

CHAPTER 66

URBAN FORESTRY

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CHAPTER 66

URBAN FORESTRY

SECTION 66.01 Statement of Policy and Applicability.

- (a) **Intent and Purpose.** It is the policy of the Village to regulate and establish policies for the control of planting, removal, harvesting, maintenance, and protection of trees and shrubs in or upon all public areas of the Village, including terrace and conservancy areas, 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 Village; to prohibit the undesirable and unsafe planting, removal, harvesting, or maintenance of trees and shrubs in public areas; and to guard all trees and shrubs, both public and private, within the Village 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 conservancy 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.

SECTION 66.02 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

- (a) **Conservancy Areas.** All public conservation lands owned, controlled, maintained, or leased by the Village.
- (b) **Person.** An individual, firm, corporation or other legal entity.
- (c) **Public Areas.** All public parks and other lands owned, controlled, or leased by the Village except terrace areas.
- (d) **Public Nuisance.** Any tree or shrub or part thereof which by reason of its condition interferes with the use of any public area; is infected with a plant disease; is infected with injurious insects or pests; is injurious to public improvements; or endangers the life, health, safety, or welfare of persons or property.
- (e) **Public Property.** Property owned or controlled by the Village, including, without limitation because of enumeration, public sites, parks, playgrounds, streets, alleys, sidewalks and boulevards.
- (f) **Public Tree.** Any tree located within a public right-of-way or upon any other lands owned or leased by the Village whether acquired by lease, purchase, gift, dedication, condemnation or otherwise.
- (g) **Shrub.** Any woody vegetation or a woody plant having multiple stems and bearing foliage from the ground up.

- (h) **Terrace Areas.** The land between the normal location of the street curbing and the sidewalk. Where there is no sidewalk, the area four feet from the curbline shall be deemed to be the terrace area for the purpose of this chapter.
- (i) **Tree.** Any woody plant normally having one stem or trunk bearing its foliage or crown well above ground level to heights of 16 feet or more.
- (j) **Tree-Related Public Nuisance.**
 - 1. Fatal or deleterious tree diseases.
 - 2. Insects that carry fatal or deleterious tree diseases.
 - 3. Any living or standing tree or part thereof infected with a fatal tree disease or in a weakened condition which harbors any insect that carries a fatal or deleterious tree disease.
 - 4. Any dead tree or part thereof, including logs, branches, stumps, firewood or other material from which the bark has not been removed and burned or sprayed with an effective insect-destroying concentrate.
 - 5. 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 the curb and lot line.

SECTION 66.03 Village Forester; Powers and Duties.

The Director of Public Facilities shall serve as the Village Forester and shall have the following powers and duties:

- (a) To 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. If entry upon private property is necessary and is withheld, the Village Forester may apply for and execute a special inspection warrant.
- (b) To direct, manage, supervise, and control the Village's urban forestry program including the planting, removal, trimming, maintenance, and protection of all trees and shrubs in or upon all public areas of the Village;
- (c) To enforce such rules, regulations, permit, and penalty procedures as deemed necessary and may do so by the issuance of administrative orders and/or municipal citations to effectuate the intent of this chapter.
- (d) To inspect any trees, shrubs, vines, hedges, plants, logs or branches existing or growing upon any property within the Village and to conduct surveys to determine if any destructive or communicable disease or pest exists which may be detrimental to or endanger the good health and well being of trees or other plant life in public areas.
- (e) To restrict or regulate tree maintenance activities within the Village limits to reduce the spread of infectious diseases and/or insects.

- (f) To plant, remove, maintain, and protect all public trees and shrubs or cause such work to be done as may be necessary to preserve the beauty of public areas, and to protect life and property
- (g) To provide information to the public concerning the urban forestry program and tree and shrub care.
- (h) To implement and direct a Village Urban Forestry Management Plan.

.SECTION 66.04 Interference with Village Forester Prohibited.

No person shall interfere with the Village Forester or his authorized representative while he is engaged in carrying out any work or activities authorized by this chapter.

SECTION 66.05 Planting Requirements.

- (a) **Planting.** The size, genus, species, and variety of trees and shrubs to be planted in public areas and terrace areas and the manner of planting shall be submitted to the Village Forester for approval before commencement of such work.
- (b) **Unlawfully Planted Trees.** Trees, plants, or shrubs planted in any public areas or terrace areas without the authorization and approval of the Village Forester may be removed. The Village Forester shall notify the owner in writing, listing the unlawfully planted trees, plants, or shrubs, ordering their removal and establishing a reasonable time within which such removal shall be accomplished. In the event that removal is not accomplished within the time specified, the Village may remove such trees, plants, or shrubs and assess the costs thereof to the owner.

SECTION 66.06 Harvesting, Maintenance and Removal.

- (a) **Harvesting.** The Village Forester or his authorized representative may take actions to harvest trees in public areas of the Village, including terrace areas and conservancy areas, using good arboricultural practices, in order to ensure a healthy and nonhazardous environment.
- (b) **Maintenance.** The Village Forester or his authorized representative may take actions to maintain trees and shrubs in public areas of the Village, including terrace areas and conservancy areas, using good arboricultural practices, in order to ensure a healthy and nonhazardous environment.
- (c) **Removal.** The Village Forester or his authorized representative may take actions to remove trees and shrubs in public areas of the Village, including terrace areas and conservancy areas, using good arboricultural practices, in order to ensure a healthy and nonhazardous environment.

SECTION 66.07 Abatement of Tree Disease Nuisances.

- (a) **Tree Diseases a Public Nuisance.** The Village Board has determined that there are many trees growing on public and private premises within the Village 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 Village and that the health and life of such trees are threatened by fatal diseases, including but not limited to Dutch elm disease, oak wilt and the emerald ash borer. The Village Board hereby declares its intention to control and prevent the spread of such diseases and the insect pests and vectors which carry such diseases and specifically declares diseases of this nature and the insects which carry such diseases to be public nuisances.
- (b) **Inspection.**
 - (1) The Village Forester, or his authorized representative, shall inspect or cause to be inspected all premises and places within the Village to determine whether any tree-related public nuisance exists thereon. He shall also inspect or cause the inspection of any tree reported or suspected to be infested with disease or any bark bearing materials reported or suspected to be infested with disease-carrying insects.
 - (2) Whenever necessary to determine the existence of a tree-related public nuisance 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 Village Forester who shall forward them to the Wisconsin Department of Agriculture, Trade and Consumer Protection for analysis to determine the presence of such nuisances.
 - (3) The Village 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.
- (c) **Abatement of Nuisances; Duties of Forester.**
 - (1) Following authorization by the Village Board, the Village Forester shall order, direct, supervise and control the abatement of tree-related public nuisances by spraying, removal, burning or by other means which he determines to be necessary to prevent as fully as possible the spread of fatal or deleterious tree diseases or the insect pests or vectors known to carry such diseases.
 - (2) Whenever the Village Forester, after inspection or examination, shall determine that a tree-related public nuisance exists on public property in the Village, 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 fatal or deleterious tree diseases or the inspect pests or vectors known to carry such disease fungus.
 - (3) When the Village Forester shall determine with reasonable certainty that a tree-related public nuisance exists upon private premises, he shall

immediately serve or cause to be served personally or by certified 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 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 Village, the Village 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 Village.

- (4) If, after hearing held pursuant to subsection (c)(3), it shall be determined by the Village Board that a tree-related public nuisance exists, it shall forthwith order the immediate abatement thereof. Unless the property owner abates the nuisance as directed within five days after such hearing, the Village 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 chapter. The Village Forester may extend the time allowed to the property owner for abatement work but not to exceed 10 additional days.

(d) **Spraying.**

- (1) Whenever the Village Forester determines that any tree or part thereof is infected with a fatal or deleterious tree disease or is in a weakened condition or harbors insects that carry tree-related public nuisances, he may cause all trees within a one-thousand-foot radius thereof to be sprayed with an effective disease-destroying concentrate or other insecticide, following prior authorization by the Village Board.
- (2) In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this section, the Village Forester shall give 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 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 Village Forester shall also notify the Village Administrator/Clerk-Treasurer 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 24 hours in advance of spraying operations.

- (3) When appropriate warning notices and temporary “no parking” notices have been given and posted, the Village 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).

SECTION 66.08 Assessment of Abatement Costs.

- (a) **Public Premises.** The entire cost of abating any public nuisance or spraying any tree, or part thereof, when done at the direction of the Village Forester, shall be borne by the Village as to any growth, tree or shrub located upon property owned by the Village. The abating of a public nuisance or spraying trees or wood located upon a terrace area shall be considered private property and subject to subsection (b) below.
- (b) **Private Premises.** The cost of abating a tree-related public nuisance or spraying diseased trees located on private premises, when done at the direction and under the supervision of the Village Forester, shall be assessed to the property on which such tree-related public nuisance, tree or wood is located as follows:
 - (1) The Village 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 Village Clerk on or before October 15 of each year.
 - (2) The Village Administrator/Clerk-Treasurer 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 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.
 - (3) The Village 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.

SECTION 66.09 Protection of Public Trees.

- (a) **Prohibited Acts.** It shall be unlawful for any person to:
 - (1) Remove, destroy, cut, deface or injure any tree existing on any public area in the Village;
 - (2) Attach any rope, wire, chain, sign or any other device to any tree on any public area in the Village except as approved by the Village Forester;

- (3) Permit any toxic chemical, gas, smoke, oil, or other injurious substance to seep, drain, or be emptied upon or about any public tree or shrub, excluding routine winter street maintenance by Village Departments.
- (4) Participate in the erection, alteration or removal of any building or structure in the Village without assuring that any tree upon any public area in the vicinity of such operation is provided with a good and sufficient guard or protection so as to prevent injury, damage or defacement to such tree arising out of, in connection with or by reason of, such operation. The sufficiency of the guard or protection shall be determined by the Village Forester;
- (5) Plant, move, remove, prune or otherwise maintain any public tree or shrub except pursuant to a permit issued by the Village Forester pursuant to 66.10 of this Chapter;
- (6) Plant or maintain any tree or shrub which is prohibited or which is declared a nuisance pursuant to this Chapter.

(b) **Permit Required**

- (1) The Village Forester may issue a permit to any person allowing such person to plant, move, remove, prune or otherwise maintain any public tree or shrub in accordance with this Chapter.
- (2) Any person desiring to plant, move, remove, prune or otherwise maintain any public tree or shrub shall apply in writing to the Village Forester for a permit to do such work. Such application shall specify the location and description of the proposed work. Such permit may be issued if the Village Forester determines that the proposed work is necessary and in accord with the purposes of this subchapter, taking into account the safety, health, and welfare of the public, location of utilities, public sidewalks, driveways and street lights, general character and aesthetic quality of the area in which the tree or shrub is located or proposed to be located, and the soil conditions and physiological needs of the tree or shrub, and that the work will be performed by a person capable of completing the work without unnecessary risk of injury or damage.
- (3) Permits shall be issued by the Village Forester shall include a description of the work to be done and shall specify the genus, species, variety, size, grade, and location of trees or shrubs to be planted, if any. Any work done under such permit shall be performed in strict compliance with the terms thereof. The Village Forester shall inspect all work performed pursuant to this section. Permits issued under this section shall specify an expiration date not to exceed six (6) months after the date of issuance.
- (4) No permit shall be required to water or fertilize any public tree or shrub or to take the necessary action to guard the public safety or clear the public way in the event of a storm, accident or other emergency.

SECTION 66.10 Transporting of Infected Wood Prohibited.

No person, firm or corporation shall transport on a Village street, bring into, or store within the corporate boundaries of the Village, any wood that has been determined to have a tree-related public nuisance as defined in this Chapter without first securing the written permission of the Village Forester. Transporting of wood on county or state highways is exempt from the provisions of this section.

SECTION 66.11 Tree Protection During Construction.

The Village Forester shall review all applications for approval of construction in public rights-of-way and other public areas and shall make recommendations to the Building Inspector as to conditions or requirements necessary to adequately protect public trees and trees on property adjacent to such public areas from damage due to the construction work.

SECTION 66.12 Private Tree Maintenance.

- (a) **Oak Pruning Regulated.** No person shall prune, cut or otherwise injure any oak tree on public or private property between April 1 and October 1 in any year, provided, however, that the Village Forester may authorize the issuance of permits to allow such pruning as may be necessary to protect the public safety and shall specify any conditions thereon deemed necessary to prevent the spread of Oak Wilt Disease.
- (b) **Private Trees.** Property owners having trees or shrubs growing on their property outside of public right-of-way, but whose canopy extends into the public right-of-way shall maintain such trees and shrubs such that they do not obstruct street lights, traffic signs or signals, street name signs or the free use of public ways and do not interfere with overhead or underground utility facilities. The canopy height of all trees that extend into the public right-of-way shall be at least fourteen feet above the road surface and at least ten feet above the sidewalk surface.

SECTION 66.13 Penalty.

- (a) **General.** Any person who shall violate any provision of this chapter shall, in addition to any other remedy provided by this Code, be subject to a civil forfeiture of:
 - (1) Not less than \$50.00 nor more than \$500.00 for a first violation;
 - (2) Not less than \$100.00 nor more than \$500.00 for second and subsequent violations.
- (b) **Continuing Violations.** Each day a violation continues shall constitute a separate offense. Except as provided in sub. (3), each violation shall be considered a first

violation unless 24 hours has elapsed following notice by the Village of the violation. Notice includes, but is not limited to:

- (1) Oral or written notification or warning provided to the violator;
 - (2) The posting of a written notice on the premises where the violation has occurred;
 - (3) Service of a citation, summons or other document commencing any enforcement action; or
 - (4) Any other method of communication which provides actual notice of the violation to the violator.
- (c) **Recurring Violations.** Notwithstanding the provisions of sub. (2), a violation shall constitute a second or subsequent violation if committed by a person who, within the previous 3 years, has been adjudicated guilty of a violation of this subchapter by any court of competent jurisdiction.
- (d) **Private Remedies Preserved.** Nothing in this chapter shall be construed in any way to restrict or limit the rights of private parties to pursue whatever private legal remedies they may have as a result of any nuisance.