

Chapter 14
VILLAGE FORESTER AND FORESTRY

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VILLAGE FORESTER AND FORESTRY

Sec. 14.01 Intent and Purpose

1. Having determined that a well-managed urban forest provides many benefits to the Village, its residents and visitors, it is hereby declared to be the policy of the Village of Whiting, Wisconsin, to regulate, finance and control the planting, removal, maintenance, and protection of trees and shrubs upon or in all public areas of the Village in order to:
 - a. Promote and enhance the aesthetics and general welfare of the Village.
 - b. Eliminate and guard against dangerous conditions which may result in injury to persons using the public areas of the Village.
 - c. Prevent damage to any public sewer, water main, street, sidewalk, or other public property.
 - d. Protect trees and shrubs in public areas from undesirable and unsafe planting, removal, maintenance, and protection practices.
 - e. Protect all trees and shrubs from the damaging effects of construction, alteration, or repair of utility facilities and other improvements in any public area.
 - f. Guard all trees and shrubs both public and private, within the Village against the spread of disease, insects, or pests.
2. The provisions of this ordinance shall apply to all trees and shrubs presently or hereafter planted in or upon any public area; and to all trees and shrubs presently or hereafter planted in or upon any private premises which shall endanger the life, health, or safety of persons or property.

Sec. 14.02 Inter Departmental Coordination and Cooperation

1. Due to the complex nature and often-conflicting interrelationships between living plants such as trees, shrubs, and turf; and public improvements such as streets, sidewalks and underground facilities; it is recognized that there is a need to manage both plants and improvements in a manner that will minimize conflict and maximize the benefits to be realized from each.
2. Therefore, it is hereby declared to be the intent of the Village of Whiting, Wisconsin that there shall exist at all times, a policy of open communication and coordination between the various departments and divisions of Village government regarding the management, installation and maintenance of the plants or improvements for which they are each responsible.

Sec. 14.03 Definitions

1. The language in the text of this chapter shall be interpreted in accordance with the following rules of construction:
 - a. The singular number includes the plural number, and the plural the singular.
 - b. The word "shall" is mandatory; the word "may" is permissive.
 - c. The masculine gender includes the feminine and neuter.
2. In this chapter, unless the context clearly requires otherwise, the following words and phrases shall be defined as follows:
 - a. "Village" is the Village of Whiting, Wisconsin.
 - b. "Village Forester" shall mean the person designated by the Village under section 14.05 of this chapter, or his/her duly authorized representative designated to perform inspection or otherwise enforce the provisions of this chapter.
 - c. "Clear-vision triangle" shall mean a triangle shaped zone formed by the existing or proposed curb lines of two or more intersecting streets, roads, or alleys and a third line connecting said curb lines at a distance of thirty (30) feet in each direction from the point of curb line intersection, in order to provide vehicular traffic an unobstructed view of cross traffic at intersections.

- d. "Maintenance and protection" shall include all operations of trimming, pruning, spraying, injecting, fertilizing, treating, bracing, cabling and cutting any tree or shrub above or below ground.
- e. "Permit" shall mean written permission from the Village Forester to perform maintenance and protection on any public tree or shrub or do construction (as defined in section 14.10) in the vicinity of any public tree or shrub. Any permit may include specifications which shall be complied with, and any special provisions applicable to the purpose of the permit.
- f. "Person" shall mean any individual, firm, partnership, association, corporation, or government entity.
- g. "Public way" shall include all public streets, roads, boulevards, median strips, alleys, and sidewalks.
- h. "Public area" shall include all public ways, parks, and other lands owned, controlled, or leased by the Village.
- i. "Public nuisance" shall mean any tree, shrub, or part thereof which by reason of its condition and location has been declared to be a public nuisance under section 14.07 of this ordinance.
- j. "Tree" shall mean a woody plant usually with a single stem unbranched at the base, reaching a height of twelve feet or more.
- k. "Shrub" shall mean a woody plant usually with multiple stems branched at or near the base, reaching a height of less than twelve feet.
- l. "Public trees and shrubs" shall mean any tree or shrub as herein defined, presently or hereafter planted in or upon any public area.
- m. "Street tree" shall mean any public tree presently or hereafter located in the public way between the curb and public sidewalk, or between the curbs of a median strip, or in the equivalent location with respect to future curb, sidewalk or median strips where such curbs or sidewalk are not yet installed.
- n. "Park Tree" is herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the Village or to which the public has free access as a park.
- o. "Well Field Tree" is herein defined as trees, shrubs, bushes and all other woody vegetation in the Village well field.
- p. "Topping also known as heading, hat racking, dehorning, or rounding over shall mean the cutting of large diameter branches at a point between lateral shoots thereby leaving stubs and resulting in substantial size reduction and destruction of the natural form and shape of a mature tree.
- q. "Tree protection zone" shall mean a zone of protected space surrounding any public tree extending from the topmost branch or leader downward to a distance of thirty-six (36) inches below the surrounding ground surface level. The radial dimension from the center of the tree to the outermost horizontal limit of the zone is determined by the diameter of said tree as measured at four and one half (4 ½) feet above ground surface level and is further defined in the "Forestry Specifications for Construction on Public Lands" as adopted in section 14.04 of this ordinance.

Sec. 14.04 Standards and Specifications

- 1. The most recent version of following documents, each in its entirety, are hereby adopted and made a part of this ordinance upon passage.
 - a. "Village of Whiting Forestry Specifications for Construction on Public Lands."
 - b. ANSI A300-1995 "American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices"
 - c. ANSI Z60.1-1996 "American Standard for Nursery Stock"

Sec. 14.05 Village Forester

1. Powers and Duties. The Village Forester shall have the following general powers and duties:
 - a. To direct, manage, supervise, and control the Village's forestry program to include the planting, removal, trimming, maintenance, and protection of all trees and shrubs in or upon all public areas of the Village; to supervise parks department personnel and private contractors in the planting, removal, trimming, maintenance, and protection of said trees and shrubs.
 - b. To cause the provisions of this ordinance to be enforced.
 - c. To guard all trees and shrubs within the Village against the spread of plant diseases, insects or pests; to eliminate conditions which may endanger the life, health, or safety of persons or property?
 - d. To use all available means of communication to inform the public concerning the forestry program, tree, and shrub care. The Village Forester shall, upon request by the owner or occupant of private property, examine and recommend the proper care or treatment of trees or shrubs, to be affected by the owner at his expense. There shall be no charge to the owner for the examination.
 - e. To implement and direct a Village Urban Forestry Management Plan.
 - f. Such other powers and duties as are provided by the laws of Wisconsin, particularly sections 27.08 and 27.09 of the Wisconsin statutes, and by ordinances of the Village of Whiting.
2. Authority to Preserve and Remove Public Trees and Shrubs. The Village Forester shall have the authority to plant, remove, maintain, and protect all public trees and shrubs or cause such work to be done as may be necessary to preserve the beauty of public areas, and to protect life and property.
3. Authority to Enter Private Premises. The Village Forester or his/her authorized representative shall have the authority to enter upon private real estate, excluding any buildings thereon, at reasonable times for the purposes of examining or taking the necessary samples of any suspected nuisance tree or shrub located upon or over such premises, and enforcing the provisions of this ordinance. All nuisance trees and shrubs to be removed pursuant to Section 14.07 of this ordinance may be appropriately marked by the Village Forester.
4. Interference Prohibited. No person shall interfere with the Village Forester or his/her authorized representative while engaged in the execution or enforcement of this ordinance.

Sec. 14.06 Village Tree Board

1. Village Tree Board. There is hereby created and established a Village Tree Board for the Village of Whiting, State of Wisconsin, which shall consist of five members, citizens and residents of this Village, one of whom shall be a Village Trustee, who shall be appointed by the President with the approval of the Village Board of Trustees. The Village President shall appoint one Member to be chairman who shall serve at the pleasure of the President.
2. Term of Office. The term of the persons to be appointed by the President shall be three years except that the term of two of the members appointed to the first board shall be for one year and the term of two members of the first board shall be for two years. The Trustee shall be appointed for two years. In the event that a vacancy shall occur during the term of any member, their successor shall be appointed for the unexpired portion of the term. The Village designated Village Forester shall serve ex officio on the Board with no voting privileges.
3. Compensation. Members of the Board shall serve without compensation.
4. Duties and Responsibilities. It shall be the responsibility of the Board to study, investigate, council and develop and/or update annually and administer a written plan for the care, preservation, pruning, planting, replanting, removal of trees and shrubs in parks, along streets and in other public areas and the well field. Such upon their acceptance and approval shall constitute the official comprehensive Village tree plan for the Village of Whiting. The Board, shall

consider, investigate, make findings, report, and recommend upon any special matter of question coming within the scope of its work.

5. Operation. The Board shall make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.
6. Interference with Village Tree Board. It shall be unlawful for any person to prevent, delay or interfere with the Village Tree Board, or any of its agents while engaging in and about the planting, mulching, pruning or removing of any Street Trees, Park Trees, or trees on private grounds, as authorized in this ordinance.
7. Review by Village Board of Trustees. The Village Board shall have the right to review the conduct, acts, and decisions of the Village Tree Board. Any person may appeal any ruling or order of the Village Tree Board to the Village Board who may hear the matter and make a final decision.

Sec. 14.07 Public Nuisance, Declaration and Abatement

1. The Village board hereby declares any of the following to be a public nuisance and therefore subject to abatement pursuant to subsection (3) of this section:
 - a. Any tree or shrub or part thereof located upon any public or private property except in any area zoned conservancy, which by reason of its condition interferes with the use of a public area, is infected with an infectious plant disease, is infested with injurious insects or pests, is injurious to public improvements, is dead or cannot substantially support foliage, or endangers the life, health or safety of persons or property.
 - b. Dutch Elm Disease, defined as follows:
 1. Any living or standing elm tree or part thereof infected with the Dutch Elm Disease fungus *Ceratocystis ulmi* (Buisman), or which harbors any of the elm bark beetles *Scolytus multistriatus* (Eichh.) Or *Hylurgopinus rufipes* (Marsh).
 2. Any dead elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material not buried, burned, or from which the bark has not been removed.
 - c. Oak Wilt Disease, defined as follows:
 1. Any living or standing tree or part thereof in the red oak group such as red oak, pin oak, northern pin oak, scarlet oak and black oak colonized to any degree with the oak wilt fungus, *Ceratocystis fagacearum*.
 2. Any living or standing tree in the white oak group such as white oak, bur oak and bicolor oak, colonized to any degree by the oak wilt fungus, which poses a threat of transmission of the oak wilt fungus to other trees of the same species through interconnected root systems.
 3. Any parts of colonized oaks that do not have bark removed, including logs, branches, stumps, and firewood.
2. Public nuisances prohibited. No person shall permit any public nuisance as defined in subsection (1) of this section to remain in or upon any premises owned or leased by that person within the Village.
3. Abatement of Public Nuisances.
 - a. Public Areas. Whenever the Village Forester shall find on examination that a public nuisance as herein defined exists upon any public area, he/she shall immediately cause such nuisance tree, shrub, or part thereof to be treated, trimmed, removed, or otherwise abated in such a manner as to destroy or prevent the spread or continuance of the nuisance. The manner in which the nuisance shall be abated shall be determined by the Village Forester.
 - b. Private Premises. The Village shall have the right to cause the removal of any dead or diseased trees on private property within the Village, when such trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the Village. The Village Tree Board will notify in writing the owners of such

trees. Removal shall be done by said owners at their expense within thirty days after the date of service of notice. In the event of failure of owners to comply with such provisions, the Village shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice. No pruning or removal of oak trees shall occur between April and July.

- c. Abatement by Village. If the owner of such private premises, or his/her agent, shall refuse or neglect to comply with the terms of the written notice within the time specified, the Village Forester shall cause the public nuisance to be abated and shall report the expense thereof to the Village clerk who shall enter it as a charge against the property upon which the nuisance is located. No damage shall be awarded to the owner for the destruction of trees or shrubs pursuant to this section.

Sec. 14.08 Prohibited Acts Regarding Public Trees and Shrubs

1. Injury to Public Trees and Shrubs Prohibited. No person shall, without written permission from the Village Forester, do or cause to be done any of the following:
 - a. Secure, fasten, or run any rope, wire, sign, electrical installation or other device or material to, around, or through any public tree or shrub except in an emergency such as a storm or accident.
 - b. Break, injure, mutilate, deface, kill, or destroy any public tree or shrub.
 - c. Top any Street Tree, Park Tree, Well Field Tree, or other trees on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Village Tree Board.
 - d. Permit any toxic chemical, gas, smoke, oil, or other injurious substance to seep, drain, or be emptied upon or about any public tree or shrub. Except routine winter street maintenance by the Village.
 - e. Excavate any ditch, tunnel, or trench, or lay any drive, sidewalk, or other impermeable surface within the tree protection zone of any public tree or shrub.
 - f. Erect, alter, repair, raze, or excavate within the tree protection zone of any public tree or shrub without placing suitable guards approved by the Village Forester around such trees and shrubs which may be injured by such operations.
 - g. Remove any guard, stake, or other device or material intended for the protection or support of any public tree or shrub.
 - h. Place any earth fill, rock, trash, or other material within the tree protection zone of any public tree or shrub which may compact or prevent the entry of air and water to the root zone.
2. Clear-vision triangle. No tree, shrub, hedge, or other growth exceeding thirty (30) inches in height above street grade shall be permitted in any clear-vision triangle within the Village.
3. Obstruction of Signs, Signals, Travel. All trees and shrubs located upon any public way or upon any private premises adjacent to the public way shall be kept trimmed so that the lowest projecting branches provide a clearance height of not less than sixteen (16) feet above the travel portion of a public street, and not less than eight (8) feet above the public sidewalk. The Village Forester may waive the provisions of this section for newly planted or naturally low-profile trees if he/she determines that they do not interfere with public travel, obstruct the light of any streetlight, obstruct the view of any traffic sign or signal, or endanger public safety.
4. Any tree or shrub or part thereof found to be in violation of the provisions of subsection (2) and (3) of this section shall be declared to be a public nuisance and shall be subject to abatement as set forth in section 14.07(3) of this ordinance.

- a. A property owner receiving notice to abate a public nuisance as specified in subsection (4) of this section shall have the right to contest such taking by the Village Forester and shall have such rights as are provided in Chapter 32 of the Wisconsin statutes relating to the "taking of real property."

Sec. 14.09 Planting, Removal, Maintenance and Protection of Public Trees And Shrubs

1. Public tree Care. The Village shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, public grounds, and the Village well field as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Village Tree Board may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of said trees is in accordance with this ordinance.
2. Permit Required. No person shall plant, remove, maintain or protect any public tree or shrub, or cause such work to be done without obtaining a written permit from the Village Forester.
3. Application and Approval. Any person desiring to plant, remove, maintain, or protect any public tree or shrub shall apply in writing to the Village Forester for a permit to do such work. Such application shall specify the location and description of the proposed work. If the Village Forester determines that the proposed work is necessary and in accord with the purposes of this ordinance, taking into account the safety, health, and welfare of the public, location of utilities, public sidewalks, driveways and streetlights, general character and aesthetic quality of the area in which the tree or shrub is located or proposed to be located, and the soil conditions and physiological needs of the tree or shrub, he/she shall issue a permit to the applicant.
4. Permit Form, Expiration, Compliance, Inspection. Permits shall be issued by the Village Forester on the standard form for this purpose and shall include a description of the work to be done, and shall specify the genus, species, variety, size, grade, and location of trees or shrubs to be planted, if any. Any work done under such permit shall be performed in strict compliance with the terms thereof and with the arboricultural specifications and standards set forth under subsection (5) of this section. The Village Forester may inspect all work performed pursuant to this section. Permits issued under this section shall specify an expiration date not to exceed six (6) months after the date of issuance.
5. Permit Exemptions. No permit shall be required to water or fertilize any public tree or shrub or to take the necessary action to guard the public safety or clear the public way in the event of a storm, accident or other emergency.
6. Street Tree Plantings. In order to provide as diverse of a community tree population as possible it is recommended that no more than 19% of any one Genus e.g. (oaks, maples, crabapples etc.) be planted along Village right of way. No shrubs, multi-trunked trees or evergreen tree may be planted upon Village right of way. The following tree species may not be planted upon Village right of way, due to poor structure, being short lived or invasive: box elder, any true ash, any populus, silver maple, amur maple, any Norway maple or its cultivars, black locust, Canada red cherry, Newport plum, or Russian olive. The list may be revised periodically by the Village Tree Board.
7. Tree Planting on Village Boulevards. Only small or medium sized trees as defined in this section may be planted on boulevards/terraces (areas between curb and sidewalk) that are less than five feet but must be more than four feet in width. Large sized trees must be planted in boulevards wider than five feet. All trees planted in boulevards shall be placed in the approximate middle of the boulevard.

8. Spacing between planted Street Trees. Spacing of street trees along Village right of way shall be 30 feet for small, 40 feet medium and 50 feet large trees whose mature heights reach 30 feet for small trees, 30-50 feet medium, and taller than 50 feet for large trees. The Manual of Woody Landscape Plants by Michael Dirr will serve as the resource to seek mature height guidance. These standards shall remain except for special planting designs that are approved by the Tree Board.
9. Distance from Street Corners, Driveways and Fireplugs. No street tree shall be planted closer than 35 feet to any street corner, measured from the point of nearest intersecting curbs or curb lines. No street tree shall be planted closer than 20 feet to any fireplug or driveway.
10. Utilities. Small trees as defined in this section of this ordinance may be planted under any overhead utility wire; no medium or large sized trees may be planted within 20 lateral feet of any overhead wire. No trees may be planted over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.
11. Arboricultural Specifications and Standards. The following specifications and standards are hereby established for the planting, pruning, and removal of all public trees and shrubs within the Village.
 - a. Planting.
 1. No tree shall hereafter be planted which is less than one and one half (1½) inches in diameter at six (6) inches above the ground.
 2. No street tree shall be planted closer than two (2) feet from the curb line or the street edge of the sidewalk.
 3. No street tree shall be planted less than ten (10) feet from any driveway or fire hydrant, or within the designated clear-vision triangle or less than thirty (30) feet from any street corner, whichever is greater.
 - b. Pruning. Corner Clearance
 1. Every owner of any tree overhanging any street or right-of-way within the Village shall prune the branches so that such branches shall not obstruct the light from any streetlamp or obstruct the view of any street intersection and so that there shall be a clear space of 8 feet above the surface of the public sidewalk and not less than 16 feet above the travel portion of a public street. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The Village shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign.
 - c. Removal.
 1. Trees shall be completely removed from the growing site and disposed of in the proper manner. Any person or firm engaged in the removal of any public tree or shrub, shall have the necessary limits of insurance and shall be held liable for any injury or damage to persons or property.
 2. Stumps and roots which elevate driveways, sidewalks and/or boulevards shall be removed from the growing site by grinding or other means to a depth suitable for the future planting of trees, shrubs, or turf. The hole created by removal of a stump shall be filled to the level of surrounding grade with mineral topsoil, tamped to prevent settling, and seeded with mixture of grass species appropriate for the site.
 - d. Spraying, injecting, fertilizing, bracing, cabling, or other arboricultural operations or treatments shall be performed in a neat and professional manner according to accepted arboricultural standards and in compliance with all laws governing the use of pesticides.

Sec. 14.10 Tree Protection During Construction in A Public Area

1. Definitions.

- a. For the purposes of this section, "public tree" as defined in section 14.03 of this ordinance shall be extended to include any tree located on private property adjacent to a public area, with any part of the tree protection zone of such tree extending into the public area.
- b. "Construction" shall mean the installation, alteration, repair, replacement or relocation of any of the following:
 1. Any street, curb, sidewalk, pavement, streetlight, traffic signal, or other surface structure.
 2. Any underground utility distribution and service facility including water pipe, sanitary and storm sewer, gas pipeline, electric power and communication wire, cable, conduit, duct and associated vaults, manholes, pull boxes, and any irrigation facilities.
 3. Any overhead wire, cable and associated support structure.
2. No individual person, firm, partnership, association, corporation or government entity, except as provided in subsection (6) of this section, shall do or cause to be done, any construction as herein defined, in any public area in the Village prior to consulting with our Village Forester.

Sec. 14.11 Cost of Planting, Removal, Maintenance, And Protection of Public Trees And Shrubs

The entire cost of planting, removal, maintenance, and protection of trees and shrubs in all public areas of the Village when performed by department employees or their contractors at the direction of the Village Forester, shall be borne by the Village out of the department budgets, or from funds donated or otherwise acquired for this purpose. When a private party other than the Village plants, removes, maintains, or protects public trees or shrubs pursuant to Section 14.09(1) of this ordinance, said party shall incur all expenses connected therewith.

Sec. 14.12 Appeal from Order of the Village Forester.

A person who receives an order from the Village Forester and objects to all or part thereof may, within ten (10) days of receipt of order, notify the Village Forester in writing of the nature of the objection and request a conference with the Village Forester, who shall schedule such a conference within ten (10) days of receiving the request. If the person objecting to the order wishes to further appeal the results of the conference, that person may, within ten (10) days of the conference, make a written request to appeal the order by requesting a hearing before the Village board. The Village board shall schedule a hearing of the appeal within fifteen (15) days of receiving the appeal. Within ten (10) days of the hearing the Village board shall notify the appellant of its decision in writing. The Village board may affirm, cancel, or modify the order, in its discretion, to best conform such order to the intent of this ordinance. The decision of the Village board shall become final.

Sec. 14.13 Penalties

Every person convicted of a violation of this section shall suffer forfeiture not to exceed \$1,000.00 together with costs of prosecution, and in lieu of payment assessed imprisonment for a period not to exceed thirty (30) days in the county jail. In addition to the forfeiture the Village may require restitution for the fair market value of the tree(s) and /or shrub(s) which were damaged or destroyed as result of violation of this ordinance.

Sec. 14.14 Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision will not affect the validity of any other section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional.