

COMMONWEALTH OF KENTUCKY
CITY OF PROSPECT
CITY COUNCIL REGULAR MEETING
Monday, November 20, 7:00 p.m.

AGENDA

CALL TO ORDER

- Chair: Mayor Doug Farnsley

DEDICATION OF THE MAYOR TODD EBERLE CONFERENCE ROOM

APPROVAL OF MINUTES

- Approval of Minutes of September 29, 2023, and October 16, 2023 city council meeting.

COMMENTS FROM CITIZENS

MAYOR'S REPORT

- Mayor's update on City matters

FINANCIAL REPORT

COMMISSION & BOARD REPORTS

- Forestation Board

OTHER REPORTS

- Library Committee
- Jefferson County League of Cities

POLICE REPORT

UNFINISHED BUSINESS

NEW BUSINESS

- **Resolution 9, Series 2023**, APPROVAL OF A REVISED DETAILED DEVELOPMENT DISTRICT PLAN AND BINDING ELEMENTS FOR THE CONSTRUCTION OF A BANK LOCATED AT 5907 TIMBER RIDGE DR.
- First reading of **Ordinance No. 632, Series 2023**, AN ORDINANCE RELATING TO THE AMENDMENT AND MODIFICATION OF CHAPTER 92: NUISANCES OF THE CODE OF ORDINANCES OF THE CITY OF PROSPECT.
- First reading of **Ordinance No. 633, 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. (Versions A and B will be under consideration)

ADJOURNMENT

Supporting documents for this meeting's agenda are archived on the city's website calendar:
<https://www.prospectky.us/>

This meeting will be conducted in part via WebEx and live-streamed to YouTube here:
https://www.youtube.com/channel/UCDMvzIGZUk_tpL2HXSagU7w
Members of the public may attend in person and see and hear all participating members at
Prospect City Hall, 9200 US Hwy 42, Prospect, Kentucky.

CITY COUNCIL
REGULAR MEETING MINUTES

September 29, 2023

Attending In-Person: Mayor Doug Farnsley; Council Members John Clark, John Evans, Frank Fulcher, Don Gibson, Sara Hines, and David Holmes

Absent: City Clerk John S. Carter

Participating Remotely: City Attorney F. Chris Gorman; Deputy City Clerk and Director of Public Works Ron Cundiff

Call to Order

Mayor Farnsley called the meeting to order at 2:30 p.m.

Mayor's Report

The mayor provided a brief history and synopsis of the city's code violation citation case against Mr. and Mrs. McGrail, Case No. 21-11-1, and the related court action in Jefferson District Court, Case No. 22-C-022599, McGrail v. City of Prospect Code Enforcement Board.

Executive Session

Council Member Holmes moved to begin an executive session to discuss proposed or pending litigation pursuant to KRS 61.810 (1)(c), seconded by Council Member Clark, and the motion passed unanimously. The council entered an executive session at 2:35 p.m.

The council reconvened in regular session with no action taken in the executive session.

New Business

Council Member Fulcher moved to authorize the City of Prospect to enter into a settlement agreement in Case No. 22-C-22599, Jacquelyn Hawkins-McGrail v. City of Prospect Code Enforcement Board, seconded by Council Member Hines. A roll call vote was held: **Yea:** Clark, Evans, Fulcher, Gibson, Hines and Holmes. **Nay:** None. The motion passed 6 – 0.

Adjournment: Council Member Fulcher moved to adjourn, seconded by Council Member Clark, and the motion passed unanimously. Mayor Farnsley declared the council meeting adjourned at 3:02 p.m.

Prepared by:

Approved:

John S. Carter, City Clerk

Douglass Farnsley, Mayor

This meeting was live-streamed on YouTube.

CITY COUNCIL REGULAR MEETING MINUTES

October 16, 2023

Attending In-Person: Mayor Doug Farnsley; Council Members John Clark, John Evans, Frank Fulcher, Don Gibson, Sara Hines and David Holmes; City Attorney F. Chris Gorman; Police Chief Jeff Sherrard; City Clerk John S. Carter

Participating Remotely: Director of Public Works Ron Cundiff

Call to Order

Mayor Farnsley called the meeting to order at 7:00 p.m.

Approval of Minutes:

Council Member Gibson moved to approve the minutes of the September 18, 2023 council meeting, seconded by Council Member Holmes, and the motion passed unanimously.

Mayor's Report

- The city has scheduled a Veterans Day Celebration to be held at the John Evans Pavilion beginning at 3:30 pm on Tuesday, November 7th.
- The city has partnered with 2023 Toys for Tots campaign. New unwrapped toys are currently being accepted at City Hall collection boxes.
- The city council adopted a new solar installation regulation ordinance at the last council meeting. Several residents at that meeting expressed concern over the new ordinance. A group of residents have since volunteered to meet to discuss possible language changes to improve the solar ordinance.
- The Forestation Board has completed its review of the forestation ordinance and are ready to submit its recommendations for the city council's consideration at the November 20, 2023 regular council meeting.
- The mayor thanked the ad hoc committee members who reviewed and made recommendations for changes to Chapter 92: Nuisance Ordinance.

Financial Report

The City Clerk presented a synopsis of the city's current finances through September 2023.

- Cash on hand, which includes a checking account, one certificate of deposit [CD], and PNC/Kentucky League of Cities investments., totaled approximately \$3.8 million.
- The city's September income totaled approximately \$1.1 million, and expenses totaled approximately \$242K.

Commission and Board Reports

On behalf of the Forestation Board, Chair Lee Tucci reported on the Forestation written report.

- The Board and the mayor have been working on revising a form letter used to inform residents of their responsibilities for mitigating hazardous trees and city programs for obtaining replacement trees.
- The board is working with three different property managers to resolve dangerous trees situations without the need of citing the property owner.
- Arbor Fest is scheduled for this October 21st. The variety of trees available this year include Eastern Redbud, Sweet-Bay Magnolia, Kousa Dogwood, Sun Valley Red Maple and Pawpaw trees. Any left over trees will be planted on city property.
 - Council Member Fulcher asked Mr. Tucci if the board could provide the council with the location of where the various trees around the city are being planted.

Other Reports

On behalf of the Parks and Recreation Advisory Committee, Member Carolyn Embry reported on the Parks and Recreation Advisory Committee's written report.

- On Saturday October 2nd a group of student volunteers planted a pollinator garden in Hunting Creek Park.
- New directional signs for Putney Pond Park have been delivered and will soon be installed.
- The events subcommittee has created a survey to distribute to city residents to obtain feedback on the summer concert series.
- The committee will again participate in the upcoming Arbor Fest.
- Committee Member Sallie Schneider is currently planning another children's craft event tentatively scheduled for Saturday, October 28th.
- The organizer for the Harrods Creek Trail Bash has decided not to hold the event this year. Due to the late notice, the committee did not have time to reorganize the event for this year.

On behalf of the Library, City Clerk John Carter reported that the library's transition to new leadership is ongoing. All volunteers have been busy learning how to order and purge books. Council Member John Clark has agreed to act as the council liaison with the library volunteers. The fall library book sale is scheduled for October 21st and 22nd from 9 am to 5 pm.

Police Report:

Police Chief Sherrard reported:

- The details of the written report on arrests and call responses were presented.
- Housewatch requests continue to increase over last year's numbers.
- Officer Mike Thomas retired on September 20, 2023, after 17 years of service to Prospect Police.

New Business

- Council Member Fulcher moved to adopt **Resolution No. 8, Series 2023**, AUTHORIZATION FOR CITY CLERK TO FILE APPLICATION FOR FEDERAL FINANCIAL ASSISTANCE, seconded by Council Member Clark, and the motion passed unanimously.
- Council Member Clark moved for a first reading of **Ordinance No. 632, Series 2023**, AN ORDINANCE RELATING TO THE AMENDMENT AND MODIFICATION OF CHAPTER 92: NUISANCES OF THE CODE OF ORDINANCES OF THE CITY OF PROSPECT, seconded by Council Member Gibson. A

roll call vote was held: **Aye:** Clark, Evans, Fulcher, Gibson, Hines and Holmes. **Nay:** None. The motion passed 6 – 0.

- Council Member Fulcher raised concerns about some language in the proposed ordinance and recommended that the council and city attorney review these sections' legality and coherence. The council and city attorney agreed to review the ordinance language before the November 20th council meeting.

Comments from Citizens

Resident Jacquelyn McGrail expressed her appreciation for being a part of the ad hoc committee that created Ordinance 632, Series 2023 introduced this evening. She further stated that the revision to the city's nuisance ordinance is a good start for recognizing homeowners concerned about their impact on the environment.

Adjournment: Council Member Evans moved to adjourn, seconded by Council Member Clark, and the motion passed unanimously. Mayor Farnsley declared the council meeting adjourned at 7:33 p.m.

Prepared by:

Approved:

John S. Carter, City Clerk

Douglass Farnsley, Mayor

This meeting was live-streamed on YouTube.

Forestation Board Report

November 2023

The board met on November 9.

Major discussion and action items included:

1. Proposed updates to the Forestation ordinance (97) which was passed by council in December 2007.

The board has been working with the mayor and city attorney since the spring with the goal of clarifying the process and schedule for enforcing hazardous tree remediation and to create a mechanism for the city to recover any related expenses and fines that might be incurred if the city needed to pay for the remediation work and in particular to deny builders new permits until such costs are paid. The updates also provide the board with flexibility to avoid imposing fines by requiring tree replacement and expands the board membership from five to seven thus providing more opportunity for resident involvement.

We note that an alternative version proposed by Councilman F. Fulcher would eliminate most of the current ordinance's provisions such as hazardous tree remediation and insurance requirements for tree service companies and would make greatly complicate efforts by the board and the city to preserve and enhance Prospect's tree canopy.

2. Chase Bank Request

Chase is working towards locating a branch within the Kroger complex. The project would include some tree removals and Chase has offered some offsetting compensation or planting program. The board plans to meet with Chase representatives to review their proposal and its effects on the existing tree canopy.

3. Hazardous pine at Gunston Lane.

Efforts are ongoing to identify the property owner.

4. Arborfest

The October 21 event saw a good turnout of residents requesting trees and nearly all of the available trees were distributed. The few remaining pawpaws were planted in Little Hunting Creek Park. Board members were assisted by Parks Committee representatives.

5. Fall Planting and Tree Care Programs

The new planting sites have been marked and arrangements made with the contractor to water, weed and mulch certain recently planted trees.

**COMMONWEALTH OF KENTUCKY
CITY OF PROSPECT
RESOLUTION 9, SERIES 2023**

**APPROVAL OF A REVISED DETAILED DEVELOPMENT DISTRICT PLAN AND BINDING
ELEMENTS FOR THE CONSTRUCTION OF A BANK LOCATED AT 5907 TIMBER RIDGE DR.**

WHEREAS, an Application for a Revised Detailed District Development Plan to construct a bank and related site improvements was filed with the Louisville Metro Planning & Design Services on July 17, 2023, under Case No. 23-DDP-0066, and was recommended for approval by the agency on October 4, 2023;

NOW, THEREFORE, IT IS RESOLVED BY the Prospect City Council of the City of Prospect, Kentucky, that the Application for a Revised Detailed District Development Plan being more particularly described in the minutes and records of the Metro Planning and Design Services and Case No. 23-DDP-0066 is hereby approved; provided, however, said development shall be subject to the Binding Elements as set forth in the minutes and records of the Metro Planning & Design Services in Case No. 23-DDP-0066.

Adopted on: November 20, 2023, by a vote of _____ aye to _____ nay.

Douglass Farnsley, City of Prospect Mayor

Attested by: _____
John S. Carter, Prospect City Clerk

Date: November 20, 2023

CITY OF PROSPECT
ORDINANCE NO. 632, SERIES 2023

AN ORDINANCE RELATING TO THE AMENDMENT AND MODIFICATION OF CHAPTER 92:
NUISANCES OF THE CODE OF ORDINANCES OF THE CITY OF PROSPECT

WHEREAS, Chapter 92 establishes a code of regulation for nuisances 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 92 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 92: NUISANCES

Section

- 92.01 ~~Definitions~~ Public Purpose
- 92.02 ~~Common Law and Statutory Nuisances- Definitions~~
- 92.03 Certain Conditions Declared a Public Nuisance
- 92.04 ~~Abatement procedure~~ Managed Natural Landscape and Setback
- 92.05 Responsibility for Property Maintenance and Public Nuisance created by others
- 92.06 ~~Suspension of License~~ Emergency Cleanup and/or Abatement
- 92.07 Enforcement
- 92.08 Appeals

- 92.99 Penalty and Suspension of License

§ 92.01 ~~DEFINITIONS PUBLIC PURPOSE.~~

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

~~NUISANCE. Any condition that:~~

- ~~(1) Is enumerated in § 92.03; or~~
- ~~(2) Is similar in intensity and effect as those conditions listed in § 92.03 and which essentially interferes with the comfortable enjoyment of life and property of others.~~

~~—RUBBISH. Combustible and noncombustible waste materials, except garbage; the term shall include residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior or other packing materials, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, plastic, dust and other similar materials.~~

~~—SCRAP METAL. Pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.~~

An obligation of the City of Prospect is to provide for the prevention and abatement of conditions which are offensive or annoying to the senses, detrimental to property values, and neighborhood and community appearance, an obstruction to or interference with the comfortable enjoyment of adjacent and proximate properties or premises, or hazardous or injurious to the health, safety, or welfare of the general public in such ways to constitute a public nuisance; and, to provide standards to safeguard life, health, and public welfare in keeping with the residential character of the City by allowing for the regulation of property and premises maintenance for the following purposes:

- (1) To promote attractive and consistent neighborhood and community appearance,
- (2) To enhance the economic value of the community, and each area in it, through the regulation of the maintenance of property or premises at or above a minimum standard,
- (3) To reduce the threat to health, safety, welfare, appearance, and economic value due to the decline in property condition(s) by lawfully delineating the circumstances under which such condition(s) may be considered illegal and/or abated; and,
- (4) To prevent and abate public nuisances in the best interest of the health, safety, welfare, and comfort of the residents of the City to support maximum use and enjoyment of property or premises.

§ 92.02 COMMON LAW AND STATUTORY NUISANCES DEFINITIONS.

~~In addition to what is declared in this chapter to be a public nuisance, those offenses which are known to the common law and statutes of Kentucky as public nuisances may be treated as such and be proceeded against as is provided in this chapter or in accordance with any other provision of law.~~

For this chapter, the following words and phrases shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED. In addition to those definitions provided by state codes, local ordinances and case law, the term abandoned means and refers to any item, which has ceased to be used for its

designed and intended purpose. The following factors, among others, will be considered in determining whether an item has been abandoned:

(1) Present operability and functional utility so that the item(s) has ceased to be used for its designated and/or intended purpose,

(2) The nature of the area and location of the item. Items such as furniture, toys, bikes, appliances, stoves, refrigerators, freezers, washing machines, dryers, dishwashers, water heaters, television sets, electronic equipment, plastic containers, and the like left outside the home in view for over forty-eight (48) hours and not intended for use or storage in an outdoor environment. (Abandoned Vehicles, see Chapter 95)

ABATE. To repair, replace, remove, destroy, or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the Code Enforcement Officer, or other person or employee or group designated by the City Council to enforce City ordinances in their judgment shall determine is necessary in the interest of the general appearance, health, safety, and welfare of the community.

ATTRACTIVE NUISANCE. Any condition, instrument or machine which is unsafe, unprotected and may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any unfenced swimming pools, abandoned wells, shafts, basements, or excavations; abandoned appliances, and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris, or vegetation which may prove hazardous or dangerous to minors. (Swimming Pools, see Chapter 154)

CODE ENFORCEMENT OFFICER. The City Code Enforcement Officer, and, as used herein, any other person, employee, or group designated by the City Council to enforce applicable ordinance(s).

DISMANTLED. That from which essential equipment, parts or contents have been removed or stripped and the outward appearance verifies the removal.

GARBAGE. The animal and plant waste resulting from the handling, preparation, cooking and consumption of food and similar animal and vegetable refuse whether liquid or solid, or any accumulation of any sour, decaying or putrescent substance, either gas, liquid, or solid.

GARDEN. A cultivated area dedicated to growing vegetables, fruits, annual and perennial plants, ornamental grasses, and ground cover in a well-defined location.

GOOD REPAIR. External and/or decorative structural elements of buildings being maintained in a state of repair, which allows that element to provide the functional and safe use for which it was intended.

GROUND COVER. Low growing plants, mulch or rock/gravel.

ILLEGAL DISPLAY OR STORAGE. Items in view that are not in a lawful four wall with roof enclosure and not intended for seasonal or immediate use on the property where displayed, items partially or fully concealed with a covering violate this section, in-view for over 48 hours.

INOPERATIVE. Incapable of functioning or producing activity for mechanical or other reasons.

IN-VIEW. Any nuisance that can be seen from any public view or from any adjacent private property.

INVASIVE PLANT. A plant reproducing outside its native range and/or outside cultivation that disrupts naturally occurring native plant communities by altering structure, composition, natural processes, or habitat quality. Also, any plant on the list of invasive species specified by the Kentucky Exotic Pest Plant Council web site (www.se.eppc.org/ky/list.htm).

LANDSCAPED AREA. The entire parcel less the building footprint, driveway, sidewalks, non-irrigated portions of parking lots, hardscapes such as decks and patios, and other non-porous areas. Water features are included in the calculation of landscaped areas. A landscaped area may include an already existing natural forest area.

LANDSCAPING. Any combination of living plants and non-living landscape material such as rocks, pebbles, sand, mulch, walls, fences, or decorative paving materials.

LIENHOLDER/REAL PROPERTY OWNER. Any person, as defined in this chapter, who has a recorded interest in real property, including mortgagee, beneficiary under a deed of trust, or holder of other recorded liens or claims of interest in real property.

MANAGED NATURAL LANDSCAPE. A planned, intentional, and maintained planted garden designed to promote ecological goals such as, but not limited to:

- a. Supporting beneficial wildlife like butterflies, bees, and birds;
- b. Managing storm water runoff by rain, bog, or swale gardens;
- c. Preventing erosion;
- d. Reducing pollution caused by synthetic fertilizers, herbicides, insecticides, fungicides, and gas-powered garden equipment.

PERSON. Individual, partnership, joint venture, corporation, association, social club, fraternal organization, trust, estate, receiver, or any other entity.

PREMISES/PROPERTY. Any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved, occupied, or unoccupied.

PUBLIC NUISANCE. Any nuisance known at common law or in equity jurisprudence, or any condition defined as a public nuisance under this chapter, and which essentially interferes with the comfortable enjoyment of life and the property of others. A public nuisance occurs when a right that the public shares undergo unreasonable interference.

RESIDENT. Any person over the age of eighteen (18) who lives part or full time at the residence where the violation is alleged to have occurred in the City.

RUBBISH. Combustible and noncombustible waste materials, except garbage; the term shall include residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior or other packing materials, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, plastic, dust, and other similar materials.

SCRAP METAL. Pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

STAGNANT/POLLUTED WATER. Standing water for longer than four days, without proper drainage or disbursement.

STRUCTURE. Anything constructed, built or planted upon, any edifice or building of any kind, object d'art, or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground, including fences, gates, garages, carports, swimming and wading pools, patios, outdoor areas, paved areas, walks, tennis courts and similar recreation areas.

TREE. A self-supporting woody plant having a single trunk or a multi-trunk of lower branches, growing to a mature height of at least twelve (12) feet. (*Trees, see Chapter 97*).

TURFGRASS. Continuous plant coverage consisting of a grass species that is mowed to the established height.

UNFIT FOR FURTHER USE. Any household item, object, vehicle, or any device used to carry out a specific function which has served its usefulness (or is no longer being used) and is in its original form and can no longer be used for its originally intended purpose or having defective or missing parts or in such a condition generally as to the unfit for further use or conveyance.

VEHICLE OWNER. The registered owner of a vehicle, the person(s) to whom property tax is assessed on real or personal property, as shown on the last equalized assessment roll of the county, renter(s), lessor(s), and other occupants residing permanently or temporarily on property. (*Abandoned Vehicles, see Chapter 95*).

WASTE. Discarded or unused items, boxes, bags, plastic, paper, clothing, trash, filth, litter, rubbish, debris, building materials of any kind not being utilized for a current lawful ongoing construction project on-site, refuse of any kind left in view for over forty-eight (48) hours.

WEEDS. Plant growth such as but not limited to jimson, burdock, ragweed, thistle, cocklebur, or any other growth of a like kind or any plant growth not intended for aesthetic appeal or other legitimate purpose, such as crops, trees, shrubs, flowers, or ornamental plants.

Whether a certain plant or plant is a weed or ornamental shall be solely determined by the Code Enforcement Officer, after consideration as to whether the plant and planting, taken as a whole, evidences some reasonably discernable and clearly recognizable beautification purpose.

WRECKED. That which has outward manifestation or appearance of damage to parts and contents, which may or may not be essential to operation.

§ 92.03 CERTAIN CONDITIONS DECLARED A PUBLIC NUISANCE

It shall be unlawful for the owner, occupant, or person having control or management of any ~~land~~ property within the city to permit a public nuisance to develop thereon. The making, maintaining, using, placing, depositing, leaving or permitting to be, remain on any public or private property of ~~or exist on any premises, property or right-of way~~ any of the following items, conditions or actions shall constitute a nuisance. ~~However,~~ This enumeration shall not be deemed or construed to be conclusive, limiting or restrictive and includes but is not limited to:

(A) ~~Dangerous buildings adjoining streets. Any building, house, or structure so out of repair and dilapidated that it will, if the condition is allowed to continue, endanger the life, limb, or property of, or cause hurt, damage, or injury to persons or property using or being upon the streets or public way of the city adjoining the premises, by reason of the collapse of the building, house, or structure or by the falling of parts thereof or of objects therefrom.~~ ANIMALS. The failure to keep an animal's pen, yard, lot or other enclosure in a sanitary condition and free from preventable offensive odors. (Animals, see Chapter 90

(B) ~~Dangerous trees or stacks adjoining street. Any tree, stack, or other object standing in such a condition that it will, if the condition is allowed to continue, endanger the life, limb, or property of, or cause hurt, damage, or injury to persons or property upon the public streets or public ways adjacent thereto, by the falling thereof or of parts thereof.~~ COMBUSTIBLE MATERIALS AND UNLAWFUL BURNING. The open burning of any combustible material.

(C) ~~Existence of rubbish. Except during the construction of improvements to property and only for a reasonable period of time, the existence on any premises of filth, junk, refuse, trash, garbage, abandoned materials, metals, lumber, downed branches or limbs, dead bushes or trees, or other waste material which endangers the public health, welfare or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent or neighboring property or the city in general. This shall also include any condition which provides harborage for rats, mice, snakes or other vermin.~~ CONSTRUCTION MATERIALS - STORAGE IN RESIDENTIAL AREAS. The storage or placement of construction or building materials in front or side yards of residential parcels within the City for a period of more than 28 days while active construction is ongoing at the specific address, or for a period of more than 14 days when no construction activity is being conducted at the specific address. This provision shall apply to repairs, remodeling, or additions to an existing residence, but shall not apply to construction of a new residence within the City.

~~(D) Noxious odors or smoke. Emission into the surrounding atmosphere of odor and stenches, dust, smoke, or other matter which renders ordinary use or physical occupation, or peaceful enjoyment of other property in the vicinity uncomfortable or impossible. —DANGEROUS BUILDINGS. Any building, house, or structure so out of repair and dilapidated that it will, if the condition is allowed to continue, endanger the life, limb, or property of, or cause hurt, damage, or injury to persons or property using or being upon the streets or public way of the City adjoining the premises, by reason of the collapse of the building, house, or structure or by the falling of parts or of objects therefrom.~~

(1) Any structure/residence unfit and/or unsafe for human habitation or occupancy, or condition to exist in the structure which are dangerous or injurious to the health or safety of the occupants or the structure, the occupants of neighboring structures, or other residences of the City.

(2) Any residence within the City without a safe and operable connection to water, electric/gas, and sewer services.

~~(E) Noise. It shall be unlawful for any person within the city to make, continue, or cause to be made or continued, any unreasonably loud, harsh or excessive noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, unless the making and continuing of the noise is necessary for the protection or preservation of property or the life, health or safety of a person or persons. DILAPIDATED, DAMAGED, NEGLECTED, OR UNSAFE PREMISES. Any premises which detrimentally impact the surrounding neighborhood because of dilapidation, deterioration, or decay and/or are unsafe for the purpose for which they are being used, or are not secured, or are improperly secured. Permitting any condition to exist that causes a building or grounds not to be in good repair, such as, but not limited to:~~

(1) Every window; exterior door; basement; porch; roof; eaves; foundation; exterior wall; exterior stairs; not be reasonably watertight; weather tight; bird, animal, and rodent proof; and not kept in sound condition and good repair;

(2) All exterior wood surfaces, other than decay-resistant woods, not protected from the elements and decay by paint or by other protective covering or treatment. Noticable peeling paint is a violation of this section; and

(3) All gutters, shutters, down spouts, and any other parts of the exterior of the home not maintained in their original condition and fit for their intended purpose.

~~(F) Storage of explosives. The storage of explosive material which creates a safety hazard to other property or persons in the vicinity. This provision shall not apply to the storage of such material by a licensed contractor working on a properly permitted construction, utility or road project. DRAINAGE EASEMENTS OR PUBLIC RIGHTS OF WAY. Covering drainage easements or public rights of way in any manner to affect the flow of water over the ground, hinder the natural absorption of the water into the ground, or cause silt to be added to the water flow. Such disruption includes, but is not limited to, paving, graveling, dumping, frequent vehicular use, and~~

the accumulation of debris. Permitting or causing the interface with any obstruction of a drainage ditch, device, or system as to inhibit, alter, or prevent proper drainage patterns.

(G) ~~Weeds or grass.~~

~~(1) It shall be unlawful for the owner or occupant of any property within the city which faces or abuts on any city street to permit any grass or weeds or any vegetation whatsoever, not edible or planted for some useful or ornamental purpose, to grow or remain upon such premises so as to exceed a height of seven inches, or to emit any unpleasant or noxious odor, or to create a visual hazard at any intersection or roadway. Any grass, weeds, or other vegetation growing upon any premises in the city in violation of any of the provisions of this chapter is hereby declared to be a nuisance and detrimental to the health, safety, cleanliness and comfort of the inhabitants of this city.~~

~~(2) Any owner, tenant or party in control of any premises, whether vacant or occupied, shall remove, trim or cut all grass, weeds or other vegetation growing or remaining upon such premises in violation of the first division of this section.~~

~~(3) When the grass, weeds, and/or other vegetation exceeds the height of seven inches as described in the first division of this section, the owner will be given notice in accordance with § 92.04 hereof to mow said lot to a height of no greater than four inches. This provision shall not apply to timberland, natural wooded areas not part of a lot to which this section otherwise applies nor farm pastureland. EXPLOSIVES. The storage of explosive material which creates a safety hazard to other property or persons. This provision shall not apply to the storage of such material by a licensed contractor working on a properly permitted construction, utility, or road project.~~

~~(H) -Open wells. Any open, uncovered, or insecurely covered cistern, cellar, well, pit, excavation, or vault situated upon private premises in any open or unfenced lot or place. HAZARDOUS MATERIALS OR PETROLEUM PRODUCTS. Oil, grease, paint, other petroleum products, hazardous materials, volatile chemicals, pesticides, herbicides, fungicides, or waste (solid, liquid, or gaseous), which is determined by the Fire Department or Code Enforcement Officer, to constitute a fire or environmental hazard, or to be detrimental to human life, health, or safety.~~

~~(I) -Trees and shrubbery obstructing streets and sidewalks. Trees, overhanging branches, hedges, shrubs, or weeds on the sidewalks or public ways of the city or on private property adjacent to a public way which encroach upon or obstruct a sidewalk or public way or which obstruct the vision of any vehicle operator or obstruct any traffic sign so as to create a hazard to the safe operation of vehicle. When any such conditions are observed by city personnel, the owner will be given notice in accordance with § 92.04 thereof to correct the problem specified in the notice. The required minimum clearance above city streets is 13 feet six inches and above sidewalks is seven feet. HEALTH HAZARDS. Creation of any situation that attracts vermin, rodents, insects, or animals or is otherwise injurious to public health.~~

~~(J) Keeping of animals. The failure to keep an animal's pen, yard, lot, or other enclosure in a sanitary condition and free from preventable offensive odors. HEAVY EQUIPMENT. The operation of heavy equipment within the City except as necessary for construction projects for which a building permit has been issued by the City, but only during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of legal holidays.~~

~~(K) Operation of heavy equipment. The operation of heavy equipment within the city except as necessary for construction projects for which a building permit has been issued by the city or other appropriate jurisdiction, but only during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of legal holidays. INCOMPLETE PROJECTS. Any renovation or construction to structures or grounds not completed through consistent sustained effort and no such building or grounds under construction or renovation may be allowed to be uncompleted for an unreasonable length of time, given due consideration to the type of project. A period of one hundred twenty (120) days without consistent, sustained effort to complete the project shall be an unreasonable length of time, without sufficient, specific, written explanation for said delay.~~

~~(L) Failure to remove snow and ice. The failure to remove snow and ice from parking lots and sidewalks in commercial areas of the city within 24 hours of the cessation of a snowstorm, sleet storm or freezing rainstorm. JUNK; SCRAP METAL. The storage of junk, auto parts, tires, scrap metal stored on premises more than seventy-two (72) hours and in view from a public street, walkway, alley, or other public property within the City limits except on premises authorized by the City for such purposes. Abandoned, dismantled, wrecked, inoperable, and discarded objects, equipment, or appliances such as, but not limited to, water heaters, refrigerators, furniture which is not designed for outdoor use, household fixtures, toys, bikes, machinery, electronic equipment, or cans or containers, plastic, or other material, standing or stored on property or on sidewalks or streets~~

~~(M) The disruption of vegetation covering drainage easements or public rights of way in any manner so as to affect the flow of water over the ground, hinder the natural absorption of the water into the ground, or cause silt to be added to the water flow. Such disruption includes, but is not limited to: paving, graveling, dumping, frequent vehicular use, and the accumulation of debris. LIGHTS. (*Lights, see Chapter 159*).~~

~~(N) Storage of construction materials in residential areas. The storage or placement of construction or building materials in front or side yards of residential parcels within the city for a period of more than 28 days while active construction is ongoing at the specific address, or for a period of more than 14 days when no construction activity is being conducted at the specific address. This provision shall apply to repairs, remodeling, or additions to an existing residence, but shall not apply to construction of a new residence within the city. NOISE ENCROACHMENT, SOUND SYSTEMS.~~

~~(1) Residential. Using, operating, or permitting for any noncommercial purpose any loudspeaker, public address system, mobile sound vehicle or similar device between the hours of 11:00 p.m. and 7:00 a.m., prevailing local time, such that the sound therefrom creates a noise~~

disturbance across a dwelling unit boundary.

(2) Vehicular. The use of any mechanical loudspeaker or other device, amplifier, or noisemaker on any moving or standing vehicle within the City between the hours of 11:00 p.m. and 7:00 a.m.

(O) NOISE FROM MOTOR VEHICLES. Discharge into the open air of exhaust from any motor vehicle except through a suitable and efficient muffler or other device which will effectively prevent loud or explosive noises. (Ord. 131974, passed 6-24-74)

(P) NOXIOUS ODORS OR SMOKE. Emission into the surrounding atmosphere of odor, dust, smoke, or other matter which renders ordinary use or physical occupation of other property in the vicinity uncomfortable or impossible.

(Q) RUBBISH AND WASTE. An accumulation on any premises of filth, refuse, trash, garbage, discarded food, or other waste material which endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property or the City in general. The dropping, deposit, or acquiesce in the dropping, depositing, scattering of waste material in any manner, in or on any public or private property, not including normal yard maintenance material.

(R) SNOW AND ICE. The failure to remove snow and ice from parking lots and sidewalks in commercial areas of the City within 24 hours of the cessation of a snowstorm, sleet storm or freezing rainstorm.

(S) TREES AND SHRUBS. Vegetation obstructing streets and sidewalks or creating an unsafe condition. Trees, overhanging branches, hedges, shrubs, or weeds on the sidewalks or public ways of the City or on private property adjacent to a public way which obstructs a sidewalk, or obstructs the vision of any vehicle operator, or obstructs any traffic sign to create a hazard to the safe operation of vehicles shall be prohibited. Any tree, stack, or other object standing in such a condition that is likely to, if the condition is allowed to create an imminent danger to life, limb or property, or cause hurt, damage, or injury to persons or property by falling or of parts shall be prohibited. When any such conditions are observed by City personnel, the owner will be given notice in accordance with § 92.06 or 92.07 to correct the problem specified in the notice. The required minimum clearance above city streets is thirteen feet six inches and above sidewalks is seven feet. (Trees, see § 97.15)

(T) WASTE RECEPTACLES. Containers for discarded materials, yard waste, and recyclables which are left in view from the public roadway following the day of the regularly scheduled pick-up for the property; no garbage, yard waste or recycling items shall be placed out for collection in view of a public street more than eighteen (18) hours prior to the collection day.

(U) WATER CONTAINERS. Swimming pool, pond, spa, other body of water, or excavation which is abandoned, unattended, unsanitary, empty, or contains stagnant/polluted water or is not securely fenced, or (if not in use) does not have a secure and safe cover, which will not collect

water and is effective and suitable, or which is determined by the Code Enforcement Officer to be detrimental to life, health or safety.

(V) WEEDS OR TURFGRASS.

(1) TURFGRASS. Permitting turfgrass to grow more than seven inches on property which faces or abuts on any street. When the turfgrass exceeds the height of seven inches the owner will be given notice in accordance with § 92.04 hereof to mow said lot to a height of no more than four inches. This provision shall not apply to timberland, natural wooded areas not part of a lot to which this section otherwise applies, nor farm pastureland.

(2) WEEDS. Permitting any plant growth other than trees, ornamental, edible or useful plants, or shrubs, to grow to a height exceeding seven (7) inches.

(W) ANY OTHER CONDITION. on a property which meets the following requirements: Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, to interfere with the comfortable enjoyment of life or property.

§ 92.04 ~~ABATEMENT PROCEDURE.~~ LANDSCAPE UNLIKE NEIGHBORING PROPERTIES, INCLUDING MANAGED NATURAL LANDSCAPE, AND SETBACK.

~~(A) It shall be unlawful for the owner, occupant, or person having control or management of any land within the city to permit a public nuisance, health hazard, or source of filth to develop thereon.~~ PERMIT. An owner, authorized agent, or authorized occupant of any privately owned lands or premises may, consistent with this subsection and all other applicable laws, statutes, rules, and ordinances, install and maintain a landscape significantly different from neighboring properties. Before the installation of the landscape, a permit for such a landscape is required. Detailed plans must be submitted to the City for a permit. The City administration shall refer the plans to a Landscape Review Committee of three qualified residents appointed by the Mayor, subject to confirmation by the City Council. The Committee shall determine whether the plan is compatible with surrounding landscapes. A denial of a permit may be appealed to the Code Enforcement Board.

The permit shall cost \$50.00

~~(B) Upon the failure of the owner of the property to eliminate the nuisance, health hazard or source of filth, when requested to do so by the authorized city official, the authorized city official is authorized to send its agents or employees upon the property to remedy the situation.~~ SETBACK. The proposed landscape shall be set back from the street by at least 5 feet and shall not encroach adjoining properties. The setback shall not apply to small mailbox gardens. Turfgrass or ground cover shall be used in the setback.

~~(C) The city shall have a lien against the property for the reasonable value of labor and materials used in remedying the nuisance situation. The affidavit of the authorized city official shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to KRS 381.770 and this section, and shall be recorded in the office of the~~

County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest at the rate established by the city thereafter until paid. The lien created shall take precedence over all subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceeding. In addition to this remedy or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed. PLANNED AND MAINTAINED. A Managed Natural Landscape is not a formerly mowed lawn allowed to grow wild, does not contain noxious weeds or invasive species. It is regularly tended, weeded, trimmed, and pruned and has a defined border, such as a dug border, or the use of edging material like stone, brick, metal, or plastic. It may contain trees, shrubs, perennials, annuals, ornamental grasses, and/or ground cover. Dead trees and shrubs shall be removed by the end of the current planting season.

(D) MANAGED NATURAL LANDSCAPE. The proposed gardens, including natural landscapes that are in public view, shall be permitted in both front and back residential yards, but limited to not more than 50% of the square footage of each excluding driveways, patios, and sidewalks. The balance of the landscaping in front and back residential yards shall be turf grass, ground cover, or similar in nature to that of the properties of the that neighborhood in general.

§ 92.05 RESPONSIBILITY FOR PROPERTY MAINTENANCE AND PUBLIC NUISANCE CREATED BY OTHERS. ~~For the purposes of this chapter, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or person having control or management of the premises, but merely that the nuisance be created or contributed to by licensees, invitees, guests, tenants, lessees, or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but by the exercise of reasonable care ought to have become aware~~

(A) CREATED BY OTHERS. For the purposes of this chapter, it shall not be essential that the public nuisance be created or contributed to by the owner, occupant, or person having control or management of the premises, but merely that the nuisance be created or contributed to by licensees, invitees, guests, or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but by the exercise of reasonable care ought to have become aware.

(B) RESPONSIBILITY. The owner or resident of any property within the City shall be responsible for the maintenance of property and premises in a manner consistent with the provisions of this chapter and the Code of Ordinances of the City of Prospect, Metro Louisville Ordinances, Land Development Code, Kentucky Revised Statutes, and the Kentucky Building Code, or other appropriate laws.

§ 92.06 ~~SUSPENSION OF LICENSE~~ EMERGENCY RIGHT TO REMEDY, ABATEMENT

~~(A) Whenever it is brought to the attention of the City Council that a nuisance exists and the~~

~~City Council deems that there is an immediate threat to the public health, safety, welfare, the City Council may by majority vote suspend the license of any person conducting business upon the premises where the nuisance exists. ABATEMENT OF PUBLIC NUISANCES. To enforce the provisions of this chapter, when the Code Enforcement Officer finds and determines that the severity of the violation warrants immediate action, the person may cause the clean up or abatement of the violation. The cost of such cleanup or abatement may be recovered by the City in a civil action, adding the cost to the property tax bill, or by placing a lien on the property. Such emergency cleanup or abatement will not relieve the lienholder/real property owner or other responsible party of further action which may be taken by the City Council or its duly authorized agents and representatives, including but not limited to, liability for any violations of this chapter, or any other applicable provisions of state law and local ordinances.~~

~~—(B) The City Clerk shall cause notice of the suspension to be served personally upon the licensee or at the premises where the nuisance exists.~~

~~—(C) Upon application of the licensee, the City Council may remove the suspension upon such terms as it may direct.~~

§ 92.07 EMERGENCY RIGHT TO REMEDY ENFORCEMENT

~~If it is perceived by the city that the condition of a property or any structure thereon is an immediate danger to the health, safety, or welfare of the city, then an authorized city official may immediately send its agents or employees upon the property to remedy the condition of the property in order to ensure the health, safety or welfare of the city. Should such emergency action be undertaken, the city shall bill the property owner for all costs incurred by the city and shall have the right to place a lien on the property for said costs.~~

~~*(Code Enforcement, see Chapter 39)*~~

~~(A) METHODS OF ENFORCEMENT. Enforcement of this chapter shall be accomplished by the Code Enforcement Officer. If practicable, the process will include until there is a remedy, in this order: a personal contact, written warning, citation, abatement, and legal action.~~

~~(B) ENFORCEMENT PROCEDURES AND NOTICE.~~

~~(1) The standards and procedures for the enforcement of this ordinance under KRS 381.770 as follows:~~

~~(a) Whenever such a situation is discovered, the Code Enforcement Officer will first contact, either in person, by telephone or by email, the person having control or management of the property to remedy the nuisance. Except in cases of emergency, the City shall consider next a verbal warning specifying a reasonable time as first step in eliminating the nuisance.~~

~~(b) If the person cannot be contacted or will not remedy the nuisance the Code Enforcement Officer shall give the written notice or the citation to any one or more or all: the~~

owner, operator, agent, occupant, or person having control or management of the property of ten (10) days to remedy such situation.

(c) The notice shall be served by certified mail, or by personal service. If by mail, it may be addressed to the last known address of the owner of the said property, as it appears on the current tax assessment roll. The failure of any or all the addressees to receive the notice shall not invalidate any of the proceedings. Further, the posting of notice of a hearing or order pursuant to this chapter shall be conclusively deemed to be adequate notice to all occupants, users or possessors of the property or its contents, and the failure of any such occupant, user, or possessor to see, read, understand, or otherwise receive the notice shall not invalidate any of the proceedings.

Upon the failure of the owner of the property to comply, the City is authorized to send employees or persons hired by the City upon said property to remedy the situation.

Abatement, see § 92.06.

(2) The City shall have a lien right against the property for the reasonable value of labor and materials used in remedying the nuisance situation. The affidavit of the Code Enforcement Officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this chapter and KRS 381.770, and shall be recorded in the Office of the Jefferson County Clerk. The lien shall be the notice to all persons as from the time of its recording and shall bear legal interest until paid, compounded monthly, and may be enforced by judicial proceedings.

(3) In addition to the remedy prescribed in the previous sections of this chapter or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the City may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed.

(C) COSTS OF ENFORCEMENT. In any civil action commenced by the City under this chapter, the City shall be entitled to recover from the defendant of such action, reasonable attorneys' fees, costs of suit, any other costs of enforcement, including but not limited to, inspection costs and cleanup or abatement costs.

§ 92.08 APPEALS

Any action taken by the Code Enforcement Officer may be appealed to the Code Enforcement Board by any person cited.

Such appeal must be in writing, stating with specificity the grounds of the appeal and it must be filed with the City Clerk within the same time allowed for abatement (without extension). The grounds for the appeal shall be stated in such appeal in detail. Such appeal shall be heard by the Code Enforcement Board within sixty (60) days of it being filed with the City Clerk.

While such appeal is pending, the abatement notice shall be held in abeyance. Code Enforcement Board decisions may be appealed to the Prospect City Council. Such appeals must be in writing by both the appellant and the Prospect administration. These documents will be provided to the Council Members at least 2 business days before the scheduled hearing.

§ 92.99 ~~PENALTY~~ PENALTIES

(A) FINES. Whoever violates any provision of this chapter shall be fined not less than \$25 nor more than \$500 for the first offense. Each day’s continued violation shall constitute a separate offense and repeat offenses shall be subject to increased fines as follows:

- (1) Second violation within a two-year period, minimum \$50;
- (2) Third violation within a two-year period, minimum \$100; and
- (3) Fourth and subsequent violations within a two-year period, minimum \$250.

(B) All fines are in addition to any expenses incurred by the city because of the violation, including court costs.

(C) This chapter shall be subject to enforcement by the Code Enforcement Board. A violation of this chapter shall be considered a civil offense in accordance with KRS 65.8808.

(B) SUSPENSION OF LICENSE AND PENALTY TO PERSON DOING BUSINESS

(1) Whenever it is brought to the attention of the City Council that a public nuisance exists and the City Council deems that there is an immediate threat to the public health, safety, welfare, the City Council may by majority vote suspend the license of any person conducting business upon the premises where the public nuisance exists.

(2) The City Clerk shall cause notice of the suspension to be served personally upon the licensee or at the premises where the public nuisance exists.

(3) Upon application of the licensee, the City Council may remove the suspension upon such terms as it may direct.

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

First Reading this 16th day of October 2023

Passed on Second Reading this _____ day of _____ 2023.

By a vote of _____ aye and _____ nay of the City Council.

APPROVED:

ATTEST:

Douglass Farnsley

John S. Carter

Mayor, City of Prospect

City Clerk

DRAFT

CITY OF PROSPECT
ORDINANCE NO. 633, 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

- 97.01 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
- 97.12 Public tree care
- 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

§ 97.01 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, citizens, and residents of the city, who 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.

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.

§ 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 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 fungus, 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 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. 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. 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 by 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.

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 not less than \$50 nor more than \$750 to be determined by the 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 20th day of November 2023

Passed on Second Reading this _____ day of _____ 2023.

By a vote of _____ aye and _____ nay of the City Council.

APPROVED:

ATTEST:

Douglass Farnsley
Mayor, City of Prospect

John S. Carter
City Clerk

Draft A

CITY OF PROSPECT
ORDINANCE NO. 633, 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

- 97.01 ~~Definitions~~ Public Purpose
- 97.02 ~~Creation of Forestation Board~~ Definitions
- 97.03 ~~Term of office of Forestation Board~~ Create of Forestation Board
- 97.04 ~~Compensation~~ Term of office of Forestation Board
- 97.05 ~~Duties and responsibilities of the Forestation Board~~ / City Tree Plan Compensation
- 97.06 ~~Operation of Forestation Board~~ Duties and Responsibilities of the Forestation Board / City Tree Plan
- 97.07 ~~Native and non-native tree species permitted or prohibited~~ Operation of the Forestation Board
- ~~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~~
- ~~97.12 Public tree care~~
- ~~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~~

§ 97.01 ~~DEFINITIONS~~ PUBLIC PURPOSE.

~~—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.~~

It is an obligation of city government to provide an environment which actively supports the health and economic welfare of residents. Such 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 (FB)
- b. Define duties, responsibilities and authority of the FB

§ 97.02 ~~CREATION OF FORESTATION BOARD~~ DEFINITIONS.

~~There is hereby created and established a Forestation Board for the City of Prospect, Kentucky, which shall consist of five seven members, citizens, and residents of the city, who 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.~~

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.

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 major roots of trees on public land.

§ 97.03 ~~TERM OF OFFICE OF FORESTATION BOARD~~ CREATION 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.~~

There is hereby created and established a Forestation Board for the City of Prospect, Kentucky, which shall consist of five members, citizens, and residents of the city, who shall be appointed by the Mayor with the approval of the City Council. The Forestation Board shall exist as a distinct administrative board.

§ 97.04 ~~COMPENSATION~~ TERM OF FORESTATION BOARD.

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

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.

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

~~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.~~

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

§ 97.06 ~~OPERATION OF THE FORESTATION BOARD~~ DUTIES AND RESPONSIBILITIES OF THE FORESTATION BOARD/CITY TREE PLAN.

~~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.~~

It shall be both and 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. In addition, it shall include a process for implementation of providing advisory technical services to residents on an observed or requested basis. Said plan shall be updated annually and delivered to the Mayor and City Council along with an Annual Report on the expiring year's City Tree Plan, 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 or Mayor, shall consider, investigate, and make recommendations upon any special matter or question coming within the scope ~~of its work~~ the approved City Tree Plan.

~~§ 97.07 NATIVE AND NON-NATIVE TREE SPECIES PERMITTED OR PROHIBITED OPERATION OF FORESTATION BOARD.~~

~~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 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.~~

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.

~~§ 97.08 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 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 fungus, 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.~~

~~§ 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 feet above the surface of the street or 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.~~

~~§ 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.~~

~~—No person or business shall prevent, delay, or interfere with the Forestation Board or any of its agents or servants while engaging 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 Prospect Forestation Board. Any person may appeal any ruling or order of the Forestation Board to the City Council which may in its discretion afford a full hearing of the matter and make a final decision. 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 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 not less than \$50 nor more than \$750 to be determined by the Forestation Board. 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 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.~~

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

First Reading this 20th day of November 2023

Passed on Second Reading this _____ day of _____ 2023.

By a vote of _____ aye and _____ nay of the City Council.

APPROVED:

ATTEST:

Douglass Farnsley
Mayor, City of Prospect

John S. Carter
City Clerk