

Chapter 12.36

TREES AND VEGETATION

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12.36.010 INTENT. It is the intent of this section to exercise jurisdiction in regard to the planting, maintenance and removal of trees and shrubs growing in public places in the Village and to define public nuisances and provide for their abatement.

12.36.020 DEFINITIONS. In this section, unless the context clearly requires otherwise, the following words and terms shall have the meaning given herein:

A. Village Forester. The designated Village official assigned to carry out the enforcement of this section.

B. Public Place. That part of every street, highway, roadway or alley between the lot line and curb and from property line to property line, and any other land owned or controlled by the Village including tree planting easements.

C. Planting Strip. The public place lying between the curb or proposed curb and the lot line.

D. Public Nuisance. Any tree or shrub which is specifically designated a public nuisance in this section or part of which is on public or private property which, by reason of its condition, interferes with the use of any public place; is infected with an injurious plant disease; is infested with an injurious insect or other pest; is detrimental to the construction of public improvements; or endangers the life, health, safety or welfare of the public or its property.

E. Dutch Elm Disease. A public nuisance more particularly defined as:

1. Any living or standing elm tree or part thereof infected with the Dutch Elm disease fungus, *Ceratocystis ulmi*, (Buisman) or which harbors any Elm Bark beetle, *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsh).

2. Any dead elm tree or part thereof, standing or fallen, to include logs, branches, stumps, firewood or other elm material not buried, burned or from which the bark has not been removed.

F. Clear Vision Triangle. All of that area of a corner lot which lies within 25 feet of the intersection of the lot lines which border a public place.

G. Existing tree. Any tree which is already in existence and located within a public place prior to the adoption of this ordinance.

12.36.030 VILLAGE FORESTER; POWERS AND DUTIES. It shall be the duty of the Village Forester, or in the Forester's absence the Deputy Village Forester, under the supervision of the Director of Public Works, to enforce the provisions of this section. The powers and duties of the Village Forester are as follows:

A. The Forester shall have the jurisdiction, authority, control and supervision over all trees and shrubs growing in public places, to include, but not be limited to, planting, removal, maintenance and protection. This provision shall not be interpreted to exempt property owners from the responsibility to trim and remove dead trees as required elsewhere in this section.

B. The Forester shall have the authority to enter upon private property at reasonable times to inspect trees or shrubs, or parts thereof, upon request of the property owner, upon complaint, or if the Forester has reason to believe necessary or advisable tree care or removal may be required at the property owner's expense. The cost of inspection shall be borne by the Village.

C. The Forester shall have the authority to grant a permit under the provisions of this section and rules and work standards adopted hereunder. The Forester shall supervise all work done under any permit issued under the provision of this section and may void any permit if the provisions of this section are not complied with.

D. The Forester shall have the authority to cause a public nuisance to be abated in accordance with the provisions of this section, as further described in this section.

E. The Forester shall have the authority to formulate a master street tree plan as reviewed by the Village Plan Commission and approved by the Board of Trustees and, in regard thereto:

1. Shall consider all existing and future utility and environmental factors when recommending a specific plant species for public places within the Village.

2. Shall, upon review by the Village Plan Commission and with the approval of the Board of Trustees, have the authority to amend and make additions to the master street tree plan at any time that circumstances make it advisable.

12.36.040 TREE PLANTING REQUIREMENTS.

A. Permit Required. No person shall plant, cut, prune, remove, disturb, apply pesticides, spray, alter or root prune any tree or shrub in a public place without the written permission of the Village Forester.

B. Improper Planting a Public Nuisance. Any tree planted in violation of this section shall be deemed a public nuisance.

12.36.050 TREE AND SHRUB MAINTENANCE.

A. Private Property. All trees and shrubs on private property shall be kept pruned by the owner to permit safe and unobstructed passage of pedestrians and vehicular traffic in, on and through public places and provide a minimum clearance of 8 feet over sidewalks and 12 feet over streets and alleys, except those streets and alleys that are

subject to truck traffic which shall have a minimum clearance of 16 feet. Trees shall not obstruct street lighting, street signs, or traffic signs or signals. Any tree or shrub or part thereof found to be in violation of this section shall be deemed a public nuisance.

B. Public Property. Every owner of real estate is required to trim and remove all dead branches of trees upon any street or highway abutting that owner's land at least once every calendar year, and to remove from any street or highway abutting that owner's land any dead tree within one year after its death. All trees and shrubs located upon any street or highway abutting private property shall be kept pruned by the owner to permit safe and unobstructed passage of pedestrians and vehicular traffic in, on and through public places and provide a minimum clearance of 8 feet over sidewalks and 12 feet over streets and alleys, except those streets and alleys that are subject to truck traffic which shall have a minimum clearance of 16 feet. Trees shall not obstruct street lighting, street signs, or traffic signs or signals. Any tree or shrub or part thereof found to be in violation of this section shall be deemed a public nuisance. Any person violating this section shall be subject to a penalty as provided in Chapter 1.08 of this code or elsewhere in this section.

C. Planting on Location of Future Sidewalk Forbidden. No tree or shrub may be planted on public property or within any easement that has been determined by the Village Forester or the Director of Public Works to be the possible future location for a public sidewalk.

D. Liability of Tree Trimmers. Any person performing work on a tree in a public place, by permit, contract or otherwise, shall assume full responsibility for damage to property and to any person, and shall save the Village harmless from any liability therefor.

12.36.060 PROTECTION OF TREES. Except as authorized by written permission from the Forester, it shall be a violation of this section to perform or cause to be performed the following acts in any public place within the Village.

A. To attach any sign, poster, handbill, electrical installation wire or other device or material to, around or through a tree.

B. To permit or cause fire to burn where it may kill or injure any tree.

C. To allow any wire charged with electricity to come in contact with any tree or to allow any toxic chemical, smoke, oil, gas or other substance that may kill or damage any tree to come in contact with its leaves or roots.

D. To use tree spurs or climbers when working healthy trees.

E. To remove any guard, stake, pole or other device intended for the protection or stabilization of a public tree, or close or obstruct any open space around the base of a public tree designed to permit access to air, water and fertilizer.

F. To erect, alter, repair, raze or move any building, structure or other large object without placing suitable guards around public trees which may be injured by such operations. It shall be the responsibility of the owner thereof to repair or replace any tree injured or killed by such operations. If it is found that the moving of any tree is necessary to allow for such operations, the cost of the moving shall be borne by the owner of the project.

G. To excavate any ditch, tunnel, hole, trench or place any drive within a radius of 5 feet from any tree in a public place except by written permit from the Village Forester or when an emergency situation exists. The Forester may require the posting of an

adequate surety bond or other sufficient security by any person proposing to make any such excavation to cover the cost of replacement of any tree destroyed as the direct result of the excavation, as reasonably determined by the Forester.

H. To damage, injure, remove or appropriate for one's own personal or private use any tree or shrub procured in whole or in part with public funds, or planted or growing in a public place.

12.36.070 OBSTRUCTION OF VIEW AT INTERSECTIONS. No person shall plant, grow or maintain any tree, shrub or other vegetation on any Village street corner lot within the clear vision triangle which may obstruct the vision of the operator of any motor vehicle or pedestrian approaching such intersection. Any tree, shrub or other vegetation which exceeds 30 inches in height above street grade shall be deemed a public nuisance.

12.36.080 PUBLIC NUISANCES. No person shall permit any public nuisance enumerated in this section to remain on any property owned or controlled by that person, including public places.

A. Notice of Public Nuisance. Whenever the Village Forester shall find and declare any tree or shrub a public nuisance, the Forester shall notify the property owner or the property owner's agent in writing that the nuisance must be abated and the procedure required for the abatement.

B. Abatement Procedure and Cost. See 12.36.090.

12.36.090 ABATEMENT OF PUBLIC NUISANCES.

A. Enforcement. It shall be the duty of the Chief of Police, the Fire Chief, the Building Inspector, and the Village Forester to enforce those provisions of this chapter that come within the jurisdiction of their offices and they shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer shall have inspected or caused to be inspected the premises where the nuisance is alleged to exist and have satisfied that officer that a nuisance does in fact exist.

B. Summary Abatement.

1. Notice to Owner. If the inspecting officer shall determine that a public nuisance exists within the Village and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Director of Public Works or the Director's designee may direct the Chief of Police to serve notice on the person causing, permitting or maintaining such nuisance or upon the owner or occupant of the premises where such nuisance is caused, permitted or maintained and to post a copy of said notice on the premises. Such notice shall direct the person causing, permitting or maintaining such nuisance or the owner or occupant of the premises to abate or remove such nuisance within 24 hours and shall state that unless such nuisance is so abated, the Village will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.

2. Abatement by Village. If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be

found, the officer having the duty of enforcement shall cause the abatement or removal of such public nuisance.

C. Abatement by Court Action. If the inspecting officer shall determine that a public nuisance exists on private premises, but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, that officer shall serve notice on the person causing or maintaining the nuisance and the owner of the property to remove the same within 10 days. If such nuisance is not removed within 10 days, that officer shall report such fact to the Village President for referral to the Board of Trustees, who may direct the Village Attorney to commence an action in Circuit Court for the abatement of the nuisance.

D. Other methods not excluded. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the Village or its officials in accordance with the laws of the State, nor as prohibiting an action to be commenced in the Circuit Court seeking a forfeiture as provided elsewhere in this code.

E. Cost of Abatement. In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given the owner, the cost of abatement and other costs awarded by the Circuit Court pursuant to Ch. 823, Wis. Stats., shall be assessed against the real estate as a special charge.

12.36.100 PENALTY. Any person violating this section shall be subject to a penalty as provided in Chapter 1.08 of this code or elsewhere within this section.

12.36.110 EXISTING TREES. This provision is intended to protect trees which are already in existence and located within a public place prior to the adoption of this ordinance. No existing tree shall be determined to be a public nuisance unless a majority of the Board of Trustees determines it to be so. The Village Forester may recommend to the Plan Commission that an existing tree be determined to be a public nuisance, in which case the Plan Commission shall make a recommendation to the Village Board whether the existing tree should be determined to be a nuisance. Regulations adopted by the Village Board governing the planting of new trees are not intended to apply to existing trees, and the Village Board shall only make a determination that an existing tree is a public nuisance based on the definitions and designations found in this chapter.