

COMMISSIONERS' ORDINANCE NO. 0-20-20

AN ORDINANCE CREATING A NEW CHAPTER 51 ENTITLED "URBAN FORESTRY."

* * * *

NOW THEREFORE,
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY
OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

Sections § 51.01 through 51.99, which read as follows, are added to and amend the Covington Code of Ordinances:

TITLE V: PUBLIC WORKS

CHAPTER 51: URBAN FORESTRY

§ 51.01 PURPOSE AND INTENT.

(A) The purpose of this subchapter is to establish a Covington Urban Forestry Program and a Covington Urban Forestry Board(UFB). The Public Works Department through the Covington Urban Forestry Program 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) Promote public safety by reducing 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.

§ 51.02 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 Public Works Director 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 celebrating trees.

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

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

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 of 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 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, measured at 4.5 inches above the ground line. 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.

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

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 designated by the Landmark Tree Program.*

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

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.*

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.*

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

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

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, designated by the City Manager 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.

§ 51.03 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 or prohibit the planting, maintenance, removal, and replacement of such trees, shrubs and other plants. This ordinance shall not regulate trees, shrubs, or other plants located on private property. The City may have separate regulatory powers over trees under additional City ordinances, including but not limited to the City's zoning and subdivision ordinances.

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

(C) The Covington Urban Forestry Program ("the Program") and the UFB will promote, but not regulate, the stewardship of trees, shrubs, and other plants upon private property within the City limits.

§ 51.04 URBAN FORESTRY PROGRAM.

(A) 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.

(6) Annually coordinate the City's Arbor Day proclamation, and observance, in order to retain Tree City USA status.

(B) Responsible official. The Urban Forester, or other person designated by the City Manager, shall be the responsible official for administering the Urban Forestry Program. The UFB and the City Department of Public Works shall provide advice and assistance to the Urban Forester in carrying out his or her duties. Responsibilities of the Urban Forester shall be identified in the corresponding position description.

(C) 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.

(D) 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 an annual report. The report shall be submitted to the UFB for approval and then presented to the Director of Public Works. The annual report shall be submitted to the Mayor and City Commissioners.

(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 cost of the Urban Forest Program; and

(d) Opportunities for improvement of the Urban Forestry Program.

(e) Progress towards the goals of the Urban Forestry Master Plan.

§ 51.05 URBAN FORESTRY BOARD.

This subsection has been moved to Chapter 32 (§32.19).

§ 51.06 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 UFB, 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) The BMPs shall be reviewed and updated as necessary by the Urban Forester.

(D) The BMP's shall be adopted by Order of the Commission before going into effect.

§ 51.07 URBAN FORESTRY MASTER PLAN.

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

(A) The Urban Forester, with the advice and assistance of the Board and the City Department of Public Works, shall prepare the Covington Urban Forestry Master Plan (UFMP) for adoption by the City Commission. The process for developing the UFMP shall:

(1) Include an assessment of the current condition of the urban forest;

(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 UFMP, or any amendments thereto, shall be forwarded to City Commission for review and recommendations before adoption.

(C) The Urban Forester, with the advice and assistance of the Public Works Department, shall collect and maintain all records and data necessary to objectively evaluate progress in attaining stated goals of the UFMP.

§ 51.08 PUBLIC EDUCATION AND OUTREACH.

(A) The Urban Forester, with the advice and assistance of the UFB and City Departments, 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 UFB and the Public Works 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 through the City Manager or his/her designee and 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.

§ 51.09 LANDMARK TREE PROGRAM.

The Urban Forester, with advice and assistance of the UFB and Public Works 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.

§ 51.10 PUBLIC HEALTH AND SAFETY.

(A) 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 Tree Risk Assessment Manual. Reference copies of the International Society of Arboriculture's Tree Risk Assessment Manual will be made available in the office of the City Clerk, and the Public Works Department.

(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.

(3) The Urban Forester shall manage or eliminate any public arboriculture that constitutes a hazard or a public nuisance as determined through the City's nuisance ordinances.

§ 51.11 PERMIT REQUIRED FOR ACTIVITIES INVOLVING PUBLIC ARBORICULTURE

(A) 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 plant, remove, prune, trim, treat, damage or disrupt Public Arboriculture, above ground or within the critical root zone, without first having obtained a Public Arboriculture Permit permit to do so from the Public Works Department of the City.

(B) 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. Permits are also not required for watering or mulching street trees, but these should also be done in accordance with the City's Best Management Practices.

(C) Permit Requirements:

(1) Application for a permit shall be made on forms prescribed by the Public Works Director and submitted a minimum of 10 business days prior to any proposed work. The application shall contain:

- (a) The name, mailing address, and contact information for the applicant;**
- (b) A statement or plan identifying the location and scope of work for the proposed planting, removal, pruning, trimming, treatment, or changes to the immediate area of Public Arboriculture;**
- (c) A digital image of the impacted area under the proposed work plan;**
- (d) The name and address of the owner of any abutting property;**
- (e) The name and qualifications of the individual doing the work;**
- (f) The protective measures that will be utilized to minimize damage to the Public Arboriculture being addressed;**
- (g) Identification of any overhead utilities in the work zone; and**
- (h) Any other pertinent information which the Public Works department may require.**

Permit applications will be evaluated utilizing the City's most recent Best Management Practices document. Reference copies of the Best

Management Practices will be on hand in the City Clerk's Office, the Public Works Department, and posted to the City's website.

(2) The Public Works Department, before issuing any permit, shall determine that the workmanship and method proposed in the permit application are satisfactory.

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

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

(5) Failure to comply with any of these standards and conditions shall be adequate grounds for the denial of a permit application.

(D) Denied Permit Appeal Process:

(1) Upon determining that an application for permit is to be denied, the Urban Forester shall state the basis for such denial in writing, including the criteria upon which the denial is predicated.

(2) All applicants for permits under the provisions of this subchapter shall have the opportunity to submit a written appeal, to the Public Works Director within 5 business days of the initial permit denial. The Public Works Director will have 5 business days for a response on the appeal.

(3) A hearing before the City Manager, or his or her designee, may be requested, if the Public Works Director upholds the initial denial. All hearing requests must be submitted within 5 business days of the Public Works Directors decision. The hearing shall be held within 30 days of the request. Utilizing the decision making criteria of this ordinance, the City Manager or his or her designee shall weigh the testimony and evidence submitted by the appellant and the Urban Forester, and uphold, reverse, or remand to the Urban Forester for further consideration stipulating certain facts.

(4) A hearing before the Board of Commissioners may be requested, if the City Manager, or his or her designee, upholds the initial denial. All hearing requests must be submitted to the City Clerk with a copy to the City Solicitor within 5 business days of decision by the City Manager, or his or her designee's, decision. The hearing shall be held within 30 days of the request. Utilizing the decision-making criteria of this ordinance, the Board of Commissioners shall weigh the testimony and evidence submitted by the appellant and the Urban Forester, and uphold, reverse, or remand to the City Manager for further consideration stipulating certain facts.

(E) Limited Permitting Exceptions.

(1) 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 public 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.

(2) Limited permitting exception for utilities. Public and private utilities operating under the jurisdiction of their respective City franchise agreements or contracts with the City may, without a Public Arboriculture Permit 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 and any other applicable public arboriculture regulations related to public or private utilities. The Public Works Director shall have the authority to stop or modify any work in, on, or around the public arboriculture that does not conform to these BMPs. Nothing in this paragraph shall be construed to waive requirements for any other permits applicable to maintenance and construction involving or impacting public arboriculture.

(3) 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.

§51.12 QUALIFICATIONS FOR PERFORMING WORK ON PUBLIC ARBORICULTURE

Any landscaping or tree service contractor engaged in the business of planting, removing, pruning, trimming, or treating Public Arboriculture 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.

§ 51.13 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 Public Arboriculture.

§ 51.99 PENALTIES.

(A) A violation of this subchapter shall constitute a civil offense. Unless otherwise addressed in this section, any person, firm, or corporation who violates any provision of this subchapter, shall be subject to a civil fine or fines including abatement costs as set forth herein and in §92.99 of this code of ordinances.

(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, except state, county, school board, and City taxes if all legal requirements are satisfied.

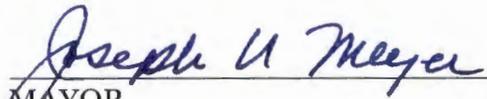
(C) Repair or replacement of trees. As a result of the violation of any provision of this subchapter, if the injury, mutilation, or death of Public Arboriculture is caused, the cost of the repair or replacement of such tree, shrub, or plant shall be assessed as abatement costs and included in the final civil fine to be borne by the party in violation by the Code Enforcement Board. Replacement value of the Public Arboriculture shall be determined in accordance with the latest revision of The Guide for Plant Appraisal, published by the International Society of Arboriculture. Reference copies of the Guide for Plant Appraisal will be made available in office of the City Clerk, and the Public Works Department.

(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 or final unappealable order of the Code Enforcement Board, 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.

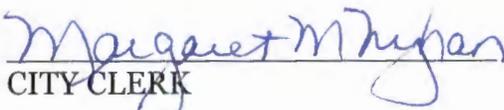
(E) The City Code Enforcement Board shall have power to issue remedial orders, determine the imposition of reasonable abatement costs, and impose civil fines to enforce this section. Enforcement of this section shall be in accordance with the procedures outlined in the Code Enforcement Board guidelines located in §§ 92.16 through 92.23. Civil fines for violations of this section shall be those set forth in § 92.99. The City shall possess a lien on property, real or personal, for all fines, penalties, charges, attorney's fees, and other reasonable costs associated with enforcing this code, and the cost of placing of a lien on a personal or real property pursuant to this code.

Section 2

That this ordinance shall take effect and be in full force when passed, published, and recorded according to law.


MAYOR

ATTEST:


CITY CLERK

Passed: 9-15-20 (Second Reading)

8-11-20 (First Reading)



Meeting Date:						
ORD.: 1ST			2ND			
OR:						
		Bowman 3	Downing 4	Smith 2	Williams 1	Meyer
Yeas		✓	✓	✓	✓	✓
Nays						
Present, not Voting						