

CHAPTER 4

Trees and Shrubs

SEC. 6-4-1 STATEMENT OF POLICY AND APPLICABILITY OF CHAPTER.

- (a) **INTENT AND PURPOSE.** It is the policy of the City to regulate and establish policy for the control of planting, removal, maintenance and protection of trees and shrubs in or upon all public areas and terrace areas of the City to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, alleys, sidewalks or other public areas; to promote and enhance the beauty and general welfare of the City; to prohibit the undesirable and unsafe planting, removal, treatment and maintenance of trees and shrubs located in public areas; and to guard all trees and shrubs both public and private within the City against the spread of disease, insects or pests.
- (b) **APPLICATION.** The provisions of this Chapter shall apply to trees and shrubs growing or hereafter planted in or upon public areas and terrace areas and also to all trees and shrubs growing or to be planted in or upon any private premises which shall threaten the life, health, safety or welfare of the public or of any public areas.

SEC. 6-4-2 DEFINITIONS.

Whenever the following words or terms are used in this Chapter, they shall be construed to have the following meanings:

- (a) **PERSON.** "Person" shall mean person, firm, association or corporation.
- (b) **PUBLIC AREAS.** "Public Areas" shall include all public parks, trails, bike paths, and other lands owned, controlled or leased by the city except terrace areas.
- (c) **PUBLIC TREES AND SHRUBS.** "Public Trees and Shrubs" means all trees and shrubs located or to be planted in or upon public areas.
- (d) **PUBLIC NUISANCE.** "Public Nuisance" means any tree or shrub or part thereof which, by reason of its condition, interferes with the use of any public area; infected with a plant disease; infested with injurious insects or pests; injurious to public improvements or endangers the life, health, safety or welfare of persons or property.
- (e) **BOULEVARD OR TERRACE AREAS.** "Boulevard or Terrace Areas" means the land between the normal location of the street curbing and sidewalk. Where there is no sidewalk, the area four (4) feet from the curb line shall be deemed to be a boulevard for the purpose of this Chapter. "Boulevard" shall have the same meaning as "terrace." Where there are only sidewalks, the area four (4) feet from the curb shall be deemed boulevard areas under this Chapter.
- (f) **MAJOR ALTERATION.** Trimming a tree beyond necessary trimming to comply with this Chapter.
- (g) **SHRUBS.** "Shrubs" shall mean any woody vegetation or woody plant having multiple stems and bearing foliage from the ground up.
- (h) **TREE.** "Tree" shall mean any woody plant, normally having one stem or trunk bearing its foliage or crown well above ground level to heights of sixteen feet or more.
- (i) **EVERGREEN TREE.** "Evergreen Tree" shall mean any woody plant normally having one stem or trunk and bearing foliage in the form of needles and crowns which extend from

- ground level throughout its entire height.
- (j) **FORESTER.** Person designated by the Common Council as authorized to carry out provisions of this Chapter.
 - (k) **CITY.** City of Menasha, Wisconsin.

SEC. 6-4-3 AUTHORITY OF CITY FORESTER TO ENTER PRIVATE PREMISES.

The Superintendent of Parks, Forestry and Cemeteries shall serve as City Forester and shall carry out the provisions of this Chapter under the direction of the Parks and Recreation Board.

- (a) He/she may designate a municipal employee to perform the duties of Forester under Chapter 27, Wis. Stats., and may authorize such Forester to perform the duties and exercise the powers imposed on the Common Council by this Chapter.
- (b) The City Forester or his/her authorized representative may enter upon private premises at all reasonable times for the purpose of examining any tree or shrub located upon or over such premises and carrying out any of the provisions of this Chapter.

SEC. 6-4-4 INTERFERENCE WITH THE CITY FORESTER PROHIBITED.

No person shall interfere with the City Forester or his authorized representative while they are engaged in carrying out any work or activities authorized by this Chapter.

SEC. 6-4-5 ABATEMENT OF TREE DISEASE NUISANCES.

- (a) **DUTCH ELM AND OTHER TREE DISEASES A PUBLIC NUISANCE.** Whereas the Common Council has determined that there are many trees growing on public and private premises within the City, the loss of which would substantially depreciate the value of public and private property, impair the use and enjoyment of public and private premises and erode the tax base of the City, and that the health and life of such trees is threatened by fatal diseases such as Dutch Elm Disease, which is spread by the elm bark beetles Scolytus multistriatus (Eichb.) or Hylurgopinus rufipes (Marsh.), the Common Council hereby declares its intention to control and prevent the spread of tree diseases and the insect pests and vectors which carry such diseases. Contagious tree diseases are declared to be public nuisances.
- (b) **DEFINITIONS.** As used in this Section, unless otherwise clearly indicated by the context:
 - (1) "Public Nuisance" in this Chapter means:
 - a. Fatal or deleterious tree diseases.
 - b. Elm bark beetles Scolytus multistriatus (Eichb.) or Hylurgopinus rufipes (Marsh.); Dutch Elm Disease.
 - c. Any living or standing elm tree or part thereof infected with the Dutch Elm Disease fungus or in a weakened condition which harbors any of the elm bark beetles, Scolytus multistriatus (Eichb.) or Hylurgopinus rufipes (Marsh.)
 - d. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.
 - e. Any tree or part thereof which by reason of its condition and location is

hazardous or dangerous to persons and property using or upon any public street, sidewalk, alley, park or other public or private place, including the terrace strip between curb and lot line.

f. Any tree or part thereof which is infested by the eastern tent caterpillar or other defoliating larvae.

(2) "Public property" means owned or controlled by the City, including without limitation because of enumeration, public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards, and the terrace strip between the lot line and the curb or improved portion of any public way.

(3) "Person" means person, firm or corporation.

(c) **INSPECTION.**

(1) The City Forester shall inspect or cause to be inspected all premises and places within the City to determine whether any public nuisance exists thereon. He shall also inspect or cause the inspection of any elm tree reported or suspected to be infested with the Dutch Elm Disease or any elm bark bearing materials reported or suspected to be infested with elm bark beetles.

(2) Whenever necessary to determine the existence of Dutch Elm Disease or elm bark beetles in any tree, the person inspecting such tree shall remove or cut specimens from the tree in such manner as to avoid fatal injury thereto and deliver such specimens to the Forester who shall forward them to the Wisconsin Department of Agriculture at Madison for analysis to determine the presence of such nuisances.

(3) The Forester and his agents or employees shall have authority to enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this Section.

(d) **ABATEMENT OF NUISANCES; DUTY OF FORESTER.**

(1) The Forester shall order, direct, supervise and control the abatement of public nuisances as defined in this Section by spraying, removal, burning or by other means which he determines to be necessary to prevent as fully as possible the spread of Dutch Elm Disease fungus, other deleterious tree diseases or the insect pests or vectors known to carry such diseases.

(2) Whenever the Forester after inspection or examination shall determine that a public nuisance as herein defined exists on public property in the City, he shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch Elm Disease, other deleterious tree diseases, or the insect pests or vectors known to carry such disease fungus.

(3) a. When the Forester shall determine with reasonable certainty that a public nuisance exists upon private premises, he shall immediately serve or cause to be served personally or by registered mail upon the owner of such property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance and of a time and place for a hearing, not less than fourteen (14) days after service of such notice, on the abatement action to be taken. Such notice shall describe the nuisance and recommend procedures for its abatement, and shall further state that unless the owner shall abate the nuisance in the manner specified in the notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of trees in the City, the Forester shall cause the abatement thereof at the expense of the property served. If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the City.

b. If, after hearing held pursuant to this Subsection, it shall be determined by the

Common Council that a public nuisance exists, it shall forthwith order the immediate abatement thereof. Unless the property owner abates the nuisance as directed within five (5) days after such hearing, the Forester shall proceed to abate the nuisance and cause the cost thereof to be assessed against the property in accordance with the procedures provided in this Section. The Forester may extend the time allowed the property owner for abatement work but not to exceed ten (10) additional days.

(e) **SPRAYING.**

- (1) Whenever the Forester shall determine that any tree or part thereof is infected with a deleterious or fatal tree disease or is in a weakened condition or harbors elm bark beetles, he may cause all trees within a one thousand (1,000) foot radius thereto to be sprayed with an effective disease destroying concentrate or other insecticide.
- (2) In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this Section, the Forester shall cause to be given advance public notice of such operations by newspaper, radio, television, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least twenty-four (24) hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Forester shall also notify the Chief of Police, who shall take all necessary steps to make and enforce temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each block of any affected street at least twenty-four (24) hours in advance of spraying operations.
- (3) When appropriate warning notices and temporary "no parking" notices have been given and posted in accordance with Subsection (b) of this Section, the City shall not allow any claim for damages to any vehicle caused by such spraying operations.
- (4) When trees on private property are to be sprayed, the Forester shall notify the owner of such property and proceed in accordance with the requirements of Subsection (d)(3).

SEC. 6-4-6 ASSESSMENT OF COSTS OF ABATEMENT.

- (a) The entire cost of abating any public nuisance, spraying trees or trimming trees located on public property shall be borne by the City.
- (b) The cost of abating a public nuisance or spraying elm trees or elm wood located on private premises when done at the direction and under the supervision of the Forester shall be assessed to the property on which such nuisance, tree or wood is located as follows:
 - (1) The Forester shall keep a strict account of the cost of such work or spraying and the amount chargeable to each lot or parcel and shall report such work, charges, description of lands to which charged and names and addresses of the owners of such lands to the Common Council on or before October 15 of each year.
 - (2) Upon receiving the Forester's report, the Council shall hold a public hearing on such proposed charges, giving at least fourteen (14) days' advance notice of the time, place and purpose of such hearing to interested persons by publication in a newspaper of general circulation in the municipality and by mail to the owner of each property proposed to be charged. Each property owner shall be notified of the amount proposed to be assessed against his premises and the work for which such charge is

being made.

- (3) After such hearing, the Common Council, upon the recommendation of the Parks and Recreation Board, shall affirm, modify and affirm or disapprove such assessments by resolution and shall cause a copy thereof to be published. Upon adoption and publication of such resolution, assessments made thereby shall be deemed final.
- (4) The City Comptroller shall mail notice of the amount of such final assessment to each owner of property assessed at his last-known address, stating that, unless paid within thirty (30) days of the date of the notice, such assessment will be entered on the tax roll as a tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.
- (5) The City hereby declares that, in making assessments under this Section, it is acting under its police power, and no damages shall be awarded to any owner for the destruction of any diseased or infested tree or wood or part thereof.

SEC. 6-4-7 PERMIT FOR PLANTING, MAINTENANCE AND REMOVAL OF TREES AND SHRUBS.

- (a) **PERMIT REQUIRED.** No person, except upon order of the City Forester, shall plant or remove, or perform major alterations as determined by the Forester on a tree or shrub in the public right-of-way terrace area or cause such act to be done by others without first obtaining a written permit for such work from the City Forester as herein provided. Such planting permit must be obtained from the City Forest at least five (5) days prior to the planting. The applicant shall comply with the planting standards of Sec. 6-4-8.
- (b) **PERMIT EXEMPTIONS.** No permit shall be required to cultivate, fertilize or water trees or shrubs or for work by City personnel on park properties. No permit is necessary to plant trees inside the property line.
- (c) **PERMIT REQUIREMENTS AND CONDITIONS.** If the City Forester determines that the proposed work or planting described in an application for a permit is necessary and in accord with the purposes of this Chapter, taking into account the safety, health and welfare of the public, location of utilities, public sidewalk, driveways and street lights, general character of the area in which the tree or shrub is located or proposed to be located, type of soil, characteristics and physiological need of the genus, species and variety of tree and shrub, he shall have the Forester issue a permit to the applicant. The applicant must contact Digger's Hotline for location of all utilities prior to planting.
- (d) **PERMIT FORM; EXPIRATION; INSPECTION.** Every permit shall be issued by the City Forester on a standard form and shall include a description of the work to be done and shall specify the genus, species and variety, size and location of trees or shrubs to be planted, if any. Any work under such permit must be performed in strict accordance with the terms thereof and the provisions of this Chapter. Permits issued under this Section shall expire six (6) months after date of issuance. There will be no charge for this permit.
- (e) **PERMITS TO PUBLIC UTILITIES.**
 - (1) Whenever a permit is issued under this Section to a public utility to remove, trim, prune, cut, disturb, alter or perform surgery on any public tree or shrub, the City Forester or his/her designee shall limit any such work in his/her discretion.
 - (2) A public utility may secure an annual working agreement with the City Forester's office which gives the City Forester the authorization to supervise and direct work

associated with trees and shrubs.

SEC. 6-4-8 PLANTING OF TREES AND SHRUBS.

- (a) **PURPOSE.** The Common Council hereby states its determination that the planting, care and protection of the trees within the City is desirable for the purposes of beauty, shade, comfort, noise abatement and economic betterment, and hereby encourages all persons to assist in a program of tree planting, care and protection.
- (b) **TREE PLANTING PROGRAM.** The City Forester shall recommend to the Common Council a program for tree planting, care and protection for public parks. The Council shall also encourage the planting, care and protection of trees and shrubs on private premises within the City.
- (c) **PLANTING.**
 - (1) The size and genus, species and variety of trees and shrubs to be planted in public areas and boulevards and the manner of planting shall be submitted to the City Forester for approval before commencement of such work. The permit application process is required in Section 6-4-7.
 - (2) There shall be a minimum distance of thirty (30) feet and a recommended distance of thirty-five (35) to fifty (50) feet between terrace area trees depending upon the size of tree and other factors. Terrace trees shall be planted equal distance between the sidewalk or proposed sidewalk and back of the curb or proposed back of curb. In terrace areas less than three (3) feet wide, planting will not be permitted. Terrace area trees shall be a minimum of twenty-five (25) feet from an intersection.
 - (3) Evergreen trees shall not be planted in a terrace area.
 - (4) It shall be unlawful to plant or maintain shrubbery, ground cover or other plants not considered to be a deciduous leaf tree within terrace areas whose growth is in excess of eight (8) inches in height above the top of the nearest curb. If deemed appropriate, the City Forester may waive this requirement.
 - (5) Tree grates shall be provided for terrace trees surrounded by concrete by the adjacent property owner and shall be level with adjacent concrete.
- (d) **UNLAWFULLY PLANTED TREES.** Trees, plants or shrubs planted within any terrace or planting easement without the authorization and approval of the Forester may be removed. The Forester shall notify the abutting owner in writing, listing the unlawfully planted trees, plants or shrubs, order their removal, and establishing a reasonable time within which such removal shall be accomplished. In the event that removal is not to be accomplished within the time specified, the City may remove such trees, plants or shrubs and assess the costs thereof to the owner.
- (e) **FRAMES.** Any person, adjacent to whose land any shade or ornamental tree or shrub is growing in any street, may, for the purpose of protecting such tree or shrub, surround the same with a suitable box or frame for protection, but all such work shall be performed under the supervision and direction of the City Forester.

SEC. 6-4-9 TRIMMING.

- (a) Trees and shrubs standing in or upon any boulevard, public area or upon any private premises adjacent to any public right-of-way or public areas shall be kept trimmed so that the lowest branches projecting over the public street or alley provide a clearance of not less than

fourteen (14) feet. Such trimming may only be done by City employees or authorized persons under contract with the City. The City Forester may waive the provisions of this Section for newly planted trees if he determines that they do not interfere with public travel, obstruct the light of any street light or endanger public safety.

- (b) The necessity of the pruning may be determined by the City Forester.
- (c) Clearance from sidewalk to lower branches shall not be less than eight (8) feet. All trees standing upon private property in the City, the branches of which extend over the line of the street, shall be trimmed so that no branch shall grow or hang over the line of the sidewalk lower than eight (8) feet above the level of the sidewalk. No tree shall be permitted to grow in such a manner as to obstruct the proper diffusion of light from any public lamp. All private trees must maintain a minimum clearance of fourteen feet above any public street or any private road serviced by any municipal vehicles. Low growing trees, such as crabapples, shall be trimmed within the confines of the terrace.

SEC. 6-4-10 TREES AND SHRUBBERY OBSTRUCTING VIEW AT INTERSECTION OR VIEW OF TRAFFIC SIGNS.

(a) OBSTRUCTION BY TREES, SHRUBS, FENCES, WALLS, SIGNS OR OTHER STRUCTURES.

- (1) Prohibited Obstructions. No person shall maintain trees, shrubs, fences, walls, signs, or other structures in the vision control area which obstruct the necessary view of the driver of a motor vehicle on a public street or private driveway or which interfere with the driver's control. The vision control area is defined as the minimum sight triangle for the appropriate intersection/driveway set of conditions, as established by the current effective AASHTO sign distance references. In said vision control area, fences, walls, signs, or other structures shall not exceed three (3) feet in height and shall be two-thirds (2/3) open to vision equally distributed throughout the vision control area. In the vision control area, trees and shrubs shall be maintained to provide unobstructed vision from two and one-half (2-1/2) feet above the centerline of the abutting pavement to ten (10) feet above the said centerline elevation.
- (2) Duties of the Director of Public Works. It shall be the duty of the Director of Public Works or his representative to enforce this Section by appropriate order giving the offending party thirty (30) days to remove or correct the situation. Said order shall be served by certified mail. Where the home is in joint tenancy, service on one (1) of the homeowners shall be presumed service on the other.
- (3) Appeals of Orders of the Director of Public Works. All appeals of orders issued by the Director of Public Works shall be made within fifteen (15) days of the service of the order and shall be addressed to the City Clerk and the matter heard by the Board of Public Works.

(b) **OTHER OBSTRUCTIONS.** It is unlawful for any person to plant, cause to grow, allow to grow or maintain any trees, bushes, shrubbery or vegetation of any kind which is an obstruction to the clear and complete vision of any traffic sign or driveway approach to a street in the City.

(c) Any shrub, tree or other plant which obstructs the view at an intersection or the view of a traffic sign shall be deemed to be dangerous to public travel and the City Forester may order, by written notice, the owner or occupant of any private place or premises on which there stands a tree or shrub which unreasonably interferes with or encroaches upon the street or sidewalk, to take such steps as are necessary to remove such interference. If such owner or

occupant fails, within ten (10) days of receipt of notice, to take such necessary steps, the Director of Public Works shall order the City employees to remove the interference. The cost of removing the interference shall be levied and collected as a special tax upon the property upon which or in front of which such tree or shrub stands.

- (d) Any person who is an owner or occupant or firm or corporation failing to obey the written notice of the Director of Public Works as specified in Subsection (c) above shall, upon conviction thereof, be subject to a forfeiture as established in Section 1-1-7 of this Code of Ordinances.

SEC. 6-4-11 PROHIBITED ACTS.

- (a) **DAMAGE TO PUBLIC TREES.** No person shall, without the consent of the owner in the case of a private tree or shrub, or without written permits from the City Forester in the case of a terrace-area tree, public tree or shrub, perform or cause to be performed by others any of the following acts:
 - (1) Secure, fasten or run any rope, wire sign, unprotected electrical installation or other device or material to, around or through a tree or shrub.
 - (2) Break, injure, mutilate, deface, kill or destroy any tree or shrub or permit any fire to burn where it will injure any tree or shrub.
 - (3) Permit any toxic chemical, gas, smoke, oil or other injurious substance to seep, drain or be emptied upon or about any tree or shrub or place cement or other solid substance around the base of the same.
 - (4) Remove any guard, stake or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water and fertilizer.
 - (5) Attach any sign, poster, notice or other object on any tree, or fasten any guy wire, cable, rope, nails, screws or other device to any tree; except that the City may tie temporary "no parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance work or parades.
 - (6) Cause or encourage any fire or burning near or around any tree.
- (b) **EXCAVATIONS.** All trees on any parkway or other publicly owned property near any excavation or construction of any building structure or street work shall be sufficiently guarded and protected by those responsible for such work as to prevent any injury to said trees. No person shall excavate any ditches, tunnels or trenches, or install pavement within a radius of ten (10) feet from any public tree without a permit from the City Forester.
- (c) **REFUSAL TO ABATE NUISANCE.** Permits any public nuisance to remain on any premises owned or controlled by him when ordered by the Forester to abate such nuisance.

SEC. 6-4-12 APPEAL FROM DETERMINATIONS OR ORDERS.

Except as provided in Section 6-4-10, any person who receives a determination or order under this Chapter from the City Forester and objects to all or any part thereof shall have the right to appeal such determination or order, pursuant to the provisions of Title 4 of this Code of Ordinances and Chapter 68, Wis. Stats., to the Common Council within seven (7) days of receipt of the order and the Common Council shall hear such appeal within thirty (30) days of receipt of written notice of the appeal. After such hearing, the Common Council may reverse, affirm or modify the order or determination appealed from and the grounds for its decision shall be stated in writing. The

Common Council shall, by letter, notify the party appealing the order or determination of its decision within ten (10) days after the hearing has been concluded. The Council shall file its written decision with the City Clerk.

SEC. 6-4-13 ADOPTION OF STATE STATUTES.

Sections 27.09 and 86.03, Wis. Stats., are hereby adopted and incorporated herein by reference.

State Law Reference: Sections 27.09 and 86.03, Wis. Stats.