	Moved from PS/PW Committee
Downtown Traffic Management & Revitalization Study	Stinnett	8-16-11	Law/Building Inspection Review
Right of Entry & Administrative Warrants	Farmer	9-6-11	
Department of Planning Commissioner Position Addressing Ordinance	Farmer	9-14-11	Review UCG Ord 17-2
Review Chapter 4 of UCG Code re Harboring Animals	Beard	9-27-11	
In Residential Areas	Martin	9-27-11	
Review Street Tree & Tree Protection Ordinances			

10.16.2011