

Chapter 4

Trees and Shrubs

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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.

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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) **Boulevard or Terrace Areas.** The land between the typical location of the street edge or curbing and the street right-of-way. Where there is no curb and gutter, the edge of the road way (pavement or gravel) to the right-of-way 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 no sidewalks, the area from the curbing or edge of street to the right-of-way line shall be deemed boulevard areas under this Chapter.
- (b) **Critical Root Radius (CRR).** 1.5 feet for every diameter inch at diameter at breast height (DBH), as relating to excavations near trees.
- (c) **Evergreen Tree.** 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.
- (d) **Frames.** A device used to stabilize or provide protection to a tree. May include staking materials, blocks, or other landscaping materials around the base of a tree.
- (e) **Major Alteration.** Trimming a tree beyond one-third (1/3) of the crown.
- (f) **Person.** Person, firm, business, association, corporation or other legal entity.
- (g) **Public Nuisance.** Any deleterious or fatal tree disease. Any tree or shrub or part thereof which, by reason of its condition and location, is hazardous and/or interferes with the use of any public property/area or public ways; 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.
- (h) **Public Properties/Areas.** Land owned or controlled by the City, including without limitation because of enumeration, public sites, parks, playgrounds, recreation areas, park ways, common open spaces, greenways, forests, conservancies and other lands owned or leased by the City under the authority of the Parks and Recreation Board.
- (i) **Public Trees and Shrubs.** All trees and shrubs located or to be planted in or upon public areas.
- (j) **Public Ways.** All public streets, roads, right-of-ways, boulevards, terraces strips between public lot lines and curbs, alleys, sidewalks, cemeteries, and other lands owned or leased by the City and under the authority of the Board of Public Works.
- (k) **Shrubs.** Any woody vegetation or a woody plant having multiple stems and bearing foliage from the ground up.
- (l) **Staff Forester.** Person designated by the Parks and Recreation Board and the Board of Public Works as authorized to carry out provisions of this Chapter
- (m) **Top, Topping.** The severe cutting back of limbs to stubs within the tree crown to such a degree so as to remove normal canopy and disfigure the tree.
- (n) **Tree.** 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.
- (o) **Urban Forest.** The collection of trees in and around the City, including park and street trees on public property and on private property.

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Sec. 6-4-3 Staff Forester.

- (a) **Parks and Recreation Board Appointment.** The Parks and Recreation Board may designate a municipal employee(s) to perform the duties of Staff Forester under Chapter 27.09, Wis. Stats., and may authorize such Staff Forester to perform the duties and exercise the powers imposed by this Chapter. The Staff Forester shall have the following general powers and duties:
- (1) To direct, manage, supervise, and control the planting, removal, maintenance, protection of all trees and shrubs on all public properties, areas and ways; to supervise Park Department personnel in the planting, removal, maintenance, and protection of said trees and shrubs.
 - (2) To guard all trees and shrubs within the City located on public areas so as to prevent the spread of disease or pests and to eliminate dangerous conditions which may affect the life, health or safety of persons or property.
 - (3) To enforce this ordinance as it pertains to trees and shrubs on private premises.
 - (4) Such other powers and duties as are provided by the laws of Wisconsin, particularly Sections 27.08 and 27.09, Wis. Stats., by ordinance of the City and by the Parks and Recreation Board.
- (b) **Right-of-Entry.** The Staff Forester or other authorized City representatives may make a request 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 a request to inspect such trees or shrubs is denied by the person responsible for the property, an inspection warrant may be obtained pursuant to Sec. 66.0119, Wis. Stats.
- (c) **Inspection.** The Staff Forester may inspect or cause to be inspected all premises and places within the City to determine whether any public nuisance exists thereon. The Staff Forester may also inspect or cause the inspection of any tree reported to be public nuisance or suspected to be infested with a deleterious or fatal tree disease or any part of a tree bearing materials reported or suspected to be infested.
- (d) **Maintenance/Removal.** Staff Forester or other authorized agent may trim, prune, or remove a tree or shrub located on or hanging into public properties/areas and public ways as necessary as determined by the Staff Forester, due to disease, damage, hazardous condition and/or location, public nuisance, or if it's location is such that substantial detriment is done to the property upon which the tree or shrub stands, or property abutting the same. Staff Forester shall cause maintenance and/or removal of a tree or shrub on private premise (as Per Section 6-4-5).

Sec. 6-4-4 Interference with the Staff Forester Prohibited.

No person shall interfere with the Staff Forester or authorized representative while Staff Forester is engaged in carrying out any work or activities authorized by this Chapter.(Refer to Section 6-4-3 (b).)

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Sec. 6-4-5 Abatement of Public Nuisances, Dangerous, Obstructive and Infective Trees.

- (a) **Tree Diseases as a Public Nuisance.** Due to the 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, the City intends to control and prevent the spread of tree diseases, therefore infectious, epidemic and fatal tree diseases (“Nuisance Diseases”) and the insect pests and vectors which carry such diseases are declared to be public nuisances.
- (b) **Inspection.** The Staff Forester may inspect or cause to be inspected all premises and places within the City to determine whether any public nuisance exists thereon. The Staff Forester may also inspect or cause the inspection of any tree reported or suspected to be infested with an Nuisance Diseases, or any part of a tree bearing materials reported or suspected to be infested.
- (c) **Abatement of Nuisances; Duty of Staff Forester.**
 - (1) The Parks & Recreation Board or its designee, upon the recommendation of the Staff Forester, shall order, direct, supervise and control the abatement of public nuisances on public properties/areas or public ways as defined in this Section by removal, burning or by other means which it determines to be necessary to prevent as fully as possible the spread of Nuisance Diseases, other deleterious tree diseases or the insect pests or vectors known to carry such diseases.
 - (2) Any tree or part thereof, whether alive or dead, which the Staff Forester finds to be infested, hazardous or a nuisance so as to be a public nuisance, endanger the public or other structures, trees, plants or shrubs, shall be removed, trimmed or treated by the owner of the property. The Staff Forester shall give written notice to said owner to remedy the situation. Such notice shall describe the public nuisance and recommend procedures for its removal or abatement and shall specifically state the period of time within which the action must be taken, which shall be within not less than twenty-four (24) hours nor more than fourteen (14) days as determined by the Staff Forester on the basis of the seriousness of the condition of the tree and/or danger to the public. The notice shall state that unless the owner abates the public nuisance in the manner specified in the notice, or appeals to the Parks & Recreation Board or its designee to show that such nuisance does not exist or does not endanger the health of trees in the City, the Parks and Recreation Board or its designee shall cause the abatement thereof and the property shall be assessed a special charge for the work completed plus an administrative fee.
 - (3) If the owner shall fail to remove, treat or trim said tree within the specified timeframe, the Staff Forester may cause the tree to be removed, treated or trimmed by order of the Parks and Recreation Board or its designee and the property shall be assessed as a special charge for the work completed in addition to an administrative fee as set forth on the City’s fee schedule.

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- (4) Prior to the Staff Forester causing the work to be completed, the Parks and Recreation Board or its designee shall determine if a public nuisance exists on private property in the City and determine the method to abate or cause the abatement of such nuisance in a manner as to remove the tree or bush or to destroy or prevent as fully as possible the spread of public nuisances, other deleterious tree diseases, or the insect pests or vectors known to carry such disease.
- (5) If the property owner appeals to the Parks and Recreation Board or its designee and the appeal to halt the abatement fails, the Parks and Recreation Board or its designee shall order the immediate abatement thereof. Unless the property owner abates the nuisance as directed within five (5) days after such appeal, the Parks and Recreation Board or its designee shall proceed to abate the nuisance and cause the cost thereof to be assessed against the property, including an administrative fee, in accordance with the procedures provided in this Section. The Parks and Recreation Board or its designee may extend the time allowed the property owner for abatement work, but not to exceed ten (10) additional days.

Sec. 6-4-6 Assessment of Costs of Abatement.

- (a) The entire cost of abating any public nuisance as defined herein may be charged to and assessed against the parcel or lot abutting on the street, alley, terrace, boulevard or parkway upon or in which such tree is located or the parcel or lot upon which such tree stands, at the direction of the Parks and Recreation Board or its designee and Common Council in accordance with Section 66.0627 or Section 27.09, Wis. Stats.
- (b) The cost of abating a public nuisance located on private premises shall be assessed as a special charge to the property on which such public nuisance is located, as follows:
 - (1) The Staff Forester shall keep a strict account of the cost of such work 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 and subsequently the Common Council on or before October 15 of each year.
 - (2) Upon receiving the Parks and Recreation Board or its designee'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 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 Clerk 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.

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- (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 Maintenance and Removal of Trees and Shrubs in Public Ways or Public Properties/Areas.

- (a) No person, firm, organization or corporation shall remove, damage, perform major alterations on or destroy a tree or shrub in public ways or public properties/areas or cause such act to be done by others unless authorized in writing by the Staff Forester.
- (b) In cutting down trees located in public and terrace areas, the tree must be removed with the root stump grubbed out, or ground out to a depth of at least eight (8) inches below grade measured in a straight line with the normal grade of sidewalk to top of eight (8) inches below grade measured as a straight line, normal grade of sidewalk to top of curb. All wood and debris must be removed from the street prior to the end of each working day and all holes shall be filled to normal grade level with topsoil and seeded as soon as practicable.
- (c) Public Utilities shall notify the Staff Forester prior to removal, trimming, pruning, etc., of any public tree or shrub in public ways or on public properties/areas in the City.
- (d) Any landscaping installed at the base of a public tree or shrub may be removed at the discretion of the City.

Sec. 6-4-8 Planting of Trees and Shrubs.

- (a) **Purpose.** The planting, care and protection of the trees within the City is desirable for the purposes of beauty, shade, comfort, stormwater runoff, 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 Staff Forester shall establish a program for tree planting, care and protection for public properties/area and public ways. The Common Council shall also encourage the planting, care and protection of trees and shrubs on private premises within the City. Planting of trees in the terrace areas shall be according to the City approved tree planting list, as kept on file with the Staff Forester.
- (c) **Planting.**
 - (1) The size and genus, species and variety of trees and shrubs to be planted in public ways shall be consistent with the City's recommended tree species list on file with the Staff Forester, and following planting requirements listed herein. The City at its discretion may remove any trees planted in public ways.
 - (2) Prior to any tree or shrub planting in public properties/areas, the Staff Forester shall first be consulted regarding the size and genus, species and variety of trees and shrubs to be planted as well as the manner of planting. The City at its discretion may remove any trees planted in public properties/areas.

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- (3) There shall be a minimum distance of fifteen (15) feet and a recommended distance of twenty-five (25) to thirty (30) 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 five (5) feet wide, planting will not be permitted. Terrace area trees shall be a minimum of twenty (20) feet from an intersection.
- (4) Evergreen trees shall not be planted in a terrace area.
- (5) 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 thirty (30) inches in height above the top of the nearest curb.
- (6) Tree grates, where required, shall be provided for terrace trees surrounded by concrete by the adjacent property owner and shall be level with adjacent concrete.
- (7) Trees or shrubs shall not be planted closer than two and a half (2.5) feet to any sidewalk or curb. Where sidewalks are not installed, trees or shrubs shall be planted in a manner to allow for future sidewalk improvements.
- (8) All new required shade trees must be a minimum of one and one-half inch (1-1/2") diameter caliper at the time of planting. All new required evergreen trees must be a minimum of six feet (6) high when planted, except for low creeping shrubs.
- (9) For all new subdivisions and commercial developments, developers shall install one (1) tree per twenty-five feet (25') of street frontage on boulevard of street frontage prior to issuance of occupancy permits.
- (10) Placement of Trees. Trees may not be planted in the boulevard closer than:
 - (a) Twenty (20) feet to a utility or street light pole;
 - (b) Fifteen (15) feet to a driveway or alley;
 - (c) Six (6) feet to a water stop box, or gas shut off;
 - (d) Ten (10) feet to a fire hydrant.
 - (e) Fifteen to thirty (15-30) feet to another tree; or
 - (f) Twenty (20) feet to the intersection of two (2) streets from either corner on the property line.
- (d) **Unlawfully Planted Trees.** Trees or shrubs planted within any terrace or planting easement without the authorization and approval of the Staff Forester may be removed. The Staff Forester shall notify the abutting owner in writing, listing the unlawfully planted trees or shrubs, ordering 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 public tree or shrub is growing in public ways or public property/areas, may, for the propose of protecting such tree or shrub, surround the same with a suitable box or frame or staking for protection, but all such work should be performed under the supervision and direction of the Staff Forester. The City may at its discretion remove frames or landscaping located in public ways or on public properties/areas.

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Sec. 6-4-9 Trimming.

- (a) Trees and shrubs standing in or upon any boulevard, public way, public property/area or upon any private premises adjacent to any public way or public property/areas shall be kept trimmed so that the lowest branches projecting over the public way provide a clearance of not less than fourteen (14) feet. The Staff Forester may waive the provisions of this Section for newly planted trees if the Staff Forester determines that the trees(s) do not interfere with public travel, obstruct the light of any street light or endanger public safety.
- (b) The necessity of pruning shall be determined by and may be ordered by the Staff Forester to be completed.
- (c) Clearance from sidewalk to lower branches shall not be less than ten (10) 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 ten (10) 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.
- (d) No person may remove, trim or fertilize trees in the public right-of-way or on public property unless the work is completed by a licensed arborist or designated agent of the City unless the City gives written permission for another individual to complete such work. No person shall remove or make Major Alterations to trees in the public right-of-way or on public property unless such work is approved in writing by the City Forester, or the City Forester's designee, prior to the completion of work. For the purposes of this subsection the term "Major Alteration" shall mean "trimming or pruning of more than one third (1/3) of the crown of a tree or bush."

Sec. 6-4-10 Trees and Shrubbery Obstructing View at Intersection or View of Traffic Signs.

- (a) Notwithstanding any other provision of this Chapter, no person shall maintain, plant or permit to remain on any private or public premises situated at the intersection of two (2) or more streets or alleys in the City any tree, shrub or other growth which may obstruct the view or life safety of the operator of any motor vehicle or pedestrian approaching such intersection.
- (b) 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. It shall be the duty of every owner of such tree, bush, shrubbery or vegetation to remove such obstruction.
- (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 or life safety. The Staff Forester shall notify the abutting owner in writing, listing the planted trees, plants or shrubs, ordering their trimming/removal, and establishing a reasonable time within which such trimming/removal shall be accomplished. In the event that trimming/removal is not accomplished within the time specified, the Board of Public Works may order the trimming/removal such trees, plants or shrubs and property shall be special assessed for the work completed in addition to an administrative fee.

Cross Reference: Traffic Visibility- Section 13-7-13.

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Sec. 6-4-11 Prohibited Acts.

- (a) **Damage to Public Trees.** No person shall 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 concrete/asphalt or other solid substance around the base of the same.
 - (4) Remove any guard, stake, tree gator bag 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 official regulatory temporary 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.
 - (7) It is prohibited to plant trees that reach a maximum, mature height of greater than twenty-five (25) feet underneath any overhead utility line.
- (b) **Excavations.**
- (1) 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 Street Opening / Work in Right-of-Way Permit from the Engineering Department. Any person seeking a permit to excavate near a tree in a public street, alley, highway, or boulevard shall submit a written proposed plan to the Engineering Department as part of the permit application with clear and specific identification of the trees in a public street, alley, highway or boulevard which the person is targeting for excavation. The identification shall include the name and block number(s), address(s) of the street(s) on which the trees are located.
 - (2) The Staff Forester has the authority to approve or deny the permit and assess violations as outlined in this Chapter if the work is not performed in accordance with accepted arboricultural standards. Any public tree that is damaged to the extent of not gaining full recovery in the opinion of the Staff Forester will be replaced through payment from the person causing the damage. Cost will be the value as determined in the City Tree Inventory, if the tree is not part of an inventory the cost will equal \$200/inch measured at diameter breast height or 4.5 feet from ground level.

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Sec. 6-4-12 Appeal from Determinations or Orders.

Any person who receives a determination or order under this Chapter from the Staff Forester or the Parks and Recreation Board or its designee and objects to all or any part thereof shall have the right to appeal such determination or order, subject to the provisions of Chapter 68, Wis. Stats., to the Parks & Recreation Board or its designee within seven (7) days of receipt of the order. The Parks & Recreation Board or its designee shall hear such appeal within forty-five (45) 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.

Sec. 6-4-14 Violations.

Any person, firm or corporation violating any of the provisions of this Ordinance shall upon conviction thereof be subject to a forfeiture between fifty (\$50.00) and five hundred (\$500.00) dollars. Each day that such violation is not remedied, shall be considered a separate offense.

Sec. 6-4-15 Emergencies.

The Staff Forester, in the case of emergencies, such as windstorms, ice storms, insect/disease outbreaks or other disasters, may waive the requirements of this Ordinance so that private or public work to restore order in the City is in no way hindered.

Sec. 6-4-16 Severability.

Should any section, subsection, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance in whole or in any part thereof other than the part so declared to be invalid.

Sec. 6-4-17 Arboricultural Standards.

All work performed must be performed in compliance of accepted arboricultural standards.