

CHAPTER 94: PARKS AND RECREATION

Section

Urban Forestry

- [94.50](#) Purpose and intent
- [94.51](#) Jurisdiction and scope of authority
- [94.52](#) Definitions
- [94.53](#) Urban forestry program
- [94.54](#) Urban Forestry Board
- [94.55](#) Urban forestry best management practice
- [94.56](#) Comprehensive urban forest plan
- [94.57](#) Public education and outreach
- [94.58](#) Landmark tree program
- [94.59](#) Public health and safety
- [94.60](#) Protection of trees, shrubs and other plants
- [94.61](#) General articles
- [94.62](#) Appeals of Code Enforcement Board decision - final judgement
- [94.63](#) Lien - recording - fines, charges and fees
- [94.64](#) Notice of complaint; whereabouts unknown
- [94.99](#) Penalty

Statutory reference:

Power of city to regulate parks and recreation, see KRS 97.405 et seq.

GENERAL PROVISIONS

URBAN FORESTRY

§ 94.50 PURPOSE AND INTENT.

(A) The purpose of this subchapter is to establish a Covington Urban Forestry Program and a Covington Urban Forestry Board that shall promote and protect the public health, safety and general welfare, and further shall accentuate the scenic, cultural, historical, and aesthetic attributes of the city by providing policies, regulations, and standards relevant for establishing, maintaining, and preserving desirable trees, shrubs and other plants under Covington's jurisdiction.

(B) The intent of this subchapter is to:

(1) Protect residents from hazards or public nuisances caused by the improper planting, maintenance, or removal of trees, shrubs and other plants.

(2) Articulate an image for Covington by enhancing the city's physical appearance by using trees architecturally to provide space definition and landscape continuity.

(3) Promote value, protection, management, and enhancement of the urban forest resources.

(4) Advocate for the establishment and retention of efficient and appropriate tree planting spaces.

(5) Support Covington's landscape regulations and promote arboriculture in the city.

(Ord. O-2-04, passed 1-20-04)

§ 94.51 JURISDICTION AND SCOPE OF AUTHORITY.

(A) The city shall have jurisdiction of all trees, shrubs, and other plants in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city ("public arboriculture"). The city shall have the power to cause the planting, maintenance, removal, and replacement of such trees, shrubs and other plants. The city shall not regulate trees, shrubs, or other plants located on private property except hazard trees, public nuisances, and/or through application of the city's landscape regulations, as set forth in Zoning Code.

(B) The Covington Urban Forestry Board ("the Board") will advise and make recommendations to the City's Board of Commissioners regarding trees, shrubs, and other plants under Covington's jurisdiction.

(C) The Covington Urban Forestry Program ("the Program") and the Board will promote the stewardship of trees, shrubs, and other plants upon private property within the city limits. A program will be established to guide the preservation of "landmark trees".

(D) The Board will advise and make recommendations to the City's Board of Commissioners regarding issues as they relate to Covington's urban forest.

(Ord. O-2-04, passed 1-20-04)

§ 94.52 DEFINITIONS.

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

ANNUAL REPORT. A report prepared by the Director of Parks and Recreation and/or Urban Forester to help evaluate performance of the Urban Forest Program.

ARBOR DAY. A U.S. spring holiday observed in some cities by planting trees.

ARBORICULTURE. The cultivation of trees, shrubs, and/or plants.

BMPs. Best Management Practices, regarding urban forestry, shall govern species selection, planting practices, care, maintenance, pruning, and removal of trees, shrubs, and other plants.

BUFFER ZONE. An open or landscaped area of appropriate design providing a visual and/or noise separation between incompatible land uses.

CALIPER. Diameter measurement of the trunk taken six inches above ground level for trees up to and including four inch caliper size. Measurement shall be taken 12 inches above the ground level for larger trees.

CERTIFIED ARBORIST. An individual who has achieved a level of knowledge in the art and science of tree care through at least three years experience and who has passed a comprehensive examination administered by the International Society of Arboriculture.

CITY. The City of Covington, Kentucky.

CITY COMMISSION. The Board of Commissioners of the City of Covington, Kentucky

CRITICAL ROOT ZONE (CRZ). The minimum area beneath a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ will typically be represented by a concentric circle centering on the tree's trunk with a radius equal in feet to one and one-half times the number of inches of the trunk diameter.

CROWN SPREAD. The distance from the ends of branches on one side of the tree, through the trunk, to the ends of the branches on the other side.

DIAMETER BREAST HEIGHT (DBH). The diameter of a tree four and one-half feet above the average ground level.

DRIP LINE. The imaginary vertical lines that extend to the ground and mark the outermost edges of the tree crown.

GREENSPACE. Natural or vegetated areas that are deemed significant by a community. Waterways and wetlands are integral to greenspace.

HAZARD TREE. Any tree that poses a high risk of damage to persons or property, such as a dead or dying tree.

IMPERVIOUS COVER. Surfaces that substantially reduce the rate of infiltration of stormwater and other nutrients into the earth.

LANDMARK TREE. A tree which has special significance because one or more of the following criteria may apply: rare species, old age, size, location, association with an historical event or person, scenic enhancement, or unique characteristics.

LARGE TREE. Any tree having a height of 30 feet or more at maturity.

LINE CLEARANCE. Removal of limbs and branches growing within a set distance of utility distribution lines.

PAVED AREA. Any ground surface covered with concrete, asphalt, stone, gravel, brick, or other paving material.

PLANTING STRIP OR AREA. Ground surface free of paved material which is reserved for landscaping purposes.

PRIVATE TREE. Any tree on non-public land.

PRIVATE ARBORICULTURE. Any trees, shrubs, and other plants on private property (nonpublic arboriculture).

PUBLIC NUISANCE. Any tree, shrub, or other plant material with an infectious disease or insect problem; any tree, shrub, or other plant that obstructs street lights, traffic

signs, or the free passage of pedestrians or vehicles; a tree that has been repeatedly topped or otherwise abused or vandalized; a tree or vine growing into power lines and transformers.

PUBLIC ARBORICULTURE. Any trees, shrubs, and other plants in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city.

PUBLIC TREE. Any tree in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city.

PRUNING. Selective removal and thinning of a tree or shrub, taking into account the shape and natural structure of the plant.

SMALL TREE. Any tree having a height less than 30 feet at maturity.

SHRUB. Any woody plant with a multiple stem capable of growing to a height of up to 15 feet.

STREET TREE. Any public tree growing along a street, public right-of-way, median or along a similar area in which the public right-of-way borders privately owned areas.

TOPPING. Any pruning practice that results in cutting back limbs, within the tree's crown, leaving stubs, so as to remove the normal canopy with inadequate regard for the natural structure of the tree.

TREE. Any woody plant with a single trunk, or multiple trunks capable of growing to a height of 15 feet or more.

TREE CITY USA. A special recognition given by the National Arbor Day Foundation when a city meets certain requirements regarding urban forestry activities.

URBAN FORESTER. A qualified individual, who is preferably a certified arborist or who has knowledge of arboriculture with a background in forestry, horticulture, or landscape architecture, appointed by the City Commission to perform the duties of the Urban Forester, as those duties are set forth in the job description adopted by the City Commission, and to administer the Urban Forestry Program.

(Ord. O-2-04, passed 1-20-04)

§ 94.53 URBAN FORESTRY PROGRAM.

(A) *Responsible official.* The Urban Forester, or other person designated by the City Commission, shall be the responsible official for administering the Urban Forestry

Program. The Urban Forestry Board and City Parks and Recreation Department shall provide advice and assistance to the Urban Forester in carrying out his or her duties.

(B) *Authority and responsibilities of the Urban Forester.* The Urban Forester shall:

(1) Regulate, supervise, and authorize the planting, pruning, removal, replacement, and maintenance of public arboriculture to ensure safety, proper workmanship and to maintain the quality of the urban forest.

(2) Examine all public arboriculture and private arboriculture to determine whether they are contagiously diseased, dead or hazardous, obstructing the right-of-way, or posing a threat to public safety.

(3) Develop and update, at least every three years, the Covington Urban Forestry Best Management Practices, with the advice and assistance of the Urban Forestry Board.

(4) Develop and review, and update yearly, the Covington Comprehensive Urban Forest Plan ("CUFP"), with the advice and assistance of the Urban Forestry Board.

(5) Administer and implement the CUFP.

(6) Review site plans of new development and redevelopment to guide the compliance of such with Covington's landscape regulations. Based on the review, the Urban Forester will make recommendations to the Zoning Administrator, the City Planning Department, or other appropriate official, department, or agency.

(7) Review project plans for publicly sponsored developments, civic improvements, and changes to the public right-of-way as they relate to tree planting opportunities, tree protection, and tree removal. Based on the review, the Urban Forester will make recommendations to the appropriate city official, department, or agency.

(8) Develop and implement the Landmark Tree Program.

(9) Develop and conduct educational and outreach programs for the public promoting the benefits and best management practices of the urban forest.

(10) Implement a monitoring program to evaluate goals and accomplishments.

(11) Seek funding from state, federal, and other granting sources.

(12) Enforce the Covington Urban Forestry Ordinance regarding private arboriculture when it creates, in the opinion of the Urban Forester, based upon his or her investigation, a safety hazard and/or public nuisance. For purposes of carrying out the enforcement duties under this subchapter, the Urban Forester shall be classified as a "code enforcement officer" and shall carry out his or her enforcement duties pursuant to

Chapter 92, including, but not limited to, following the procedures set forth in §92.17 through § 92.99.

- (13) Prepare the annual report on the Covington Urban Forestry Program.
- (14) Serve as an ex-officio member of the Covington Urban Forestry Board.
- (15) Report directly to and be supervised by the Director of Parks and Recreation.

(D) Policy. It shall be the policy of the Urban Forestry Program to:

- (1) Encourage the establishment of large trees to the extent practicable and aesthetically pleasing.
- (2) Encourage new tree plantings on public and private property to ensure a rich and diverse urban forest into perpetuity.
- (3) Encourage proper tree care to maintain safe and healthy trees.
- (4) Provide flexibility in tree selection and planting based on site conditions, zoning, and objectives.
- (5) Make every effort to replace or repair public facilities without removing or damaging adjacent trees.

(E) *Coordination.* The Urban Forester and other city departments shall endeavor to share plans, specifications, requests, ideas, and other data affecting Covington's urban forest, in a timely and cooperative manner, to provide for coordination and the most feasible use of all public lands and resources.

(F) *Performance evaluation.*

(1) The Urban Forester shall collect and maintain all records and data necessary to objectively evaluate progress toward the purpose, intent, and goals of the Urban Forestry Program. The Urban Forester shall prepare the annual report. The report shall be submitted to the Urban Forestry Board for approval and then presented to the Mayor and City Commissioners upon request.

(2) The annual report shall include:

- (a) The number, location and type of projects subject to the Urban Forest Program;
- (b) The number of trees planted and removed;

(c) The amount of fines collected; (d) the cost of the Urban Forest Program; and (e) problem areas that need to be addressed.

(Ord. O-2-04, passed 1-20-04)

§ 94.54 URBAN FORESTRY BOARD.

The current Covington Tree Board shall be restructured and henceforth be known as the Covington Urban Forestry Board ("the Board").

(A) *Creation and establishment.* There is hereby created and established an Urban Forestry Board for the City of Covington, Kentucky, which shall consist of 11 voting members, who are citizens and residents of the city, and who shall serve without compensation. Board members shall be appointed by the Mayor and approved by the City Commission. In addition, the Urban Forester shall serve as an ex-officio member of the Board.

(B) *Representation.* To the extent practical, representation shall reflect the social and geographic diversity of the city. Five members shall demonstrate an interest in conservation or urban forestry, and shall have a background in forestry, arboriculture, horticulture, landscape architecture, architecture, city planning, public relations, business management or law.

(C) *Terms.* Board members shall serve three-year terms, except that the term of five members appointed to the first board shall be only one year and the term for five members of the first board shall be for two years. Members may serve successive terms. In the event that a board member vacates his or her term, a successor shall be appointed for the unexpired portion of that term. The Mayor and City Commissioners, by majority vote, may remove any appointed member from the Board prior to the expiration of their term, with or without cause.

(D) *Functions.* The Urban Forestry Board shall:

(1) Hold regular meetings as it deems necessary. A majority of the Board shall constitute a quorum for the purpose of transacting the business of the Board.

(2) Elect a chair, vice-chair and a secretary thereof, as soon as practical after the time of the annual appointment of members to the Board.

(3) Make its own rules and regulations and keep a record of its proceeding. Copies of the minutes shall be made available to the Mayor and City Commissioners upon request.

(E) *Responsibilities.* The Urban Forestry Board shall:

- (1) Promote the goals of the Urban Forest Program, including the value, protection, management, and the enhancement of the urban forest resources of Covington.
- (2) Advise and assist the Urban Forester in:
 - (a) Developing and updating on a yearly basis the Covington Comprehensive Urban Forest Plan (CUFP);
 - (b) Developing and periodically updating the Covington Urban Forestry Best Management Practices;
 - (c) Reviewing project plans for publicly sponsored developments, civic improvements, and changes to the public right-of-way, and making recommendations;
 - (d) Developing and conducting educational and outreach urban forest programs for the public;
 - (e) Seeking grants for the Covington Urban Forest Program;
 - (f) Planning tree planting and maintenance programs for the trees, shrubs and other plants under Covington's jurisdiction; and
 - (g) Developing and implementing the Landmark Tree Program.
- (3) Advise and assist the City Commission and city departments on issues related to urban forestry concerns.
- (4) Serve as a clearinghouse for information related to the urban forest, through the Department of Parks and Recreation.
- (5) Advise and assist with the development of legislation and policies that affect the city's urban forest.

(Ord. O-2-04, passed 1-20-04)

§ 94.55 URBAN FORESTRY BEST MANAGEMENT PRACTICES.

- (A) In an effort to establish and maintain a healthy and sustainable urban forest, and to ensure public health and safety, the urban forester, with the advice and assistance of the Urban Forestry Board, shall develop and adopt the Covington Urban Forestry Best Management Practices (BMPs).
- (B) The Covington Urban Forestry BMPs shall govern species selection, planting practices, care, maintenance, pruning and removal of public arboriculture. The BMPs

shall be based on the most current edition of the International Society of Arborist Standards for Tree Care or other nationally recognized standard.

(C) Within six months of the adoption of this subchapter, the Urban Forester shall make recommendations to the City Commission regarding adoption of the Covington Urban Forestry BMPs.

(D) The BMPs shall be reviewed and updated at least every three years by the Urban Forester.

(Ord. O-2-04, passed 1-20-04)

§ 94.56 COMPREHENSIVE URBAN FOREST PLAN.

Effective and sustained stewardship of the urban forest can be accomplished only on the basis of a comprehensive urban forest plan.

(A) Within two years of the adoption of this subchapter, the Urban Forester, with the advice and assistance of the Board and the City Parks and Recreation Department, shall prepare the Covington comprehensive Urban Forest Plan (CUFP) for adoption by the City Commission. The process for developing the CUFP shall:

(1) Include an assessment of the current condition of the urban forest, including the 2002 Street Tree Inventory and the recommendations of such;

(2) Create a vision and goals that incorporate community values;

(3) Consider and reference existing plans that relate to trees, including Covington's landscape regulations; and

(4) Include strategies and activities for achieving the envisioned urban forest, i.e., specific guidance to agencies and the public by developing education programs, establishing continuous and consistent tree care practices, identifying funding priorities and opportunities, and assuring that all needs of the urban forest are recognized and addressed.

(B) The CUFP, or any amendments thereto, shall be forwarded to affected city agencies for review and recommendations before adoption.

(C) The Urban Forester, with the advice and assistance of the Board and Recreation Department, shall collect and maintain all records and data necessary to objectively evaluate progress in attaining stated goals of the CUFP. The Annual Report shall be prepared to address this and shall include analysis of the evaluation and recommendations for action. The Annual Report shall be presented to the City Commission upon request.

(Ord. O-2-04, passed 1-20-04)

§ 94.57 PUBLIC EDUCATION AND OUTREACH.

(A) The Urban Forester, with the advice and assistance of the Urban Forestry Board and Recreation Department, shall develop and conduct educational and outreach programs for the public, promoting the benefits and BMPs of the urban forest.

(B) The Urban Forester, with the advice and assistance of the Urban Forestry Board and the City Parks and Recreation Department, shall promote trees as essential infrastructure with inherent value to the City of Covington. As infrastructure, trees shall require consideration when designing and engineering public and private development projects, and when planning the development and management of the city.

(C) The Urban Forestry Program's outreach shall include, but not be limited to:

- (1) Fostering an understanding of the benefits of the urban forest;
- (2) Promoting public understanding of city tree programs, policies, regulations, and standards;
- (3) Working with the media to bring urban forestry concerns and information to the public;
- (4) Facilitating presentations, programs, and other outreach to property owners, business council, tree care professionals, schools, and others who may have an interest; and
- (5) Promoting special events such as a city- wide Arbor Day celebration.

(Ord. O-2-04, passed 1-20-04)

§ 94.58 LANDMARK TREE PROGRAM.

The urban forester, with advice and assistance of the Urban Forestry Board and the Parks and Recreation Department, shall develop and implement Covington's Landmark Tree Program.

(A) The Landmark Tree Program shall recognize the significance of landmark trees, and designate such trees on public and on private property. A tree on private property may be designated a Landmark Tree if it is prominently visible to the public along major roads or public places, or if it is nominated for such a recognition. A tree may qualify as a Landmark Tree if it meets one or more of the following criteria:

- (1) Has historical significance to a person, place or event;
- (2) Has attained significant size in height, caliper or canopy spread for its age and species;

- (3) Has significance because of its age;
- (4) Has special aesthetic qualities for its species and/or is of special importance to the city;
- (5) Possesses rare horticulture value; and
- (6) It is not a hazard.

(B) Landmark trees under Covington's jurisdiction shall be given special consideration regarding maintenance, protection, and removal.

(C) Preservation of landmark trees on private property shall not be regulated but shall be guided.

(Ord. O-2-04, passed 1-20-04)

§ 94.59 PUBLIC HEALTH AND SAFETY.

(A) *Emergency removal or pruning.* In the case of emergencies, if immediate removal or pruning is required to protect the health and safety of the public or to restore order in the city, work to mitigate the immediate hazard may be performed on trees, shrubs and other plants under Covington's jurisdiction without a permit. Only the work required to remove the immediate hazard shall be performed and the Urban Forester shall be notified as soon as possible. Decisions regarding any further work shall be made by the Urban Forester.

(B) *Hazard trees and public nuisances.*

(1) Any tree that poses a high risk of damage to persons or property shall constitute a hazard tree. The standard for rating the degree of hazard of a tree shall be the International Society of Arboriculture's twelve-point hazard evaluation system.

(2) Any tree, shrub or other plant interfering with public or private utilities, or which interferes with or restricts the full use or visibility of any public street, sidewalk, alley, or intersection to any person lawfully using such right-of-way shall constitute a public nuisance. A public nuisance may further include any tree, shrub, or other plant on public or private property that harbors insects or disease infestations that may readily spread to infect and cause permanent harm to neighboring arboriculture. A hazard tree is one that is dead or dying and its presence would cause hardship or endanger the public or an adjoining property owner.

(3) The Urban Forester shall manage or eliminate any public arboriculture that constitutes a hazard or a public nuisance.

(4) Private property owners shall be responsible for managing or eliminating any tree, shrub, or other plant on their property that constitutes a hazard or a public nuisance. The Urban Forester, as a code enforcement officer, may serve notice to property owner(s), pursuant to §§ 92.17 and 92.18, if the Urban Forester, based upon personal observation or investigation, determines that a hazard tree or public nuisance exists on their property. Failure to abate said hazard or public nuisance within the time period set forth in the notice may result in a citation being issued by the urban forester, with appeals to the Code Enforcement Department, if such a citation is properly contested.

(Ord. O-2-04, passed 1-20-04)

§ 94.60 PROTECTION OF TREES, SHRUBS AND OTHER PLANTS.

(A) *Topping.* It shall be unlawful for any person, partnership, corporation, or other legal entity, including a public or private utility and a city, county, or state, or any employee thereof, to top any tree under Covington's jurisdiction. Trees severely damaged by storms or other natural cause, or certain trees under utility wires or other obstructions, may be exempted, with express authorization from the Urban Forester or the Director of Parks and Recreation Department, when other pruning practices are impractical.

(B) *Harmful or potentially harmful acts require permitting.* It shall be unlawful for any person, partnership, corporation, or other legal entity, including a public or private utility and a city, county, or state, or any employee thereof, to commit the following acts without a written permit for such action issued by the Urban Forester or the Director of Parks and Recreation.

(1) To treat with fertilizer, herbicide, or insecticide any tree, shrub, or other plant in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city without the proper permit. Any person using herbicides and/or insecticides on public arboriculture must be licensed and certified by the State of Kentucky for such work;

(2) To plant a tree, shrub, or other plant in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city;

(3) To cut, prune, break, injure, alter, transplant or remove public arboriculture;

(4) To attach rope, wire, chain, sign or other device, whatsoever, to public arboriculture;

(5) To place or maintain any object, fill (such as soil, mulch, stone, or rock), impervious matter (such as cement or blacktop) or other substance which may impede the free passage of air, water or nutrients to the roots, within the drip line, of any tree, shrub,

or other plant in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city;

(6) To conduct activity which may compact the soils or change the drainage, within the drip line, of any tree, shrub, or other plant in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city;

(7) To cut, unduly disturb or interfere in any way with the root system, within the drip line, of any tree, shrub or other plant in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city;

(8) To perform, or contract with another to perform, construction work (including the operation or storage of equipment or materials) within the drip line of any tree, shrub or other plant in, on, or along (except on private property) any public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city.

(9) To install, remove or damage any guard or device placed to protect public arboriculture.

(C) *Permitting process.*

(1) The Urban Forester shall issue permits to any person who wishes to plant arboriculture on a public street, sidewalk, right-of-way, easement, and in any park or other public place owned by the city or wishes to remove, prune, trim, or treat public arboriculture. Permits are not required for work performed on public arboriculture by city employees, or for public utilities that follow the requirements of division (E) below.

(2) Printed Urban Forestry BMPs shall be part of any permit issued regarding public arboriculture. Permitted actions shall follow the Urban Forestry BMPs.

(3) The Urban Forester, before issuing any permit, shall determine that the workmanship and method proposed in the permit application are satisfactory.

(4) Work authorized by said permit shall be completed within the time specified and in the manner described.

(5) Any permit shall be void if any of its terms are violated and the civil fines prescribed in this subchapter may be applied.

(6) Application for such permit shall be made at least ten working days in advance of the time proposed for such work.

(D) *Certified Arborist required.* Any landscaping or tree service contractor engaged in the business of planting, removing, pruning, trimming, or treating trees, shrubs, or other plants under Covington's jurisdiction shall have a Covington business license, including proof of appropriate liability insurance on file. Such contractor shall be an arborist certified by the International Society of Arboriculture (ISA) or have on staff an ISA-certified arborist who will oversee all tree-related work. Such contractor shall coordinate all proposed work with these trees, shrubs, and other plants with the Urban Forester and shall follow the Urban Forestry BMPs.

(E) *Regulations regarding utilities.* Public and private utilities operating under the jurisdiction of their respective franchise agreements or policies with the city may, without a permit, perform such maintenance and construction, including street tree pruning, as may be required to provide utility service in the city or comply with the public safety regulations under which they operate, however, a utility must notify the Urban Forester of such work at least ten working days before undertaking the work, unless an emergency exists. Work in, on, and around the public arboriculture shall conform to the Urban Forestry BMPs. The Urban Forester shall have the authority to stop or modify any work in, on, or around the public arboriculture that does not conform to these BMPs.

(F) *Road and/or sidewalk projects.* Individual permits will not be required for city, county or state road and/or sidewalk projects as long as tree preservation and protection requirements, conforming to the Urban Forestry BMPs, are included in the project plans.

(Ord. O-2-04, passed 1-20-04)

§ 94.61 GENERAL ARTICLES.

(A) *Liability disclaimer.* Nothing contained in this subchapter shall be deemed to impose any liability upon the City of Covington, its officers or employees, nor relieve the owner of any private property from his or her duty to keep any tree, shrub, or other plant on or over his or her property or under his or her control in such condition as to prevent it from constituting a hazard or public nuisance within the city.

(B) *Noninterference.* No person, partnership, or other legal entity shall interfere with persons acting under city authority while engaged in the inspection, planting, pruning, treatment, or removal of any tree, shrub, or other plant under Covington's jurisdiction.

(C) *Enforcement.* The Urban Forester, as a code enforcement officer, may serve notice to individuals, pursuant to §§ 92.17 and 92.18, if the Urban Forester, based upon personal observation or investigation, determines that a violation of this subchapter has occurred. Failure to abate said hazard or public nuisance within the time period set forth in the notice may result in a citation being issued by the Urban Forester, with appeals to the Code Enforcement Department, if such a citation is properly contested.

(Ord. O-2-04, passed 1-20-04)

§ 94.62 APPEALS OF CODE ENFORCEMENT BOARD DECISION - FINAL JUDGMENT.

(A) An appeal from any final order issued by the Code Enforcement Board ("the board") may be made to the Kenton District Court within 30 days after the date when the order is issued by the Board. The appeal shall be initiated by the filing of a complaint and a copy of the Board's order in the same manner as any civil action under the Rules of Civil Procedure. The appeal shall be limited to a review of the record created before the Board.

(B) A judgment of the Kenton District Court may be appealed to the Kenton Circuit Court in accordance with the Rules of Civil Procedure.

(C) If no appeal from a final order of the Board is filed within the time period set forth in this section, the Board's order shall be deemed final for all purposes.

(Ord. O-2-04, passed 1-20-04)

§ 94.63 LIEN - RECORDING - FINES, CHARGES AND FEES.

(A) For citations issued for hazard trees and public nuisances, the city shall possess a lien on real property owned by the person found by a final order of the Board (that is not appealed), or by final judgment of a court, to have committed a violation of a city ordinance in the amount of all fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the ordinance in question. The lien shall be notice to all persons from the time of its recording and shall bear interest until paid. The lien shall take precedence over all other subsequent liens, except state, county, school, and city taxes, and may be enforced by judicial proceedings.

(B) In addition to any other civil remedies prescribed in this code, a person found to have committed a violation of this code shall be personally responsible for the amount of all fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the ordinance. The city may bring a civil action against the person to recover such damages.

(Ord. O-2-04, passed 1-20-04)

§ 94.64 NOTICE OF COMPLAINT; WHEREABOUTS UNKNOWN.

All notices, complaints, findings, or orders issued by the Urban Forester pursuant to this subchapter shall be served on persons by the method described in the individual sections of this subchapter. However, if the whereabouts of a person is unknown and it cannot be ascertained by the Urban Forester in the exercise of reasonable diligence, or if the whereabouts of the owner is known and he or she refuses to accept personal service or the certified letter mailed to him or her, then the Urban Forester shall make an affidavit to that effect, and thereafter, such notice, complaint, findings, or order may be served on

such persons by posting a same in a conspicuous place on the premises, by sending a copy of same by regular U.S. mail to the person's last known mailing address, and by newspaper publication, pursuant to KRS Chapter 424.

(Ord. O-2-04, passed 1-20-04)

§ 94.99 PENALTIES.

(A) Any person, firm, or corporation who violates any provision of this subchapter shall be subject to a civil fine of not less than \$100 per day per violation but not more than \$500 per day per violation, or the cost to the city to abate the public nuisance, or both. Each date that a violation of this code continues after due notice has been served in accordance with the terms of this code shall be deemed a separate offense.

(B) The city shall possess a lien on property for all fines, penalties, charges, attorney's fees, and other reasonable costs associated with enforcing this code and placing of a lien on a parcel of real property pursuant to this code. The lien shall be superior to and have priority over all other liens filed subsequently, except state, county, school board, and city taxes.

(C) *Repair or replacement of trees.* As a result of the violation of any provision of this subchapter, if the injury, mutilation, or death of a public tree, shrub, or plant is caused, the cost of the repair or replacement of such tree, shrub, or plant shall be borne by the party in violation, in addition to any civil fines assessed by the Code Enforcement Board. Replacement value of the tree(s) shall be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscaped Trees, Specimen Shrubs, and Evergreens," as published by the International Society of Arboriculture.

(D) *Hazardous trees and public nuisances.* In the event that a hazardous tree or public nuisance is not abated by the date specified in any citation from the Urban Forester, or in any order of the Code Enforcement Board, if the citation is appealed, the city may abate the hazard or nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the hazard or nuisance was located. In addition, the owner of the property on which the hazard or nuisance was located shall be subject to the civil fines set forth above.

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