

CHAPTER 98: TREES

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GENERAL PROVISIONS

§ 98.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"ABUTTING PROPERTY OWNERS." The owner(s) of any parcel sharing side lot lines or in the case of a corner lot sharing side/rear lot lines with the applicant.

"BOARD OF COUNCIL." The Board of Council of the city of Bellevue, Kentucky.

"BUILDABLE AREA." Any portion of area within the defined construction limits of a project that is essential for the purpose of constructing improvements thereon.

"CITY." The City of Bellevue, Kentucky, including its officers, employees or designated representatives.

"CITY TREE." A tree located on property owned by the city or in the public right-of-way.

"DRIP LINE." A line connecting the tips of the outermost branches of a tree projected vertically onto the ground.

"LANDMARK TREE." Any tree designated and identified as such by Tree Commission pursuant to the standards set forth herein.

"PROTECTIVE BARRIER." A barrier constructed to protect the root system or trunk of a tree from damage during construction or from equipment or soil or material deposits.

"ROOT SYSTEM." Tree roots within the drip line perimeter.

"STRUCTURAL SOIL." A combination of soil and gravel designed in substantial compliance with the composition of CU structural soil.

"TREE." Any living, self-supporting woody or fibrous plant, usually having a single woody trunk, and having a diameter of not less than two inches measured at a point four feet above the ground.

"TREE BED." The area designed for planting and maintaining a city tree.

"TREE COMMISSION." The Tree Commission of the City of Bellevue, Kentucky.
(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.02 PUBLIC IMPROVEMENTS AFFECTING TREES.

The construction of any improvement in the public right-of-way shall be done to the extent practicable so as to preserve a maximum number of trees consistent with the appropriate and practical construction of the public improvement. The Tree Commission will be advised prior to the commencing of such work and the Commission may advise the city or other party performing the work how same may be accomplished without injury to any trees consistent with conditions set forth in § 98.24. General maintenance, repair or replacement of existing sidewalks and curbs shall not require approval from the Tree Commission. Nothing in this section shall be construed to prohibit or impede the construction, maintenance, or operation of any public improvement or utility.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.03 NOTIFICATION OF TREES NEEDING ATTENTION.

It is hereby declared to be the duty of all persons having knowledge thereof, to immediately notify the city of any tree in or upon any public right-of-way or public property under the jurisdiction of the city which has suffered any accident or injury, is in need of attention or care or has become dangerous to the public or to the adjacent property. This provision shall be considered as a directive only and for the public good, and no penalty shall be imposed for the failure to comply with this provision.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

TREE COMMISSION

§ 98.20 ESTABLISHMENT.

A Tree Commission is hereby established, to be known as the City of Bellevue Tree Commission. The Tree Commission shall consist of five (5) members, who shall be appointed by the Mayor with the advice and consent of the Board of Council. In the event the Mayor fails to fill a vacancy on the Tree Commission, within sixty (60) days of the vacancy, the Planning Commission shall appoint the new member.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.21 TERM OF OFFICE.

The initial Tree Commission shall contain one (1) member appointed for a term of one (1) year, two (2) members appointed for a term of two (2) years, and two (2) members appointed for a term of three (3) years. Thereafter, all subsequent appointments shall be for a term of two (2) years. Members of the Commission may be appointed for consecutive terms. All members of the Tree Commission shall serve without compensation.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.22 VACANCIES.

Any vacancy occurring by reason of death, resignation or removal of any member shall be filled for the unexpired term of the member. The Mayor may cause removal of a member of the Commission for inefficiency, neglect of duty, malfeasance, or conflict of interest. Any member of the Tree Commission removed from office by the Mayor may appeal the removal to the Board of Council within thirty (30) days.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.23 ORGANIZATION.

The Tree Commission shall organize within thirty (30) days after the appointment of its initial total membership to adopt by-laws. The Commission shall annually elect a chairman, vice-chairman, and secretary who shall be eligible for re-election at the Commission's first meeting annually. The Tree Commission shall meet periodically on an as needed basis.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.24 POWERS AND DUTIES.

The powers and duties of the City Tree Commission shall include:

(A) Provide public promotion and leadership in facilitating public awareness of tree conservation, tree protection, tree removal, and tree planting issues.

(B) (1) Designate and maintain records of landmark trees on city and private property. A tree may qualify as a landmark tree if it meets one or more of the following criteria:

- (a) A tree species is rare.
- (b) The tree is more than one hundred (100) years of age.
- (c) The tree has been connected with a significant historical event.
- (d) The tree is of an outstanding trunk diameter or drip line diameter for a tree of its species.
- (e) The quality of the tree foliage is outstanding for a tree of its species.
- (f) The location, shade value, fragrance, erosion control, aesthetic features or scenic enhancement of such tree is of special importance to the city.

(2) All trees designated as landmark trees by the Tree Commission shall be shown on an Official City Map with appropriate code marks signifying each tree's designation, number, species, age, and periodic monitoring.

(3) If the owner of the property on which landmark tree is located consent thereto, the Tree Commission may identify such tree as a landmark tree by the placement of a suitable marker thereon. The cost of the marker shall be underwritten by the property owner.

(4) Prior to removal of any designated landmark tree, the Tree Commission may suggest alternate building areas in an effort to preserve said landmark tree. If and when any landmark tree is removed, the Tree Commission shall arrange for the necessary changes to be made to the official landmark tree inventory records of the City Map.

(C) The Tree Commission shall prepare and submit a list of trees to the city staff suitable for planting in public right-of-way areas that are conducive to growth in the Greater Cincinnati region. All city trees located on property owned by the city shall be maintained by the city. Trees located in or on the public right-of-ways that were planted by the city shall be maintained by the city. Trees located in or on the public right-of-ways that were not planted by the city shall

be maintained by the property owner. The Tree Commission may be consulted with regard to the selection, location and planting of trees that are to be placed on a city property or right-of-way. When consulted, the Tree Commission shall check to ensure no underground utilities exist in the area where a tree is to be planted.

(D) Any public utility serving the city with overhead services shall have the right to remove city trees, without the prior approval of the city, only when an emergency exists. All public utilities with overhead services shall coordinate all non-emergency tree-trimming activities with the city staff and/or Tree Commission that are reasonably required for the purpose of providing the appropriate utility service or to avoid danger to the public or overhead utility personnel or equipment pursuant to the requirements contained in the franchise agreements as authorized by the City Board of Council. Any other person or firm, except the public utility with overhead lines having line clearing operations, tree trimming done by them or, for them by any persons or firm shall first obtain written approval from the City of Bellevue. (Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.25 PERMISSION REQUIRED FOR CERTAIN ACTIONS.

(A) It shall be unlawful to commit any of the following acts with respect to city trees without the prior written permission of the city.

- (1) Cut, prune, break, injure, later, or remove any tree; or cut, unduly disturb, or interfere in any way with any root of a tree or trees except as provided for in § 98.24.
- (2) Fasten any object, rope, wire, sign, insulator, or other device to protect trees.
- (3) Install, remove, or injure any guard or device placed to protect trees.
- (4) Close or obstruct any open spaces provided about the base of a tree or trees to permit the access of air, water, and fertilizer to the roots of such tree or trees.
- (5) Cut any roots within the drip line of any tree or any roots four (4) inches or more in diameter.
- (6) String or bury wires or lines through a public park.
- (7) Plant any tree or other plant material on city property or right-of-ways.

(B) The city may grant such written permission if the activity for which such permission is requested is in the public interest and is not likely to injure any city tree. Any person or persons who cause damage to any city trees shall be held liable to city for damages to said tree.

(C) No person shall operate, place, or maintain, within the drip line of any city tree, any machinery, equipment, heavy object, stone, rocks, cement, earth, soil, or other substance which may harmfully affect such city tree or excavate around to remove earth from or cause any water to flow upon the root of any tree. The city may waive in writing, in whole or in part such provisions, but only to the extent absolutely necessary to alleviate undue hardship in the provision of necessary public utilities and the appropriate use and enjoyment of property. (Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

TECHNICAL REQUIREMENTS

§ 98.40 REQUIREMENTS OF SUBDIVISION PLANS AND DEVELOPMENT PLANS.

All subdivision plans and development plans submitted for consideration to the City Planning and Zoning Commission shall address the following items. The Planning and Zoning Commission shall have sole enforcement authority of said chapter as it relates to subdivision plans and development plans.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.41 NC-1, NC-1(HP), NC-3, C1, SC, MLU, I1, PUD, CO, MHP, R3-MF AND RCD OVERLAY ZONES.

The following requirements shall apply for all development plans submitted for a development in a NC-1 zone, NC-1(HP) zone, NC-2(HP) zone, NC-3 zone, C1 zone, SC zone, MLU zone, and I1 zone, PUD zone, CO zone, and MHP zone.

(A) (1) A tree inventory plan shall be submitted in conjunction with all development plans for a development contained in this section. The tree inventory plan shall be submitted pursuant to the requirements contained in Section 9.20 of the Bellevue Zoning Ordinance (88-6-4).

(2) The tree inventory plan shall delineate the buildable area of a proposed development. The Planning and Zoning Commission may permit the removal of a tree outside the buildable area, provided the removal of the tree is reasonably required to develop the parcel in compliance with this chapter.

(B) (1) All trees to be saved outside of the buildable area of a development shall be conspicuously designated with suitable protective barriers as designated herein or as otherwise approved by the Zoning Administrator. Approved tree protective barriers shall be installed along the outermost dripline around the tree protection zone. The use of tree protection zones is encouraged rather than the protection of individual (non-specimen) trees that may be scattered throughout a development site.

(2) The layout of development improvements, utilities, access drives, grading, and the like of a site shall accommodate the required tree protective zones. The public improvements shall be

placed along the corridors between tree protective zones unless the placement of same causes undue hardship on the developer as determined by the Planning and Zoning Commission. If the Planning and Zoning commission determines that public improvements and/or utilities may be placed within a tree protective zone, the installation of same shall occur by way of tunneling rather than trenching.

(3) Construction site activities including, but not limited to material storage, parking, or concrete washout shall not encroach into any tree protection zone without the prior approval of the Zoning Administrator. Any tree irreparably damaged or killed within a tree protection zone as a result of construction activity shall be removed and replaced by the owner and/or developer at a rate of two trees for every tree irreparably damaged or killed.

(4) Protective tree barriers shall be installed to a minimum height of four (4) feet above ground level around the outermost dripline of the tree protection zone. Tree protection zones shall be delineated with typical temporary construction fencing or continuous rope or flagging. In either case, the tree protection barrier shall be accompanied by "Tree Save Area" signage to be placed around the tree save zone not more than every twenty (20) feet.

(C) (1) A tree planting plan shall also be submitted in conjunction with the developments plan submission. One tree shall be planted on the development site for every five required parking spaces for areas located in a NC-1, NC-1(HP), NC-2,(HP), NC-3, C1, SC, MLU, I1, PUD, CO and MHP zoning districts. One tree shall be planted on the development site for every one unit approved in the R3-MF and RCD overlay zones. Any tree planted relative to the requirements contained herein shall not be less than three (3) inches in diameter when planted.

(2) The tree planting plan shall indicate the total number and species of trees to be planted within a proposed development along with the intended location of same. Trees required to be planted by this chapter should be planted predominately in the developed areas, driveway aisles, and/or parking areas of the project. In no case shall more than fifty percent (50%) of the trees required to be planted be utilized to satisfy the screening requirements of a development. The exact location of the trees to be planted and species shall be approved by the Planning and Zoning Commission as part of the Stage I review process. Whenever the owner/developer can demonstrate to the Planning and Zoning Commission that the site spacial constraints result in an absolute inability to plant the required number of trees, as many trees as possible shall be planted on the site. The difference of those trees required to be planted, and those trees planted shall be donated to the city for use elsewhere, in the city on public property. A reduction credit on one tree or more shall be granted to an owner/developer when either of the following conditions exist.

(a) For every tree saved within the buildable area of a development eight (8) inches or more in diameter, or

(b) For every two (2) trees saved within the buildable area of a development four (4) to eight (8) inches in diameter.
(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

§ 98.42 R-1A, R-1B, R-1C, R-1H, R-1H(HP) AND R-2 ZONES.

The following requirements shall apply for all new subdivision plans with multiple lots submitted for a subdivision in a R-1A zone, R-1B zone, R-1C zone, R-1H, R-1H(HP) and R-2 zones.

(A) (1) A tree inventory plan shall be submitted in conjunction with all subdivision plans for a subdivision contained in this section. The tree inventory plan shall be submitted with the preliminary plat as required by the subdivision regulations.

(2) The tree inventory plan shall delineate the buildable area of a proposed subdivision lot. The Planning and Zoning Commission may permit the removal of a tree outside the buildable area of a subdivision lot with the advise of the Tree Commission provided the removal of the trees is reasonably required to develop the subdivision in compliance with this chapter.

(B) (1) All trees to be saved outside of the buildable area of a subdivision shall be conspicuously designated with suitable protective tree barriers as designated herein or as otherwise approved by the Zoning Administrator. Approved tree protective barriers shall be installed along the outermost dripline around the tree protection zone. The use of tree protection zones is encouraged rather than the protection of individual (non-specimen) trees that may be scattered throughout a development site.

(2) The layout of subdivision improvements, utilities, driveways, and the like should accommodate the required tree protection zones. Whenever practical, public improvements utilities, or driveways should be placed along the corridors between tree protective zones installation of same shall occur by way of tunneling rather than trenching.

(3) Construction site activities including, but not limited to material storage, parking, or concrete washout shall not encroach into any tree protection zone without the prior approval of the Zoning Administrator. Any tree irreparably damaged or killed within a tree protection zone as a result of construction activity shall be removed and replaced at a rate of two trees for every tree irreparably damaged or killed.

(4) Protective tree barriers shall be installed to a minimum height of four feet above ground level around the outermost dripline of the tree protection zone. Tree protection zones shall be delineated with typical temporary construction fencing or continuous rope or flagging. In either case, the tree protection barrier shall be accompanied by "Tree Savage Area" signage to be placed around the tree zone not more than every twenty (20) feet.

(C) (1) A tree planting zone shall also be submitted in conjunction with the subdivision plan submission. One tree shall be planted on each lot for every five thousand (5,000) square feet of lot area or fraction thereof. The trees required to be planted on each lot may be planted on the lot or on the public right-of-way in front of each lot. Any tree planted relative to the requirements contained herein shall not be less than three inches in diameter when planted.

(2) The tree planting plan shall indicate the total number and species of trees to be planted on each lot along with the intended location of same. The exact location of the trees and species shall be approved by the Planning and Zoning Commission, with the advice of the Tree Commission, as part of the final plat review process. Whenever the owner/developer can demonstrate to the Planning and Zoning absolute inability to plant the required number of trees, as many trees as possible shall be planted on the site. The difference of those trees required to be planted and those trees planted shall be donated to the city for use elsewhere in the city on public property. A reduction credit of one tree or more shall be granted to an owner/developer when wither of the following exists.

(a) For every tree saved within the buildable area of a lot eight (8) inches or more in diameter.

(b) For every two (2) trees saved within the buildable area of a lot four (4) to eight (8) inches in diameter.
(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)

REQUIREMENTS AND SPECIFICATIONS

§ 98.50 REQUIREMENTS AND SPECIFICATIONS FOR PLANTING OR REMOVING CITY TREES.

Minimum tree planting specifications shall be enforced for the planting of any new or transplanted city tree or the removal of any city tree.
(Ord. 2003-07-02, passed 8-13-03)

§ 98.51 CITY TREE PLANTING APPLICATION REQUIREMENTS.

(A) Requests for any city tree planting shall receive approval from the tree commission through a permit issued by the city. The applicant shall underwrite the cost associated with the purchase of the tree. The applicant may request a certain tree species with the Tree Commission approving final selection.

(B) Notice of the request will be sent by regular mail or hand delivered to the applicant and abutting property owners announcing the meeting.

(C) After the city receives payment for the cost of the tree from applicant, the city shall be responsible for the acquisition, planting and maintenance of the tree. All tree species must be listed on the city's recommended tree list.

(D) Application approval by the Tree Commission shall be based upon the following considerations:

- (1) Degree of urban forestation needed in the area.
- (2) Adequate, satisfactory planting space/environment.
- (3) Non-interference with overhead and underground utilities.

(Ord. 2003-07-02, passed 8-13-03)

§ 98.52 MINIMUM CITY TREE PLANTING TECHNICAL SPECIFICATIONS.

(A) (1) The tree planting bed shall be a minimum of four feet square.

(2) EXCEPTION: If the four-foot square bed causes the public sidewalk width to be less than three (3) feet, a three-foot square planting bed may be permitted, however, no planting bed shall be less than three (3) feet square.

(B) Trees shall be planted in the center of the planting bed.

(C) Trees shall be planted utilizing structural soil.

(Ord. 2003-07-02, passed 8-13-03)

§ 98.53 CITY TREE REMOVAL APPLICATION REQUIREMENTS.

(A) (1) Requests for any city tree removal shall receive approval from the Tree Commission through a permit issued by the city prior to the removal of any city tree.

(2) EXCEPTION: Trees identified by the city as presenting immediate risks to the public health, safety and general welfare shall be exempt from the permitting requirements.

(B) Notice of the request will be sent by regular mail or hand delivered to the applicant and abutting property owners announcing the meeting.

(C) The applicant shall underwrite costs of removal. In some circumstances, the Tree Commission may require the applicant to contribute to the cost of tree replacement as a possible condition of a tree removal request.

(D) A city tree may be removed by a majority vote of the Tree Commission under one (1) or more of the following criteria only:

(1) Hazardous tree: identified as having a defect or fault that may cause injury or property damage if not removed, or is inappropriately located, including but not limited to:

- (a) Dead or in advanced stages of decline.

(b) Structurally unsound - server bifurcation (split) with high chance of failure within the next five (5) years, excessive borer activity, excessive dead wood or decay, or heavy leaning.

(c) Diseased, damaged or in otherwise poor health with little prospect of recovery, including being unsightly or dangerous.

(d) Exposed roots having a high potential as a public hazard.

(e) Causing major damage to existing public or private infrastructure (where the project cannot be overcome by an engineering solution).

(f) Potential for tree or its roots to be irreparably damaged or otherwise made hazardous by a scheduled public construction project where the project cannot be reasonably re-routed away from the tree.

(g) Creating a dangerous hazard to the public because tree is leaning over roads/paths and/or blocking sight lines (where the problem cannot be corrected by pruning or an engineering solution).

(h) Tall tree species growing beneath overhead utility lines where pruning of the tree cannot produce an aesthetically or structurally suitable result.

(i) Undesirable tree species planted as an infill on an existing avenue.

(j) Tree that is known to cause major damage to public/private infrastructure and is planted within close proximity to such assets.

(k) Tree species that do not conform to the Tree Commission's recommended tree planting list and are deemed by the Commission as non-contributing to the streetscape, tree canopy or overall amenity of the site.

(l) Tree that is less than fifteen (15) feet in height, is loose in the ground and clearly not performing.

(2) The presence of special or extenuating conditions or circumstances, at the sole judgement and discretion of the Tree Commission.
(Ord. 2003-07-02, passed 8-13-03)

§ 98.54 MINIMUM CITY TREE REMOVAL TECHNICAL SPECIFICATIONS.

(A) The tree trunk and all resulting wood chips shall be completely removed from the planting bed. All other debris shall be immediately removed and disposed of properly. Damage to adjacent sidewalk or curb areas shall be repaired or replaced as specified in §§ 97.36 through 97.38.

(B) The existing planting bed shall be filled with topsoil to a level equal to the top level of the adjacent sidewalk until such time as the planting bed is repaved as specified in §§ 97.36 through 97.38. No existing planting bed shall be left unpaved for a period of more than thirty (30) days from the date of the tree removal. The property owner shall underwrite the costs associated with the sidewalk replacement.

(Ord. 2003-07-02, passed 8-13-03)

§ 98.99 PENALTY.

(A) Any person, firm, organization or corporation who violates any of the provisions of this chapter shall be guilty, upon conviction, of a Class B Misdemeanor in accordance with the Kentucky Revised Statutes. Each day of continuous violation with any of the provisions contained herein shall be considered a separate offense and shall be punished accordingly.

(B) Furthermore, any repeated violation of any provision of §§ 98.40 through 98.54 by any person, firm, organization or corporation shall be grounds for the revocation or suspension by the Building Inspector or Zoning Administrator of any permit for the grading, construction, remodeling or demolition of any site, building or structure on a site so involved. Upon the revocation or suspension, the person, firm, organization, or corporation shall not be granted any new permit until violations are remedied by the applicant.

(Ord. 91-3-1, passed 3-27-91; Am. Ord. 2003-07-02, passed 8-13-03)