

Ordinance 2023-03

Chapter 325: Trees and Shrubs

[HISTORY: Adopted by the Village Board of the Village of Theresa 6-3-1996 as Title 6, Ch. 4 of the 1996 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Brush, grass and weeds — See Ch. 127.

§ 325-1 Intent; applicability.

- A. Intent. It is the intention of this chapter to sustain environmental health and enhance the economic well-being of the neighborhoods of the Village through aesthetics of beauty, tranquility and integrity by promoting the planting and maintenance of trees and shrubs on both public and private property. This chapter establishes policy for an orderly, cost-effective system of achieving its intent with a minimum of danger or damage to persons, buildings, streets, curbs, sidewalks, overhead wires and all underground utilities. It also guards against the spread of disease and the damage or unnecessary removal of trees and shrubs of either the public or private sector.
- B. "Tree City" eligibility. The program goal is to maintain eligibility for annual recertification as a recognized "Tree City, USA."
- C. Applicability. The provisions of this chapter shall apply to all public trees and shrubs within the Village of Theresa unless otherwise specified.

§ 325-2 Definitions.

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

ARBORIST

A professional, specially trained person who makes a career of caring for the urban forest. Some arborists are self-employed, some work for tree care companies and others work for municipalities.

BOULEVARD OR TERRACE AREA

The land between the street curbing and sidewalk. Where there is no sidewalk, the area 10 feet from the private property line shall be deemed to be a boulevard.

CLEAR-SIGHT TRIANGLE

A triangle formed by the two intersecting rights-of-way and a third line connecting a full-view zone 30 feet from intersecting corners of streets and parking lot entrances. On both sides of a private driveway or alley the clear-sight triangle is reduced to 10 feet of the property lines.

MEDIAN BOULEVARD

"Boulevard area" also refers to the center or median boulevard on center boulevard streets.

PERSON

A person, firm, association or corporation.

PUBLIC AREA

Includes all public parks and other lands owned, controlled or leased (unless otherwise noted as part of the agreement) by the Village.

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 infested with injurious insects or pests; is injurious to public improvements; or endangers the life, health, safety or welfare of persons or property.

PUBLIC TREES AND SHRUBS

All trees and shrubs located or which will be located in or upon public areas.

RIGHT-OF-WAY (ROW)

The established and legally recognized distance from the center line of the associated street or road, improved or not, for the purpose of vehicular or pedestrian travel.

SHRUB

Any woody vegetation or a woody plant having multiple stems and bearing foliage from the ground up.

TOPPING

The practice of cutting back large-diameter branches of a mature tree to stubs.

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.

TREE MAINTENANCE SPECIFICATIONS

A manual prepared by the Forester/Arborist containing scientifically accepted standards for tree and shrub pruning, planting and removal. Included is a listing of acceptable and undesirable ROW tree species.

TRIMMING

Trimming (or pruning) by an arborist shall be accomplished according to current technical specifications of the National Arborist Association.

URBAN FOREST

Trees planted in the urban areas subjected to the alterations in the soil and other stresses resulting from the activities of urban life.

VILLAGE

The Village of Theresa.

VILLAGE FORESTER

A duly appointed Village official responsible for administering Village tree ordinances and physical maintenance of the urban forest.

§ 325-3 Administration.

- A. ~~The Citizens Tree Management Advisory Committee Village Parks Committee shall carry out the provisions of this chapter. It may designate one or more Village employees to perform the duty of Forester under Ch. 27, Wis. Stats., and authorize such Forester to perform the duties and exercise the powers of the Committee imposed by this chapter.~~
- B. ~~The Village Forester shall be properly trained and be responsible to the Director of Public Works. In carrying out the duties of this chapter, the Forester shall have the power to enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges, and other plants upon the right-of-way of any street, alley, sidewalk, park or other~~

public place in the Village.

§ 325-4 Right of entry.

~~The Village Forester or any trained representative may enter upon private premises at all reasonable times after 10 days' written notification to the owner at the last known address for the purpose of examining any tree or shrub located upon or over such premises to carry out the provisions of this chapter.~~

§ 325-5 Interference with Village Forester prohibited.

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

§ 325-6 Citizens Tree Management Advisory Committee.

~~A. There is hereby created a Citizens Tree Management Advisory Committee (for purposes of this chapter, the "Tree Committee") which shall serve in an advisory capacity to the Village of Theresa. The Committee shall advise the Village on all matters pertaining to tree and landscape planning, maintenance and development in the Village. The Committee shall consist of five members appointed by the Village Board to be composed of the following: one member from the Parks and Recreation Committee and four additional members representing the various civic groups and/or citizens of the Theresa area. Each Committee member will serve a three year period, except that the initial members shall serve staggered terms of office as determined by the Village Board. Committee members shall serve without compensation. In the event a vacancy occurs, the successor shall be appointed by the Village Board to fill the unexpired portion of the term.~~

~~B. Removal of a Citizens Tree Management Advisory Committee member will be by the majority consent of the Committee members with consent of the Village Board. Vote will be by roll call vote. Reasons for removal may include (but shall not be limited to) conflict of interest or lack of meeting attendance or participation.~~

§ 325-7 Assessment of costs.

A. Public property. The cost of treating or removing any tree or part thereof that is declared dangerous, diseased, dead or a nuisance which is located in or upon any park, terrace, cemetery or public grounds shall be borne by the Village.

B. Private property. The cost of treating or removing any tree or part thereof that is declared dangerous, diseased, dead or a nuisance which is located in or upon private premises, when removed under the supervision of the Forester, shall be assessed to the property owner.

- (1) ~~The Forester Parks Committee, or trained persons designated by the Forester Parks Committee, shall keep an accurate account of costs and forward the charges, including description of work, land description, and name and address of owner, to the Free Parks Committee Chairperson.~~
- (2) ~~The Free Parks Committee Chairperson will forward a complete copy of the assessment to the Clerk-Treasurer for processing and billing.~~
- (3) The Village Clerk-Treasurer shall mail a notice of the assessment to the private property owner at the last known address, stating that unless paid within 30 days such assessment will be entered on the tax roll as a special assessment 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.
- (4) The private property owner reserves the right to a public hearing before the ~~Free~~ Parks Committee if requested within five days after receiving the assessment.
- (5) The Village hereby declares that in making assessments under this section it is acting under its police power and no damage shall be awarded to any owner for the destruction of any dangerous, nuisance,

diseased or dead tree, wood or part thereof.

§ 325-8 Permit for maintenance and removal.

- A. Permit required. No person, except on order of the Village Forester Parks Committee, shall remove any trees or shrubs in public areas or cause such act to be done by others without written permit for such work from the Village Forester Parks Committee as herein provided. This includes all persons engaged in the business of cutting or removing trees or shrubs.
- B. Permit required and conditions. When an application for a permit is submitted, the Village Forester Parks Committee must decide that the proposed work described is in accord with the purpose of this chapter. The Forester Parks Committee must take into account safety, health and welfare and location of utilities, public sidewalks, driveways and streetlights.
- C. Permit exemption. No permit shall be required to cultivate, fertilize or water trees and shrubs on the property identified as Village boulevards/terraces.
- D. Permit form; expiration; inspection. Every permit shall be issued by the Village Forester Parks Committee on a standard form which is serial numbered and includes a description of the work to be done and shall specify the exact location. Any work under such permit must be performed in strict accordance with the provisions of this chapter. Permits issued under this section shall expire six months after date of issuance. There is a charge for the permit as prescribed by Chapter 167, Fees.
- E. Permits to public utilities.
 - (1) A permit may be issued, under this section, to a public utility to remove, trim, prune, cut, disturb, alter or do surgery on any public tree or shrub. The desired all-around clearance on primary conductor lines [7,200 volts] is 10 feet, and secondary conductor lines require five feet of clearance. The Village Forester shall limit the work to be done to the actual necessities of the utility and may assign an inspector to periodically review the work done under the provisions of the permit. The permittee shall adhere to the arboricultural specifications and standards of workmanship set forth in the permit. The expense of such inspection or supervision shall be charged to the appropriate public utility.
 - (2) A public utility may secure an annual working agreement with the Village Forester's office Parks Committee which gives the Village Forester Parks Committee the authorization to periodically review the work done associated with trees and shrubs according to the provisions of the permit.

§ 325-9 Planting permit; restrictions; landscape plans.

- A. Planting. As of the date of adoption of this chapter, all trees planted on all public property, including boulevards, within the Village of Theresa become the property of the Village.
 - (1) The permit for planting shall be issued by the Forester Parks Committee on a standard form which is serial numbered and includes the name, address and location of the plant site. Permits issued under this section shall expire six months after date of issuance. There is a charge for the permit as prescribed by Chapter 167, Fees.
 - (2) No person shall plant any tree, shrub or other vegetation in the public right-of-way terrace area, median center boulevard or any other public area without first obtaining a written permit for such work from the Village Forester Parks Committee. The request for such a permit shall specify the size, species and the variety of the tree, shrub or other vegetation to be planted along with the planting procedure and shall be submitted to the Village Forester Parks Committee for approval 10 working days before planting. The Village Forester Parks Committee shall maintain tree and shrub lists approved by the Village Board.
 - (3) There shall be a minimum distance of 18 feet between terrace area trees. Mature size and landscape variables must be considered. Side terrace trees shall be planted in equal distance between the sidewalk

or proposed sidewalk and the back of the curb or proposed back of curb.

B. Restrictions.

- (1) No person shall plant on any public or private premises situated at the intersection of two or more streets or alleys in the Village any hedge, tree, shrub or other vegetation planting which may obstruct the view of the operator of any motor vehicle or pedestrian approaching such intersection. The new plantings shall not be allowed in the clear-sight triangle as defined in § 325-2.
 - (2) Only small-statured trees or shrubs are authorized for planting under overhead utility wires. This applies to both public and private property. Tree lists are available at the Forester's office from the Village Parks Committee.
 - (3) Only shallow-root, small-statured trees or bushes are authorized for planting over underground utilities. This applies to both public and private property. Tree lists are available at the Forester's office from the Village Parks Committee.
- C. Public project landscaping. Public projects involving streets, terraces, parks and public buildings shall have a landscape plan identifying the proposed planting and layout of trees and shrubs submitted to the Village Board as a component of the preliminary application. This plan shall be approved by the Village Board previous to start of project. Specific measures shall be taken to include, to the extent possible, all existing trees as an integral part of the landscape development.
- D. Private project landscaping. Private industry, including manufacturing, commercial or retail, shall have a landscape plan identifying the proposed planting and layout of trees and shrubs submitted to the Village Board as a component of the preliminary application. This plan shall be approved by the Village Board previous to start of project. Specific measures shall be taken to include all existing trees as an integral part of the landscape development.

§ 325-10 **Trimming.**

- A. To ensure long-lived, high-quality shade trees, shaped for maximum aesthetic appreciation and to prevent interference with traffic and utility wires, all newly planted trees in public areas, including terraces, shall be trimmed and shaped for five years after planting.
- B. When trimming (pruning) is done by professionals, all trees in public areas, including boulevards, shall be done according to current technical specifications of the National Arborist Association and current safety specifications of the American National Standard for Tree Care Operations, ANSIZ133.1, and shall be OSHA approved. The Village recognizes the trimming specifications in the publication "Pruning Trees Near Electric Utility Lines" by Alex Shigo, former Chief Scientist and Pioneering Progress Leader, United States Forest Service, copyright 1990 or most recent, as the standards for trimming in the Village. Current publications and specifications are available from the office of the Village Forester Village Parks Committee.
- (1) It shall be the duty and responsibility of all property owners adjacent to any public right-of-way or public area, excluding center boulevards, to maintain all trees and shrubs encroaching on such public areas trimmed (pruned) according to the provisions of Subsections C and D noted below.
 - (2) In residential areas the trimming (pruning) of trees on street boulevards/ terraces adjacent to a residence is the duty and obligation of the owner. Specifications and procedures are available from the office of the Village Forester Parks Committee.
 - (3) The Village will maintain all trees, shrubs and lawns on all center boulevards.
- C. Trees and shrubs standing in or upon any boulevard/terrace or public area or upon any private premises

adjacent to any public right-of-way or public areas shall be kept trimmed so that the lowest branches projecting over the public street or alley provide a clearance of not less than 14 feet. The Village Forester Parks Committee may waive the provision of this subsection for newly planted trees if it is determined that they do not interfere with public travel or endanger public safety. The Village shall have the right to trim any tree or shrub in the Village when it interferes with the safe use of streets or sidewalks or with the visibility of any traffic control.

- D. Clearance from the sidewalk to the lower branches shall not be less than 10 feet. All trees standing upon private property in the Village, the branches of which extend over the line of the street, shall be trimmed (pruned) so that no branches shall grow or hang over the line of the sidewalk lower than 10 feet above the level of the sidewalk.
- E. All cuts above one inch in diameter shall be treated with a tree wound compound (consult Village Forester Parks Committee).

§ 325-11 Removal of trees and stumps.

- A. Dangerous, obstructive and infected trees. Any public tree or part thereof, whether alive or dead, which the Village Forester Parks Committee shall find to be infected, hazardous or a nuisance so as to endanger the public or other trees, plants or shrubs grown within the Village, or to be injurious to sewers, sidewalks or other public improvements, may be removed by the adjacent owner or the Village. Similarly affected trees on private property shall be removed, trimmed or treated by the owner of the property upon which the tree is located. The Village Forester Parks Committee shall give written notice to said owner to remedy the situation which shall be served personally or posted upon the infected tree. Such notice shall specifically state the period of time within which the action must be taken, which shall be within not less than six days nor more than 14 days unless emergency situations of risk to persons or property require removal in 24 hours as determined by the Village Forester Parks Committee 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 Village shall cause such action to be performed and the cost of such will be charged to the property owner.
- B. Stump removal. In cutting down trees located in public and boulevard areas, the tree must be removed with the root stump grubbed out, or ground out to the depth of at least seven inches below grade measured in 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 practical.
- C. Removed trees to be replaced. All removed public trees shall may be replaced with one or more trees, except for those which have been removed as a visibility hazard.
- D. Liability. Nothing in this chapter shall be deemed to impose any liability for damages or duty of care and maintenance upon the Village or upon any of its officers or employees. The person in possession of public property or the owner of any private property shall have a duty to keep the trees upon the property in a safe, healthy condition. Any person who feels a tree located, possessed, controlled or owned by him is a danger to the safety of himself, others or structural improvements on site or off site shall have the obligation to secure around the tree or support the tree, as appropriate, to safeguard both persons and improvements from harm.

§ 325-12 Damage to trees; protection of trees near excavations.

- A. Damage to public trees. No person shall, without the consent of the owner in the case of a private tree or shrub or without written permits from the Village Forester Parks Committee in the case of a boulevard/terrace tree, public tree or shrub, do or cause to be done 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 except to secure leaning or newly planted trees.

- (2) Break, injure, mutilate, deface, kill or destroy any tree or shrub or permit any fire to burn where it will injure any tree or shrub.
 - (3) Permit any toxic chemical, gas, smoke, oil or other injurious substance to seep, drain, or be emptied upon or about any tree or shrub, or place cement or other solid substance around the base of the same.
 - (4) Remove any guard, stake, or other device or material intended for the protection of a public tree or shrub or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water and fertilizer.
 - (5) Attach any sign, poster, notice or other object on any tree or fasten any guy wire, cable, rope, nails, screws or other device to any tree, except that the Village may tie temporary "no parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance work, or parades.
- B. Excavations. All trees on any center boulevards 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.

§ 325-13 Violations and penalties.

- A. The Director of Public Works is hereby charged with the responsibility for the enforcement of this chapter, in cooperation with the Village Forester Parks Committee, and may serve notice to any person, partnership, firm or corporation or other legal entity who or which violates any provision of this chapter by the institution of legal proceedings as may be required. Criminal complaints and/or violations of Village ordinance shall be turned over to the Police Department for investigation and forwarded to the Village Attorney or District Attorney for prosecution:
- (1) Offenses against property, Chapter **254**, Article **III** of this Code.
 - (a) Destruction of property.
 - (b) Damage to public property.
 - (c) Disturbing cemetery property.
 - (d) Penalties.
- B. In addition to the general penalty of this Code or any other penalty imposed for violation of any section of this chapter, any person who shall cause physical damage to or destroy any public property shall be liable for the cost of inventoried value or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates § **254-18** may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with the Wisconsin Statutes:
- (1) Chapter 943, Wis. Stats., Crimes Against Property.
 - (a) Section 943.01, Criminal damage to property.
 - (b) Section 943.012, Criminal damage to religious and other property.

§ 325-14 Appeals.

Any person who receives a determination or order under this chapter from the Village Forester Parks Committee and objects to all or any part thereof shall have the right to appeal such determination or order within five days of the order, subject to the provisions of Ch. 68, Wis. Stats., to the Village Board and filed with the Village Clerk-Treasurer within the allotted time. The Village Board shall hear such appeal within 30 days of receipt of written notice of the appeal. After such hearing the Village Board may reverse, affirm, or modify the order or determination appealed, and the grounds for its decision shall be stated in writing. The

Village Board shall by letter notify the party appealing the order or determination of its decision within 10 days after the hearing conclusion and file its written decision with the Village Clerk-Treasurer.

§ 325-15 **Declaration of public nuisances.**

- A. Purpose. The purpose of this section is to define unacceptable situations which are subject to abatement by the local government. Conditions and situations that jeopardize public health and safety are most commonly declared to be public nuisances. Hazardous trees and trees which obstruct travel or line of sight fall into this category.
- B. Public nuisances. Any tree, shrub or ground cover growing or standing on private property in such a manner that any portion thereof interferes with any public street, sidewalk, alley or intersection thereof to any person or persons lawfully using such trees, sidewalks, alleys or intersections shall constitute a public nuisance. The following specific items are public nuisances whenever they may be found within the Village of Theresa.
- (1) Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm Disease fungus, *Ceratocystis ulmi* (Buisman) Moreau, or which harbors any of the elm bark beetles, *Scolytus multistriatus*.
 - (2) Any dead elm tree or dead part of any elm tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed.
 - (3) The following trees are not recommended and therefore declared a public nuisance in the Village of Theresa:
 - (a) Box elder and silver maple. Both of these trees are close relatives, and both are classified as soft maples. The silver maple has shallow roots which will clog sewer lines and lift pavement. The wood of both trees is weak and very vulnerable to wind and ice damage. There is no fall color. The box elder is short-lived and produces a large seed crop.
 - (b) Poplar species and cottonwood. These trees have weak wood and shallow roots and are easily damaged by storms. Most species of poplar are very short-lived and susceptible to a number of insect pests and diseases.
 - (c) Siberian elm (also known as "Chinese elm"). This tree is susceptible to storm damage and produces a large amount of seed.
 - (d) Willow. This tree, while valued for its "weeping" form and fast growth, often becomes a nightmare for its owner. Willows are susceptible to numerous insect pests and diseases and have weak wood that breaks easily during storms, and, due to the affinity for water, their roots often clog drains and sewers.
- C. Negligent care of oak trees. It is hereby declared a public nuisance for any person owning, leasing or occupying or having charge of any premises in the Village of Theresa which has one or more oak trees located thereon to intentionally, negligently, accidentally, or otherwise maintain said premises in such a manner so as to cause harm to any of said oak trees by reason of any of the following conditions:
- (1) Water saturation or deprivation.
 - (2) Nailing, screwing, stapling, bolting, or otherwise attaching boards, fences, signs, placards, posters, or any other material which might cause injury to the oak tree.
 - (3) Neglect in the pruning or trimming of overgrown, diseased, decaying, dead, or rotting limbs, branches and foliage.

Jody Steger
Village President

6/20/2023
Date

Becky Tellier
Clerk-Treasurer

6/20/2023
Date

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