ORDINANCE NO. _____, SERIES 2016

AN ORDINANCE CREATING A NEW CHAPTER OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES RELATING TO LOUISVILLE METRO TREES, TREE CANOPY AND ENVIRONMENTAL INFRASTRUCTURE

SPONSORED BY: COUNCIL MEMBERS HOLLANDER AND HAMILTON

WHEREAS, Louisville Metro Council finds that a comprehensive tree protection ordinance is needed to promote sustainability and remain competitive in economic development and quality of life with comparable metropolitan areas; and

WHEREAS, the 2015 Louisville Urban Tree Canopy Assessment commissioned by the Louisville Metro Government establishes recommendations in three broad areas, those being planting new trees, caring for existing trees, and establishing a supportive framework to build and maintain a sustainable urban tree canopy;

WHEREAS, of the 41 recommendations in the 2015 Louisville Urban Tree Canopy Assessment, the very first recommendation was “to adopt tree preservation ordinances that reduce tree canopy loss and encourage land use planning;" and

WHEREAS, the 2015 Louisville Urban Tree Canopy Assessment found that there was 37% canopy coverage overall in Louisville Metro as of 2012, a 3% loss from 2004 to 2012; an average of 54,000 trees have been lost per year over the eight year period studied; threats associated with invasive pests could lead to an additional 10-17% loss in the future; continued loss threatens to have a negative impact on public health and quality of life of Louisville Metro citizens; and Louisville

trees provide approximately $330 million in annual benefits, including annually intercepting over 18 billion gallons of stormwater, removing 150,000 pounds of carbon monoxide, 4.3 million pounds of ozone, 500,000 pounds of nitrogen dioxide, 600,000 pounds of sulfur dioxide, and 1.2 million pounds of soot, dust and other particulates that irritate human lungs;

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: A new chapter of the Louisville Metro Code of Ordinances is hereby enacted as follows:

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ARTICLE I:
GENERAL PROVISIONS

Section 1.1. Short Title.

This enactment will be known and may be cited as the "Louisville Metro Tree Ordinance."

Section 1.2. Authority.

This ordinance is enacted pursuant to the Metro Government's general police power; and all other state and local laws applicable to this article.

Section 1.3. Scope.

The terms and provisions of this ordinance shall apply to all public property (and privately owned property with respect to safety related issues) subject to regulation by the Metro Government; including open spaces, rights-of-way, and easements granted to private or public entities except where superseded by franchise agreements.

Section 1.4. Definitions.

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

Abutting (Real Property). This term shall have the same meaning as in the Land Development Code.

ANSI. American National Standards Institute.

Caliper. The diameter measurement of the trunk taken six inches above ground level (should be at or near top of root flare) for trees up to and including four inch diameter size.

Certified Arborist. An arborist certified by the International Society of Arboriculture.

Code Enforcement Officer. A metro police officer, safety officer, citation officer or other public law enforcement official with the authority to issue a citation.

Committee. The Louisville Metro Advisory Tree Committee.

Community Forester. The head of the Division.

Critical Root Zone. The minimum area surrounding a tree considered essential to support its viability. The dimensional measurement of the critical root zone is equal to a radius of one foot per one inch of trunk DBH. Thus, in the instance of a 20 inch DBH tree, the tree's critical root zone would consist of a 20 foot radius projecting in all directions from the tree as measured from the center of its trunk; or in terms of full diameter, a critical root zone of a 40 foot diameter spread across the full root system of the tree.

DBH (Diameter at Breast Height). The main stem of a tree trunk measured in inches at a height of four and one-half feet above the natural grade of the ground at its base. Whenever a branch, limb, defect or abnormal swelling of the trunk occurs at this height, the DBH shall be measured at the nearest point below four and one-half feet at which a normal diameter occurs. If a tree splits into multiple trunks below four and one-half feet, then the trunk is measured at its most narrow point beneath the split. In determining the DBH for purposes of calculating the value of a tree which has been illegally cut or removed, DBH shall be the top diameter of the stump less than four and one-half feet above the ground.

Dead Tree. A tree that is dead or has been damaged beyond repair or where insufficient live tissue, green leaves, limbs, or branches exist to sustain life.

Destroyed Tree. A tree which through an intentional or negligent act or lack of protection is more likely than not to die within a period of five years, as determined by a Certified Arborist employed by the Division.

Division. The Metro Government’s Division of Community Forestry. A singular unit of local government providing centralized regulatory and comprehensive coordination of local efforts for tree (arboricultural) and forest (silvicultural) concerns in the Metro Government.

Dripline. This term shall have the same meaning as in the Land Development Code.
Dying Tree. A tree in an advanced state of decline because it is injured, diseased or infested by insects and cannot be saved by reasonable treatment or pruning, or

must be removed to prevent spread of the infestation or disease to other trees, or is likely to become a danger.

Historic Tree. Any tree or group of trees which is of notable historic or cultural interest because of age, or which traces its ancestry directly to, or through seed or propagation to, an historic event or notable personage including trees descendant from a tree found at an historical location and trees descendant from a tree planted by a prominent individual.

Plan. The Community Forestry Management Plan, which outlines goals and concerns regarding trees, tree canopy, and forestation

Proper Arboricultural Practices. A reference to the methods employed during tree planting or cutting or removing any part of the branching structure of a plant in the crown, trunk or root areas in accordance the most recent edition of the ANSI “A-300 Standards” and published "Best Management Practices" of the International Society of Arboriculture.

Pruning. The removal or reduction of parts of a tree which are not requisite for growth or production, or are injurious to the health or development of a tree.

Public Tree. A tree wholly or in part situated on Louisville Metro Government owned or controlled land or in public right-of-way areas, excluding parks and parkways that are under the jurisdiction of Louisville Metro Parks.

Specimen Tree. Any tree or group of trees which serves as an important community asset by virtue of outstanding quality and importance for a particular species due to unique or noteworthy characteristics of rarity, size, age or ecological significance.

Support and Protection Systems. The installation of cables, bracing, anchors, lightning protection or additional hardware along with accompanying components that serve to provide additional support, limit movement, or provide protection for a tree. Support and protection systems shall only be installed by a Certified Arborist or a person acting under said arborist’s supervision.

Topping. The severe cutting back of limbs to stubs within a tree's crown and thus reducing the size of the tree using heading cuts that shorten limbs or branches back to a predetermined crown limit. Also referenced as “heading,” “tipping,” “hat racking,” or “rounding over.”

Treatment. The application of therapeutic remedies or corrections to site conditions after injury to trees has occurred and performed in order to improve a tree's chances for long term viability. Treatment measures can include compensatory or corrective pruning, fertilization, inoculation, soil fracturing, grade restoration and supplemental irrigation, and shall be conducted by a Certified Arborist or a person acting under said arborist’s supervision.

Tree. Any self-supporting woody plant of a species which normally grows, or is capable of growing, to an overall height of a minimum of ten feet in the north central region of Kentucky. This term includes canopy trees and understory trees, but does not include shrubs, ground cover or containerized trees and nursery stock trees for resale in licensed nurseries.

Tree Encroachment. This term shall have the same meaning as in the Land Development Code.

Tree Maintenance. Any and all work performed on a tree including, but not limited to watering; structure and safety related pruning; removing dead or diseased limbs; treating insect infestations, fungi, diseases and pest control; and removal when a majority of a tree is dead or is a threat to public health and safety.

Tree Removal. This term shall have the same meaning as in the Land Development Code.

ARTICLE II:
METRO DIVISION OF COMMUNITY FORESTRY

Section 2.1. Establishment of the Division.

A Division, to be known as the Metro Division of Community Forestry, is established within the Louisville Metro Government to provide oversight and comprehensive coordination for tree and forestation issues.

Section 2.2. Duties of the Division.

The duties of the Division shall include:

A. The development of policies and standards, to be reviewed by the Committee with respect to the tree maintenance of public trees; and
B. Responsibility for the tree maintenance or enforcement of tree maintenance of public trees set out in this ordinance or in policies and standards developed by the Division; and
C. Provision of staff support to the Committee; and
D. Creation and maintenance of the official Permitted and Prohibited Tree Species Listing; and
E. Coordination of efforts among all Louisville Metro Government departments, boards, commissions or other local governmental entities to utilize or exceed proper arboricultural practices applying to the planting and transplanting of public trees for all capital projects undertaken by Louisville Metro Government either solely or as joint ventures with other local government and/or outside entities; and
F. Facilitation of cooperative efforts between public and private entities to preserve, protect and increase levels of tree canopy within the jurisdiction of the Metro Government; and

G. Facilitation of intergovernmental cooperation concerning trees and forestation between local, state, regional and national jurisdictions; and
H. Creation of the Plan, which shall be updated no less than once each fiscal year. The Plan and updates to said Plan shall be provided to the Mayor, Metro Council and the Committee; and
I. Completion of a Louisville Metro-wide tree canopy assessment every five years, beginning in the year 2020, that results in, among other points of information, the percentage of overall tree canopy for Louisville Metro as well as individual tree canopy percentages in each of the Metro Council Districts. The assessment shall be provided to the Mayor, Metro Council and the Committee and published online for public use; and
J. Presentation of an Annual Report to the Mayor, Metro Council and the Committee reporting on:
    1. The extent to which stated goals in the Plan have been met;
    2. What issues, new goals, and/or revised goals regarding trees, tree canopy and forestation are projected for the coming fiscal year;
    3. Itemized expenditures of public funds, including the Fund, from the prior fiscal year for tree planting, maintenance and protection, infrastructure and research including periodic tree canopy assessment; and
    4. An analysis comparing expenditures for trees, tree canopy and forestation from the prior fiscal year with recommended expenditures for the upcoming fiscal year.

Section 2.3. Powers of the Division.

The administrative powers of the Division are set out as follows:
A. The Division shall have power and control over all public trees. Such powers and controls include planting, tree maintenance, tree removal, and protection of public trees within Louisville Metro. These powers may be delegated by the Division by the execution of written agreements regarding specifically defined public trees or areas after such time as formal written notice of such agreements are delivered to the Committee.
B. The Division shall have the exclusive responsibility for granting or denying permits for planting, pruning, treatment, tree encroachment, support and protection systems and tree removal of dead or live trees within the scope of this ordinance.
C. The Division, through its Community Forester or the Community Forester's duly designated representative, shall develop proposed policies and standards illustrating proper arboricultural practices regarding:
    1. The planting, tree maintenance and protection of trees; and
    2. The furtherance of and support for all the provisions of this ordinance.
D. The Division, through a Code Enforcement Officer, shall have the right of entry onto all lands within Louisville Metro at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures, to examine trees, alive or dead, standing or fallen, for the purpose of determining whether the same are dying trees. Said examinations shall include the right to take samples from such trees for laboratory testing purposes. If entry is refused or not obtained, the Code

Enforcement Official is authorized to pursue recourse as provided by law. The Code Enforcement Officer shall carry proper identification when conducting said inspections and examinations.

E. The Division shall have the authority to enter into contracts with tree care companies and/or third parties, including but not limited to neighborhood associations and home owner associations, to perform proper arboriculture practices on trees subject to the Division's jurisdiction.
F. The Division may participate in the review process for any development plan submitted to Louisville Metro Planning and Design that involves (i) public trees or (ii) trees located on private roads that are reasonably anticipated to become part of the public right-of-way.
G. The Division shall determine designations regarding Historic Trees and Specimen Trees.
H. The Division shall make recommendations on all Metro Government-initiated capital construction projects to assure the protection of and planning for Metro Louisville's tree and forestation resources.
I. When the Division determines that work or other activities affecting trees is being conducted in violation of the ordinance and poses irreparable damage to trees or threatens public health and safety, the Community Forester or personnel acting on the Community Forester's behalf has the authority to issue a stop work order requiring the person or entity to cease work until a review of the activity can be conducted by the Division for possible further actions.
J. The Division may refer violations of this Ordinance to the Code Enforcement Board and/or the County Attorney.

ARTICLE III:
THE LOUISVILLE METRO TREE ADVISORY COMMITTEE

Section 3.1. Advisory Committee; Establishment and Organization.

A. There is established the Louisville Metro Tree Advisory Committee.
B. Membership. The Committee shall consist of at least 11 members who hold an interest in the advancement of tree and forestation concerns and shall be appointed as follows:
    1. A member of the Metro Council to be appointed by the Metro Council President.
    2. At least ten individuals to be appointed by the Mayor, and approved by Metro Council, as follows:
        a. At least two Certified Arborists;
        b. At least one registered, Kentucky-licensed landscape architect;
        c. At least one local representative of the nursery industry;
        d. At least one local representative of an environmental interest organization; and
        e. At least five members from the community at large representing geographically diverse areas of Louisville Metro.
C. Term of Office and Organization. The term of office of appointees and the

organization of the Committee shall conform to the following:

1. The term of office for members shall be three years from January 1st of the first year continuing for three years through and until December 31st of the end year. To accomplish staggered terms, the initial appointment of four members shall be for a one-year term; four members shall be for a two-year term; and three members shall be for a three-year term. Members may be reappointed for successive terms and each member shall serve until the appointment of his or her successor.
2. Members shall serve without compensation. A member shall be immediately removed from the Committee if the member has missed three consecutive regular Committee meetings without excuse accepted by the Committee. A member of the Committee may also be removed by joint decision of the Chair and the Vice Chair of the Committee if the member has missed five consecutive regular meetings of the Committee regardless of reason for absence. The chair of the Committee shall notify the proper appointing authority of any declared vacancy resulting from a member's failure to attend the required number of meetings and appointment will be made by the appointing authority to fill that vacancy by a member who will complete the unexpired term of the removed member.
3. The Mayor shall appoint one member of the Committee as the Chair, who shall preside at all meetings of the Committee. The Mayor shall also appoint one member of the Committee as Vice-Chair, to preside at meetings when the Chair is absent and/or to act as Chair of the Committee at such times as the Chair is unable to act. The Chair and the Vice-Chair shall each serve for a one year term and shall each be eligible for re-election.

Section 3.2. Duties of the Committee.

A. The duties and responsibilities of the Committee shall be as follows:
   1. Advise the Division on issues affecting Louisville Metro's protection of trees and appropriate levels of tree canopy;
   2. Provide consultation and assistance to the Division in the creation and updating of the Plan;
   3. Promote the value of a healthy community tree canopy and the maintenance of healthy trees in Louisville Metro;
   4. Participate in Arbor Day activities and other educational outreach events regarding trees;
   5. Periodically review the policies and standards of the Division to assure reflection of current best practices for tree planting and tree maintenance;
   6. Advise the Division on the preparation and contents of the annual Division budget request to the Mayor;
   7. Provide recommendations to the Mayor and Metro Council as to needed changes or amendments to the Louisville Metro Tree Ordinance, the Louisville-Jefferson County Land Development Code, and the Comprehensive Plan; and
   8. Review applications and make recommendations to the Division regarding the designation of historical trees and specimen trees.

B. The Committee shall establish a schedule of regular meetings and may hold special meetings upon the call of the Chair. The Committee shall keep minutes of all proceedings, including the number of votes for and against each specific action taken.
C. A quorum of the Committee shall be a majority of the members of the Committee.
D. No member of the Committee may participate in the hearing or disposition of any matter in which that member has any conflict of interest, as defined by Chapter 21 of this Code of Ordinances.
E. The Committee shall adopt policies and procedures for the conduct of its meetings, the processing of designation applications for historical trees or specimen trees and for any other purposes considered necessary for its proper functioning under this Ordinance.

ARTICLE IV:
TREE MAINTENANCE AND FORESTATION INFRASTRUCTURE MANAGEMENT

Section 4.1. Tree Maintenance – Responsible Party.

A. The Division shall maintain or order tree maintenance of public trees. If maintenance orders are not met, the Division has the authority to perform needed work and recover costs per Section 4.6.
B. The responsible party that is charged with tree maintenance of public trees located in the public right of way of all streets, alleys, lanes, and other public open spaces is the abutting property owner. In accordance with this ordinance and Division standards, abutting property owners are required to obtain a permit from the Division for planting, tree maintenance, tree encroachment, tree removal or replacement of a public tree.

Section 4.2. Policies and Standards for Public Trees.

The Division shall establish policies and standards for planting, tree maintenance, treatment, tree encroachment, tree removal and replacement of public trees and it shall be a fineable action if such policies and standards are not followed. The policies and standards shall include, but not be limited to:

1. All public trees that are removed are required to have the stump ground within three months of the removal unless the Division provides a written waiver of this requirement.
2. All public trees that are removed are required to be replaced within one year unless the Division provides a written waiver of this requirement.
3. Maintenance requirements for newly planted public trees.
4. Only trees that grow to a mature height of 25 feet or less will be considered for planting within 15 feet of an overhead utility line.

Section 4.3. Permits.

A. Except as allowed in Section 4.4, no person or other entity shall undertake any of the following activities: planting, treatment, tree maintenance, tree encroachment or tree removal of a public tree without first obtaining a permit from the Division. The Division shall develop standards for the permit application. Those standards shall include, but not be limited to, specifying which activities must be performed by a licensed, insured and bonded tree care business employing a certified arborist. Permits involving historic trees or specimen trees are addressed in Section 4.9 below.
B. No permit shall be issued unless the party seeking the permit has filed a written statement whereby the party that is to receive the permit signs and agrees to indemnify and hold harmless Louisville Metro Government, its officers and employees, from any loss, liability or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the work to be done pursuant to the permit.
C. Fee. The Division may establish and maintain a fee schedule for permits. The fees shall reasonably relate to the recovery of administrative expenses incurred in the granting of the permit. Bonds may be required to be posted in amounts sufficient to perform the permitted work in case of default.
D. Tree Removal. Circumstances where a permit for the tree removal of a public tree may be issued include the following:
    1. Threat to public safety;
    2. Threat to the health of other trees in the community;
    3. Tree is located in violation of the policies and standards of the Division and should be replaced by a tree in compliance with the policies and standards of the Division; or
    4. Tree is of a species identified for active removal or elimination on the current Permitted and Prohibited Tree Species Listing.

    The tree removal permit will be conditioned upon the replacement of the public tree in accordance with the standards of the Division. If the person fails to replace the public tree, the Division may fulfill the replacement requirements and recover its costs in doing so from the person who removed the public tree.
E. Tree permits issued by the Division shall become null and void if work so permitted is not undertaken within the specified time range listed on the permit, and a new permit shall be required.
F. All activity authorized by a permit shall be performed in compliance with proper arboricultural practices, including required certifications from the State Department of Agriculture for herbicide application.
G. The permit holder shall also comply with the requirements of Louisville Metro Code of Ordinance (“LMCO”) 97.051, unless excepted from those requirements pursuant to LMCO 97.052.
H. Any person who has been denied a permit by the Division may appeal that decision by submitting a written appeal to the Community Forester within ten days of the decision. Such appeal shall be answered within ten days of receipt of said appeal,

and the decision of the Community Forester shall be final.

Section 4.4. Exemptions to Permit Requirements.

Permits issued under Section 4.3 above shall not be required for:

A. Trees which are within the scope of a development plan which has received final approval from the Louisville Metro Planning Commission, except in a case involving trees designated as historic trees or specimen trees under Section 4.9 of this ordinance.
B. Actions to be performed by a Louisville Metro Government agency, or a contractor for a Louisville Metro Government agency.
C. Emergency repairs by public utility providers that have entered into a public utility permit agreement with the Division pursuant to Section 4.5 of this ordinance.
D. Limbs with less than a four inch diameter and are located within seven feet above ground surface that are pruned in accordance with Division standards when said limb is:
    1. Interfering with normal flow of pedestrian traffic; or
    2. Obstructing cross-visibility at any street corner or intersection between two feet and seven feet above the level of center of adjacent street corner or intersection; or
    3. Obstructing visibility of traffic control devices, signals, or permanent signs.

Section 4.5. Public Utility Permit Agreements.

The Division shall have the authority to enter into tree permit agreements with public utilities for activities involving similarly situated trees or groupings of trees which permit pruning of trees, tree encroachment and/or tree removal, to the extent deemed necessary to allow reasonable construction activities or to avoid a threat to the continuous provision of utility services. Such utility agreements shall be in the form of a written memorandum, the most recent version of which shall be kept on file with the Division and the local office of the utility involved. Memoranda shall include clearly expressed standards describing the specific situations where pruning, tree encroachment and/or tree removal is unable to be avoided in order to assure reasonable utility construction activities or to avoid a threat to the continuous provision of utility services.

Section 4.6. Prohibited Actions with Public Trees.

A. Violations. The following actions are considered prohibited interactions with public trees and are fineable offenses per the Penalties Section in Article V of this chapter:
    1. Injury or Abuse of Public Tree. No person shall conduct injurious, abusive or other damaging activity regarding such public tree, including but not limited to:
        a. Carving, defacing or mutilating the bark of a public tree;
        b. Breaking a limb of a public tree;
        c. Using climbing spikes or irons to climb a public tree, except for purposes of permitted tree removal;
        d. Unduly disturbing or interfering with the root system;

e. Allowing any harmful gaseous, liquid, chemical, or solid substance to come in contact with the root system, bark, leaves, or base of a public tree;
f. Setting fire to or permitting fire to burn when such fire or heat from fire will injure any portion of a public tree; or
g. Attaching ropes, wires, nails, screws, electric insulators, cables, chains, advertising posters, signs, or any other objects or contrivances except for the purpose of protecting a public tree or the public.

2. Endangerment of Public Trees. No person shall endanger such public tree or trees by the creation of or the allowing the existence of situations which endanger public trees, including but not limited to:
   a. Maintenance of any impervious matter or substance in such a manner as may obstruct the free access of air and water to the roots of any public tree, other than the Metro Government's regular paving, repairing or altering of streets or sidewalks;
   b. Maintenance or operation of any gas pipes or mains laid beneath the ground or the surface of any street, alley, or sidewalk in a negligent manner that allows a leak to occur from such pipes or mains within a radius of 40 feet of a public tree;
   c. Fastening or attaching an animal or foreign object to a public tree in such a way as to cause possible injury to the tree; or
   d. Attachment of any electric wire, insulator or other device for holding an electric wire to a public tree.
3. Disfigurement of Public Trees. It shall be unlawful for any person to engage in topping, severely pruning or otherwise disfiguring any public tree.
4. Pruning for Off-Premise Advertising or Building Facade Visibility. It shall be unlawful to prune any public tree in order to increase visibility of commercial outdoor signage, off-premise advertising, or building facades.
5. Destruction of Public Trees. No person shall destroy a public tree by causing its physical removal by any means, including but not limited to:
   a. Digging up the public tree out of the ground; or
   b. Cutting down and/or severing the main stem of the public tree; or
   c. Sheering off a tree by a moving object such as a vehicle running into the public tree; or
   d. Causing its effective removal by any means which creates a situation that will more than likely lead to the imminent death of a public tree, including but not limited to:
      (1) Major structural damage to a tree which, in the opinion of a Certified Arborist on the staff of the Division, will than likely cause the tree to die within a five year period;
      (2) Girdling the bark or cambium layer of a tree;
      (3) Poisoning, applying a herbicide or other toxic substance to the above ground portion or root system of a tree;
      (4) Changing the natural surface grade within the drip line of a tree;
      (5) Excessive paving or installing of an impervious surface over a substantial portion of the drip line of a tree;

(6) Substantially changing natural drainage patterns in a manner which would reasonably be expected to kill a tree; or
(7) Burning of a tree's limbs or branches, or the bringing of fire to the base or main stem of the tree resulting in severe damage to the bark and cambium layer of a tree.

B. Violations of this section shall be referred to the Code Enforcement Board, who shall determine the liability and penalties for damages to public trees in accordance with this Ordinance. The person committing the violation and any person contracting for the work resulting in the violation shall be jointly and severally liable for any penalties or other enforcement actions imposed pursuant to this ordinance.
C. If the prohibited action poses a serious threat to the public health, safety or welfare; or where the consequences for continued violation would be irreparable or irreversible to one or more public trees; the Division may, without further notice, proceed to abate the conditions. In such cases, the Division may, in addition to any monetary penalty imposed pursuant to Article V of this ordinance, charge the responsible person or persons with the cost of the abatement, including equipment expense and a disposal fee, if any, as well as an administrative fee.
D. In addition to the civil enforcement mechanism provided for the correction of violations under this chapter, it shall be the duty of the County Attorney to institute an action for the recovery of any penalties and costs otherwise authorized in this chapter, and to bring an action for an injunction against any person violating or threatening to violate any provision of this chapter, or any standard of the Division issued pursuant thereto.

Section 4.7. Tree Removal or Remediation of Dying Trees on Private Property.

The Division shall have the authority to require tree removal or remedial action for any tree or portion of a tree located on private property within Metro Louisville when the tree presents a public nuisance, as that term is defined in Section 156.005, or presents a threat or potential threat of the spread of disease or infestation to other trees within Metro Louisville that threatens the lives of those trees. Tree removal or remedial action is the responsibility of the landowner and shall be conducted at the landowner's expense.

A. Procedures for citations or notice of violations of this Section shall be in accordance with and as prescribed by Section 32.405.
B. If the decision of the Code Enforcement Board approves the tree removal or remedial action, the Division shall have the right to enter the property, conduct the tree removal or remedial action and bill all costs to the landowner. If the property owner fails to pay such costs within 45 calendar days after said notice is given or posted on the property, the Louisville Metro Government shall be entitled to take all actions necessary to place a lien on the property for costs of the removal or remedial action.

Section 4.8. Community Forestry Escrow Fund.

A. Establishment. The Division shall establish the Community Forestry Escrow Fund (the "Fund") which shall be maintained as a separate account for the purpose of holding monies received from tree related activities, including but not limited to:
   1. Monetary penalties received in payment for violations resulting from the enforcement of provisions of this ordinance; and
   2. Compensatory payments received which are based upon the value of destroyed, removed or injured public trees; and
   3. Monies received from the sale of wood or wood products in the maintenance or removal of trees by the Division or other Metro departments and agencies; and
   4. Donations or bequests received from members of the public, businesses, charitable organizations or other entities for the planting, care and protection of trees or the enhancement of the community tree canopy.

B. Purposes of Fund. Disbursements from the Fund shall be restricted to:
   1. Non-personnel Division expenditures relating to public trees;
   2. Establishment and maintenance of a landowner assistance program, which is intended to help defray the cost of Division-mandated tree removal or remedial action on behalf of indigent property owners; and
   3. Furtherance of the purposes of this ordinance.

C. Monies Held Separately. The Louisville Metro Government shall keep a separate accounting of all receipts and expenditures relating to the Fund. End-of-year balances of the Fund shall carry over from one fiscal year to the next. No part of the Fund shall be commingled with other funds and no portion of the Fund shall at any time lapse into or become part of the general fund of the Metro Government. Monies in the Fund shall not be subject to appropriation for purposes other than those set forth in this ordinance.

Section 4.9. Designation and Listing of Historic Trees or Specimen Trees.

A. Petitions for Historic Trees or Specimen Trees.
   1. Petition for Public Trees. The Division, on behalf of itself or for an individual or entity, may identify and petition that a public tree or group of public trees should be designated as historic trees or specimen trees.
   2. Petitions for Trees on Private Property. Any landowner within Metro Louisville may petition for a tree located on his or her land to be designated as a historic tree or specimen tree. Such petitions shall be submitted to the Division in writing with supporting documentation.
   3. Petition to Remove Designation. Notwithstanding the provisions set out in subsection (C) below, a subsequent landowner of the property on which a historic tree or specimen tree is located may petition for the removal of the recorded designation, based on Division standards for removal consideration. Such petition shall be submitted to the Division in writing with supporting documentation. In the event that the petition requests removal of the designation because the tree is a dying tree, upon verification that the tree is a dying tree, the Division has authority to act upon the petition without Committee review.

B. Committee Review of Petitions. The meeting of the Committee scheduled to review a petition shall constitute a public hearing on such petition. The Committee shall

make a recommendation based upon a written finding of fact, which shall approve the petition, deny the petition, or defer consideration of the petition until a later meeting of the Committee. Any petition which fails to obtain the votes of a majority of the members present shall be deemed to be recommended for denial. The Committee recommendation shall be sent via certified mail to both the Division and the landowner. The Division shall have 30 days thereafter to either confirm or reject the recommendation of the Committee, and shall send notice of its decision via certified mail to the landowner.

C. Listing. The Division shall maintain a listing and locations of all trees that have been designated as historic trees or specimen trees within Metro Louisville. A current mapping record of all trees that have been designated as historic trees or specimen trees shall be kept on file at the Division.

D. Tree Designations on Private Property to Run With the Land. By operation of law, the designation of a tree as a historic tree or specimen tree shall attach to and run with the land and be binding upon subsequent owners of the property where the tree is located. Once a decision approving any such designation is made by the Division and upon receipt of the certified copy of the decision, the landowner shall duly record the designation document with the Jefferson County Clerk and provide a copy of the recorded designation document to the Division. Once the Division has received a copy of the recorded designation document, it shall place the tree or trees on the Division's official listing of historic trees or specimen trees

E. Permitting for Historical Trees or Specimen Trees.
   1. Pruning and Excavation. No person may prune or excavate within a 20 foot radius of a designated historic tree or specimen tree, whether on private or public land without a permit from the Division.
   2. Tree Removal. No person may remove or destroy a designated historic tree or specimen tree, whether on private or public land, without a permit from the Division. Circumstances that will determine if tree removal is appropriate include but are not limited to:
      a. The tree is a dead tree or dying tree;
      b. The tree is a serious threat to persons, property or public safety; or
      c. The tree poses an imminent threat to the health of other trees in the immediate vicinity.
   3. Public Hearing Required for Request to Remove Multiple Historic or Specimen Trees. A permit for the removal of two or more historic trees or specimen trees in the same land parcel or on adjacent land parcels shall not be granted by the Division until such time as a public hearing is held on the subject of the proposed removal before the Committee. Such public hearing shall be conducted in the same manner as a petition for designation, as set forth in subsection (B) above.

F. Appeals. A Division decision regarding historic trees or specimen trees pursuant to subsection (B) above may be appealed to the Code Enforcement Board by the landowner. Such appeal must be filed with the Code Enforcement Board within 14 calendar days of the date the Committee’s decision was sent via certified mail.

ARTICLE V:
PENALTIES

Section 5.1. Civil Penalties.

A. A person who violates any provision of this chapter shall be subject to the schedule of civil penalties contained in Section 5.2 of this Ordinance**.**
B. The Louisville Metro Government shall possess a lien on the property of the person committing the violation for all fines, penalties, charges and fees imposed pursuant to subsection (A) above. The lien shall be superior to and have priority over all other subsequent liens on the property except state, county, School Board and Louisville Metro Government taxes.
C. A violation of this chapter shall be classified as a civil offense and shall be enforced through the Code Enforcement Board as provided in Sections 32.275 through 32.291 of the Ordinance, or as it may be amended. All monies collected pursuant to the monetary penalty provisions of this chapter shall be held in the Fund in accordance with Section 4.8.

Section 5.2. Schedule of Civil Penalties.

A. Penalties for a First Violation. For a first offense by a person within a five year period, monetary penalties shall be imposed as follows:
   1. Offense other than tree removal of a live public tree. A fine of not less than $50 nor more than $500 for violations other than tree removal of a live public tree. Each day a violation continues after due notice has been served of the violation shall constitute a separate offense. Each tree in an offense involving multiple trees shall be considered a separate offense, but in no case shall the total fine exceed $2,000.
   2. Offense involving tree removal of a live public tree. A fine of not less than $250 nor more than $3,000 for the tree removal of a live public tree. Each live public tree in an offense involving the tree removal of multiple live public trees shall be considered a separate violation, but in no case shall the total fine exceed $20,000.
B. Penalties for Subsequent Violations. For subsequent violations by a person within a five year period, monetary penalties shall be imposed as follows:
   1. Offense for a Violation Differing From the First Offense. A second violation by the same person within a five year period which involves a violation different than the offense involved in the first violation, shall carry a penalty of two times the monetary range amounts set out for first violations under Section 5.2(A) herein.
   2. Offense for a Violation for the Same Offense. A second violation by the same person within a five year period, which involves an offense identical to the offense involved in the first violation, shall carry a penalty of three times the monetary range amounts set out for first violations under Section 5.2(A) herein.
   3. Three or More Violations. Where the same person has three or more violations within a five year period, each violation, beginning with the third violation, shall carry a penalty of four times the monetary range amounts set out for first violations under Section 5.2(A) herein.
C. Additional Fine in Exceptional Circumstances. In addition to the above monetary penalties set out herein, an additional monetary penalty may be imposed in an amount not less than $200 nor more than $2,000 in the following exceptional

circumstances:

1. Five or more violations by the same person within any twelve month period;
2. Any violation affecting a historic tree or a specimen tree; or
3. Any violation resulting in tree damage which, in the professional opinion of a Certified Arborist on the staff of the Division, has caused the death or irreversible damage which will lead to the death of six or more trees with a DBH of over four inches each.

D. Restitution for Damage to or Loss of Trees. In addition to the foregoing monetary penalties set out in this Section, when a violation of this ordinance results in the injury, mutilation or death of a live public tree, historic tree and/or specimen tree, the cost of repair or replacement, and/or the appraised dollar value of such tree shall be borne by the person who violated the ordinance. The value of trees shall be determined in accordance with applicable tables or references set out in the most recently updated Plan.

ARTICLE VI:
MISCELLANEOUS PROVISIONS

Section 6.1. Repeal of Code Provisions.

Code provisions found in Title IX, Chapter 96, Health Regulations and Nuisances at: Section 96.02, Removal of or Damages to Trees; Section 96.03, Removal of Dead Trees; and Subsection 96.99(B), Penalty are hereby repealed. In addition, all ordinances or parts of ordinances in the Code that are in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION II: This Ordinance shall take effect upon passage and approval.

_____ _____

H. Stephen Ott
Metro Council Clerk

David Yates
President of the Council

_____ _____

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

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