

**CITY OF AUDUBON PARK, KENTUCKY
ORDINANCE NUMBER 008 , SERIES 2002**

**AN ORDINANCE ESTABLISHING PROCEDURES
FOR THE PROTECTION AND PRESERVATION OF THE FOREST AND MAKING
CORRESPONDING AMENDMENTS TO THE CODE OF ORDINANCES**

WHEREAS, the urban forest of the City of Audubon Park is its most precious natural resource, central to the health and safety of the community; and

WHEREAS, the citizens of the City of Audubon Park share in the benefits of its forest's natural beauty, shade, oxygen replenishment, and wildlife habitat, as well as in the risks and hazards posed by damaged, unhealthy or declining trees; and

WHEREAS, the shared values and burdens of the citizens of the City of Audubon Park constitute a common interest, expressed in this Ordinance by means to preserve and enhance a common good; and

WHEREAS, the citizens of the City of Audubon Park commit themselves to high common standards of forest preservation, management and replenishment throughout the City;

THEREFORE, BE IT ORDAINED BY THE CITY OF AUDUBON PARK, KENTUCKY:

(1) Chapter 4 of Title III of the Code of Ordinances of the City is hereby amended to read as follows:

Chapter 4: City Officials

Sec. 3-4.01 General

(a) The Mayor shall appoint the following officials and assistants thereto of the City to carry out those functions which may be assigned to and required of them by law. These officials are subject to confirmation by the Legislative Body.

- 1) Clerk;
- 2) Treasurer;
- 3) City Attorney;
- 4) Chief of Police and members of the police force;
- 5) City Engineer;
- 6) City Forester;
- 7) Director of Building.

(b) The offices of Clerk and Treasurer may be consolidated and the offices of Assessor, City Engineer and City Forester are to be filled at the discretion of the Mayor.

(c) Specific provisions for appointment and duties of the City Forester and Director of Building are given in Titles X and XV of this Code, respectively.

Sec. 3-4.02 Qualifications Of City Officials:

No person shall be eligible to hold any office in the city, except members of the police force, unless he is a resident and qualified voter in the city, and has resided in the city for one (1) year next preceding the day of his election or appointment. The Mayor must be at least 25 years of age, Legislative Body members must be at least 21 years of age and reside in the city during their entire term of office. The Mayor's term of office is four (4) years and Legislative Body members' two (2) years.

Sec. 3-4.03 Term Of Office:

All city officials other than elected officials, may be removed following the policies and procedures set forth in the personnel ordinance.

Sec. 3-4.04 Liability:

Any City official charged with the enforcement of any ordinance of the city, acting in good faith and without malice for the city in the discharge of his duties, shall not thereby render himself personally liable and he is hereby relieved from all personal liability for damage that may accrue to persons or property as a result of any act required or by reason of any act or omission performed by him in the enforcement of any provisions of an ordinance of this city, and shall have the right to be defended by the city Attorney until final determination of any proceedings pending against him.

(2) The Code of Ordinances of the City is hereby amended to add the following Title:

Title X: Forest Management Code

Chapter 1: Definitions and Intent

Sec. 10-1.01 Intent

Trees are declared to be beneficial public resources. To that end, this Title provides for the promotion, management and redevelopment of the Audubon Park urban forest. The first responsibility for maintaining and renewing the forest, however, lies with the individual citizen. It shall be unlawful to Remove, Top, Transplant, damage, poison or in any other manner destroy or cause to be destroyed any Tree covered by this Title, or to fail to comply with any other provision set forth herein, except in accordance with the provisions of this Title.

Sec.10-1.02 Definitions

For purposes of this Title, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Any word or phrase used in a definition, or otherwise, in this Title, shall have the meaning given to it elsewhere in the Code of Ordinances of the City.

- (a) **City Forester** The City official appointed by the Mayor and confirmed by the City Council pursuant to Section 10-3.01 of this Title.

- (b) **Construction Machinery and Vehicles** Equipment or vehicles used in the construction of buildings or other structures, or used for the movement of earth including, but not limited to, bulldozers, cement trucks, cement mixers, backhoes, cranes, transport trucks, and other vehicles, whether commercial or private.

- (c) **Easement** Any right-of-way in favor of the City and/or any Utility through, across or under the real property of any Landowner in the City, as recorded in the office of the County Clerk of Jefferson County, Kentucky.

- (d) **Forest Board** Those individuals appointed by the Mayor and confirmed by the City Council pursuant to Section 10-2.01.

- (e) **Historic/Landmark Tree** A Tree which has been identified by the City Forester and officially designated by the Mayor and/or City Council to be a Historic/Landmark Tree because of its age, type, size, uniqueness, scenic enhancement, or association with an historical event.

- (f) **Landowner** Any Person who is the owner of record of real property located within the City, as well as any Person who is an Owner within the meaning of Section 1-1.01(j) of Title 1 of the Code of Ordinances of the City.

- (g) **Remove or Removal** The act of digging up or cutting down a Tree.

- (h) **Resident** Any Person who resides within the corporate limits of the City, whether or not such person is a Landowner.

- (i) **Service Provider** Any Person engaged in the planting, removal or maintenance of trees, any Landowner or Resident performing such work, and any Utility.
- (j) **Stump** The remaining part of a Tree, attached to the roots, after the rest of the Tree has been Removed.
- (k) **Top or Topping** The act of cutting back limbs within the crown of a Tree to such a degree as to remove the normal canopy and disfigure the Tree.
- (l) **Transplant** The act of digging up a Tree from one location and replanting the same Tree in another location.
- (m) **Tree** Any self-supporting woody perennial which has a trunk diameter of two inches or greater measured at a point six inches above the ground level, and which normally attains a height of at least ten feet at maturity. The term shall also apply to any other woody perennial designated by the City Forester regardless of size.
- (n) **Tree Nuisance** Any Tree, or part thereof, with an infectious disease or insect problem; any Tree, or part thereof, which is dead or dying; any Tree, or part thereof, which poses a threat to safety.
- (o) **Trench or Trenching** A cut in the ground exceeding twelve feet in length and of a depth sufficient to damage Tree roots in the area of the Trench.
- (p) **Trim or Trimming** The act of cutting back the limbs of a Tree, whether for cosmetic, therapeutic, or functional reasons.
- (q) **Utility** Any railroad, and any public or private entity providing services including, but not limited to the following: telephone, electric, gas, water, sewer, television, or cable. The term "Utility" shall apply to any subcontractor or other Person or entity working on behalf of a utility as herein defined.

Chapter 2: Forest Board

Sec. 10-2.01 Appointment and Constitution

- (a) There is hereby established a City Forest Board whose members, each of whom must be a Resident and/or a Landowner, shall be appointed by the Mayor, with the advice and consent of the City Council.
- (b) The Forest Board shall have no fewer than six members and no more than twelve members. The Mayor shall be an *ex officio* member of the Forest Board, but shall vote only in the event of a tie. A majority of the entire Tree Board shall constitute a quorum.

Sec. 10-2.02 Terms

Each member of the Forest Board shall be appointed for a term of four calendar years, or until a successor is appointed and qualified, provided, however, that initial terms shall be staggered so that one-third of the members are appointed for two-year terms, one-third of the members are appointed for three-year terms, and one-third of the members are appointed for four-year terms.

Sec. 10-2.03 Meetings

The Forest Board shall meet on the second Wednesday of each month at City Hall, or such other location as shall have been duly designated according to the Kentucky Revised Statutes. Minutes of every such meeting shall be kept and promptly filed with the City Clerk.

Sec. 10-2.04 Duties

The Forest Board shall propose criteria for the approval or denial of permits requested pursuant to Chapter 5, as well as procedures for submitting applications for such permits. Such criteria and procedures shall include provisions to preserve and renew the City's forest resources, and shall become effective upon approval by the City Council. Copies of such criteria and procedures shall be made available by the City Clerk without charge. The Board shall further be responsible for

- (a) preparing and maintaining a forest management plan for the City;
- (b) keeping an inventory of trees covered by this Title;
- (c) providing for the education of residents on planting, care and preservation of trees;
- (d) advising the Mayor and City Council on matters pertaining to the urban forest, and
- (e) such other duties as may, from time to time, be assigned to it by the Mayor.

Sec. 10-2.05 Organization

The Forest Board shall elect such officers as it deems appropriate for its efficient operation.

Sec. 10-2.05 Compensation

Members of the Forest Board shall serve without compensation.

Chapter 3: City Forester

Sec. 10-3.01 Appointment

Upon recommendation of the Forest Board, the Mayor shall appoint an individual as City Forester, with the advice and consent of the City Council.

Sec. 10-3.02 Duties and Responsibilities

- (a) The City Forester shall examine each application for a permit under Chapter 5, as well as any documentation required to be submitted with such application, and shall determine, after conducting a field inspection, whether the activity described in the permit satisfies the requirements of this Title.
- (b) The City Forester may waive the insurance requirements described in Section 10-5.03 in those instances when the Service Provider is the Landowner or Resident of the lot upon which the work is to be performed. Such waiver shall be made in writing, describe the reasons why the City Forester believed it to be reasonable and prudent to grant such waiver, and shall be filed with the City Clerk.
- (c) The City Forester shall endeavor to ensure that any work for which a permit is required under this Chapter is completed in a professional manner using standard arboricultural practices and methods, and to ensure that the Residents, property and vegetation in the work area will be protected.
- (d) The City Forester has the authority to designate any Tree Nuisance and to give written notice of required abatement to the Landowner or Resident of the property where such Tree Nuisance is situated. The notice shall provide a reasonable period for compliance.
- (e) The City Forester has the authority to grant exceptions to the restrictions of Sections 10-4.03 and 10-4.04, where the conditions described in such Sections apply.
- (f) In the performance of the duties assigned to him/her in this Section, the City Forester shall have the authority to enter upon any lot within the City after providing reasonable notice to the Resident and/or Landowner of his/her intention to do so, the reason for such entry, and the time when such entry shall occur.

- (g) The City Forester shall identify, and maintain a listing of, any Tree determined by him/her to be a Historic/Landmark Tree.

Chapter 4: Requirements

Sec.10-4.01 Trimming, Removing or Transplanting Trees

It shall be unlawful for any Service Provider, Landowner, Resident, Utility or other Person to Trim, Remove or Transplant any Tree located on any public way within the City, without first having obtained a permit to do so in accordance with the procedures set forth in Chapter 5.

Sec.10-4.02 Removing Stumps

It shall be unlawful for any Service Provider, Landowner, Resident, Utility or other Person who has obtained a permit to Remove a Tree to do so without also removing the Stump and restoring the area within a reasonable period of time, as determined by the City Forester, of the completion of the Tree removal.

Sec.10-4.03 Excavation and Construction

It shall be unlawful for any Service Provider, Landowner, Resident, Utility or other Person to Trench or otherwise excavate, or to perform construction, repair or remodeling work, with or without the use of Construction Machinery and Vehicles, within a radius of ten feet from the Trunk of any Tree without first having obtained a permit to do so in accordance with the procedures set forth in Chapter 5.

Sec.10-4.04 Affixing Foreign Objects or Materials

It shall be unlawful for any Service Provider, Landowner, Resident, Utility or other Person (1) to nail, screw or otherwise affix to a Tree any foreign object including, but not limited to, a notice, Sign, or house address, or (2) to paint any portion of a Tree. The City Forester may grant exceptions to the provisions of this subsection for standard arboricultural practices (e.g., cabling).

Sec.10-4.05 Topping

It shall be unlawful for any Service Provider, Landowner, Resident, Utility or other Person to Top any Tree, provided, however, that the City Forester may grant exemption from the provisions of this subsection in the case of severely damaged Trees, whether by storm or otherwise, or in the case of Trees whose location makes Pruning impractical.

Sec.10-4.06 Abatement of Nuisances

It shall be unlawful for any Landowner or Resident to fail to abate a Tree Nuisance as prescribed once the City Forester has given written notice to the Landowner or Resident of the property where such Tree Nuisance is situated. The notice shall provide a reasonable period for compliance.

Sec.10-4.07 Trimming By Utilities

Except in the case of emergency repairs occasioned by storm damage, it shall be unlawful for any Utility to Trim any Tree, whether or not located along such Utility's right-of-way or Easement, without first having met with the City Forester and having obtained a permit to do so.

Chapter 5: Permits

Sec.10-5.01 Application

Applications for a permit to Trim, Remove or Transplant any Tree, or to engage in Trenching, or for Utilities to Trim Trees, shall be submitted to the City Clerk in accordance with procedures established by the City Forester and approved by the City Council.

Sec.10-5.02 Processing

- (a) Prior to the approval or denial of any permit, the City Forester shall complete a field inspection.
- (b) Prior to the approval of any permit, the City Forester shall make a determination that the work to be performed will follow standard arboricultural practices and methods, and that the Residents, property and vegetation in the work area will be protected.

Sec.10-5.03 Insurance

No permit shall be issued under this Section until the applicant has provided proof that the Service Provider has obtained insurance for property damage and bodily injury in the amount of \$300,000 per person or parcel of property and \$1,000,000 per occurrence, and Worker's Compensation insurance for all agents or employees of the Service Provider in the amounts required by law.

Sec.10-5.04 Posting Permits

No work requiring a permit hereunder shall commence until the permit holder or Service Provider shall have posted a permit card in the work area. Such card shall be preserved and remain posted until the work is completed.

Sec.10-5.05 Appeals

Upon determining that an application for permit is to be denied, the City Forester shall state the basis for such denial in writing, and shall notify the applicant of the criteria upon which the denial is predicated. Upon denial of a permit, the affected Landowner or Resident may appeal such denial by requesting a variance in the manner described in Section 15-2.05 of the Code of Ordinances of the City.

Chapter 99: Penalty

Sec.10-99.01 Fines

- (a) Any Person who Removes or causes the Removal of a Tree on any public way within the City without a permit shall be fined up to \$500. Such fine shall be in addition to any applicable fine provided in subsection (b) below.
- (b) Any Person who violates any of the provisions of this Chapter, other than the violation described in subsection (a) of this Section, shall be subject to fines of not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Each day's continued violation shall constitute a separate offense.

Sec.10-99.02 Liens

Should a Landowner fail to comply with any of the requirements specified in Chapter 4, the City may send its employees or contractors upon the property where a violation exists to remedy said violation. The City shall have a lien against said property for the reasonable value of labor and materials used in remedying the violation, which lien shall be recorded in the Office of the County Clerk of Jefferson County, Kentucky. Such lien shall bear interest at the rate on one percent (1%) per month from the date of recording until paid, and shall also include the cost of recording and releasing such lien.

- (3) Chapter 5 of Title XI of the Code of Ordinances of the City is hereby amended to read as follows:

Chapter 5: Maintenance of Trees, Public Ways, and Areas Adjacent Thereto

**Sec. 11-5.01 Maintenance of Trees, Public Ways, and Areas Adjacent Thereto
Abatement of Hazards, Nuisances and Obstructions**

- (a) ~~Whenever the Mayor or designee shall condemn any dead or decaying trees or branches thereof on public ways of the City, and notice is served by such body on the owner of the lot or property abutting on the public ways where said tree shall be located, the owner shall within thirty (30) days after notice, at his expense, remove the said condemned tree or branches from the public way in such manner as will least impede the public travel, and shall put the surface of the streets or public way in an even and uniform shape after removal.~~

~~(b)(a)~~ Whenever there exists ~~trees~~, or overhanging branches of ~~same trees~~, hedges, shrubs or weeds on public ways of the City or on private property adjacent thereto, which in the opinion of the Mayor or designee create a hazard, unsightly conditions, or nuisance, the Mayor or designee may order the removal of the same by giving the owner of property abutting said public way written notice to remove said ~~trees~~, branches, hedges, shrubs, or weeds within ten (10) days from receipt thereof, and if said notice is not complied with within said time then the Legislative Body may have the same removed at the expense of such property owner.

~~Sec. 11-5.03 Removal of or Damage to Trees:~~

~~It shall be unlawful for any person to trim, damage, or remove any shade or ornamental tree on any public way within the city without first having secured a permit to do so.~~

~~Sec. 11-5.05 Grass and Weeds in Public Ways or Gutters:~~

~~(a)(b)~~ It shall be unlawful for the owner or agent of private property abutting any public way to permit noxious weeds, leaves or vegetable matter to grow or remain in the area between his property line and the paved portion of the street or highway or such public way and it shall be the duty of the abutting property owner to maintain the grass in the unpaved portion of the public way adjacent to his property and to keep drainage facilities adjacent to his property free from obstruction.

~~(b)(c)~~ The Mayor or designee shall give notice of violations of this section to the owner or his agent requiring the nuisance to be abated within five (5) days.

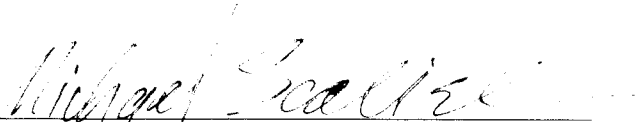
~~(e)(d)~~ Upon failure of the owner of the property to comply with any notice specified herein, the Mayor or designee may send employees upon said property to remedy the situation and the City shall have a lien against said property for the reasonable value of labor and materials used in remedying the situation, which lien shall be in the form of an affidavit signed by the city clerk and shall be recorded in the Jefferson County Clerk's office and which lien shall bear interest at the rate of one percent per month thereafter until paid.

~~Sec. 11-5.072 Entrances to Streets and Roads:~~

It shall be unlawful for any Person to make or cause to be made over any public way in the city any opening from any private lot or land into the paved portion of any street or road or to make any connection therewith within the city without first obtaining a written permit from the Mayor or designee.

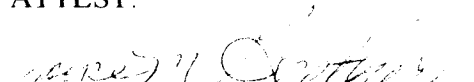
This Ordinance shall be effective from and after its passage, signing and publication as required by law.

This Ordinance was passed and adopted at a meeting of the City Council of the City of Audubon Park, Kentucky, held on the 18th day of November, 2002, having first been read at a meeting held on the 19th day of August, 2002.



MIKE SCALISE, MAYOR

ATTEST:



JOYCE GREETHER, CITY CLERK