

**Code of Ordinance, City of Lexington, Virginia
Abstracted March 2016**

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Chapter 142. Cable Television

[HISTORY: Adopted by the City Council of the City of Lexington by Ord. No. 02-11 (Ch. 29 of the 1970 Code). Amendments noted where applicable.]

Article III. Authority and Responsibility Under Franchise

Sec. 142-23. Use of street and roads.

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C. All aerial and underground construction shall be performed in such a manner as to abide by the tree protection requirements in Chapter 380, § 380-8 of the City Code.

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Chapter 147. Cemeteries

[HISTORY: Adopted by the City Council of the City of Lexington by Ord. No. 05-4 (Ch. 6 of the 1970 Code). Amendments noted where applicable.]

Article I. In General

Sec. 147-1. Disfiguring cemetery property.

It shall be unlawful for any person to disfigure, break or mutilate any tombstone, gravestone, marker, monument, vault, enclosure, tree, shrub or vegetation in Evergreen Cemetery or Stonewall Jackson Memorial Cemetery.

Chapter 178. Erosion and Sediment Control

[HISTORY: Adopted by the City Council of the City of Lexington by Ord. No. 03-10 (Ch. 8.1 of the 1970 Code). Amendments noted where applicable.]

Sec. 178-2. Definitions.

As used in this chapter, unless the context requires a different meaning, the following terms shall have the meanings indicated:

CLEARING Any activity which removes the vegetative ground cover, including but not limited to root mat removal or topsoil removal.

LAND-DISTURBING ACTIVITY Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including but not limited to clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

A. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

...

TRANSPORTING Any moving of earth materials from one place to another place, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Chapter 295. Peace and Good Order

[HISTORY: Adopted by the City Council of the City of Lexington as §§ 15-1, 15-2, 15-3, 15-8, 15-9, 15-17, 15-18, 15-19, 15-23, 15-24, 15-25, 15-26, 15-29, 15-30, 15-36, 15-37, 15-38, 15-42, 15-43 and 15-44 of the 1958 Code (§§ 15-1, 15-2, 15-3, 15-8, 15-9, 15-16.1, 15-19, 15-22.1, 15-26, 15-27, 15-28, 15-28.01, 15-28.2, 15-28.3, 15-30, 15-46, 15-47 15-50, 15-51, 15-52, 15-53, 15-54, 15-54.1, 15-56.1, 15-57, 15-58, 15-59, 15-60, 15-61, 15-62 and 15-63 of the 1970 Code). Amendments noted where applicable.]

Sec. 295-10. Injuring or trespassing upon property.

It shall be unlawful for any person to injure or trespass upon any property, real or personal, not his own, whether public or private.

[1] Editor's Note: For state law as to injuring property generally, see Code of Virginia, § 18.2-77 et seq. As to injury to public buildings, see Code of Virginia, § 18.2-138. As to injuries to trees and fences in public squares or grounds, see Code of Virginia, § 18.2-139. As to trespass after being forbidden to do so, see Code of Virginia, § 18.2-119. As to trespass at night upon cemetery, see Code of Virginia, § 18.2-125. As to trespass at night upon church or school property, see Code of Virginia, § 18.2-128. As to entering property of another for purpose of damaging it, see Code of Virginia, § 18.2-121.

Chapter 314. Property Maintenance

[HISTORY: Adopted by the City Council of the City of Lexington as §§ 15-22, 11-9 to 11-12 and 19-1 to 19-6 of the 1958 Code (§ 15-25, Ch. 18, Art. II and Ch. 19 of the 1970 Code). Amendments noted where applicable.]

Sec. 314-2. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context clearly indicates a different meaning:

WEEDS Grass, weeds, bushes, poison ivy, poison oak or any other vegetable growth other than trees, ornamental shrubbery, flowers and garden vegetables.

Chapter 349. Solid Waste

[HISTORY: Adopted by the City Council of the City of Lexington as §§ 11-1 to 11-5, 11-7 and 11-8 of the 1958 Code (Ch. 18, Art. I of the 1970 Code). Amendments noted where applicable.]

Sec. 349-1. Definitions.

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

TRASH Leaves, branches and small limbs of trees and shrubs, flowers, stalks, weeds and other disposable and inedible accumulations of lawn or garden products, as well as matter which from its nature and size is not capable of being placed in suitable containers for collection and disposal, including vehicles, bicycles, machines, tools, trees, shrubs, furniture or other articles of large size, and also excessive accumulations of household, store or office waste and of lawn and garden trash. Such trash may not be placed on any street or public place for collection and disposal.

[Amended 7-17-2008 by Ord. No. 2008-06]

Chapter 356. Streets and Sidewalks

[HISTORY: Adopted by the City Council of the City of Lexington as §§ 15-20, 15-21, 21-1, 21-2, 21-4 to 21-10, 21-12 to 21-15, 21-20 to 21-26 and 21-28 of the 1958 Code (§§ 15-23, 15-24 and 15-29 and Ch. 21 of the 1970 Code). Amendments noted where applicable.]

Sec. 356-14. Vegetation obstructing view at intersections.

Where any vines, hedges, shrubbery or like vegetation obstructs the view at or near any intersection of streets, the City Manager shall have full power and authority to require the owner thereof to reduce the height of such vine, hedge, shrub or like vegetation and to maintain the same at such a height as the City Manager may deem necessary to promote public safety.

Chapter 380. Trees

[HISTORY: Adopted by the City Council of the City of Lexington 4-20-2006 by Ord. No. 2006-03 (Ch. 25.1 of the 1970 Code). Amendments noted where applicable.]

Sec. 380-1. Purpose and intent.

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

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

Sec. 380-2. Definitions.

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

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

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

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

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

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

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

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

PARK Public parks or public open spaces having instituted names.

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

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

PUBLIC TREES Trees planted in public areas.

PUBLIC UTILITY COMPANY Any corporation, company, individual, association, or cooperative that is a public utility as defined in § 56-232 of the Code of Virginia, 1950, as amended.

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

Sec. 380-3. Policies regarding trees.

It shall be the policy of the City to:

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

Sec. 380-4. City Arborist.

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

Sec. 380-5. Tree Board.

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

§ 380-6. Comprehensive Tree Management Plan.

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

Sec. 380-8. Protection of trees.

- A. Any tree protected by the terms of this chapter (hereafter "protected tree") which is near any excavation or construction of any building, structure, or street work shall, if feasible, have its critical root zone protected with an effective fence, frame, shield, or box not less than three feet high, and all building material, dirt or other debris shall be kept outside this barrier.
- B. No person, including public utility companies and City departments, shall excavate any ditches, tunnels, or trenches or lay any line within the critical root zone of any protected tree without notification of and discussion with the City Arborist. In the event of a disagreement between the public utilities, City departments and the City Arborist, the decision regarding the location of excavation will be made by the City Manager.
- C. Any person performing emergency work to restore, but not increase beyond the original capacity of, underground utilities, and within the same trench as existing utilities, shall be exempt from this notification, provided that the City Arborist is notified as soon as practical should excavation necessitate severing roots in excess of three inches in diameter.
- D. All trees on public areas shall, to the degree practical, be pruned or trimmed in accordance with the standards described in the American National Standards Institute's A300 Pruning Standard. This applies to all public utility companies and City departments involved in maintenance of easements.

Sec. 380-9. Damage prohibited.

- A. Unless specifically authorized by the City Arborist, or by the City Manager as detailed in § 380-8B, no person shall intentionally damage, cut, carve, disturb, transplant or remove any protected tree; allow any gas, liquid or solid substance which is harmful to such trees to come in contact with them; set fire to or allow the heat thereof to injure any portion of any such tree; or change the natural grade of the critical root zone of such trees either by excavating or filling. Any person violating the provisions of this subsection shall be guilty of an unclassified misdemeanor punishable with a fine of up to \$500 and, in addition thereto, shall be responsible for the cost of repair or replacement of any such tree so damaged.
- B. It shall be unlawful as a normal practice to top any protected tree. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy, disfigure the tree, and create a public hazard. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this subsection as determined by the City Arborist.

Sec. 380-10. Prior notice for removal.

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

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

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

Sec. 380-11. Remedies for hazard trees.

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

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

(1) Such notification shall:

(a) Be in writing;

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

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

(d) Cite the tree's condition and the corrective action required to remedy the hazard tree.

(2) If such owner cannot be found, a copy of such notice shall be placed next to said tree or part thereof.

(3) Written notice shall also be given to any tenant occupying such property.

C. Upon receipt of the written notice described above, the property owner may appeal the order to the City Manager. Such appeal must be made in writing within 15 days of notification from the City Arborist. Any actions required in the notice shall be delayed pending the City Manager's response to the appeal.

D. If any work required to be done by the City Arborist is not accomplished within the time specified, the City Attorney may institute a suit to compel the responsible party to remedy or remove the hazard tree and to recover the necessary costs incurred for the provision of emergency services reasonably required to remedy or remove any such hazard tree.

E. The term "responsible party" shall include, but not be limited to, the owner of the premises where the hazard tree is located.

Sec. 380-12. Appeals process.

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

Sec. 380-13. Violations and penalties.

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

Sec. 380-14. Enforcement.

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

Sec. 380-15. Performance evaluation.

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

Sec. 380-16. Administrative responsibilities.

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

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

B. The Tree Board is hereby vested with the authority to carry out the following responsibilities:

- (1) Review notification for activities that affect protected trees.
- (2) Conduct community outreach and education programs.
- (3) Assist with the development, revision and evaluation of the Comprehensive Tree Management Plan.
- (4) Seek funding from state, federal or other granting agencies.
- (5) Evaluate yearly whether progress is being made toward the goals of this chapter.

Chapter 403. Water and Sewers

[HISTORY: Adopted by the City Council of the City of Lexington by Ord. No. 98-14 (Ch. 26 of the 1970 Code). Amendments noted where applicable.]

Article I. In General

Sec. 403-5. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

GARBAGE All solid waste, including sludge and other discarded material, including solid, liquid, semiliquid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations and from community activities and residences.

STORMWATER Rain, stormwater, or other surface waters which are collected and transported by the storm sewer.

Chapter 420. Zoning

[HISTORY: Adopted by the City Council of the City of Lexington 12-16-1976 (Ch. 28 of the 1970 Code). Amendments noted where applicable.]

Article II. Regulations of General Applicability

Sec. 420-28. Telecommunication towers.

The intent of this section is to establish general guidelines for the siting of towers and antennas.

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G. Factors considered in granting conditional use permits for new towers or poles. The governing authority shall consider the following factors in determining whether to issue a conditional use permit, although the City may waive or reduce the burden on the applicant of one or more of these criteria if it concludes that the goals of this section are better served thereby:

- ...
- (5) Surrounding tree coverage and foliage
- ...

...

K. Landscaping. The following requirements shall govern the landscaping surrounding towers for which a conditional use permit is required; provided, however, that the governing authority may waive such requirements if the goals of this section would be better served thereby:

- ...
- (3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
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[Added by Ord. No. 00-4; amended 9-3-2009 by Ord. No. 2009-09]

Article XI. Commercial District (Shopping Centers) C-2

[Added by Ord. No. 02-7]

Sec. 420-99. Shopping centers.

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C. Any part of the project area not used for buildings or other structures, parking, loading and accessways shall be landscaped with grass, trees, shrubs or pedestrian walks.

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Article XV. Entrance Corridor Overlay District EC

[Added by Ord. No. 98-12]

Sec. 420-141. Design standards.

All applications for certificates of appropriateness must satisfy the design standards contained in this section.

A. Landscaping.

- (1) Landscaping shall be used to soften the visual impact of development and enhance the appearance of the area.
- (2) Landscaping shall be sufficient to soften the visual effects of parking lots, reduce the effective visual mass of large buildings and provide screening between development, the street and surrounding lots.

- (3) Landscape buffers shall be provided adjacent to public streets of sufficient size to permit street trees and plantings to be installed to reduce the visibility into parking lots.
- (4) Landscaping shall be compatible with landscaping on adjacent properties.

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