

**COMMISSIONERS ORDINANCE NO. O-2019-011**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY REPEALING IN ITS ENTIRETY AND REPLACING CHAPTER 94 OF THE CODE OF ORDINANCES CONCERNING TREES AND LANDSCAPE.**

WHEREAS, the City recognizes that its trees and urban forests are a vital part of the community and desires to ensure its citizens enjoy the benefits provided by public trees while being protected from the potential risk of personal injury or property damage; and,

WHEREAS, its trees and urban forests contribute to the quality of life of its residents and visitors and are a valuable and beautiful asset throughout the City; and,

WHEREAS, trees stabilize the soil, control water pollution and storm water runoff; improve air quality and reduce urban heat; conserve energy; lessen visual and noise pollution; and, provide a natural habitat for birds and other wildlife as well as provide social and psychological benefits and aesthetics to the urban landscape,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF NEWPORT, KENTUCKY, as follows:

**SECTION I**

That Chapter 94 of the Code of Ordinances is hereby repealed in its entirety and replaced with the following:

**CHAPTER 94: TREES**

**SECTION 94.01                      DEFINITIONS**

**ANSI:** American National Standards Institute. The developed controlling professional specifications and standards governing safe and appropriate horticultural practices to be employed within the City, utilizing the most current editions of standards for tree care operations, including, but not limited to ANSI Chapters A300 concerning tree, shrub and other woody plant management;

Z133.1 concerning safety requirements for arboricultural operations; and, Z760.1 concerning nursery stock, a copy of which shall be on file with the City Clerk.

**Bamboo:** Any species commonly known as and classified as such, either “running” or “clumping” in nature.

**Branch:** A secondary shoot or stem arising from one of the main axes (i.e. trunk or leader) of a tree, or other vegetation.

**Caliper:** The diameter of a tree trunk measured at 6 inches above the ground up to and including 4 inches caliper size, and 12 inches above the ground for larger trees. Used for nursery stock and newly planted trees and not for established trees.

**Canopy (Shade) Tree:** A large or medium tree with a crown size and shape that will typically provide significant shade and beneficial effects on temperature, air quality, water quality and other environmental conditions, at maturity.

**City Arborist:** A person certified by the International Society of Arboriculture possessing the technical competence through experience and related training to provide for or supervise the management of trees, shrubs or other vegetation in residential, commercial, and public landscapes. The City may designate or contract with any person to act in this capacity.

**Critical Root Zone:** A circle on the ground corresponding to the dripline of a tree.

**Crown:** The leaves and branches of a tree, shrub or other vegetation; the upper portion of a tree from the lowest branch of the trunk to the top.

**Crown-spread:** The distance between a tree trunk and the outermost edge of the tree canopy or branch spread.

**Decay:** Degradation of woody tissue caused by biological organisms.

**Diameter Breast Height (DBH):** The diameter of the trunk of a tree, as measured 4.5 feet above ground level for trees over 12 inches at that point. For trees with co-dominant (forked) stems, the trunk as measured below the fork and above the trunk flare, at the point of the smallest diameter. For multi-stemmed trees, the diameter as considered to be the sum of the diameters of all the stems that contribute significantly to the crown.

**Diseased Tree:** Any tree with one or more significant structural defects or an infection, infestation or decay, or high probability thereof, as determined by an arborist making it subject to a high probability of failure or decline.

**Director:** The Director of the Community Services Department or his/her designee.

**Dripline:** A line extending down to the ground from the greatest horizontal extent of a tree's branches, more or less forming a cylinder around the tree.

**Emergency Utility Work:** Any sudden and unanticipated disruption or loss of existing utility service, not to include routine maintenance, planned repairs, service improvements or upgrades to any transmission or distribution system or residential, commercial, or governmental facility.

**Hazard/Risk Tree:** A tree, or any part thereof, that is at risk for failure and threatens the health, safety or general welfare of persons or property.

**International Society of Arboriculture (ISA):** A worldwide professional organization dedicated to fostering a greater appreciation for trees and to promoting research, technology, and the professional practice of arboriculture.

**Invasive Plants:** Vegetation which, by its nature, grows beyond the property of its owner, and causes a neighboring property owner potential hardship due to the vegetation being overly competitive, poisonous, or illegal by State statute, is deemed to be “invasive” for the purposes of this ordinance.

**Person:** Any natural person, business, partnership, corporation, legal entity, or governmental entity or agency.

**Property Owner:** The record owner or contract purchaser of any parcel of real estate.

**Pruning:** Removal of tree or woody plant parts.

**Public Tree:** Any tree whose trunk is growing wholly or partially within any public rights-of-way or upon land owned or controlled by the City.

**Public Sidewalks and Rights-of-way:** Means and includes all sidewalks, highways, streets, and other city owned or controlled real property or easements, including tree wells and tree lawns which are owned or controlled by the City including the areas above and below such easements and which are reserved or used for pedestrian or vehicular traffic.

**Shrubs and Other Vegetation:** All vegetation, woody or otherwise, except lawn, ornamental grasses and perennials.

**Topping** (heading, lopping, tipping): An improper method of pruning that involves cutting a currently growing or one-year-old shoot back to a bud, or cutting an older branch or stem back to a stub or lateral branch not sufficiently large enough to assume a terminal role.

**Tree:** A woody perennial plant that has the potential to attain a height of 15 feet or greater and a DBH of 3 inches or greater, including all portions thereof both above and below ground.

**Tree Canopy Cover:** The area of land covered by trees in full bloom of leaves when viewed from above.

**Tree Wells and Tree Lawns:** The area within the improved public rights-of-way located between the curb line of the street and the nearest edge of any sidewalk.

**Trunk:** The main stem(s) of a tree, located above ground, extending up from the root system, and supporting the crown.

**Wound:** The opening that is created any time the tree's protective bark covering is penetrated, cut or removed, insuring or destroying living tissue.

## **SECTION 94.02                    APPLICABILITY**

The provisions of this Chapter shall apply to all trees, shrubs and other vegetation located upon public rights-of-way and upon City owned or controlled property or easement.

## **SECTION 94.03                    JURISDICTION**

The Community Services Department shall have exclusive control over the planting, setting out, removal, replacement, protection, and care of all public trees,

shrubs and other vegetation within the applicable areas of the City. The City Arborist may be utilized in consultation with regard thereto

#### **SECTION 94.04                      ADMINISTRATION**

The provisions of this Chapter shall be implemented by the Community Services Director, in conjunction with the City Arborist, who shall oversee regulation of the planting, removal and management of public trees, shrubs and other vegetation and areas of tree canopy, and shall enforce and administer the provisions hereof. The Director shall work closely with all other City departments, persons or entities to promote and ensure the maximum protection of trees, shrubs and other vegetation and the enhancement of the tree canopy through the implementation and administration of this Chapter. The Director shall, in conjunction with the City Arborist, review all policies, procedures and/or administrative regulations relating to public trees, shrubs and other vegetation and areas of tree canopy.

#### **SECTION 94.05                      DESIGNATED CITY ARBORIST**

The City may designate a member of the Community Services Department to act as the City Arborist, who shall be responsible for implementation of the provisions of this Chapter or, the City may elect to employ or contract with a qualified individual or entity to act as the City Arborist who shall be designated as such. In such event the City Arborist shall work in conjunction with the Director for implementation of the provisions set forth in this Chapter.

The City Arborist shall consult with the City's Code Enforcement Department Director or any of the Department's sworn citation officers concerning the issuance of citations for the violation of any of the provisions hereof, but shall have no power to individually issue such citations.

**SECTION 94.06 GENERAL RESPONSIBILITIES & REQUIREMENTS**

All trees located on property and rights-of-way owned or controlled by the City shall be maintained by the City and shall be addressed based on priority and available funding.

Tree planting, pruning, fertilizing or any other maintenance may be performed on any public tree, shrub or other vegetation by abutting property owner, but requires advanced permission from the City and must be accomplished per ANSI-A300 standards and ISA Best Management Practices, which shall be on file with the Community Services Department.

**SECTION 94.07 PROHIBITIONS**

It shall be unlawful to undertake any of the following acts with respect to any tree, shrub or other vegetation covered in this Chapter without prior permission of the City Arborist or Director:

- (1) Cut, prune, break, injure, alter or remove any tree, shrub or other vegetation;

- (2) Cut, unduly disturb or interfere, in any manner, with any root of a tree, shrub or other vegetation;
- (3) Fasten any object, rope, wire, insulator, signage or other device to any tree, shrub or other vegetation, excepting the posting of public notices by the City;
- (4) Install, remove or injure any guard or similar device placed to protect any tree, shrub or other vegetation; and/or,
- (5) Close or obstruct any open spaces provided about the base of a tree, shrub or other vegetation so as to prevent the access of air, water and fertilizer to the roots of the same.

#### **SECTION 94.08 DAMAGE**

Any person who causes damage to any tree, shrub or other vegetation shall be liable for such damages and subject to penalty as set forth in Section 94.99 hereof, including monetary compensation to the City for such damage or replacement cost of the same.

A. Damage to public trees, shrubs or other vegetation is strictly prohibited and shall include, but is not limited to, any of the following causes:

- (1) Construction and excavation;
- (2) Mechanical damage from lawn mowers or string trimmers;
- (3) Vehicular accidents;
- (4) Vandalism;
- (5) Root cutting or damage occurring from sidewalk repair;
- (6) Incorrect pruning practices or topplings;



- (7) Adhering advertisements or electrical wiring;
  - (8) Animals (tied to or damaged by); and/or,
  - (9) Introduction of any toxic substance (oil, gas, liquid dye, brine water) to the soil within the area of the dripline area.
- B. In the event of damage to any public tree, shrub or other vegetation, the person causing such damages shall be obligated to report the same to the Community Services Department within 48 hours thereof.
- C. The City shall be held harmless from and against any damages which may occur to any plantings subject to this Chapter due to any of its operations or repairs undertaken including stump removal; tree, shrub or other vegetation planting, trimming or removal; utility, street or curb repairs; plowing; or, salting.

**SECTION 94.09                      MAINTENANCE**

- A. If a property owner wishes to prune, remove or replace a tree, shrub or other vegetation within a public rights-of-way adjacent to their property, the property owner shall obtain permission from the City Arborist in consultation with the Community Services Department, and complete the work at his or her own cost, subject to the standards contained within this ordinance.
- B. Where it is determined that the complete removal and replacement of a tree is required, the cost of removal and replacement shall be paid by the City. If the adjacent property owner does not wish to have the tree replaced, the cost of removal shall be paid by the adjacent property owner.

- C. In the event that pruning (and not complete removal of a tree, shrub or other vegetation) is required, it shall be pruned pursuant to the acceptable standards required herein and under the same requirements as set forth in Section 94.06.
- D. The City Arborist shall maintain a priority list for tree maintenance, removal and replacement of trees located on property owned by the City, or in public rights-of-way.
- E. It shall be the duty of the adjacent property owner abutting any City sidewalk to properly maintain the growth and length of grass, or other ground cover, including the seeding, re-seeding, mowing and eradication of weeds and for the raking, sweeping and removal of leaves, grass clippings and/or any other yard waste, within the tree wells and tree lawns located therein or adjacent thereto. Leaves, grass clippings and other yard waste shall be properly disposed of through the City's normal waste collection procedure or any other disposal program as may be implemented by the City.
- F. The City shall be responsible to prune trees, shrubs or other vegetation as to provide for the unobstructed passage of vehicular or pedestrian traffic upon the public rights-of-way and repair. However, the repair and/or replacement of sidewalk panels which become damaged by trees, shrubs or other vegetation shall be the responsibility of the adjacent property owner.
- G. No landscape features, including, but not limited to, fencing, large rocks, metal stakes, chains or plants with tall or wide growth habits (over 12"), that may present a trip hazard, obscure vehicular or pedestrian sight lines or interfere with the lawful parking, including ingress and egress from vehicles shall be permitted within the tree lawn by anyone other than the City without prior

approval. Existing features will be evaluated on a case by case basis for identified hazards related to access and safety.

H. If removed by the property owner, all stumps of trees, shrubs or other vegetation shall be removed below the surface of the ground by at least four inches (4") so that the top of their stump shall not project above the surface of the ground, or if replanting twelve to eighteen inches (12-18").

#### **SECTION 94.10 INVASIVE SPECIES**

No known invasive trees, shrubs or other vegetation, as set forth in the Kentucky Invasive Plant Council List, including any species of bamboo, shall be planted within any public rights-of-way or upon any City owned or controlled property or easement.

A. Any invasive which has been planted, installed, or otherwise continues to grow prior to the effective date hereof is subject to the following compliance requirements:

(1) The property owner shall be responsible to ensure that any such preexisting invasive plant does not encroach or grow upon any adjoining property or properties. Such measures may include installation of sheathing comprised of metal or any other impenetrable material at a sufficient depth within the property line or lines where such preexisting invasive is planted or growing.

(2) Preexisting bamboo shall not be replanted or replaced once such bamboo is or has become, for any reason, dead, destroyed, uprooted, eradicated or otherwise removed.

B. In the event that any invasive grows or invades upon any adjoining property or properties, the City Arborist or Director shall notify the offending property owner of the invasion or growth and that the property owner is responsible for its removal. The property owner shall have thirty (30) days in which to undertake remedial measures or thereafter shall be considered in violation hereof and, upon citation, shall be subject to the penalty provision set forth herein. In the event the City shall be required to remove said invasive from any public rights-of-way or City owned or controlled property or easement, the property owner shall be liable to the City, upon invoice, for the cost of removal.

#### **SECTION 94.11 CONSTRUCTION OF STREETS AND SIDEWALKS**

The construction of any public sidewalk along any street or, the constructing, opening, curbing or paving of any street requiring the consent of the City as outlined in Chapter 93: Streets and Sidewalks, shall be accomplished to the extent possible so as to preserve any trees, shrubs or other vegetation adjacent thereto, consistent with the appropriate and practical construction aspects of the public improvement.

The City Arborist shall be consulted regarding how the work may be accomplished in order to prevent injury to any tree, shrub or other vegetation. The City Arborist shall also make recommendations as to the location for installation of trees, shrubs or other vegetation, tree wells and green spaces within the public rights-of-way in order to enhance their appearance and contribute to the residents' quality of life.

Upon recommendation of the City Arborist, the City may install tree wells and create tree lawns and provide and plant trees, shrubs or other vegetation therein at no cost to the property owner.

Nothing herein shall be construed to prohibit or impede the construction, maintenance or operation of any public improvement or utility.

## **SECTION 94.12                      PERMISSION REQUIREMENT**

**Requirements.** Permission from the City shall be required for any planting, maintenance, construction work or for any other activity deemed to have a potentially negative impact upon any tree, shrub or other vegetation located within any public right-of-way or upon any City owned or controlled property or easement.

**Grant of Permission.** The request for permission shall be made in writing, including e-mail, to the City Arborist. The request shall be reviewed by the City Arborist and a written determination shall be issued to the applicant within 10 days of receipt either denying or granting permission for the requested work to be performed. The permitted work to be performed shall be completed in accordance with any plans, specifications or conditions issued therewith by the City Arborist or Director in keeping with the applicable standard and guidelines and the express purposes and intents set forth in this Chapter.

**Rules of Conduct.** The Community Services Director shall issue written rules of conduct on an annual basis for work to be performed, to local utility companies and those companies regularly engaged in the business of tree maintenance.

**Revocation.** The Director, within his/her discretion, may revoke any permission granted if the work is not completed in full compliance with any of the plans, specifications or conditions made a part thereof; or, if the work is being performed in an unsafe manner or in violation of any provisions of this Chapter. In such event the Community Services Department may take appropriate action to remedy or restore to a safe condition any tree, shrub or other vegetation at the expense of the applicant.

**Exemptions.** The requirements for obtaining permission shall exclude any activities located upon private property or within fifteen feet (15') of any public owned property.

Any public utility serving the City with overhead services shall have the right to trim or otherwise remove trees, tree limbs, shrubs or other vegetation interfering therewith only when an emergency exists and shall coordinate such removal with the Community Services Department or the City Manager. Any other trimming or removal shall be coordinated and scheduled with the City Arborist or Community Services Department.

Any person performing emergency utility work, as set forth below and upon the conditions set forth herein, shall be exempt from the necessity of obtaining prior permission:

- (1) Restoring, but not increasing, the original capacity of underground transmission or distribution systems and located within the existing trench, provided that all applicable and controlling specifications and

standards set forth within this Chapter are followed and that the Director is notified, in advance, should excavation necessitate cutting roots in excess of 3 inches in diameter.

- (2) Restoring overhead transmission or services or distribution systems necessitating the cutting of limbs or branches up to 4 inches in diameter as measured outside the branch collar, provided that all applicable and controlling specifications and standards set forth within this Chapter are followed and the Director is notified upon completion of the work.

**Emergencies.** In the event of a declared emergency, such as, but not limited to, a natural disaster, snow storm, accident, or other such event; or, when a tree, shrub or other vegetation is infested, dead or dying and its presence constitutes a threat to public safety to the general public or an adjacent property; or, when a tree, shrub or other vegetation may be considered a hazard by virtue of obstructing the view of motor vehicle operation or with traffic flow or pedestrian safety, authority is so granted to the City Manager or Director to undertake all necessary work to abate the emergency situation.

#### **SECTION 94.13**

#### **TREE FUND**

**Establishment and Funding.** There is hereby established the "Tree Fund", within the Community Development Fund of the City. All monies received by way of fines, other compensatory payments, or civil fines assessed and collected as a result of citations issued against any person for violation of any of the provisions of this Chapter which shall be deposited in the Tree Fund. Any balance remaining therein

at the end of each fiscal year shall be carried forward into the next fiscal year. All revenues and expenditures shall be reported on their respective lines. An annual report with regard to the Tree Fund shall be provided to the City Manager.

**Contributions.** Deposits to the Tree Fund shall also include the payment of restoration fees, receipt of grant funds, and the sale of any wood products from public trees or by means of voluntary contributions made thereto by any person.

**Permissible Expenditures.** Such funds on deposit in the Tree Fund shall be solely utilized for any of the following:

Acquisition, planting establishment, and maintenance of public trees, shrubs or other vegetation which, in the judgment of the Director, in consultation with the City Arborist, will enhance the scope and value of the urban forest within the City; or,

To provide education, outreach and technical assistance to the community and to support related actions or programs regarding maintenance of public trees and urban forest.

Expenditures from the Tree Fund may also be utilized to increase future urban forestry work within the City and increase public awareness of the value of trees, shrubs and other vegetation, their care and value to the urban forest.

**Administration.** The Tree Fund and determination of its expenditures shall be undertaken by the Community Services Director, in consultation with the City Arborist.

**SECTION 94.14 VIOLATIONS, ENFORCEMENT AND PENALTY**



**Enforcement.** The Director shall have responsibility for enforcement of the provisions of this Chapter. The Director may serve notice upon any person concerning any violation of this Chapter and may order the cessation of any work being undertaken upon any tree, shrub or other vegetation in an unsafe manner which may be threatening to any property owned or controlled by the City or which may affect the health, safety or welfare of any individual. The Director may also request citations be issued by any Code Enforcement personnel against any person for any violation hereof.

**Violations.** If the Director determines that circumstances so warrant, any person found to be in violation hereof shall be notified, in writing, of such violation and given 30 days in which to complete corrective measures without being issued a citation. In the event such violator fails to take the requisite corrective measures within the stated period of time, a citation for the violation may be issued and the Community Services Department may undertake the necessary corrective measures and shall be permitted to bill the violator for all cost incurred, including administrative and legal costs, as a result thereof.

**Civil Fines Upon Citation.** Any person who shall violate the provisions of this Chapter shall be subject to a civil fine upon citation before the Code Enforcement Board.

- A. Any person failing to obtain permission as outlined in Section 94.13 shall be subject to a fine of two hundred dollars (\$200.00).

B. Any person conducting unauthorized removal of or doing damage to public trees shall be subject to a fine of Two-hundred Fifty (\$250.00) Dollars per inch diameter at breast height (DBH) of the damaged or removed portion.

C. Any tree contractor discovered working on a public tree or upon public property without permission shall be subject to a fine of five hundred dollars (\$500).

**Criminal Penalty.** In the event of intentional damage or removal of any tree, shrub or other vegetation subject herein, such person shall be subject to criminal citation and, upon conviction, be guilty of the appropriate degree of criminal mischief as defined in KRS Chapter 512 and subject to the corresponding statutory penalty therefore.

**SECTION II**

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded, published and effective upon publication.

**PASSED:** First reading June 10, 2019

**PASSED:** Second reading June 11, 2019

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Jerry R. Peluso, Mayor

ATTEST:

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Amy B. Able, City Clerk

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