

F. Brown, Chair
McCurn, Vice-Chair
Kay
Moloney
Ellinger
LeGris
Sheehan
Kloiber
Worley
Bledsoe



MEETING AGENDA
Environmental Quality & Public Works Committee
June 22, 2021
1:00 P.M.

- | | | |
|-------------|--|----------------|
| I. | Approval of May 18, 2021 Committee Summary | (1-4) |
| II. | FY22 Pavement Management Plan
(F.Brown/Albright) | (5-15) |
| III. | Abandoned Shopping Carts
(Kloiber/Albright) | (16-27) |
| IV. | KU Vegetation Management Agreement
(Kloiber/Kloiber) | (28-41) |
| V. | Items Referred to Committee | (42) |

"Environmental quality and public works committee to which shall be referred matters relating to the department of environmental quality and public works and its divisions, including capital improvement projects and any related partner agencies.- Council Rules & Procedures, Section 2.102 (3) as adopted by Urban County Council November 1, 2018

2021 Meeting Schedule

January 19	August 24
February 16	October 19
April 20	November 17
May 18	December 7
June 22	



Environmental Quality & Public Works Committee Virtual Meeting

May 18, 2021

Summary and Motions

Chair F. Brown called the meeting to order at 1:00 p.m. Committee Members Kay, Ellinger, Moloney, McCurn, LeGris, Sheehan, Kloiber, Worley, and Bledsoe were present.

F. Brown began the meeting by providing the following statement: “Due to the COVID-19 pandemic and State of Emergency, this meeting is being held via live video teleconference pursuant to 2020 Senate Bill 150, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting.”

I. Approval of March 9, 2021 Committee Summary

Motion by Kay to approve the March 9, 2021 Special Environmental Quality & Public Works Committee Summary. Seconded by Ellinger. The motion passed without dissent.

II. Single Use Plastics and Energy Conservation

Members of the Environmental Commission provided a presentation on recommendations for Council to consider: Blaine Early, Chair of the Environmental Commission; Sarah Asalon, Secretary and Member representing District 5; Paul Swoveland, Immediate Past Chair and Member representing District 9; and Danny Woolums, Vice Chair and Member representing District 4. Early began with a review of the Environmental Commission and its objectives which include development of a sustainability plan and reduction of waste by focusing on reducing single-use plastics. He spoke about the implementation of the Empower Lexington Plan which was adopted in 2012 and he reviewed the 5 sectors of the plan: Residential, Transportation, Industrial/Commercial/Institutional, Land Use/Food/Agriculture, and Waste. Asalon spoke about the rationale for the importance of reducing greenhouse gas emissions and energy use and she provided results of a public opinion survey on global warming. She displayed a chart to illustrate changes in the Southeastern United States and she spoke about the impacts of climate change, but said temperature impacts are not equitably distributed. She reviewed the challenge with energy costs and affordability challenges prior to COVID-19 with almost one-third of U.S. households reporting an impact of energy insecurity. She said there is a direct correlation with plastics in energy use which results in greenhouse gas emissions. Swoveland explained that plastics were introduced as a solution for life's problems, but have presented multiple concerns causing both environmental and health problems. He spoke about the concern with microplastic and he emphasized that increased recycling will not solve the environmental impacts of single-use plastics. Swoveland highlighted proposed policy options which include material bans, material fees, public education, and voluntary action. Woolums proposed that Council and the LFUCG take action and designate or appoint a staff member to update the Empower Lexington Plan and to work with the Environmental Commission to implement the plan. He concluded the presentation with a review of 3 proposed actions that could be taken by the Environmental Commission.

Sheehan mentioned that she is working on a sustainability item in this committee that intends to explore the environmental components of our Comprehensive Plan and she would like to see that the

update of the Empower Lexington Plan is in line with what is in the Comprehensive Plan. She asked if there is grant funding available for hiring a Sustainability Coordinator. Early agreed that the Environmental Commission and the Council can work together to update the Empower Lexington Plan and the Comprehensive Plan to make them consistent. He explained that several sources for grants to assist with hiring a Sustainability Coordinator have been identified and with the last COVID relief bill, there might be funding available for communities to implement this type of initiative, but currently there is no active grant application. Sheehan expressed support for efforts to find outside funding since it is not included in the current budget. Early stressed that this was the reasoning behind the recommendation to have a current staff member designated to assume this role.

Kay described the work of this group which began in the early 2000s to address what the community could do about environmental issues. He highlighted the Energy Improvement Fund position which has managed to guide the city in making changes to our energy use while also saving money. He spoke about the need for an additional point person to address these issues on a broader scale for the entire community which is what the Environmental Commission is recommending. He spoke about potentially using ARPA (American Rescue Plan Act) funds for this position which would focus on low-income communities. He added that he has put in a request for a full-time staff person within Environmental Quality & Public Works who would staff the Environmental Commission, find more grant funds, and coordinate efforts in the community to reduce our environmental footprint.

F. Brown asked if this position was run through the Links process and Kay said it was not, but he has had preliminary conversations with Commissioner Albright and the position would potentially be located in Division of Environmental Quality.

No further comment or action was taken on this item.

III. Backyard Composting

LeGris provided a brief background to the item which came out of discussions on potential alternatives for the diversion of waste and said one particular concern is the diversion of food waste. She introduced Angela Poe, Program Manager for Environmental Services, who provided details for a home compost pilot program. Poe explained the purpose is to provide an alternative for disposal of organic materials and to encourage at-home food composting. She said the program will consist of a workshop, a free composter, and several surveys to be completed throughout the process. Poe explained that there are requirements for participation in this program and those include: being a resident with city collection, only one composter available per household, participation in the 2-2.5 hour workshop, completion of the surveys, and the person must use the composter. She reviewed the topics that will be covered during the workshop and the plan in place for obtaining compost bins. She concluded the presentation with a detailed look at the budget for the pilot program which includes costs for taking the demonstration into the community and she anticipates being able to report on the findings next spring.

Sheehan asked how this scales up and what happens if the pilot program is successful. Poe said it depends on the level of interest, but when the city has offered home composting workshops in the past, they sold out quickly. She said this could be scaled up by making the workshops larger and offering them more frequently.

F. Brown asked where the workshop would take place and Poe said potentially at one of the Seedleaf Gardens because they have compost bins available. F. Brown mentioned the \$1,940 budgeted per

workshop and asked how many participants that would include. Poe said it would be approximately 20 households with an average of 2 people from each household.

LeGris said this proposal would take place in the fall of 2021 and she will include as a FY22 budget recommendation, a reallocation of \$9,000 for this program that would include any additional promotional costs that may exceed the \$6,520 budgeted for the entire pilot program.

No further comment or action was taken on this item.

IV. Urban Forestry and Street Tree Update

Susan Plueger, Director of Environmental Policy, began the presentation by displaying the organizational chart to illustrate staffing of the Urban Forestry Program in the Division of Environmental Services. She provided a background on Street Trees in Lexington and she explained that 10% of those trees are maintained by the city and 90% are maintained by property owners, but some of the tasks can be difficult for a property owner. She provided an overview of the Hazardous Street Tree Cost Share Program and she shared success stories associated with the program. She spoke about the Street Tree Clearance Pruning Program and reviewed statistics as well as success stories that came as a result of the program. She continued the presentation with a look at next steps and future initiatives for the Urban Forestry Program.

McCurn asked if there is a diameter that we focus on for street tree replacement and Plueger said it is 1.75 inches minimum. McCurn asked if there is a specific tree we use and Plueger pointed out that there is a list of prohibited street trees because some trees should not be planted in the right-of-way and there is also a list of acceptable trees. She said it also depends on the width of the utility strip and there are several factors that have to be considered such as overhead power lines. McCurn asked how many trees were provided through the reforest program and Plueger said the at-home portion was about 500 trees with a total of 5,000 trees planted.

No further comment or action was taken on this item.

V. Scott County Landfill

Council Member Josh McCurn began the Scott County Landfill presentation with a review of the RFP that was solicited in 2014 for the operation of the LFUCG transfer station and the disposal of municipal waste. Three proposals were received and scored on six criteria. In the end, Waste Services of the Bluegrass (WSB) was selected for a variety of reasons including their close proximity to the LFUCG transfer station and considerable cost savings. He pointed out that WSB is closing on October 31, 2021 and with the landfill unable to expand, our operation would discontinue. This means that in the next few years we would need to find another option for waste disposal. The current contract is effective through 2025, he said, so it is important that we consider options for moving forward.

Worley said he was impressed by the operation and he spoke about the cleanliness of the landfill which is important when considering the surrounding communities.

Moloney emphasized that this is a regional problem and does not just effect Fayette County. He pointed out that other counties have submitted letters to Frankfort expressing the importance of this for their community and we need to get our message to Frankfort as well.

F. Brown explained that he has worked with McCurn to draft a resolution and Law Department has been reluctant to draft a resolution because of pending litigation related to the contractor and Scott County. He said the contractor has multiple violations and the Scott County Judge Executive said the contractor is out of compliance and is not allowed to accept our waste disposal. F. Brown mentioned that an Environmental Plan was submitted prohibiting them from expanding further and we have drafted a resolution to support the contractor in expanding the landfill, but Scott County does not want to expand. As of October 31, 2021, the contractor can no longer accept Lexington's waste. The contractor has agreed to honor the contract through 2025, but will need to find another location for waste disposal.

Kay asked for additional information on the lawsuit. McCurn explained the landfill is suing against the decisions that have been made. Kay asked what the status is at the moment and what Scott County's role is. Greg Elkins, with Central Kentucky Landfill (CKL), explained the Scott County Solid Waste Management Plan allows for 9.7 million tons of capacity. He said we relied on that capacity assurance when bidding the LFUCG contract and LFUCG relied on that capacity when awarding the contract. He said we also relied on the capacity assurance when applying for a horizontal expansion. He said last year, the Energy & Environmental Cabinet (EEC) approved an amendment to the plan to allow Scott County to zero-out the capacity. He said the Administrative Law Judge with the EEC looked at this and questioned the cabinet's investigation when approving the amendment to zero-out the capacity. He said there is a case before the Administrative Law Judge and she has until mid-July to rule on that. Kay asked if it would make more sense to wait for the judge to make a decision before we take action. Elkins said even if the judge decides it was inappropriate, it will still be incumbent upon the EEC Secretary to sign off on the judge's ruling or rule in Scott County's favor. He said a resolution from this group would be helpful to persuade the Secretary to consider relying on the capacity that was assured by CKL and LFUCG in the 2015 bid process.

Worley said he understands that many of the communities serviced by CKL and WSB have submitted letters or resolutions of support. McCurn said that is correct and Elkins said Franklin County, Harrison County, Jessamine County, City of Versailles, and Owen County submitted letters from the Judges and Mayors, but a resolution would carry more weight and speak more loudly. Worley said, unlike those communities, our administration is not getting involved and Council can only act through resolution.

Motion by McCurn to move this item out of committee and have a presentation at Work Session on May 25, 2021, seconded by Worley. The motion passed without dissent [Note: the presentation was rescheduled for Work Session on June 8, 2021].

VI. Items Referred to Committee

No further comment or action was taken on this item.

Motion by Worley to adjourn, seconded by McCurn. The motion passed without dissent.
Meeting adjourned at 2:44 p.m.

PAVEMENT MANAGEMENT PLAN FY22

Environmental Quality & Public Works Committee Meeting

June 22, 2021



LEXINGTON

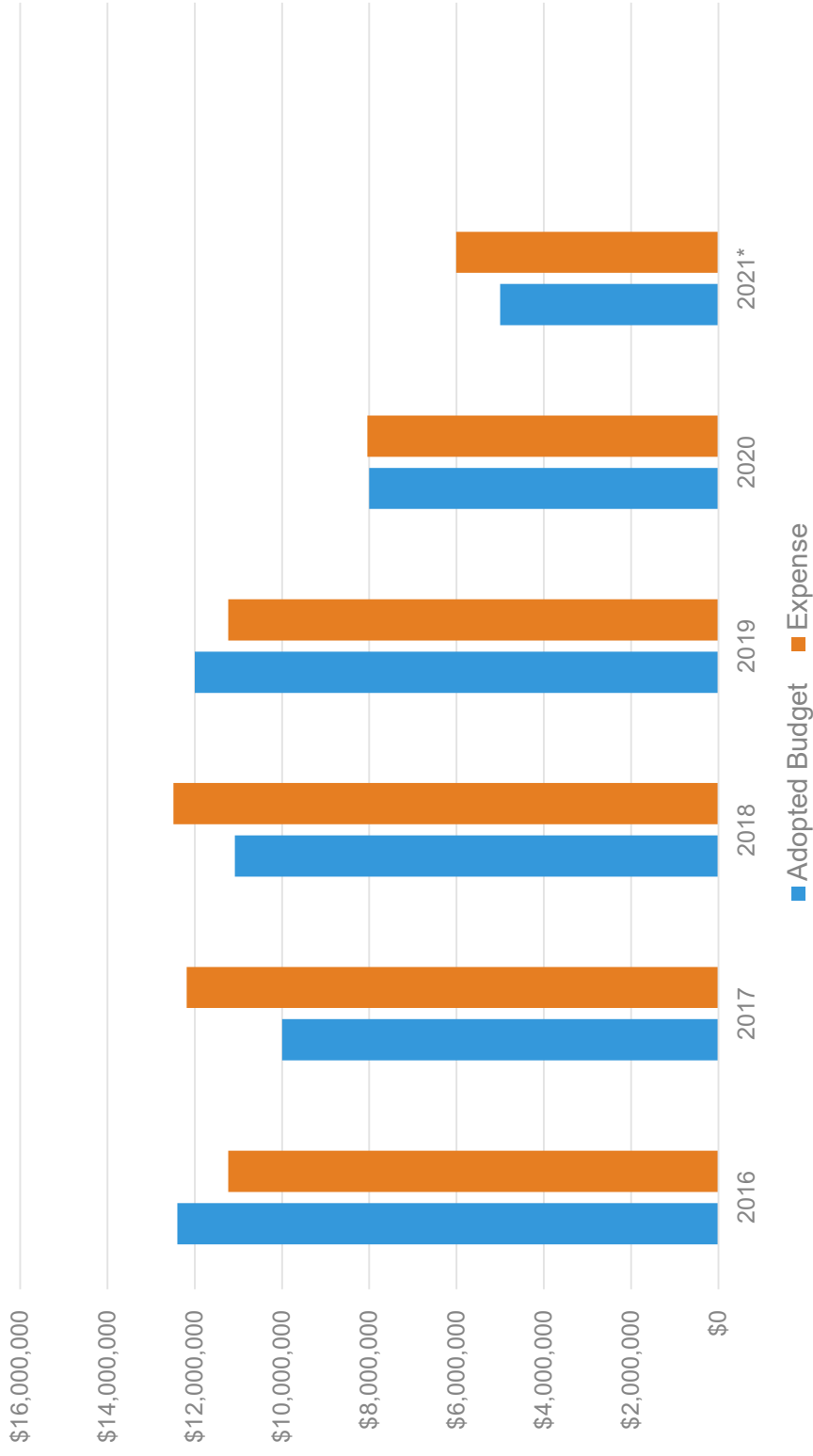
Council Resolutions

- Resolution 470-2016
 - A resolution directing the administration to include fifteen (15) million dollars in the budget for the pavement management plan annually beginning FY2017-2018.
 - Passed by the Urban County Council July 5, 2016.
- Resolution 471-2016
 - A resolution authorizing council acceptance of the pavement management plan.
 - Passed by the Urban County Council July 5, 2016.

AGENDA

- Council Resolutions
- Budget & Expenditures FY 2016 – 2021
- FY22 Budget
- Allocations
- Allocations by Functional Class
- Allocations for Local Roads by District
- Preventive Maintenance
- Plan update for FY22

Budget (as Adopted) & Expenditures (FY16-21)



***thru 6/9/2021**

FY 22 BUDGET

\$ 10,000,000	* 2022 Bond
\$ 1,000,000	* 2022 Bond-for Man o War
<u>\$ 2,811,947</u>	Municipal Aid Program
\$ 13,811,947	subtotal focused on paving
<u>\$ 271,178</u>	Roadcare data collection
\$ 14,083,125	Total

* \$1,500,000 will be moved from FY 22 Bond to FY 21 via the BA currently under review

PROPOSED ALLOCATION

\$ 12,311,947	Starting FY 22 paving
\$ 150,000	address base failures citywide
\$ 25,000	address service roads citywide
\$ 775,000	Tates Creek from Alumni to Lansdowne
<u>\$ 150,000</u>	High friction pavement
\$ 11,211,947	Allocated by functional class

ALLOCATION BY FUNCTIONAL CLASS

Fiscal year budget allocations are recommended as a percentage of the total paving budget, based on functional classification.

Budget Category by		Lane Miles *	Percentage	Allocation
Major/Minor arterials		191	10	\$ 1,121,195
Collectors		363	25	\$ 2,802,987
Local		1615	65	\$ 7,287,766
* Additional 10 lane miles of service roads/14 lane miles of alley				

PREVENTITIVE MAINTENANCE & RESURFACING DISTRIBUTION

Preventive Maintenance extends the pavement life for pavements in good condition by applying a pavement seal to the surface, preventing water infiltration and slowing down oxidation and aging and stabilize loose materials.

25% set aside of each allocation for preventive maintenance - crack seal & rejuve		
Major /Minor Arterials	\$	280,299
Collectors	\$	700,747
Locals	\$	1,821,941

75% for resurfacing and repairs		
Major /Minor Arterials	\$	840,896
Collectors	\$	2,102,240
Locals	\$	5,465,824

Council District Allocation by local lane miles

Percentage of local road lane miles with OCI less than 60

CD	% LOCAL LANE MILES WITH OCI	ALLOCATED FUNDS BY	LANE MILES <60
1	0.091008339	\$ 497,436	99.2
2	0.08790745	\$ 480,487	95.82
3	0.053228869	\$ 290,940	58.02
4	0.083577215	\$ 456,818	91.1
5	0.094237668	\$ 515,087	102.72
6	0.112063192	\$ 612,518	122.15
7	0.058082036	\$ 317,466	63.31
8	0.060916872	\$ 332,961	66.4
9	0.112008147	\$ 612,217	122.09
10	0.100063302	\$ 546,928	109.07
11	0.075054357	\$ 410,234	81.81
12	0.071852552	\$ 392,733	78.32
TOTAL:	1	\$ 5,465,824	1090.01

PAVEMENT MANAGEMENT

Next Steps

- Arterials and Collectors will be selected in the next week to share with Council
- Local Roads with OCI < 60 will be shared if you don't already have them
- Data Collection scheduled for later this summer
- Time to update the pavement management plan

Questions?



Abandoned Shopping Carts

EQPW Committee

June 22, 2021

Nancy B. Albright, P.E.
Commissioner of Environmental Quality and Public Works



LEXINGTON



Background

Clog storm sewers & creeks, affect water quality, Litter

- Often associated with homelessness, but more broadly relates to people who don't have access to an automobile.
- Cluster of 80+ found in one location (Buena Vista Dr.), believed to be tied to temporary housing at adjacent hotels.
- averaged around 4 per week for May and June
- Put into EQPW Committee March 9, 2021





Findings

Research found other City Ordinances can include:

- Retailers to place identifying info on each cart.
- Removing carts from premises is illegal.
- Retailers to develop, and follow, a cart containment plan.
- A requirement for retailers to promptly retrieve their carts, or face fines if gov't has to intervene.
- Out west, cart retrieval services have sprung up to help retailers comply.
- No local ordinances could be found for Knoxville, Louisville, Indianapolis, or Cincinnati.



Proposed LFUCG Ordinance

- Requires all businesses with at least 10 shopping carts to develop a retention plan
- Differentiates between unattended and abandoned.
- 24 hours for a business to retrieve an abandoned cart
- Citations tied to multiple retention violations per year.
- Unattended carts to be put on notice with a sticker. 72 hours later belongings removed and follows the abandoned cart procedure.
- Belongings to be stored for retrieval.



Current Ordinance Challenges

- Burdensome for small businesses.
- We do not know how many businesses fit the definition to need a plan.
- Determinations / penalties for non-compliance with the retention plan undefined.
- Reports by residents to companies won't be under enforcement.
- Where to store personal belongings?
- Who retrieves and stores the belongings?
- Defining "belongings" – distinguishing trash from valuables.
- Ordinance will delay clean up, currently dispose immediately.
- The appeals process sets up the city to retain the abandoned carts/
- Treat broken carts differently?

Recommendations

More Tracking and Discussion

- Establish a unique LexCall code for just shopping carts to help determine scale of the issue.
 - Include location, # of carts, and any identifying info.
- More discussion on Pros and Cons of any proposed regulatory action.
 - Are we penalizing a victim if we cite retailers?
 - Are we penalizing the homeless?
 - Resource constraints would affect any new enforcement effort
- Better coordination with the Office of Homeless Prevention and Intervention.
 - Add cost recovery to fine (our costs to retrieve/dispose).

Questions?



ORDINANCE _____ - 2021

AN ORDINANCE CREATING SECTION 12-11 OF THE CODE OF ORDINANCES RELATED TO

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

WHEREAS: The Urban County Council has declared that shopping carts that have been removed from the premises of businesses and left abandoned on public and private property throughout Fayette County constitute a public nuisance and a hazard to the health, safety and public welfare.

Section 1 — That Section 12-11 of the Code of Ordinances of the Lexington Fayette Urban County Government be and hereby created to read as follows: In order to serve the public health, safety and general welfare, it is the declared purpose of Sections 12-11 to 12-15 to impose requirements on shopping cart owners to abate the nuisance caused by abandoned shopping carts.

Section 2 – That Section 12-12 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows:

For the purpose of Sections 12-11 to 12-15 , the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) *Abandoned Shopping Cart.* Means any shopping cart that has been removed without written consent of the owner, from the owner's business premises and is now located on either public or private property.
- (2) *Code Enforcement Officer.* Means an employee of the divisions of code enforcement or environmental services authorized to issue citations.
- (3) *Director.* Means the director of code enforcement or code enforcement officer charged with enforcement of this section.
- (4) *Owner.* Means any person or entity that in connection with the operation of a business makes a shopping cart available to a

customer.

- (5) *Premises.* Means the entire area of the real property owned, occupied or utilized by an owner, including any parking lot or other property provided by or on behalf of an owner for customer use or parking.
- (6) *Shopping Cart.* Means a basket that is mounted on wheels and used for the transportation of goods, or any other similar device, that is provided by an owner for the use by a customer
- (7) *Unattended Shopping Cart.* Means a shopping cart containing personal belongings that are bagged or bundled

Section 3 – That Section 12-13 of the Code of Ordinance of the Lexington-Fayette Urban County Government be and hereby is created to read as follows:

- (1) Abandoned Shopping Cart Retention and Retrieval Plan. Every business with 10 or more shopping carts must create and implement a a plan to retain and retrieve its shopping carts that are found throughout Fayette County. Each business must provide an annual copy of this plan to the director. The plan must be provided during the month of January for the upcoming year.
- (2) The retention and retrieval plan shall include: name of the owner/manager, physical address of the business, and telephone number of the owner/manager or any point of contact to call and report an abandoned shopping cart.
- (3) Every shopping cart must have a permanently affixed sign that contains the identity of the owner, a telephone number of the owner for the shopping cart return and a statement that the shopping cart may not be removed from the premises without written permission of the owner.
- (4) A telephone number shall be established and made available to the public for the purpose of reporting abandoned shopping carts. Said telephone number shall be posted on a sufficient

number of conspicuously located signs on the owner's premises that also informs the public that shopping carts may not be removed from the premises without written permission of the owner.

- (5) Violation of any subsection of Section 12-13 shall result in a fine not to exceed \$500.00.

Section 4 – That Section 12-14 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows:

- (1) A code enforcement officer or any member of the public may report the location of an abandoned shopping cart by calling the telephone number of the owner.
- (2) Once a business owner is notified of the location of an abandoned shopping cart on public property, the owner has 24 hours to remove the shopping cart. If the shopping cart is not removed within 24 hours or the code officer removes the cart after 24 hours, the business shall be fined \$100.00 for 1-3 violations in a calendar year, \$200.00 for 4-6 violations in a calendar year, \$300.00 for 7-9 violations in a calendar year and \$500.00 for 10 or more violations in a calendar year.
- (3) If the abandoned shopping cart is located on private property, the owner of the cart must obtain permission from the owner of the property to enter the property and remove the shopping cart. If the abandoned shopping cart remains on private property for more than 24 hours it becomes a nuisance subject to the provisions 12-2 to 12-5 of this chapter.
- (4) Upon notice of an unattended shopping cart, the code officer shall affix a notice to the cart stating the personal belongings will be removed after 72 hours of the notice. The notice shall also provide an address where the personal belongings may be retrieved and the appeal rights of the owner of the personal

belongings. Once the personal belongings are removed, the unattended shopping cart becomes an abandoned shopping cart subject to the provisions of Section 12-14.

Section 5 – That Section 12-15 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows:

Any person or business may appeal a citation through the appeal process outlined in in chapter 2B-6 of the Code of Ordinances.

Section 6 - That this Ordinance shall become effective on _____.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

KU Vegetation Management Agreement

Environmental Quality & Public Works Committee

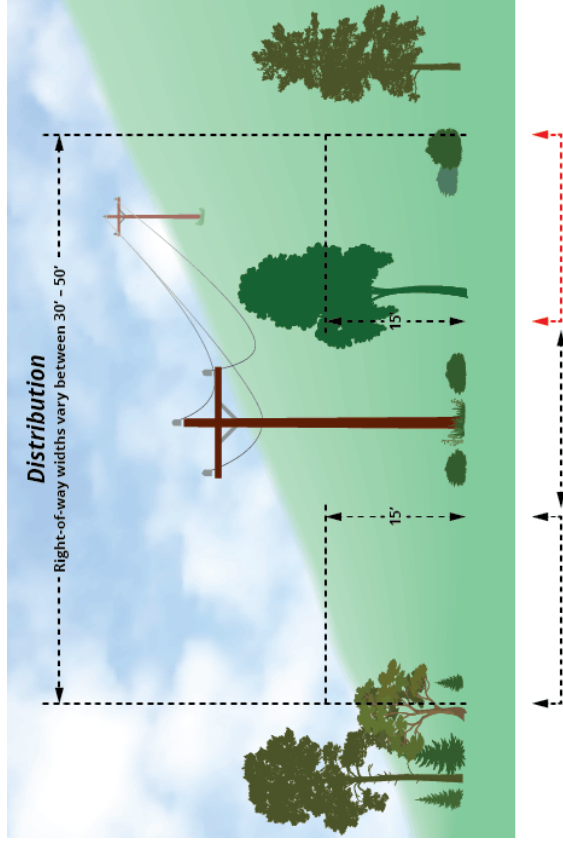
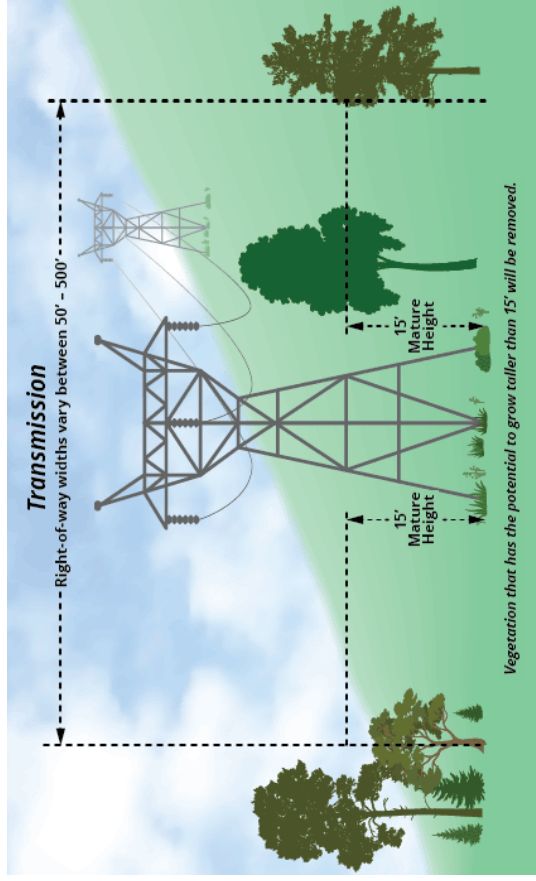
June 22, 2021

Councilmember David Kloiber, 6th District



Kentucky Utilities Transmission Line Clearing Plan

- Kentucky Utilities has begun work on a Transmission Line Clearing Plan across the city.
- The Transmission Clearing Plan is an enforcement of the utility’s maximum height policy requirement, which calls for the removal of trees that grow taller than 10 feet near transmission lines and 15 feet for distribution lines, in order to prevent power outages.



Source: <https://ge-ku.com/safety/trees-power-lines>



Kentucky Utilities Transmission Line Clearing Plan

- In recent months, an invasive clear cutting of all trees beneath transmission and distribution lines has taken place in neighborhoods across the city.
- The aggressive clearing measures prompted a Council Resolution in October 2020 condemning KU’s “extreme and unilateral tree removal practice” in the city’s rights of way and in neighborhoods where branches posed no immediate threat to power lines.

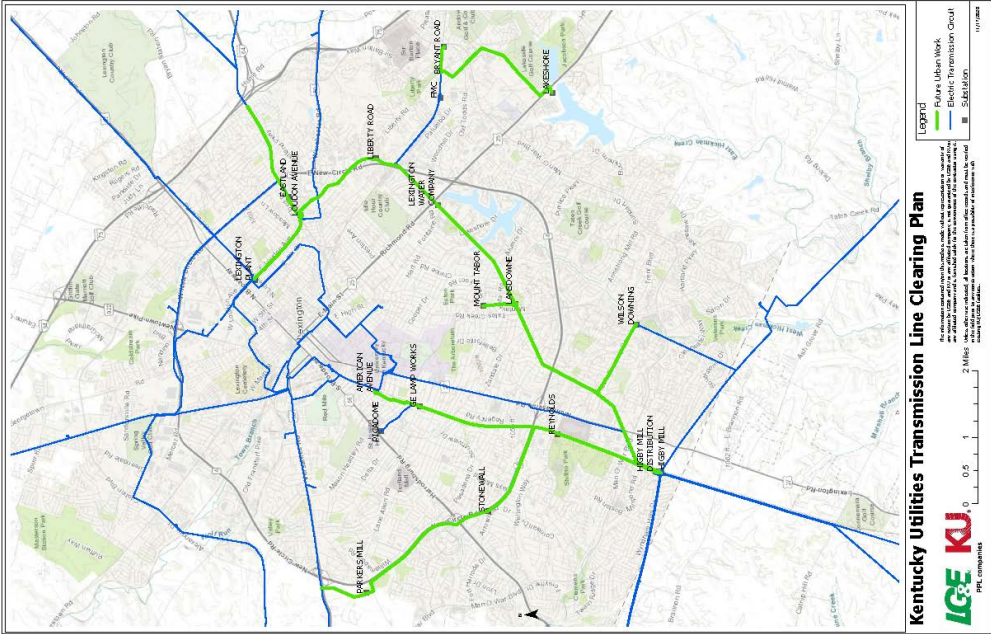


Above Photo: Ryan C. Hermens RHERMENS@HERALD-LEADER.COM



Kentucky Utilities Transmission Line Clearing Plan

- Impacts of KU’s Transmission Line Clearing Plan will extend across all of Lexington and result in critical tree canopy loss.





Possible Solutions: Mutual Agreement vs. Ordinance

- The agreement aims to establish an agreement with KU acknowledging the benefits of the existing tree canopy to the community, and to address the concerns of impacted residents.
- While LFUCG does not regulate the trimming, clear cutting, or removal of trees other than in public rights-of-way, LFUCG will consider adopting significant regulations related to eliminating or reducing the practice of clear cutting, to require undergirding of existing above ground facilities at the expense of KU.
- While the Public Service Commission has regulatory power over utilities and has given discretion to the utilities, a potential ordinance would not prevent KU from continuing with the practice of clear cutting in the event where a substantial portion of canopy cover has been removed, it would allow LFUCG to require KU to bury the lines afterwards which would prevent this issue from happening again.
- The issue can instead be amicably resolved by KU modifying some of its existing practices of clear cutting, as outlined in the draft agreement.





Vegetation Management Plan Agreement Proposal

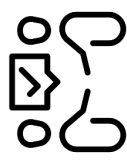
- An agreement is needed in order to ensure KU and LFUCG agree to work in good faith towards a goal of zero net canopy loss in Fayette County.
- This agreement is limited to the locations in Lexington-Fayette County.
- The agreement applies to street medians and parks in which KU has existing above ground transmission lines.
- LFUCG acknowledges and agrees that in some instances due to legitimate safety concerns, some trees will need to be clear cut or removed.





Vegetation Management Plan Agreement Proposal

- KU will provide the LFUCG Arborist with an inventory of all trees within the area of work, identified by species and diameter at least thirty (30) days prior to the commencement of work related to the clear cutting or removal of any trees, in order to provide sufficient time to reach an agreement on the clear cutting and removal of any trees.
- KU will meet with LFUCG’s arborist at least thirty (30) days prior to the clear cutting or removal of any trees to discuss the necessity of their actions, lesser alternative actions, and potential tree replacement.
- KU will work with the LFUCG Arborist to create a zero net canopy loss plan, utilizing the National Tree Benefit Calculator, ensuring all benefits are located within the same Urban County Council District, or in a location determined by the arborist with the understanding that an agreement is to be reached prior to undertaking the work.





Questions?

DRAFT 06-09-21

AGREEMENT – VEGETATION MANAGEMENT

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an Urban County Government formed pursuant to KRS 67A.010, whose address is 200 East Main Street, Lexington, Kentucky 40507, hereinafter called “LFUCG” party of the first part, and **KENTUCKY UTILITIES COMPANY**, a Kentucky corporation, 220 West Main Street, Louisville, Kentucky 40202, hereinafter called “KU,” part of the second part,

WITNESSETH:

WHEREAS, the parties agree that preserving existing tree canopy provides a significant benefit to the community; and

WHEREAS, in some instances KU has clear cut or removed trees from underneath its transmission lines in Lexington-Fayette County, which has resulted in a concern among impacted residents; and

WHEREAS, LFUCG does not currently regulate in a significant manner the trimming, clear cutting or removal of trees other than in public rights-of-way or pursuant to Chapter 17C of the Lexington-Fayette Urban County Government Code of Ordinances; and

WHEREAS, as a result of KU’s clear cutting and tree removal practices in certain areas of Lexington-Fayette County, the Urban County Council of the Lexington-Fayette Urban County Government is considering adopting significant regulations related to

eliminating or reducing these practices, including requiring the undergrounding of existing above ground facilities at the expense of the utilities; and

WHEREAS, the parties believe this issue can instead be amicably resolved by KU modifying some of its existing practices on the limited basis provided in this agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

1. This agreement is not intended to alter, amend, or modify any rights, duties, or obligations that either party may have pursuant to Chapter 17C of the Code of Ordinances or KU's franchise agreement.

2. This agreement is limited to the locations in Lexington-Fayette County as specifically provided herein. KU is under no obligation or duty to implement the practices required herein in other locations, but is not prohibited from doing so should it so choose.

3. This agreement is not intended to impact to reduce or eliminate any existing regulatory practice related to the trimming, clear cutting or removal of trees imposed on KU pursuant to any other regulatory body, including but not limited to the Kentucky Public Service Commission or FERC.

4. KU agrees to continue to comply with the requirements of its Vegetation Management Plan or similar plans, policies, or guidelines pertaining to vegetation located in the vicinity of transmission lines. This agreement is intended to create additional requirements in the limited instances provided herein

5. LFUCG acknowledges and agrees that in some instances due to legitimate safety concerns certain trees that are located within the locations provided herein will need to be clear cut or removed. It is not the intent of the parties that this agreement in any way infringe on KU's ability to continue to operate in this manner when necessary.

6. This agreement shall apply to all of the following types of property locations within Lexington-Fayette County (the "Locations") in which KU has existing above ground transmission lines: street medians and parks.

7. The parties agree to work in good faith towards a goal of zero net canopy loss in Lexington-Fayette County in the Locations.

8. With respect to all such Locations, KU agrees to the following with respect to the clear cutting or removal of any trees:

a. Providing the LFUCG Arborist with an inventory of all trees within the area of work, identified by species and diameter at least thirty (30) days prior to the commencement of work related to the clear cutting or removal of any trees, in order to provide sufficient time to reach an agreement on the clear cutting and removal of any trees;

b. Meeting with LFUCG's arborist at least thirty (30) days prior to the clear cutting or removal of any trees to discuss the necessity of such action, lesser alternative actions, and potential tree replacement;

c. Working with the LFUCG Arborist to create a zero net canopy loss plan, utilizing the National Tree Benefit Calculator, ensuring all benefits are located within the same Urban County Council District, or in a location determined by the arborist with the understanding that an agreement is to be reached prior to undertaking the work.

9. Neither Party shall be in default under this Agreement unless and until the non-defaulting Party shall have given the defaulting Party written notice of such default and the defaulting Party shall have failed to cure the default within thirty (30) days after written receipt of such notice. Upon the failure by the defaulting Party to timely cure any default after notice thereof from the non-defaulting Party, the non-defaulting Party shall have the right to terminate the Agreement and pursue an appropriate remedy.

10. The failure or delay on the part of LFUCG or KU to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

11. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein and supersedes all prior offers, negotiations and other agreements concerning the subject matter contained herein.

12. No revision of this Agreement shall be valid unless made in writing and signed by an officer of KU and an authorized signatory on behalf of LFUCG.

13. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such Party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

14. The laws of the Commonwealth of Kentucky shall govern this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either Party, regardless of which Party may have drafted any of its provisions.

15. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.

16. Any notice or demand required or permitted to be given or made hereunder shall be sufficiently given or made by reliable overnight courier or by Certified Mail, return receipt, in a sealed envelope, postage prepaid, addressed to LFUCG or KU at the following address:

LFUCG: ?????
 Lexington-Fayette Urban County Government, 4th Floor
 Phoenix Building
 100 East Main Street
 Lexington, KY 40507

With
 copies to: Commissioner of Public Works
 Lexington-Fayette Urban County Government, 11th Floor
 200 East Main Street
 Lexington, KY 40507

KU: Kentucky Utilities Company
 1 Quality Street
 Lexington, KY 40507
 Attn: _____

Any such notice or demand shall be deemed to have been given or made three (3) business days following the date it is deposited in the United States Post Office or on the day following delivery to the overnight courier. LFUCG or KU may from time to time designate any other address for this purpose by written notice to the other Party.

17. The execution, delivery and performance of this Agreement and any documents relating hereto have been duly authorized by all necessary parties, and this Agreement is enforceable in accordance with its terms. LFUCG and KU have full power

and authority to enter into this Agreement, to execute and deliver all instruments and documents referred to herein and to consummate the transactions contemplated hereby. Neither the execution of this Agreement, nor the consummation of any transaction contemplated herein, violates any laws, rules, regulations or ordinances.

WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

Lexington-Fayette Urban County Government

By: _____
Linda Gorton
Mayor

Kentucky Utilities Company

By: _____
Name: _____
Title: _____

LIST OF COMMITTEE REFERRAL ITEMS

Environmental Quality & Public Works Committee

Referral Item	Sponsor/Referred by	Date of Committee Referral	Last Presented	Status	Legistar File ID
1 Solid Waste Trash Compactors	R. Moloney	August 22, 2017			
2 Explore Lexington's Sustainability Options	L. Sheehan	February 20, 2018			
3 Waste Management Fines	H. LeGris	April 17, 2018			
4 CNG Conversion and Use	D. Kloiber	October 25, 2016	January 24, 2017		0073-17
5 5G Small Cell Wireless Plan Update	J. McCurn	February 12, 2019	September 17, 2019	August 24, 2021	0983-19
6 Evaluation of Vacuum Leaf Collection (Efficiency and Fiscal Impact)	H. LeGris	November 12, 2019			0302-20
7 Single Use Plastics / Energy Conservation	S. Kay	March 12, 2019	May 18, 2021		0499-21
8 Urban Forestry / Street Trees Update	J. McCurn	September 17, 2019	May 18, 2021		0501-21
9 Backyard Composting - Home Compost Pilot Proposal	H. LeGris	February 2, 2021	May 18, 2021		0500-21
10 Consideration of a Local Tree Protection Ordinance	D. Kloiber	February 9, 2021		June 22, 2021	0642-21
11 Recycling General Practices	P. Worley	March 9, 2021			
12 Abandoned Shopping Carts	D. Kloiber	March 9, 2021		June 22, 2021	0641-21
Annual Committee Presentations					
13 Energy Improvement Fund Update	F. Brown	January 10, 2017	May 5, 2020	January 19, 2021	0073-21
14 Snow/Ice Removal Plan	F. Brown	February 15, 2014	October 6, 2020	November 16, 2021	0962-20
15 Pavement Management Plan / Curbs Assessment	F. Brown	May 26, 2020	June 2, 2020	June 22, 2021	0640-21
16 Vacuum Leaf Collection Plan	F. Brown		September 1, 2020	October 19, 2021	0837-20
17 Capacity Assurance Plan (CAP) Audit	F. Brown	August 30, 2018	October 6, 2020		0964-20
18 Annual Stormwater Priority List Update	F. Brown	February 20, 2018	July 7, 2020	August 24, 2021	0677-20
19 MS4 Program Update	F. Brown	February 20, 2018	September 1, 2020	October 19, 2021	0838-20
20 Consent Decree Remedial Measures Plan Update	F. Brown		February 19, 2020	January 19, 2021	0074-21