

**CITY OF PROSPECT
ORDINANCE NO. 637, SERIES 2023**

**AN ORDINANCE RELATING TO THE AMENDMENT AND MODIFICATION OF CHAPTER 97: TREES
AND FORESTATION OF THE CODE OF ORDINANCES OF THE CITY OF PROSPECT**

WHEREAS, Chapter 97 establishes a code of regulation for trees and forestation in the City of Prospect; and

WHEREAS, it is the responsibility of the City Council to review ordinances on a periodic basis and amend them as appropriate, and

WHEREAS, it has been determined by City Council that modifications, corrections, additions, and clarifications are necessary to reflect the intent of the City Council,

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. Chapter 97 is hereby amended and modified as hereinafter set forth with old language struck through, changes, and new language being underlined and reading as follows:

CHAPTER 97: TREES AND FORESTATION

Section

97.00 Public Purpose

97.01 Definitions

97.02 Creation of Forestation Board

97.03 Term of office of Forestation Board

97.04 Compensation

97.05 Duties and responsibilities of the Forestation Board/City Tree Plan

97.06 Operation of Forestation Board

97.07 Native and non-native tree species permitted or prohibited

97.08 Spacing of street trees

97.09 Distance from curb and sidewalk

97.10 Planting distance from street corners and hydrants

97.11 Planting distance from utilities

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97.13 Remedial action by property owner regarding dead, diseased or infected trees

97.14 Topping, disfiguring and damaging of trees

97.15 Pruning, corner clearance, street lamp and traffic control obstruction

97.16 Removal or damage to public trees

97.17 Nominations for designation of protected or historic trees

97.18 Pruning, removal or excavation relating to protected or historic trees

97.19 Interference with Forestation Board

97.20 Arborist permit, bond, insurance and agreed standards

97.21 Review by City Council

97.99 Penalty

§ 97.00 PUBLIC PURPOSE.

It is the role of city government to provide an environment which actively supports the health and economic welfare of residents. This obligation extends to the desirability of creating and maintaining a healthy and sustainable tree canopy. Accordingly, the City Council finds and declares that the purpose of this chapter is to:

- a. Create a Forestation Board, and
- b. Define its duties and responsibilities.

§ 97.01 DEFINITIONS.

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

ARBORIST. An individual engaged in the profession of arboriculture who, through experience, education and related training, possesses the competence to provide for or supervise the management of trees and other woody plants.

CITY. The City of Prospect, Kentucky.

TREE. A woody perennial usually having one dominant trunk and a mature height greater than 5 meters (16 feet) as defined by the International Society of Arboriculture (ISA).

HISTORIC TREES. Any public tree found by the arborist for the city or by resolution of the Prospect Forestation Board of the city to be of notable historic interest because of its age, type or size; or a tree which traces its ancestry through seed or propagation to an historic event or notable personage including trees descendant from a tree found at an historic location and trees descendant from a tree planted by a prominent individual.

PARK TREES. Trees located within the city's established parks, open areas, landscaped areas, open lawn areas, confined spaces around buildings, recreational facilities, plazas, parking lots, buffers, and recreational areas of the city.

PROTECTED TREES. Any public tree within the corporate limits of the City of Prospect with a circumference of 42 inches or more, measured at four feet above natural grade, and which is deemed by the arborist for the city or by resolution of the Prospect Forestation Board to have significant or historical interest to the city.

PUBLIC SHRUBS OR BUSHES. Any low, multiple-stemmed, woody vegetation located within the public right-of-way, within the city's established parks, open areas, landscaped areas, open lawn areas, plazas, parking lots, buffers, and recreational areas of the city.

PUBLIC TREES. Collectively include "street trees", "park trees" and "trees on other public properties" as further defined in this chapter.

STREET TREES. Trees located within the public street right-of-way of the city.

TREES ON OTHER PUBLIC PROPERTIES. Trees within greenways, along trails, in riparian zones and drainage areas, in buffers, or in utility easements within the city. This type of forestation is commonly identified with densely wooded areas or flood plains adjacent to streams and creek banks.

TRENCH OR TRENCHING. A linear cut in the ground exceeding 12 feet in length and of such depth as to significantly affect the tree roots of a public tree in the area of the trench. A trench or trenching on private land falls within the definition of regulated trenching in situations where such trenching affects roots of trees on public land.

§ 97.02 CREATION OF FORESTATION BOARD.

There is hereby created and established a Forestation Board for the City of Prospect, Kentucky, which shall consist of ~~five~~ seven members, at least five of whom are citizens, and residents of the city, ~~who~~ No more than two of the members may be residents of nearby communities. Board members shall be appointed by the Mayor with the approval of the City Council. The Forestation Board shall exist as a distinct administrative board ~~with independent authority~~.

§ 97.03 TERM OF OFFICE OF FORESTATION BOARD.

The term of office for the ~~five~~ seven persons appointed by the Mayor to the Forestation Board shall be three years, except that the term of ~~two~~ three of the members appointed initially shall be for one year, and the term of ~~two~~ four members of the first Board shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

§ 97.04 COMPENSATION.

The members of the Forestation Board of the City of Prospect shall serve without compensation.

§ 97.05 DUTIES AND RESPONSIBILITIES OF THE FORESTATION BOARD/CITY TREE PLAN.

- A) It shall be the responsibility of the Forestation Board to study, investigate, counsel, develop and administer a written City Tree Plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs along streets, in parks and in other public areas. Said plan shall be updated annually and delivered to the Mayor and City Council no later than the last Friday in April of each year, that date coinciding with National Arbor Day observance. Upon acceptance and approval of the plan by the City Council, it shall constitute the official comprehensive tree plan for the City of Prospect, Kentucky. The Board, when requested by the City Council, shall consider, investigate, and make recommendations upon any special matter or question coming within the scope of its work.
- B) Among the duties of the Forestation Board shall be to help educate the citizens of the city to the environmental benefits of the city's tree canopy.

- C) The board shall also make itself and the city's arborist available upon request of a city resident for assistance in assessing potentially dangerous and/or diseased trees on their private property located within the city's limits.

§ 97.06 OPERATION OF THE FORESTATION BOARD.

The Forestation Board shall select its own officers, and keep a written record of its findings and written reports of its meetings. A majority of the members shall constitute a quorum for the transaction of business.

§ 97.07 NATIVE AND NON-NATIVE TREE SPECIES PERMITTED OR PROHIBITED.

The Forestation Board shall formulate an official Native and Non-Native Tree Species Listing for the City of Prospect in consultation with a professional arborist or professional forester retained by the city and/or the Kentucky Division of Forestry. The list shall be approved by the Mayor and City Council. The list shall specifically address both allowed and non-allowed species and shall be broken down into categories of small, medium, and large trees as well as native and non-native categories. No species other than those included in this list may be planted as street trees, park trees or trees on other public properties without written permission of the Forestation Board. ~~The initial listing of allowed and non-allowed trees shall be published by resolution of the Forestation Board no later than 60 days after the adoption of this section. Thereafter, said~~ The official listing shall be included in the Annual Report of the Forestation Board to the Mayor and City Council, when modified or updated and submitted no later than the last Friday in April of each year. The listing of allowed and non-allowed trees shall be kept on file with the city, shall be reviewed and updated at least annually, but may be updated with approval of the Mayor at such times as circumstances require.

§ 97.08 SPACING OF STREET TREES.

The spacing of street trees will be in accordance with the three size classifications as set out by the Forestation Board in its most recently updated official listing, and unless specifically approved in writing by the Forestation Board, no newly planted trees may be planted closer together than the following distances: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet. When planting new street trees near existing mature trees, a minimum distance must separate the trees based upon one-third of the new tree's mature spread.

§ 97.09 DISTANCE FROM CURB AND SIDEWALK.

The distance which trees may be planted from curbs or curb lines and sidewalks will be in accordance with the classifications of trees as set out by the Forestation Board in its most recently updated official listing, and no newly planted trees may be planted closer than four (4) feet to any curb or sidewalk ~~than the following distances: small trees, two feet; medium trees, three feet; and large trees, four feet.~~

§ 97.10 PLANTING DISTANCE FROM STREET CORNERS AND HYDRANTS.

No street tree or park tree shall be planted closer than 20 feet to any street corner, measured from the point of the nearest intersection's curbs and curb lines. No tree shall be planted closer than ten feet from any fire hydrant or utility pole. No shrubs or bushes located in the public right-of-way shall be planted closer than 20 feet from any street corner or intersection if said plant or bush obstructs visual site lines of any vehicle operator or creates any other health or safety hazard.

§ 97.11 PLANTING DISTANCE FROM UTILITIES.

No tree, whether on public or private property within the city, other than those classified as "small trees" as set out by the Forestation Board in its most recently updated official Tree Listing, may be planted under or within ten lateral feet of any overhead utilities wire.

§ 97.12 PUBLIC TREE CARE.

The city shall have the right to plant, prune, maintain; and to remove public trees, stumps, plants, or shrubs within the lines of all streets, alleys, lanes, and other public grounds as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The city, in consultation with the Forestation Board, and a professional arborist or professional forester retained by the city if deemed appropriate, may remove or cause or order to be removed or remediated any public tree or any portion thereof which is in an unsafe condition or which by reason of its nature is injurious due to fungi, insects, or other pests. All contractual work or labor conducted on behalf of the city in planting, pruning, maintaining or removing public trees or stumps shall be done in accordance with current American National Standards for Arboricultural Operations Safety Requirements (ANSI Z133-1) and current American National Standards for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance (ANSI A300). The Mayor or City Administrator shall notify the Forestation Board whenever it is necessary for said Board to make determinations to effectuate the provisions of this chapter.

§ 97.13 REMEDIAL ACTION BY PROPERTY OWNER REGARDING DEAD, DISEASED OR INFECTED TREES.

~~The city, upon written confirmation from the Forestation Board, in consultation with a professional arborist or professional forester retained by the city if deemed appropriate, shall have the right to cause the removal or remediation of any tree or any portion of a tree located on private property within the city when that tree presents an unsafe condition constituting a hazard to life or property, or presents a threat or potential threat of the spread of disease to other trees within the city due to injurious fungus, insects, or other pests. If the owners of said trees decline for any reason to remove or remediate trees as required under this section, the city may provide written notice, via regular mail or posting on the property, advising the owners to conduct removal or remediation. If removal or remediation is not conducted within 45 calendar days, the city may provide further written notice, via regular mail or posting on the property, advising the owner of the city's intent to remove or remediate said trees. The owners shall have ten days from the receipt or posting of said notice to file a written appeal of the proposed~~

~~removal or remediation to the Forestation Board. The Forestation Board shall have 30 days to issue a written ruling on such appeal. The city in consultation with the Forestation Board may determine that a tree or any portion of a tree located on private property within the city presents an unsafe condition constituting an imminent danger to the general public or presents a threat or potential threat of the spread of disease to other trees within the city due to injurious fungi, insects, or other pests. Should such a determination be made, the city shall notify the owner of the tree's condition. Thereafter, the city may notify the owner of required remediation. Within 14 days of receipt of such notice, the owner may file a written appeal of the proposed remediation. Any such appeal may be supported by a written report or finding from a ISA certified (International Society of Arboriculture), professional arborist or by other evidence. The Forestation Board shall within 30 days issue a written ruling on the appeal. Absent an appeal and within the 14-day period, the property owner shall provide written confirmation of intent to remediate and a schedule for remediation. If remediation is not completed within 45 calendar days, the city may provide further written notice advising the owner of the city's intent to remove or otherwise remediate the tree or trees. Any entry by the city or contractor selected by the city on to private property to evaluate, remediate, or remove a tree shall be undertaken in compliance with state and federal law, and with reasonable notice having been provided to the owner of the property. The notice shall further advise the owner: 1) of the city's intent to assess the owner the costs incurred by the city and any related fine that may be imposed on the owner, and 2) of the city's intent to assert a lien on the property if payment is not received ty the city within 30 days.~~

§ 97.14 TOPPING, DISFIGURING AND DAMAGING OF TREES.

It shall be unlawful for any person, firm, or city department to top or significantly disfigure any street tree, park tree, or other tree on public property. 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 and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires and other obstructions where alternative pruning practices are impractical may be exempt from this chapter by written decision of the Forestation Board. No person shall, with respect to any street tree, park tree or other tree on public property, intentionally damage, cut, carve, attach any rope, wire, nails, advertising posters, or other contrivance to said trees; allow any gaseous, liquid, chemical, or solid substance which is harmful to trees to come in contact with said trees or the base of said trees; or set fire or permit fire to burn when such fire or heat from fire will injure any portion of said trees.

§ 97.15 PRUNING, CORNER CLEARANCE, STREET LAMP AND TRAFFIC CONTROL OBSTRUCTION.

The owner of any tree overhanging a street or right-of-way within the city shall prune the branches so that such branches do not obstruct the light from any street lamp, impede the flow of pedestrian or vehicular traffic, or obstruct the view of any street intersection. In such ~~intersection~~ situations there shall be a clear space of ~~eight~~ thirteen feet, six inches above the surface of the street or seven feet above the sidewalk. Owners shall remove all dead, diseased, or dangerous trees or broken or decayed limbs which may constitute a threat to public safety

when they interfere with the proper spread of light along the street from a street light or interfere with visibility of any traffic control device or sign. If said owners fail to prune trees as required under this section, the city may provide written notice, via regular mail or via a posting on the property, advising the owners to conduct appropriate pruning. If the pruning is not conducted within 25 calendar days after receipt of notice, the city may conduct the pruning and assess the costs to the owners, for which a lien may attach, if payment is not received by the city within 30 days after notice of the costs assessed to the owners.

§ 97.16 REMOVAL OR DAMAGE TO PUBLIC TREES.

No person or business shall damage any public tree in the city including any shade or ornamental tree along sidewalks or other public ways of the city or remove any public tree in the city including any shade or ornamental tree along sidewalks or other public ways of the city without first obtaining written permission from the Forestation Board, in consultation with a professional arborist or professional forester if deemed appropriate. No person shall excavate any ditches, tunnels, trenches or create a new driveway within a radius of 15 feet from any public tree, without first obtaining written permission from the Forestation Board.

It shall be unlawful for any utility to trim any tree located in the public right-of-way within the City of Prospect without first contacting the Prospect Forestation Board to give them detailed information regarding the scope of the work to be performed. In some cases, a meeting with the City Forester may be necessary. Any trimming to be done must be done in a manner determined by the Forester to be the least detrimental to the health of a tree or trees where consistent with the requirements of the appropriate safety code in effect in the Commonwealth of Kentucky.

§ 97.17 NOMINATIONS FOR DESIGNATION OF PROTECTED OR HISTORIC TREES.

Any owner of lands within the City of Prospect, including the city itself, may nominate a tree on their land to be designated as a "protected tree" or "historic tree" as defined in this chapter. Nominations for such designations shall be submitted to the Forestation Board in writing and be accompanied by documentation supporting the designation. The Forestation Board may conduct hearings on protected or historic tree nominations. The Forestation Board shall make their determination regarding designation within 90 days from receipt of the written nomination or within 45 days after a final hearing regarding designation, whichever date occurs later. The designation of a tree as a "protected tree" or "historic tree" shall attach to and run with the land as a binding designation for subsequent owners. However, nothing shall prevent a landowner later in time from the owner who originally obtained "protected" or "historic" designation, from petitioning the Forestation Board to remove such designation for good cause shown. A record of all trees within the city designated as "protected" or "historic" shall be kept on file at the Prospect City Hall and an updated listing of all such trees shall be included in the annually updated City Tree Plan. The Forestation Board, in its discretion, may require as a condition of determining a tree or trees to be "protected" or "historic," that the landowner requesting such designation agree to the city recording a document signed by said landowner requesting that the designated tree or trees be included in a written covenant running with title to the land.

§ 97.18 PRUNING, REMOVAL OR EXCAVATION RELATING TO PROTECTED OR HISTORIC TREES.

No person or business shall remove or prune a "protected" or "historic" tree designated as such by the Forestation Board without first obtaining written permission from the Forestation Board, in consultation with a professional arborist or professional forester if deemed appropriate. No person or business shall excavate any ditches, tunnels, trenches or lay any driveway within a radius of 20 feet from any "protected" or "historic" tree, without first obtaining written permission from the Forestation Board, in consultation with a professional arborist or professional forester if deemed appropriate.

§ 97.19 INTERFERENCE WITH FORESTATION BOARD.

In compliance with § 97.13, no person or business shall prevent, delay, or interfere with the Forestation Board or any of its agents or servants while engaging in the evaluation of trees, in the planting, cultivating, mulching, pruning, spraying, removing or otherwise caring for trees as authorized under this chapter.

§ 97.20 ARBORIST PERMIT, BOND, INSURANCE AND AGREED STANDARDS.

It shall be unlawful for any person or company to engage in the business or occupation of pruning, treating, or removing (street or park) trees within the city without first applying for and obtaining a permit. The permit fee shall be \$40 annually; however, no permit shall be required of any utility or public service company or city employee doing such work in the pursuit of their public service endeavors. Before any permit shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$1,000,000 for bodily injury and \$500,000 for property damage, agreeing to indemnify the city or any person injured or damage resulting from the pursuit of such endeavors as herein described. This coverage shall include premises and/or operations, independent contractors, products and/or completed operations, broad form property damage, explosion/collapse/underground (XCU) coverage, and a contractual liability endorsement. Further, before any permit shall be issued, each applicant shall first file evidence of workers compensation insurance coverage. Finally, before any permit shall be issued, the individual or company shall confirm their agreement to follow current American National Standards for Arboricultural Operations Safety Requirements (ANSI Z133.1) and current American National Standards for Tree Care Operations — Tree, Shrub, and Other Woody Plant Maintenance (ANSI A300).

§ 97.21 REVIEW BY CITY COUNCIL.

The City Council shall have the right to review the conduct, acts, and decisions of the city and/or the Prospect Forestation Board. Any person may appeal any ruling or order of the city and/or the Forestation Board to the City Council which may in its discretion afford a full hearing of the matter and make a final decision. A request for review of conduct, acts and decisions made by the city and/or the Forestation Board ~~Requests for reviews of Forestation Board conduct, acts and decisions~~ must be filed in writing with the City Clerk or City Administrator within 20 days of the final action taken by the City and/or of the Forestation Board.

§ 97.99 PENALTY.

Any person or company found to have violated any provision of this chapter shall be subject to a fine levied by the city not less than \$50 nor more than \$750 to be determined by the city ~~Forestation Board~~ with the option of a fine and/or the requirement to plant a tree . Each tree affected by any violation of this chapter shall be considered as a separate offense and shall carry a separate fine. If as a result of the violation of this chapter, the injury, mutilation or death of a tree, shrub, or other plant located private or on city owned property is caused, the cost of repair or replacement, or the appraised dollar value of such tree, shrub, or other plant, shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with applicable references or resources ~~set out in the most recently updated City Tree Plan.~~

In the event a builder and/or a Prospect lot owner or any entity controlled by such builder or property owner fails to pay a fine assessed under any provision of this ordinance or fails to repay the City for costs incurred by the City in remediating a hazardous tree situation on property within Prospect within thirty days of receiving notice of such obligation, no permits of any kind required by the City for any other project shall be issued until said fine and/or costs are paid.

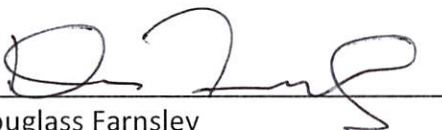
Section 2. This Ordinance shall take effect from and after its passage, signing, and publication as required by law.

First Reading this 15th day of July 2024


Passed on Second Reading this 19th day of August 2024.

By a vote of 6 aye and 0 nay of the City Council.

APPROVED:


Douglass Farnsley
Mayor, City of Prospect

ATTEST:


John S. Carter
City Clerk