

ORDINANCE 2024-07

AN ORDINANCE TO AMEND AND RESTATE CHAPTER 94 OF THE CITY OF AUBURN CODE AS IT RELATES TO WEEDS AND OTHER VEGETATION

SUMMARY

This ordinance amends and restates Chapter 94 Weeds, Trees, and Shrubbery of the Auburn City Code. Upon passage of said Ordinance, a codified version of the Ordinance shall be maintained at www.ci.auburn.in.us under Auburn Code Chapter 94. This Ordinance shall be maintained by the Clerk-Treasurer of the City of Auburn, Indiana. The City of Auburn shall also maintain this Ordinance in booklet form readily available for public dissemination upon request at Auburn City Hall Office of the Clerk-Treasurer during regular business hours.

<input type="checkbox"/> Recorder's Office	<input checked="" type="checkbox"/> Publish Public Hearing
<input type="checkbox"/> Auditor's Office	_____
<input type="checkbox"/> Clerk's Office	<input type="checkbox"/> Publish O/R after adoption
<input type="checkbox"/> Other	_____

ORDINANCE NO. 2024-07

**AN ORDINANCE TO AMEND AND RESTATE CHAPTER 94
OF THE CITY OF AUBURN CODE**

WHEREAS, the City of Auburn, Indiana, has previously passed Ordinances regarding Weeds, Trees, and Shrubbery; and

WHEREAS, the City of Auburn, Indiana, recognizes that the regulation and control of weeds and other vegetation is an important duty to its citizens; and

WHEREAS, it is the desire of the Common Council of the City of Auburn to amend and restate Chapter 94 of the Auburn City Code; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF AUBURN, INDIANA, that Chapter 94 shall be amended and restated as follows:

94.01 PURPOSE

The purpose of this subchapter is to promote public health, safety and welfare by requiring owners of real property within the city to control the growth of weeds and other rank vegetation.

94.02 STATUTORY AUTHORITY

Indiana Code 36-7-10.1 et seq. is hereby adopted by the city as authority for the removal of weeds and rank vegetation.

94.03 APPLICATION.

This subchapter applies to all real property within the city.

94.04 DEFINITIONS

- OWNER
Any one or more of the following:
 1. The fee simple owner or owners of a parcel of real estate including the life tenant or tenants if any;
 2. The record owner or owners as reflected by the most current records in the DeKalb County Auditor's office; or
 3. The purchaser or purchasers of such real estate under any contract for conditional sale thereof.
- PRIVATE PROPERTY

All real estate within the city, except governmental property.

• **GOVERNMENTAL PROPERTY**

Real estate within the city which is owned, leased, controlled, or occupied by the United States, the State of Indiana, or any political subdivision thereof.

• **WEEDS AND VEGETATION**

1. Any weeds, including but not limited to, jimson, burdock, thistle, cocklebur, ragweed, poison ivy, poison sumac, poison oak, or other poisonous plant or other weeds of a like kind, or plants detrimental to health.
2. Grass, plants, or other rank vegetation, allowed to grow to a height exceeding 7 (seven) inches, other than trees, bushes, flowers, other ornamental plants, or agricultural plants.
3. Any accumulation of dead weeds, grass, brush, undesirable, uncultivated, un-groomed, or uncontrolled plants and vegetation, and plants and vegetation that are poisonous or detrimental to health on private or governmental property.

94.05 PUBLIC NUISANCE

An owner permitting weeds and/or rank vegetation to grow or remain on his/her property in violation of this subchapter are hereby declared to be a public nuisance and shall be unlawful.

94.06 EXEMPTIONS

The following areas shall not be governed by this subchapter:

- A. Unplatted areas;
- B. Areas for agriculture;
- C. Areas defined as wetland districts in the Auburn Zoning Code; and
- D. Interior fields, wooded lots, the banks of streams and open drains, areas maintained in their natural state in public parks and outdoor nature laboratories maintained by schools.

94.07 DUTIES OF THE BOARD OF PUBLIC WORKS AND SAFETY

The Board of Public Works and Safety is authorized and empowered to enforce this subchapter within the city.

94.08 VIOLATIONS

A violation of this subchapter shall be construed as willful or negligent failure to abide by the rules and regulations contained within this subchapter.

94.09 DETERMINATION OF VIOLATION

E. Complaint

Violations under this subchapter shall be cited by any department of the city which receives a complaint regarding public nuisance on any property within the city, and they shall forward that complaint to the Police Department which, after investigation shall report to the Board of Public Works and Safety.

F. Notice to abate

When a report addresses private property, the Police Department, through the Board of Public Works and Safety, shall cause a written notice to abate to be served upon the owner of the property in

question, granting that owner a minimum of 3 (three) calendar days in which to remove the environmental nuisance. This notice shall be served by a law enforcement officer. Should the law enforcement officer be unable to serve notice upon the property owner, then notice shall be served by the Police Department on the owner by certified mail, return receipt requested. Should the certified letter not be accepted by the property owner, a "notice" placard shall be conspicuously posted on the subject property. The Police Department, after posting a "notice" placard to abate, shall serve to the owner of the subject property a copy of the notice by regular first class United States mail, postage prepaid, any failure to give such written notice shall not constitute a defense to any action to enforce the provisions of this subchapter.

1. A notice of violation of this section may be given or if a continuous abatement notice is given pursuant to IC 36-7-10.1, such notice shall have the effect of serving as notice to the real property owner that each subsequent violation during the same year for which the initial notice of the violation was provided may be abated by the city or its contractors. The procedure for issuing notice to the owner of real property of a violation of the ordinance, including any procedures for issuing a continuous abatement notice under IC 36-7-10.1-3(d) shall be as follows:

(a) A person authorized to enforce this ordinance who finds a grass and weeds in violation of this ordinance shall deliver to any adult occupying the premises a notice containing the following information:

- 1) The date, time, officer's names, city department responsible for administration of the ordinance, and address and telephone number to contact for information.
- 2) A description of the violation and a copy of the city code section applicable giving the definition of weeds and rank vegetation and the height at which there is a violation.
- 3) Notice that the owner or occupant of the real estate shall have three (3) days after service of the notice to remove such weeds and grasses.
- 4) A statement that if the weeds and grasses are not removed within the time specified, the city or its contractors may enter the real property and abate the violation and the owner will be held responsible for all costs incidental to the abatement of the violation and if not paid, a lien may be filed against the owner's real estate.
- 5) A statement that the owner may avoid cost by abatement of the violation within three (3) calendar days after posting of the notice (notice is posted upon placing notice in U.S. mail service, postage prepaid to the address specified herein).
- 6) A statement that a notice posted once each calendar year to the owner of the real estate at the address shown in the county auditor's records by certified mail, return receipt, shall constitute a continuous abatement notice. For any subsequent violations in the same calendar year for any property that was given a continuous abatement notice as provided herein, no further advance notice shall be given, and a notice affixed to the main building on the real estate at the time of subsequent abatements shall constitute notice to the owner and occupant of the real estate.

If no adult is occupying the premises, the notice described above shall be attached at the entrance of the main building on the premises or in a prominent place on the premises that is most likely to be seen by anyone who may occupy the premises.

(b) In addition, an identical notice shall be served once each calendar year upon the owner of the real estate at the address shown in the county auditor's records by certified mail, return receipt, which shall constitute a continuous abatement notice. For any

subsequent violations in the same calendar year for any property that was given a continuous abatement notice as provided herein, a notice affixed to the main building on the real estate at the time of subsequent abatements shall constitute notice to the owner and occupant of the real estate.

- 2. The bill to the owner of real property for the costs incurred by the municipality in abating the violation, including administrative costs and removal costs shall be delivered in the same manner as described for giving notice in subsection 1. above.

The cost of sending notice is an administrative cost that may be billed to the owner under this subdivision.

G. Inspection

Following the expiration of the notice to abate, a police officer shall visually inspect the property to determine whether a public nuisance exists. If a public nuisance exists, action shall be taken to abate that nuisance in accordance with this subchapter.

H. Governmental property

Where a complaint addresses governmental property, and it is determined by the Police Department that a violation exists and threatens the health and safety of the people of the city, the Board of Public Works and Safety may notify the governmental unit which owns the property, and request said unit to abate the public nuisance.

94.091 APPEAL

Any person accused of a violation shall have the opportunity to appeal said accusation to the Board of Public Works and Safety at a regularly scheduled meeting. The appeal must be presented to the Clerk-Treasurer in writing at least five days prior to the meeting at which the appeal is requested. The appealing party must appear in person or by council to present his/her case. If not present the question will be decided in his/her absence. Notwithstanding the appealing party's right of future appeal to any court, the determination of the Board of Public and Works shall be final. Enforcement shall abate during the Appeal Procedure to the Board of Public Works and Safety.

TREES AND SHRUBBERY

94.10 DEFINITIONS

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

- STREET TREES
Trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the city.
- PARK TREES
Trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all areas owned by the city, or to which the public has free access to as a park.

94.11 STREET TREE SPECIES TO BE PLANTED

A current list of recommended trees, obtained from DeKalb County Extension Office, constitutes the official street tree species for the city. No species other than those included in this current list may be planted as street trees without written permission of the City Tree Commission.

94.12 SPACING

The spacing of street trees will be in accordance with the three species size classes as designated in 94.11 of this subchapter, and no trees may be planted closer together than the following: Small trees at maturity, 30 feet; medium trees at maturity, 40 feet; and large trees at maturity, 50 feet; except in special plantings designed or approved by a landscape architect.

94.13 DISTANCE FROM CURBS AND SIDEWALKS

The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species size classes listed in ' 94.12 of this subchapter, and no trees may be planted closer to any curb or sidewalk than the following: Small trees, two feet; medium trees, three feet; and large trees, four feet.

94.14 DISTANCE FROM STREET CORNERS AND FIREPLUGS

No street tree shall be planted closer than 35 feet from any street corner, measured from the point of the nearest intersecting curbs or curblines. No street tree shall be planted closer than ten feet from any fire hydrant.

94.15 UTILITIES

No street trees other than those species listed as small trees in ' 94.11 of this subchapter may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

94.16 PUBLIC TREE CARE

- A. The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of the public grounds.
- B. The City Tree Commission may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of the trees is in accordance with 94.11 through 94.15.

94.17 TREE TOPPING

It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or any 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 or other obstructions where other pruning practices are impractical may be exempted from this section at the determination of the City Electric Department and Street Department.

94.18 PRUNING, CORNER CLEARANCE

The city shall be responsible for any tree overhanging any street or right-of-way within the city and shall prune the branches so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. The city shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to prune any trees or

shrubs on private property when it interferes with the proper spread of light along the street from a street light or interferes with the visibility of any traffic-control device or sign.

94.19 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY

The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when the trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the city. The City Tree Commission will notify in writing the owners of the trees. Removal shall be done by the owners at their own expense within 60 days after the date of service of notice. In the event of failure of the owners to comply with the provision, the city shall have the authority to remove the trees and charge the cost of removal on the owner's property tax notice.

94.20 REMOVAL OF STUMPS

All stumps from street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

94.21 INTERFERENCE WITH CITY TREE COMMISSION

It shall be unlawful for any person to prevent, delay or interfere with the City Tree Commission, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees, or trees on private grounds, as authorized in this subchapter.

94.99 PENALTY

A. Any person violating any provision of 94.10 through 94.21 shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$50.

B.

1. Any person or persons found to be in violation of 94.01 through 94.091 shall be fined:

- a. Twenty-five dollars for the first violation;
- b. Thirty-five dollars for the second violation within five years of the first violation;
- c. Forty-five dollars for the third violation within five years of the second violation;
- d. Fifty dollars for the fourth violation within five years of the third violation;
- e. Further, any person or persons found to be in violation of § 94.01 through § 94.091 shall pay costs of removal of the public nuisance, administrative fees (not to exceed \$100), legal fees, and all recording fees associated with the collection of the outstanding balance. Such penalties and costs shall be paid to the Clerk-Treasurer of the city within 30 days after receipt of a statement to the property owner delivered by first-class mail.

2. Failure to pay

If the owner fails to pay the amount within 30 days after receiving a statement, a copy of all costs shall be filed by the Clerk-Treasurer of the city in the Office of the Auditor of DeKalb County for the purpose of placing the amount claimed on the tax duplicate against the property, so that the amount claimed can be collected as taxes are collected, subject to the limitations above.

BE IT FURTHER ORDAINED this Ordinance shall be codified in Chapter 94 of the

Auburn City Code as set forth as Exhibit "A" and shall be in full force and effect upon passage

by the Common Council, signing by the Mayor, and proper publication and codification in the Auburn City Code under Chapter 94 as further set forth. Further, an original of this Ordinance shall be maintained by the Clerk-Treasurer of the City of Auburn, Indiana, a copy shall be maintained in booklet form for public dissemination upon request, and the Ordinance shall be placed as set forth in Exhibit "A" on the City of Auburn Code of Ordinances located at www.ci.auburn.in.us.


PASSED AND ADOPTED by the Common Council of the City of Auburn, Indiana, this

19 day of March, 2024.



James Finchum, Councilmember

ATTEST:



Lorrie K. Pontius
Clerk-Treasurer


Presented by me to the Mayor of the City of Auburn, Indiana, this me this 19 day of

March, 2024.



Lorrie K. Pontius, Clerk-Treasurer

APPROVED AND SIGNED by me this _____ day of _____, 2024.



David E. Clark, Jr., Mayor

VOTING:

AYE

NAY

Natalie DeWitt



Rod Williams



James Finchum



Dan Braun



David Bundy



Kevin Webb



Emily Prosser



Exhibit “A”

94 Weeds, Trees, and Shrubbery

94.01 PURPOSE

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2. The bill to the owner of real property for the costs incurred by the municipality in abating the violation, including administrative costs and removal costs shall be delivered in the same manner as described for giving notice in subsection 1. above.

The cost of sending notice is an administrative cost that may be billed to the owner under this subdivision.

C. Inspection

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Where a complaint addresses governmental property, and it is determined by the Police Department that a violation exists and threatens the health and safety of the people of the city, the Board of Public Works and Safety may notify the governmental unit which owns the property, and request said unit to abate the public nuisance.

94.091 APPEAL

Any person accused of a violation shall have the opportunity to appeal said accusation to the Board of Public Works and Safety at a regularly scheduled meeting. The appeal must be presented to the Clerk-Treasurer in writing at least five days prior to the meeting at which the appeal is requested. The appealing party must appear in person or by council to present his/her case. If not present the question will be decided in his/her absence. Notwithstanding the appealing party's right of future appeal to any court, the determination of the Board of Public and Works shall be final. Enforcement shall abate during the Appeal Procedure to the Board of Public Works and Safety.

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A current list of recommended trees, obtained from DeKalb County Extension Office, constitutes the official street tree species for the city. No species other than those included in this current list may be planted as street trees without written permission of the City Tree Commission.

94.12 SPACING

The spacing of street trees will be in accordance with the three species size classes as designated in 94.11 of this subchapter, and no trees may be planted closer together than the following: Small trees at maturity, 30 feet; medium trees at maturity, 40 feet; and large trees at maturity, 50 feet; except in special plantings designed or approved by a landscape architect.

94.13 DISTANCE FROM CURBS AND SIDEWALKS

The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species size classes listed in ' 94.12 of this subchapter, and no trees may be planted closer to any curb or sidewalk than the following: Small trees, two feet; medium trees, three feet; and large trees, four feet.

94.14 DISTANCE FROM STREET CORNERS AND FIREPLUGS

No street tree shall be planted closer than 35 feet from any street corner, measured from the point of the nearest intersecting curbs or curblines. No street tree shall be planted closer than ten feet from any fire hydrant.

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No street trees other than those species listed as small trees in ' 94.11 of this subchapter may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

94.16 PUBLIC TREE CARE

- A. The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of the public grounds.
- B. The City Tree Commission may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infested with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of the trees is in accordance with 94.11 through 94.15.

94.17 TREE TOPPING

It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or any 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 or other obstructions where other pruning practices are impractical may be exempted from this section at the determination of the City Electric Department and Street Department.

94.18 PRUNING, CORNER CLEARANCE

The city shall be responsible for any tree overhanging any street or right-of-way within the city and shall prune the branches so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. The city shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to prune any trees or shrubs on private property when it interferes with the proper spread of light along the street from a street light or interferes with the visibility of any traffic-control device or sign.

94.19 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY

The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when the trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the city. The City Tree Commission will notify in writing the owners of the trees. Removal shall be done by the owners at their own expense within 60 days after the date of service of notice. In the event of failure of the owners to comply with the provision, the city shall have the authority to remove the trees and charge the cost of removal on the owner's property tax notice.

94.20 REMOVAL OF STUMPS

All stumps from street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

94.21 INTERFERENCE WITH CITY TREE COMMISSION

It shall be unlawful for any person to prevent, delay or interfere with the City Tree Commission, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees, or trees on private grounds, as authorized in this subchapter.

94.99 PENALTY

A. Any person violating any provision of 94.10 through 94.21 shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$50.

B.

1. Any person or persons found to be in violation of 94.01 through 94.091 shall be fined:

- a. Twenty-five dollars for the first violation;
- b. Thirty-five dollars for the second violation within five years of the first violation;
- c. Forty-five dollars for the third violation within five years of the second violation;
- d. Fifty dollars for the fourth violation within five years of the third violation;
- e. Further, any person or persons found to be in violation of § 94.01 through § 94.091 shall pay costs of removal of the public nuisance, administrative fees (not to exceed \$100), legal fees, and all recording fees associated with the collection of the outstanding balance. Such penalties and costs shall be paid to the Clerk-Treasurer of the city within 30 days after receipt of a statement to the property owner delivered by first-class mail.

3. Failure to pay

If the owner fails to pay the amount within 30 days after receiving a statement, a copy of all costs shall be filed by the Clerk-Treasurer of the city in the Office of the Auditor of DeKalb County for the purpose of placing the amount claimed on the tax duplicate against the property, so that the amount claimed can be collected as taxes are collected, subject to the limitations above.