

CHAPTER 20

CITY FORESTER AND FORESTRY MANAGEMENT

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CITY FORESTER AND FORESTRY MANAGEMENT

20.01 INTENT AND PURPOSE.

It is hereby declared to be the policy of the City of Middleton to regulate, finance and control the planting, removal, maintenance and protection of trees and shrubs within all public areas of the City in order to:

- (1) Eliminate and guard against dangerous conditions which may result in injury to persons using the streets, sidewalks or other public areas;**
- (2) To promote and enhance the beauty and general welfare of the City;**
- (3) To prohibit the undesirable and unsafe planting or removal of trees and shrubs located in public areas; and**
- (4) To guard all trees and shrubs, both public and private, within the City against the spread of disease, insects or pests.**

The provisions of this ordinance shall apply to all trees and shrubs growing or hereafter planted within public areas; and also to all trees and shrubs growing or to be planted in or upon any private premises which may threaten the life, health, safety or welfare of the public or of any public areas.

20.02 DEFINITIONS.

- (1) "Boulevard" shall be the median strip between the edge of pavements or curbs of streets or roads having a separation of vehicular traveled ways.**
- (2) "City" means the City of Middleton, Wisconsin.**
- (3) "Clear Sight Triangle" shall be a triangle formed by the property lines of two intersecting rights of way and a third line connecting specified points on those property lines so as to provide a full view zone at corners of streets, alleys and highways (see s. 10.04(7), Traffic Visibility).**
- (4) "Dutch Elm Disease" includes all standing elm trees or parts thereof, logs, branches, stumps or other elm materials infected with the fungus CERATOCYSTIS ULMI or which harbors any of the Elm Bark, Beetle, SCOLYTUS MULTISTRIATUS - (European) or HYLURGOPINOS RUFIDES (American).**
- (5) "Forestry Program" shall be a comprehensive plan including maintenance, new planting and budget with projections for long range implementation.**

- (6) "Maintenance and Protection" shall include all operations of trimming, pruning, spraying, injecting, fertilizing, treating, bracing, doing surgery work, cutting above or below ground, except such operations as are conducted by a department of the City.
- (7) "Oak Wilt Disease" is a disease caused by the fungus *Ceratocystis fagacearum* that attacks the water conducting system of oak trees causing the trees to wilt and die.
- (8) "Person" shall include an individual, firm, association or corporation.
- (9) "Public Area" shall include all public ways, parks and other lands owned or leased by the City.
- (10) "Public Nuisance" shall mean any tree or shrub or part thereof which, by reason of its condition, interferes with the use of public areas; is infected with a plant disease; infested with injurious insects or pests; injurious to public improvements; or which may endanger life, health, safety or welfare of persons or property, public or private.
- (11) "Public Way" shall include all streets, roads, boulevards, alleys and sidewalks.
- (12) "Terrace" shall be the area between the edge of the pavement or curb, or proposed curb, and the sidewalk or proposed sidewalk; also, all unpaved areas in cul de sacs.
- (13) "Trees and/or Shrubs" shall include all woody vegetation presently standing or hereafter planted.

20.03 AUTHORITY OF CITY FORESTER.

(1) Over Public Trees and Shrubs. The City Forester shall have the power to maintain and protect, renew and remove public trees or cause such work to be done as may be necessary to insure public safety and preserve the beauty and the protection of property from injury or damage.

(2) Over Private Trees and Shrubs. Whenever the City Forester shall find on examination that any tree or shrub, or part thereof, growing or located upon private property is a public nuisance as defined in this ordinance, he or she shall notify the owner, as his or her name appears on the assessment roll of the City, in writing, that the nuisance must be properly treated or removed or otherwise abated as directed in the notice within the time specified, which shall not be less than thirty (30) days, unless the City Forester determines that immediate action is necessary for public safety. If the owner does not comply with the notice within the specified time, the City Forester shall cause the nuisance to be abated forthwith. He or she shall then notify the owner in writing of the expense of abatement, the time and place when he or she may be heard before the Board of Park, Recreation and Forestry Commissioners if desirous of contesting the abatement charge, and that the charge will be entered on the tax roll against the parcel of real estate on which the tree or shrub was located if the same is not contested. In the event the charge is contested, the Board shall finally determine the amount thereof which shall be paid within ten (10) days following such determination or, if not so paid, shall be entered in the tax roll against said

property.

20.04 PUBLIC AREA PLANTINGS.

(1) Subdivision or Plat of Record. Public plantings shall be under the control of the City Forester. A determination shall be made as to the best suited species at a particular planting site in regard to growth habits, shape, form, health, disease and pest resistance, conflicts with wires, lights, pavements, traffic, pedestrians, sewers, water mains, space availability and environmental pollution. The locations for plantings shall be determined by the City Forester. Except as hereinafter provided, the cost of planting, removal, maintenance and protection of all trees and shrubs in public areas shall be borne by the City. The cost of terrace, boulevard and traffic circle plantings shall either be wholly the responsibility of the City or may be shared by the City and a permit holder (subdivider, builder contractor, etc.) as determined by the policy of the Park, Recreation and Forestry Commission then in effect.

(2) New Subdivisions. Plats or Certified Survey Maps that create new public right-of-way shall include with their development drawings a tree planting plan approved by the City Forester. The plan shall provide for trees to be installed in terraces, boulevards, and traffic circles and the plan shall be subject to all provisions of this ordinance. The cost of preparing and implementing this plan shall be borne by the subdivider. The subdivider shall be responsible for replacing trees that die within two years of planting. The owner of a lot shall be responsible for all tree relocation or replacement costs due to their actions or construction.

(3) Planting, Maintenance and Removal of Public Trees and Shrubs.

(a) **Permit Required.** No person, except on the order or with the permission of the City Forester, shall plant, remove, spray, brace, trim, prune, cut above or below the ground, disturb or alter any tree or shrub in any public area of the City or cause such act to be done by others, without first obtaining a written permit from the City Forester as hereinafter provided, except that no permit shall be required to cultivate, fertilize, mulch or water public trees or shrubs, and no permit shall be required of any other department of the City.

(b) **Permit Conditions.** Whenever the City Forester shall determine that any proposed planting or work is in accord with the provisions of this ordinance, a permit shall be issued on a standard form and shall specify the work to be done and shall specify the species, variety, size and location of any trees or shrubs to be planted. All work to be done must be in accord with this ordinance and the permit shall expire six (6) months after the date of issuance.

(c) **Permits to Public Utilities.** A public utility, except municipal utilities, shall secure an annual permit from the City Forester which shall provide that the utility will notify the Forester at least twenty four (24) hours before any tree or shrub is to be cut, trimmed or removed within any public area, and the City Forester shall determine whether such cutting, trimming or removal is in the public interest and whether it is permissible under this ordinance before such work is done.

20.05 GENERAL RULES AND REGULATIONS REGARDING TREES AND SHRUBS.

(1) Planting. The species, varieties and sizes of all trees and shrubs to be planted in public areas and the manner of planting shall be submitted to and approved by the City Forester before commencement of such work.

(2) Dimensional Limits on Planting.

1. No trees or shrubs shall be planted within forty (40) feet of any street corner or within any "clear sight triangle" as hereinabove defined. There shall be a minimum of thirty five (35) feet between trees in public ways, unless otherwise authorized by the City Forester, based on site and plant species. An approved species list of trees shall be kept on file with the Park, Recreation and Forestry Commission subject to periodic revision. Trees planted within public ways shall be at least 1 1/2 inches in diameter measured 6" above the ground. Each tree shall have a minimum height of eight (8) feet. No tree shall be planted less than two (2) feet from any established or proposed curb line or less than two (2) feet from the inner line of any sidewalk or proposed sidewalk.

2. The City Forester shall prepare and maintain lists of tree species desirable for planting according to their normal mature height:

- (i) Large trees - over forty (40) feet; and
- (ii) Medium trees - twenty five (25) to forty (40) feet; and
- (iii) Small trees - fifteen (15) to twenty five (25) feet.

3. Planting size.

(i) All large or medium trees, when planted, shall be at least eight (8) feet high and have a minimum trunk diameter of one and one-half inches.

(ii) All small trees, when planted, shall be at least five (5) feet high and have five (5) or more branches.

4. Location.

(i) There shall be a distance of thirty five (35) feet to fifty (50) feet between the terrace area trees depending upon the size of tree and other factors. Terrace/median 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 four (4) feet wide, planting will not be permitted. No trees or shrubs shall be planted within forty (40) feet of any street corner or within any clear sight triangle. There shall be a minimum of thirty five (35) feet between trees in terraces, unless otherwise authorized by the City Forester, based on site and plant species.

(ii) Small sized trees shall be planted at least five (5) feet from driveways and large or medium sized trees shall be planted at least fifteen (15) feet from driveways. Trees shall also be planted at least ten (10) feet from curb box/water shutoffs and sanitary sewer laterals. Trees shall not be planted within 25 feet of any public light pole.

(iii) Evergreen trees or shrubs shall not be planted in a terrace area.

5. **Certain Species Restricted.** No person shall plant within the City any female tree of the species *Populus deltoidea*, commonly called the "Cottonwood", or any tree commonly called the seed bearing Box Elder or *Acer negundo*, which may now or hereafter become infested with Box Elder bugs, and such trees are hereby declared a nuisance.

6. **Unlawfully Planted Trees.** Trees, plants or shrubs planted within any terrace/median or planting easement without the authorization and approved of the City Forester may be removed. The City Forester shall notify the abutting 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 City may remove such trees, plants or shrubs and assess the costs thereof to the owner.

(3) **Trimming.** Trees and shrubs standing on either public or private property and overhanging any public right of way shall be kept trimmed so that the lowest branches provide a clearance of at least fourteen (14) feet above the ground. The City Forester may waive this requirement for newly planted trees if he or she determines that any such tree does not interfere with public travel, obstruct street lighting or endanger public safety. Clearance from sidewalk to tree branches shall be not less than ten (10) feet. Shrubs planted on private property adjacent to sidewalks shall be pruned so as to not encroach upon the walk right of way. Trees shall be trimmed so as to allow the proper diffusion of light from any public lamp.

(4) **Obstruction of View at Intersection is Prohibited.** Notwithstanding any other provisions of this ordinance, no person shall maintain, plant or permit to remain on any premises owned or controlled by him or her and situated at the intersection of two (2) or more streets in the City any tree, hedge or shrub or other growth which may obstruct the view of any motorist or pedestrian approaching such an intersection. Within this clear sight triangle, all growth shall be limited to a height of thirty (30) inches above the street grade. Any planting which exceeds this height is hereby declared a public nuisance. Any shrub, tree or other plant which obstructs the view of an intersection or the view of a traffic sign or interferes with public use of public areas and sidewalks shall be deemed 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 City Forester and/or Common Council shall order 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. Any person who is an owner or occupant or firm or corporation failing to obey the written notice of the City Forester as specified above shall, upon conviction thereof, be subject to a forfeiture as provided in s. 30.04 of this Code.

20.06 DAMAGE TO TREES AND SHRUBS.

(1) No person shall, in any public area or private area without the permission of the owner, break, injure, mutilate, kill or destroy any tree or shrub, permit any animal under his or her control to do so, permit any fire to injure any portion of any tree or shrub, permit any leak to exist in any gas line within the root zone of any tree or shrub, permit any toxic chemical to seep, drain, or be emptied on or about any tree or shrub, or permit electric wires to come into contact with any tree or shrub. During construction operations, each contractor or builder shall erect suitable protective barriers around public trees and shrubs which could be injured during construction, and shall obtain the City Forester's approval of the adequacy of such barriers before construction is commenced. No person shall fasten any sign, rope, wire or other material to or around or through any public tree or shrub without first obtaining permission from the City Forester. No person shall 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. No person shall 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 or parades.

(2) **Protection During Excavations.** All trees on any terrace/median or other public 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. During construction operations, each contractor or builder shall erect suitable protective barriers around public trees and shrubs which could be injured during construction, and shall obtain the City Forester's approval of the adequacy of such barriers before construction is commenced.

20.07 REMOVAL OF TREES AND STUMPS.

(1) **Dangerous, Obstructive and Infected Trees.** Any tree or part thereof, whether alive or dead, which the City Forester shall find to be infected, hazardous or a nuisance so as to endanger the general public or other trees, plants or shrubs growing within the City, or to be injurious to sewers, sidewalks or other public improvements whether growing upon public or private premises, shall be removed, trimmed or treated by the owner of the

property upon or adjacent to which such tree of part thereof is located. The City Forester shall give written notice to said owner to remedy the situation which shall be served personally or posted upon the affected tree. Such notice shall specifically state the period of time within which the action must be taken, which shall be not less than twenty four (24) hours nor more than fourteen (14) days as determined by the City Forester on the basis of the seriousness of the condition of the tree or danger to the public. If the owner shall fail to remove, treat or trim said tree within the time specified, the City Forester shall cause the tree to be removed, treated or trimmed and shall report the full cost thereof to the City Clerk, who shall thereupon enter such cost as a special charge against the property.

(b) **Removal Standards.** 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 nine (9) inches below grade measured in a straight line with the normal grade of sidewalk to top of nine (9) 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 as soon as practicable.

(c) **Private Removal.** No person, firm, organization or corporation shall plant, injure, trim, remove or destroy any tree or shrub located in or upon any public place, until a permit shall have been issued by the City Forester. Such permit shall be issued only when the removal, trimming or cutting of the tree or shrub is necessary as determined by the City Forester, because of disease, damage, hazardous condition, and/or location, or it location is such that substantial detriment is done to the property upon which the tree or shrub stands, or property abutting the same. Such permit shall expressly state the premises upon which the tree stands and the location of the tree thereon.

20.08 TREES INFECTED WITH DESTRUCTIVE DISEASES OR INSECTS THAT CONSTITUTE A POTENTIAL THREAT OR HAZARD TO THE URBAN FOREST; NUISANCE DECLARED.

(1) Public Nuisance Declared.

(a) The Common Council of the City, having determined that the health of the elm trees within the City is threatened by a fatal disease known as Dutch Elm disease *Ceratocystis Ulmi* (Buisman) hereby declares the following to be a public nuisance:

1. Any living or standing elm tree or part thereof infected with the Dutch Elm disease fungus or which harbors any of the elm bark beetles *Scolytus multistriatus* (Marsh.) or *Hylargophinus rufipes* (Eichh.).

2. 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 insecticide.

(b) The Common Council of the City having determined that the health of oak trees within the City is threatened by a fatal disease known as oak wilt disease (*Ceratocystis fagacearum*) hereby declares the following to be a public nuisance:

1. Any living or standing oak tree or part thereof infected with the oak wilt disease fungus.

2. Any dead oak tree or part thereof, including logs, branches, stumps, firewood or other oak material from which the bark has not been removed.

(c) The Common Council of the City, having determined that the health of ash and other trees within the City are threatened by destructive insects including but not limited to the Emerald Ash Borer (*Agilus planipennis*) or the Asian long-horned beetle (*Anoplophora glabripennis*) hereby declares the following to be a public nuisance:

1. Any living or standing tree or part thereof infested with these or other destructive insects.

2. Any dead tree or part thereof, including logs, branches, stumps, or other material infested with these or other destructive insects.

3. Any infested firewood or wooden packing or shipping materials infested with these or other destructive insects.

(2) Nuisances Prohibited. No person, firm, or corporation shall permit any public nuisances as defined in subsection (1) of this section to remain on any premises owned or controlled by him or her within the City.

(3) Inspection. The City Forester shall inspect or cause to be inspected all premises and places within the City to determine whether any public nuisance as defined herein exists thereon and shall also inspect or cause to be inspected any trees or materials reported or suspected to be infected with the diseases or insects listed in subsection (1) of this section.

(4) Abatement of Nuisances.

(a) If the City Forester upon inspection or examination in person or by some qualified person acting for him or her, shall determine that any public nuisance as herein defined exists in or upon any public street, alley, park or other public place, including the terrace strip between the curb and lot line within the City, and that the danger to other trees within the City is imminent, she or he shall:

1. Immediately cause it to be removed and the wood to be debarked, covered or chipped, or

2. Otherwise abate the nuisance in such a manner as to destroy or prevent as fully as possible the spread of these or other injurious diseases and insects.

(b) If the City Forester shall determine within reasonable certainty that any public nuisance as herein defined herein exists in or upon private premises and that the danger to other trees within the City is imminent, she or he shall immediately report the existence of

such nuisance to the Board of Park, Recreation and Forestry Commissioners and the Board shall, if it determines that such nuisance exists, cause notice to be served that the Board proposes the removal and destruction of such trees or materials as nuisances under this ordinance specifying the location and number of such trees or materials, and that a hearing will be held before the Board for the purpose of ordering the removal and destruction of such trees or materials. Such notice shall be served at least two (2) weeks prior to the date of the hearing before the Board and shall be served on the owner of the lot or parcel of land on which such trees or materials stand or his or her agent, or if neither is known and there is a tenant occupying said property then to such tenant, of the time and place at which said contemplated place of work and removal will be considered by the Board. After such hearing the City Forester, subject to the direction of the Board, shall abandon the work or proceed with it as he or she believes the best interests of the public require. In lieu of such removal by the City Forester, the City Forester may serve or cause to be served upon the owner of the property notice to abate such nuisance within thirty (30) days of the service of said notice. If such owner or occupant does not abate such nuisance within the time limited, the City Forester may cause the same to be abated. No damages shall be awarded to the owner for the destruction of any trees or any part or materials thereof pursuant to this section.

(5) Assessment of Costs of Abatement.

(a) The entire costs of abating any public nuisance as defined in subsection (1) of this ordinance may be chargeable to and assessed against the parcel or lot upon which such tree or material stands. The cost of abating any such nuisance which is located in or upon any park or public grounds, boulevards or public way shall be borne by the City.

(b) The City Forester shall keep strict account of the costs of work done under this ordinance for which assessments are to be made, stating and certifying the description of land, lots, parts of lots, or parcels of land and the amount chargeable to each. The City Clerk shall include in her or his report to the Common Council the aggregate amounts chargeable to each lot parcel as recorded by her and him and such amounts shall be levied and assessed against such parcels or lots in the same manner as other special taxes. Before such assessments are entered on the tax roll the Common Council shall hold a public hearing on the proposed assessments and shall give advance notice thereof not less than fourteen (14) days before the time set for such hearing by publication in the official newspaper or posting in at least four (4) conspicuous places.

(6) Transporting of Wood Prohibited. No person, firm or corporation shall transport within the City any bark bearing wood material infested with such diseases or insects without first securing the written permission of the City Forester.

(7) Removal or Pruning of Oak Trees Prohibited. No person, firm or corporation shall remove, trim or prune any oak tree or portion thereof between April 1 and August 1 without first securing the written permission of the City Forester.

(8) Interference with City Forester Prohibited. No person, firm or corporation shall prevent, delay or interfere with the City Forester or any of his or her agents or employees

while they are engaged in the performance of duties imposed by this ordinance.

20.09 VIOLATIONS.

Any person who violates any provision of this ordinance shall be subject to a penalty as prescribed by s. 30.04 of this Code, and shall have the costs of abatement or correction assessed as an additional penalty. Each day such violation continues shall be considered a separate offense. In addition to the forfeiture the city may require restitution for the fair market value of the trees or shrubs which were damaged or destroyed as a result of violation(s) of this ordinance.