ORDINANCE NO. _____, SERIES 2017

AN ORDINANCE CREATING A NEW SUBCHAPTER OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES RELATING TO THE PROTECTION OF PUBLIC TREES, TREE CANOPY AND ENVIRONMENTAL INFRASTRUCTURE (AMENDED BY SUBSTITUTION)

SPONSORED BY: COUNCIL MEMBERS HOLLANDER AND BRYANT HAMILTON

WHEREAS, Louisville Metro Ordinances in various chapters regulate tree planting, removal and maintenance in the public rights-of-way (Section 96.02, 96.03, 96.99, 97.051 and 97.076) and designate certain trees as “public nuisances” (Section 156.005);

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

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 percent canopy coverage overall in Louisville Metro as of 2012, a 3 percent 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 percent 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.

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

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

Section 1 [§____]. Definitions

For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms not otherwise defined herein shall be interpreted first by reference to the Louisville Metro Land Development Code and the Louisville Metro Code of Ordinances if specifically defined therein; then according to common usage, unless the context clearly indicates otherwise.

CERTIFIED ARBORIST. An arborist certified by the International Society of Arboriculture.

COMMITTEE. The Louisville Metro Advisory Tree Committee.

COMMUNITY FORESTER. The head of the Louisville Metro Division of Community Forestry.

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 or retained by the Division.

DIVISION. The Louisville Metro Division of Community Forestry.

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.

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 with the most recent edition of the American National Standards Institute (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 with a base wholly or in part situated on Louisville Metro Government owned or controlled land or in public rights-of-way

controlled by Louisville Metro, excluding parks and parkways that are under the jurisdiction of Louisville Metro Parks.

PUBLIC UTILITY. An organization that provides a utility service for the use and benefit of the public, including but not limited to electricity, natural gas, water, sewage, storm water, cable, telephone and telecommunications service, and maintains infrastructure for the provision of such service. A public utility may be publicly, privately or cooperatively owned, and may or may not be regulated by the Kentucky Public Service Commission.

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.”

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.

Section 2 [§____]. Division of Community Forestry

(A) The Division shall have authority over public trees within Louisville Metro as set forth in this ordinance, including but not limited to the authority to plant, support, maintain, remove and protect public trees, to issue permits for the removal, maintenance, alteration, or planting of public trees, and to pursue enforcement for violations of this ordinance.

(B) The Division shall establish standards illustrating proper arboricultural practices in furtherance and support of the provisions of this ordinance.

Section 3 [§____]. Louisville Metro Tree Advisory Committee

(A) There is hereby created the Louisville Metro Tree Advisory Committee, hereinafter referred to as the "Committee".

(B) The Committee is established for the following purposes:

(1) To advise the Division on issues affecting Louisville Metro's protection of trees and appropriate levels of tree canopy;

(2) To provide consultation and assistance to the Division in the creation and updating of the Community Forestry Management Plan;

(3) To promote the value of a healthy community tree canopy and the

maintenance of healthy trees in Louisville Metro;

(4) To participate in Arbor Day activities and other educational outreach events regarding trees;

(5) To periodically review the policies and standards of the Division and provide recommendations to assure reflection of current best practices for tree planting and tree maintenance; and

(6) To provide recommendations to the Mayor and Metro Council as to needed amendments to this ordinance, the Louisville Metro Land Development Code, and the Comprehensive Plan.

(C) The Committee shall consist of 15 members and shall be appointed as follows:

(1) A member of the Metro Council to be appointed by the Metro Council President.

(2) Fourteen individuals to be appointed by the Mayor, and approved by Metro Council, as follows:

(a) Two Certified Arborists;

(b) One registered, Kentucky-licensed landscape architect;

(c) One local representative of the nursery industry;

(d) One local representative of an environmental interest organization;

(e) One local representative of a public utility operating overhead electric or telecommunication lines;

(f) One local representative of a public utility operating underground facilities;

(g) One local representative of the Building Industry Association of Louisville;

(h) One local representative of the Greater Louisville Association of Realtors;

(i) One local representative of the Jefferson County League of Cities;

(j) One local representative of Greater Louisville, Inc.; and

(k) Three members from the community at large representing geographically diverse areas of Louisville Metro.

(3) No company or entity shall have more than one representative on the Committee.

(D) A member may be removed from office by the Mayor or Metro Council pursuant to KRS 67C.143 for misconduct, inefficiency, or willful neglect of duty. The Mayor must submit a written statement to the member setting forth the reasons for removal.

(E) Members shall serve without compensation.

(F) The appointment term of each Committee member shall be three years, except for initial appointment terms, which shall be staggered as follows: five members appointed to one-year terms; five members appointed to two-year terms; and four members appointed to three-year terms.

(G) All members shall serve until their successor is appointed and qualified. In filling vacancies prior to the expiration of the *stated* term of membership, the appointment of a successor shall be for only the unexpired term.

(H) The Committee shall meet not less than three times annually in a space provided by Louisville Metro Government.

(I) A majority of the members of the Committee shall constitute a quorum for transaction of business at any meetings of the Committee.

(J) The Committee shall adopt bylaws and other rules as it deems necessary for its organization and proceedings consistent with the laws, ordinances and resolutions of the Commonwealth of Kentucky and Louisville/Jefferson County Metro Government.

(K) The Committee may create standing and temporary committees for such purposes and needs as may arise in the performance of the Committee's duties.

(L) Staff assistance to the Committee shall be provided by the Division.

(M) The Committee shall elect a Chair from its members. The Chair shall be elected annually.

(N) The Committee is subject to the Kentucky Open Meetings and Open Records laws.

Section 4 [§____]. Maintenance of Public Trees

Tree maintenance of public trees shall be the responsibility of the abutting property owner.

Section 5 [§____]. Standards for Public Trees

(A) The Division shall establish policies and standards for planting, tree maintenance, treatment, tree encroachment, tree removal and replacement of public trees. In no event shall the Division require planting a tree larger than one and one-half (1 ½") inch in caliper.

(B) All public trees that are removed, including public trees removed by Metro Government, are required to have the stump ground within three months of the removal unless the Division provides a written waiver of this requirement. This provision shall not require a public utility to grind the stump of a tree removed by the public utility, at the request of the Division, from right-of-way not abutting the public utility's property.

(C) All public trees that are removed are required to be replaced in accordance with Division standards within one year unless the Division provides a written waiver of this requirement. This requirement shall not apply to exempt activities under Section 7 [§____] or to public utilities operating under a public utility permit agreement with the Division pursuant to Section 8 [§___].

(D) Without limiting rights pursuant to any easement, only trees that grow to a mature height of 25 feet or less will be considered for planting within the public right-of-way within 15 feet of an overhead electric utility line.

(E) Without limiting rights pursuant to any easement, no trees will be considered for planting within the public right-of-way within 20 feet of an overhead electric-transmission line, and no trees that grow to a mature height equal to or greater than the tree base's distance to an overhead electric-transmission line will be considered for planting.

Section 6 [§____]. Permits

(A) A permit shall be obtained from the Division prior to planting, tree maintenance, tree encroachment, tree removal or replacement of a public tree in accordance with this ordinance and Division standards, except as stated in Section 7 [§____]. Permits may be issued on an area-wide basis for all activities occurring in a designated area and for a period of up to two years pursuant to applications by homeowner associations and other qualified organizations. Permits involving public utilities are addressed in Section 8 [§____] below and are not subject to this Section 6 [§____].

(B) The party seeking the permit shall 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) Permits under this ordinance, other than public utility permits under Section 8 [§____], shall be issued by the Division without charge.

(D) Tree Removal. Circumstances in which a permit for the removal of a public tree may be issued include, but are not limited to the following:

(1) Threat to public safety;

(2) Threat to the health of other trees in the community;

(3) Any tree planted after the effective date of this ordinance that 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.

Unless waived by the Division the tree removal permit will be conditioned upon the replacement of the public tree in accordance with the standards of the Division at a location approved by the Division, which may be in a different location than the removed tree. 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) All activity authorized by a permit shall be performed in compliance with Division standards and proper arboricultural practices, including required certifications from the State Department of Agriculture for herbicide application.

(F) The requirements of §97.051 relating to cross-visibility at intersections shall apply unless excepted from those requirements pursuant to §97.052.

Section 7 [§____]. Exceptions to Permit Requirements

Permits issued under Section 6 [§____] shall not be required for:

(A) Trees that are within the scope of a development plan or landscape plan which has received final approval from the Louisville Metro Planning Commission or authorized committee or staff thereof.

(B) Actions to be performed by a Louisville Metro Government agency, or a

contractor for a Louisville Metro Government agency, provided any trees removed as part of these actions are replaced pursuant to the provisions contained herein.

(C) Emergency repairs by or at the direction of public utility providers that have entered into a public utility permit agreement with the Division pursuant to Section 8 [§____].

(D) Routine Pruning of less than 10% of the canopy, including removal of tree suckers, but not including Topping or other Pruning which damages the health of the tree.

(E) Pruning of limbs with less than a four inch diameter 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;

(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; or

(4) Touching a home or structure.

(F) Any routine tree watering and mulching.

Section 8 [§____]. Public Utility Permit Agreements

The Division shall enter into tree permit agreements with public utilities for activities involving similarly situated trees or groupings of trees which permit pruning of trees, directional boring, tree encroachment and/or tree removal, to allow reasonable construction activities or to avoid a threat to the continuous provision of utility services. The permit agreement shall include clearly expressed standards describing the specific situations where pruning, directional boring, tree encroachment and/or tree removal is permitted to assure reasonable utility construction activities or to avoid a threat to the continuous provision of utility services. Such standards shall not interfere with the utility's obligation or ability to provide service and shall be in accordance with and not prohibit activity consistent with the utility's written pruning and trenching specifications review by and filed with the Kentucky Public Service Commission, which shall be submitted to the Division, or in the absence of such specifications as mutually agreeable to the Division and the utility. The permit agreement shall further include provisions for replacement of public trees that are removed as a result of the utility's

activities, which may include a fee to be paid periodically to the Division for a stump grinding, tree replacement and maintenance of trees removed by the public utility, in which case the Division and not the public utility would be responsible for such actions. With respect to any public utility providing multiple types of services which by their nature have the potential to affect trees differently, such public utility may obtain separate tree permit agreements for each such type of service. Further, with respect to any public utility which operates a type of service under another permit granted by the Metro Government's Department of Public Works which is granted annually, incorporates standards applicable to trees and applies to all of such public utility's operation of such service within Louisville Metro, such public utility shall not be required to obtain both that permit and the permit provided for in this Section and may satisfy the requirements of this Section with either of such permits. To the extent such other permit is used to satisfy the requirements of this Section, such other permit shall be deemed a permit granted under this Section for purposes of this Louisville Metro Tree Ordinance. Enforcement actions under Section 12 may be taken against any utility with a valid public utility permit agreement, or against any employee, agent, or representative of such a utility, only for violation of this ordinance caused by the gross negligence or intentional actions of the utility, employee, agent, or representative. The Division may charge a public utility a fee for the issuance of a permit under this Section, provided that such fee shall not exceed $2,400 per year.

Section 9 [§____]. Prohibited Actions with Public Trees

(A) Except as expressly permitted pursuant to a permit issued under Section 6 [§ ____], as authorized in a public utility permit agreement under Section 8 [§____], and exempt activities under Section 7 [§____], the following actions shall be prohibited:

(1) Intentional injury to a public tree, as defined in the Division's policies and standards, including but not limited to carving, defacing, breaking, using climbing spikes or irons (except for purposes of permitted tree removal), burning, attaching ropes, wires, insulators, nails, screws, chains, posters, signs, or other objects, disturbing or interfering with the root system, or allowing any harmful gaseous, liquid, chemical or solid substance to come into contact with any portion of a public tree.

(2) Endangerment of a public tree by the creation of or the allowing the existence of situations which endanger public trees, as defined in the Divisions policies and standards;

(3) Topping, severely pruning or otherwise disfiguring any public tree.

(4) Pruning a public tree for the purpose of increasing visibility of commercial outdoor signage, off-premise advertising, or building facades, except as expressly permitted pursuant to a permit issued under Section 6 [§ _].

(5) Destruction of a public tree by causing its physical removal by any means or 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.

(6) Changing the natural surface grade within the drip line of a tree;

(7) Excessive paving or installing of an impervious surface over a substantial portion of the drip line of a tree; or

(8) Substantially changing natural drainage patterns in a manner which would reasonably be expected to kill a tree.

(B) If the prohibited action poses a serious threat to the public health, safety or welfare, or if the consequences of continued violation would cause irreparable damage 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 by 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. The fee schedule for administrative fees shall be approved by Metro Council, posted in the office of the Division, and published on the Division's website.

Section 10 [§____]. Tree Removal or Remediation of Dying Trees on Private Property

(A) 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 paragraph (7) under the definition of Public Nuisance in §156.005. Tree removal or remedial action shall be the responsibility of the property owner and shall be conducted at the property owner's expense.

(B) Procedures for citations, notice of violations of this Section and appeals shall be in accordance with and as prescribed by §§32.275, *et seq*. If the property owner fails to remove or remediate the tree in accordance with an order of the Code Enforcement Board, the Division shall have the right to enter the property, conduct the tree removal or remedial action, and charge all costs to the property owner. If the property owner fails to pay such costs within 45 calendar days after notice is given to the property owner or posted on the property, Louisville Metro Government shall be entitled to place a lien on the property for costs of the removal or remedial action.

Section 11 [§____]. Community Forestry Escrow Fund

(A) 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) Appropriations of public funds from time to time by Metro Council.

(2) 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; and

(3) Monetary penalties received in payment for violations resulting from the enforcement of provisions of this ordinance;

(B) Disbursements from the Fund shall be restricted to establishment and maintenance of an assistance program administered by and in accordance with policies and standards established by the Division, which is intended to help defray the cost of Division-mandated tree removal, including stump grinding, and new street tree replacement for property owners with demonstrated financial need.

Section 12 [§____]. Enforcement and Penalties

(A) The Division and any Louisville Metro Code Enforcement Officer shall have the right of entry onto all lands within Louisville Metro at reasonable times for purposes of determining whether a tree presents a public nuisance, as that term is defined in paragraph (7) under the definition of Public Nuisance in §156.005, subject to constitutional restrictions on unreasonable searches and seizures.

(B) When the Division determines that work or other activities affecting public trees is being conducted in violation of this ordinance, is not authorized by any applicable permits and poses irreparable damage to trees or threatens public safety, the Community Forester and his or her designee is authorized 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.

(C) A violation of this ordinance shall be classified as a civil offense and shall be enforced through the Code Enforcement Board as provided in §§32.275, *et seq.*, or as it may be amended. All monies collected pursuant to the monetary penalty provisions of this ordinance shall be held in the Fund in accordance with Section 11 [§____].

(D) The civil penalty for violations shall be not less than $50 nor more than $1,000. Each tree in an offense involving multiple trees shall constitute a separate

offense, and each day of a violation that is continuing in nature after a deadline for compliance has passed shall constitute a separate offense but in no case shall the total fine exceed $10,000. The Division shall establish a schedule of penalties for specific violations within the parameters set forth in this ordinance, which schedule shall be approved by Metro Council, posted in the office of the Division, and published on the Division's website.

(E) 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 this section. 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.

(F) 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, 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.

(G) In addition to the civil enforcement mechanism provided for the correction of violations under this ordinance, the County Attorney may institute an action for the recovery of any penalties and costs otherwise authorized in this ordinance, and bring an action for an injunction against any person violating or threatening to violate any provision of this ordinance or any standard established by the Division pursuant thereto.

SECTION II: Louisville Metro Code of Ordinances §96.02 Removal of or Damages to Trees, §96.03 Removal of Dead Trees, and §96.99(B) Penalty are hereby repealed in their entirety.

SECTION III: 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: _____