

CHAPTER 380. TREES

§ 380-1. Purpose and intent.

This chapter establishes policies, regulations and standards necessary to ensure that the City of Lexington will continue to realize the benefits provided by its trees. The provisions of this chapter are enacted to:

- A. Establish and maintain the maximum sustainable amount of tree cover on public and private lands in the City.
- B. Maintain City trees in a healthy and nonhazardous condition through good arboricultural practices.
- C. Establish and maintain an optimal level of age and species diversity.
- D. Promote conservation of tree resources.
- E. Select, situate and maintain public trees to maximize benefits and minimize hazard, nuisance and hardscape damage and manage costs at an appropriate level.
- F. Coordinate tree management under a person or agency with the necessary expertise.
- G. Foster community awareness and support for a local urban forestry program and foster good tree management on privately owned properties.

§ 380-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

CITY ARBORIST A person receiving training or trained in arboriculture, forestry, horticulture, and/or landscape architecture in the employ of or under contract to the City, duly appointed by the City Manager, and charged with the responsibility of enforcing the provisions of this chapter.

COMMUNITY TREE A tree located on private property identified by the City Arborist with the concurrence of the property owner as worthy of identification and preservation.

CRITICAL ROOT ZONE That area which falls within a tree's dripline (a vertical line extending from the outermost portion of the canopy to the ground).

DBH Diameter of a tree trunk at 4.5 feet above grade.

HAZARD TREE Any tree which by virtue of its condition, surroundings, and tendency to fail constitutes a risk to life, health, or property.

INTENTIONALLY PLANTED TREE(S) Any tree or trees planted on property owned by the City, in the right-of-way or on private property that is or are planted pursuant to the City's Comprehensive Tree Management Plan; any tree or trees donated in part or whole and planted with permission of the landowner; and trees planted pursuant to an approved conditional use permit, approved site plan, approved subdivision or planned unit development.

MAINTENANCE Includes all operations of trimming, pruning, spraying, injecting, fertilizing, treating, bracing, and cutting above or below the ground.

PARK Public parks or public open spaces having instituted names.

PROTECTED TREE Any tree afforded protection under the terms of this chapter, including public trees, community trees, and intentionally planted trees.

PUBLIC AREA All public land and rights-of-way within the corporate limits of the City owned or held by the City, including rights-of-way for streets, alleys, sidewalks, utility lines and facilities, median strips and other City facilities, including parks and cemeteries.

PUBLIC TREES Trees planted in public areas.

TREE Any self-supporting woody plant growing upon the earth that usually possesses one main trunk and produces a more or less distinct and elevated head with many branches.

§ 380-3. Policies regarding trees.

It shall be the policy of the City to:

- A. Recognize that trees are a vital part of the urban infrastructure.
- B. Promote the planting of site-appropriate trees along City streets.
- C. Plant trees in "pocket parks" in the downtown area to preserve views and reduce conflicts between buildings and trees.
- D. Properly plant and maintain trees to promote their longevity and safety.
- E. Conduct a consistent and adequate program for maintaining and preserving trees.
- F. Promote the involvement of both the public and private sectors in maintaining the health of the "community forest" of the City.
- G. Identify and/or accept nominations for community trees located on private property, provide appropriate documentation of any such trees and provide for continuing protection of the same upon transfer of ownership of the property.

§ 380-4. City Arborist.

This chapter hereby establishes the position of City Arborist, whose authority and responsibilities are defined in §§ [380-14](#) and [380-16](#) of this chapter. The City Arborist shall be appointed by and shall act under the direction and control of the City Manager or his designee.

§ 380-5. Tree Board.

This chapter hereby establishes a City Council-appointed Tree Board with comment authority to serve as an advisory board to the City Council, Planning Department, and City Arborist. The Tree Board shall consist of five members appointed for three-year staggered terms.

§ 380-6. Comprehensive Tree Management Plan.

The City Arborist shall have the authority to formulate, revise, and administer a Comprehensive Tree Management Plan known hereafter as the "plan." The plan shall be reviewed and approved by the Tree Board and the City Council. The plan shall govern tree planting, maintenance and removal of trees planted along City streets in public areas and make provisions for educating the public about trees.

§ 380-7. City plantings.

All plantings existing or installed on any public area located within the corporate limits and owned by the City shall become the property of the City and be under the control of the City and subject to all regulations of the City.

§ 380-8. Protection of trees.

- A. Any tree protected by the terms of this chapter (hereafter "protected tree") which is near any excavation or construction of any building, structure, or street work shall, if feasible, have its critical root zone protected with an effective fence, frame, shield, or box not less than three feet high, and all building material, dirt or other debris shall be kept outside this barrier.
- B. No person, including public utility companies and City departments, shall excavate any ditches, tunnels, or trenches or lay any line within the critical root zone of any protected tree without notification of and discussion with the City Arborist. In the event of a disagreement

between the public utilities, City departments and the City Arborist, the decision regarding the location of excavation will be made by the City Manager.

C. Any person performing emergency work to restore, but not increase beyond the original capacity of, underground utilities, and within the same trench as existing utilities, shall be exempt from this notification, provided that the City Arborist is notified as soon as practical should excavation necessitate severing roots in excess of three inches in diameter.

D. All trees on public areas shall, to the degree practical, be pruned or trimmed in accordance with the standards described in the American National Standards Institute's A300 Pruning Standard. This applies to all public utility companies and City departments involved in maintenance of easements.

§ 380-9. Damage prohibited.

A. Unless specifically authorized by the City Arborist, or by the City Manager as detailed in [§ 380-8B](#), no person shall intentionally damage, cut, carve, disturb, transplant or remove any protected tree; allow any gas, liquid or solid substance which is harmful to such trees to come in contact with them; set fire to or allow the heat thereof to injure any portion of any such tree; or change the natural grade of the critical root zone of such trees either by excavating or filling. Any person violating the provisions of this subsection shall be guilty of an unclassified misdemeanor punishable with a fine of up to \$500 and, in addition thereto, shall be responsible for the cost of repair or replacement of any such tree so damaged.

B. It shall be unlawful as a normal practice to top any protected tree. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy, disfigure the tree, and create a public hazard. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this subsection as determined by the City Arborist.

§ 380-10. Prior notice for removal.

A. For public safety, and to avoid damage to public utilities, owners considering the removal of trees greater than six inches dbh and growing within 15 feet of the City right-of-way should notify the City Arborist of their removal plans.

B. In the Central Business District, there shall be no planting or removal of protected trees without prior notification, review, and approval of the Tree Board.

C. No person, except authorized employees of the City, shall remove planted trees, shrubs or plantings protected under this chapter without first procuring authorization from the City Arborist. The person who obtains such authorization shall bear the cost of removal.

§ 380-11. Remedies for hazard trees.

A. The City shall provide for removal of dead, diseased, or hazard trees or shrubs on land owned by the City or within a City right-of-way when such trees are determined by the City Arborist to constitute a hazard to life, health, or property.

B. If a hazard tree is located on private property, and if the tree constitutes a hazard to the general public, the City Arborist shall notify the owner of the premises as follows:

(1) Such notification shall:

(a) Be in writing;

(b) Be sent by certified mail, return receipt requested;

(c) Be mailed to the address of the owner shown on the records in the office of the Commissioner of the Revenue; and

- (d) Cite the tree's condition and the corrective action required to remedy the hazard tree.
 - (2) If such owner cannot be found, a copy of such notice shall be placed next to said tree or part thereof.
 - (3) Written notice shall also be given to any tenant occupying such property.
- C. Upon receipt of the written notice described above, the property owner may appeal the order to the City Manager. Such appeal must be made in writing within 15 days of notification from the City Arborist. Any actions required in the notice shall be delayed pending the City Manager's response to the appeal.
- D. If any work required to be done by the City Arborist is not accomplished within the time specified, the City Attorney may institute a suit to compel the responsible party to remedy or remove the hazard tree and to recover the necessary costs incurred for the provision of emergency services reasonably required to remedy or remove any such hazard tree.
- E. The term "responsible party" shall include, but not be limited to, the owner of the premises where the hazard tree is located.

§ 380-12. Appeals process.

Any action of the City Arborist or his or her designee may be appealed to and heard by the Tree Board. An appeal, to be effective, must be filed within 15 days after the action of the City Arborist or his or her designee. The appeal shall be in writing and shall clearly specify the reason or reasons for which a hearing is requested. After a hearing, the Tree Board shall render its decision. Any action of the Tree Board may be appealed to and heard by the City Manager. This appeal must be filed within 15 days after the decision of the Tree Board, must be in writing, and must clearly specify the reasons for which a hearing is requested. Decisions of the City Manager shall be final.

§ 380-13. Violations and penalties.

Unless specified elsewhere, violation of any section of this chapter shall be an unclassified misdemeanor punishable by a fine as set forth in the annual appropriations resolution.

§ 380-14. Enforcement.

The City Arborist is hereby charged with the responsibility for the enforcement of this chapter and may serve notice to any person in violation of it or may recommend the institution of legal proceedings as may be required. The City Manager may request the City Attorney to institute appropriate legal proceedings to that end.

§ 380-15. Performance evaluation.

The City Arborist shall collect and maintain all records and data necessary to evaluate whether progress is being made toward the stated goals of this chapter. An annual summary and analysis of the evaluation and recommendations for action shall be prepared and presented to the City Council.

§ 380-16. Administrative responsibilities.

A. The City Arborist or designee is hereby vested with the authority to carry out the following responsibilities:

- (1) Develop and revise the Comprehensive Tree Management Plan for Tree Board and City Council approval.

- (2) Implement a monitoring program to evaluate whether goals are being met.
 - (3) Direct municipal tree care operations.
 - (4) Assist with the preparation of, or review, the municipal tree care budget.
 - (5) Review and prepare comments for proposed site plan work that involves trees.
 - (6) Seek funding from state, federal or other granting agencies or resources.
 - (7) Conduct community outreach and education programs.
 - (8) Enforce ordinance provisions.
 - (9) Prepare and maintain all necessary current maps, plans and records relating to the various functions of this chapter.
 - (10) Report to the City Council annually on the work and activities related to the provisions of this chapter.
 - (11) Preserve historical records of the Arborist and the Tree Board.
 - (12) Provide limited advice to City residents concerning the care and maintenance of privately owned trees.
 - (13) Identify and promote community trees and facilitate the application process for community trees.
- B. The Tree Board is hereby vested with the authority to carry out the following responsibilities:
- (1) Review notification for activities that affect protected trees.
 - (2) Conduct community outreach and education programs.
 - (3) Assist with the development, revision and evaluation of the Comprehensive Tree Management Plan.
 - (4) Seek funding from state, federal or other granting agencies.
 - (5) Evaluate yearly whether progress is being made toward the goals of this chapter.