

Chapter 424

TREES AND SHRUBS

[HISTORY: Adopted by the Village Board of Trustees of the Village of Hixton 10-6-1987 (Title 4, Ch. 4, of the 1987 Code of Ordinances). Amendments noted where applicable.]

§ 424-1. Intent; applicability.

- A. Intent and purpose. It is the policy of the Village 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 Village 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 Village; 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 Village 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.

§ 424-2. Definitions.

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

BOULEVARD OR TERRACE AREAS — The land between the normal location of the street curbing and sidewalk. Where there is no sidewalk, the area four feet from the curblin shall be deemed to be a boulevard for the purpose of this chapter. "Boulevard" shall have the same meaning as "terrace." Where there are only sidewalks, the area four feet from the curb shall be deemed boulevard areas under this chapter.

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.

FORESTER — Person designated by the Village Board as authorized to carry out provisions of this chapter.

MAJOR ALTERATION — Trimming a tree beyond necessary trimming to comply with this chapter.

PERSON — Person, firm, association or corporation.

PUBLIC AREAS — Includes all public parks and other lands owned, controlled or leased by the

Village except the terrace areas.

PUBLIC NUISANCE — In this chapter, means: [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

- A. Dutch Elm disease.
- B. Elm bark beetles *Scolytus multistriatus* (Eichb.) or *Hylurgopinus rufipes* (Marsh.).
- C. Any living or standing elm tree or part thereof infected with the Dutch Elm disease fungus or in a weakened condition which harbors any of the elm bark beetles *Scolytus multistriatus* (Eichb.) or *Hylurgopinus rufipes* (Marsh.).
- D. 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 concentrate.
- E. Any other deleterious or fatal tree disease.
- F. Any tree or part thereof which by reason of its condition and location is hazardous or dangerous to persons and property using or upon any public street, sidewalk, alley, park or other public or private place, including the terrace strip between curb and lot line.
- G. Any tree or part thereof which is infested by the eastern tent caterpillar or other defoliating larvae.

PUBLIC PROPERTY — Owned or controlled by the Village, including, without limitation because of enumeration, public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards, and the terrace strip between the lot line and the curb or improved portion of any public way. [Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

PUBLIC TREES AND SHRUBS — All trees and shrubs located or to be planted in or upon public areas.

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

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.

§ 424-3. Authority of Village Forester to enter private premises.

- A. The Village Board may designate a municipal employee or citizen to perform the duties of Forester under Chapter 27, Wis. Stats., and may authorize such Forester to perform the duties and exercise the powers imposed on the Village Board by this chapter. The Village Forester shall annually be appointed by the Village President, subject to Board confirmation, at the Board's organizational meetings.
- B. The Village Forester or his authorized representative may 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.¹

§ 424-4. Abatement of tree disease nuisances.

- A. Dutch elm and other tree diseases a public nuisance. Whereas the Village Board has determined that there are many trees growing on public and private premises within the Village, 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 Village, and that the health and life of such trees is threatened by fatal diseases such as Dutch Elm disease, which is spread by the elm bark beetles *Scolytus multistriatus* (Eichb.) or *Hylurgopinus rufipes* (Marsh.), the Village Board hereby declares its intention to control and prevent the spread of such disease and the insect pests and vectors which carry such diseases and specifically declares Dutch Elm disease and the elm bark beetles which carry such disease to be public nuisances.²
- B. Inspection.
- (1) The Village Forester shall inspect or cause to be inspected all premises and places within the Village to determine whether any public nuisance exists thereon. He shall also inspect or cause the inspection of any elm tree reported or suspected to be infested with the Dutch Elm disease or any elm-bark-bearing materials reported or suspected to be infested with elm bark beetles.
 - (2) Whenever necessary to determine the existence of Dutch Elm disease or elm bark beetles in any tree, the person inspecting such tree shall remove or cut specimens from the tree in such manner as to avoid fatal injury thereto and deliver such specimens to the Forester, who shall forward them to the Wisconsin Department of Agriculture, Trade and Consumer Protection at Madison for analysis to determine the presence of such nuisances. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]
 - (3) The Forester and his agents or employees shall have authority to enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this subsection.
- C. Abatement of nuisances; duty of Forester.
- (1) The Forester shall order, direct, supervise and control the abatement of public nuisances as defined in this section by spraying, removal, burning or by other means which he determines to be necessary to prevent as fully as possible the spread of Dutch Elm disease fungus, other deleterious tree diseases or the insect pests or vectors known to carry such diseases.
 - (2) Whenever the Forester after inspection or examination shall determine that a public

1. Editor's Note: Original Sec. 4-4-4 of the 1987 Code of Ordinances, *Interference with Village Forester*, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II). See now § 424-12C, *Interference with Forester*.

2. Editor's Note: Original Sec. 4-4-5(b) of the 1987 Code of Ordinances, *Definitions*, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II). See now § 424-2, *Definitions*.

nuisance as herein defined exists on public property in the Village, he shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch Elm disease, other deleterious tree diseases, or the inspect pests or vectors known to carry such disease fungus.

(3) Notice and hearing to abate nuisance.

- (a) When the Forester shall determine with reasonable certainty that a public nuisance exists upon private premises, he shall immediately serve or cause to be served personally or by registered mail upon the owner of such property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance and of a time and place for a hearing, not less than 14 days after service of such notice, on the abatement action to be taken. Such notice shall describe the nuisance and recommend procedures for its abatement, and shall further state that unless the owner shall abate the nuisance in the manner specified in the notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of trees in the Village, the Forester shall cause the abatement thereof at the expense of the property served. If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the Village.
- (b) If, after hearing held pursuant to this subsection, it shall be determined by the Village Board that a public nuisance exists, it shall forthwith order the immediate abatement thereof. Unless the property owner abates the nuisance as directed within five days after such hearing, the Forester shall proceed to abate the nuisance and cause the cost thereof to be assessed against the property in accordance with the procedures provided in this section. The Forester may extend the time allowed the property owner for abatement work but not to exceed 10 additional days.

D. Spraying.

- (1) Whenever the Forester shall determine that any tree or part thereof is infected with a deleterious or fatal tree disease or is in a weakened condition or harbors elm bark beetles, he may cause all trees within a 1,000-foot radius thereto to be sprayed with an effective, disease-destroying concentrate or other insecticide.
- (2) In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this subsection, the Forester shall cause to be given advance public notice of such operations by newspaper, radio, television, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least 24 hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Forester shall also notify the Chief of Police, who shall take all necessary steps to make and enforce temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each block of any affected street at least 24 hours in advance of spraying operations.

- (3) When appropriate warning notices and temporary "no parking" notices have been given and posted in accordance with Subsection D(2) of this section, the Village shall not allow any claim for damages to any vehicle caused by such spraying operations.
- (4) When trees on private property are to be sprayed, the Forester shall notify the owner of such property and proceed in accordance with the requirements of Subsection C(3).

§ 424-5. Assessment of costs of abatement.

- A. The entire cost of abating any public nuisance or spraying trees as defined herein shall 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 in accordance with § 66.0627 or § 27.09, Wis. Stats. The cost of abating any such nuisance or part thereof which is located in or upon any park shall be borne by the Village. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]
- B. The cost of abating a public nuisance or spraying elm trees or elm wood located on private premises when done at the direction and under the supervision of the Forester shall be assessed to the property on which such nuisance, tree or wood is located, as follows:
 - (1) The Forester shall keep a strict account of the cost of such work or spraying 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 Village Board on or before October 15 of each year.
 - (2) Upon receiving the Forester's report, the Board shall hold a public hearing on such proposed charges, giving at least 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 Village Board 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 Village Clerk-Treasurer 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 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.
 - (5) The Village 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.

§ 424-6. Permit for planting, maintenance and removal of trees and shrubs.

- A. Permit required. No person, except upon order of the Village Forester, shall plant or remove, or perform major alterations as determined by the Forester, on a tree or shrub in the public right-of-way terrace area or cause such act to be done by others without first obtaining a written permit for such work from the Village Forester as herein provided. The applicant shall comply with the planting standards of § 424-7.
- B. Permit exemptions. No permit shall be required to cultivate, fertilize or water trees or shrubs or for work by Village personnel on park properties. No permit is necessary to plant trees inside the property line.
- C. Permit requirements and conditions. If the Village Forester determines that the proposed work or planting described in an application for a permit is necessary and in accord with the purposes of this chapter, taking into account the safety, health and welfare of the public, location of utilities, public sidewalk, driveways and streetlights, general character of the area in which the tree or shrub is located or proposed to be located, type of soil, characteristics and physiological need of the genus, species and variety of tree or shrub, he shall have the Forester issue a permit to the applicant.
- D. Permit form; expiration; inspection. Every permit shall be issued by the Village Forester on a standard form and shall include a description of the work to be done and shall specify the genus, species and variety, size, nursery grade and location of trees or shrubs to be planted, if any. Any work under such permit must be performed in strict accordance with the terms thereof and the provisions of this chapter. Permits issued under this section shall expire six months after date of issuance. There will be no charge for this permit.
- E. Permits to public utilities.
 - (1) Whenever a permit is issued under this section to a public utility to remove, trim, prune, cut, disturb, alter or perform surgery on any public tree or shrub, the Village Forester shall limit the work to be done to the actual necessities of the utility and may assign an inspector to supervise the work done under the provisions of the permit. The expense of such inspection or supervision shall be charged to the utility at the usual Village rate.
 - (2) A public utility may secure an annual working agreement with the Village Forester's office which gives the Village Forester the authorization to supervise and direct work associated with trees and shrubs.

§ 424-7. Planting of trees and shrubs.

- A. Purpose. The Village Board hereby states its determination that the planting, care and protection of the trees within the Village is desirable for the purposes of beauty, shade, comfort, 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 Village Forester shall recommend to the Village Board a program for tree planting, care and protection for public parks. The Board shall also encourage the planting, care and protection of trees and shrubs on private premises within the Village.

C. Planting.

- (1) The size and genus, species and variety of trees and shrubs to be planted in public areas and boulevards and the manner of planting shall be submitted to the Village Forester for approval before commencement of such work. The permit application process is required in § 424-6.
- (2) There shall be a minimum distance of 16 feet and a recommended distance of 25 feet to 50 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 three feet wide, planting will not be permitted. Terrace area trees shall be a minimum of 25 feet from an intersection.
- (3) Evergreen trees shall not be planted in a terrace area.
- (4) 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 eight inches in height above the top of the nearest curb.
- (5) Tree grates shall be provided for terrace trees surrounded by concrete by the adjacent property owner and shall be level with adjacent concrete.

D. Unlawfully planted trees. Trees, plants or shrubs planted within any terrace or planting easement without the authorization and approval of the Forester may be removed. The 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 to be accomplished within the time specified, the Village may remove such trees, plants or shrubs and assess the costs thereof to the owner.

E. Frames. Any person adjacent to whose land any shade or ornamental tree or shrub is growing in any street may, for the purpose of protecting such tree or shrub, surround the same with a suitable box or frame for protection, but all such work shall be performed under the supervision and direction of the Village Forester.

§ 424-8. Trimming.

- A. Trees and shrubs standing in or upon any boulevard, 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 may waive the provisions of this section for newly planted trees if he determines that they do not interfere with public travel, obstruct the light of any streetlight or endanger public safety.
- B. The necessity of the pruning may be determined by the Village Forester.
- C. Clearance from sidewalk to 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 so that no branch shall grow or hang over the line of the sidewalk lower than 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. Trimming or pruning of more than 2/3 of the crown shall be considered to be a major alteration and shall require a permit from the Village Forester.

§ 424-9. 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 or more streets or alleys in the Village any hedge, tree, shrub or other growth which may obstruct the view 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 Village. 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, and the Village 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 10 days of receipt of notice, to take such necessary steps, the Village Forester and/or Public Works Department employees shall order the Village 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.
- D. Any person who is an owner or occupant or firm or corporation failing to obey the written notice of the Village Forester as specified in Subsection C above shall, upon conviction thereof, be subject to a forfeiture as established in Chapter 1, General Provisions, § 1-3, of this Code.

§ 424-10. Removal of trees and stumps.

- A. Dangerous, obstructive and infected trees. Any tree or part thereof, whether alive or dead, which the Village Forester shall find to be infected, hazardous or a nuisance so as to endanger the public or other trees, plants or shrubs growing within the Village, 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 or part thereof is located. The Village 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 within not less than 24 hours nor more than 14 days as determined by the Village 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 limit, the Village Forester shall cause the tree to be removed,

treated or trimmed and shall report the full cost thereof to the Village Clerk-Treasurer, 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 inches below grade measured in a straight line with the 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. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]
- 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 Village Forester. Such permit shall be issued only when the removal, trimming or cutting of the tree or shrub is necessary, as determined by the Village Forester, because of disease, damage, hazardous condition, and/or location, or its 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.

§ 424-11. Prohibited acts.

- 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 in the case of a terrace-area tree, public tree or shrub, 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 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.
 - (6) Cause or encourage any fire or burning near or around any tree.
- B. Excavations. 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 10 feet from any public tree without a permit from the Village Forester.

C. Interference with Forester. No person shall:

- (1) Interfere with or prevent any acts of the Forester or his agents or employees while they are engaged in the performance of duties imposed by this section.
- (2) Refuse to permit the Forester or his duly authorized representative to enter upon his premises at reasonable times to exercise the duties imposed by this section.

D. Refusal to abate nuisance. No person shall permit any public nuisance to remain on any premises owned or controlled by him when ordered by the Forester to abate such nuisance. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

§ 424-12. Appeal from determinations or orders.

Any person who receives a determination or order under this chapter from the Village Forester and objects to all or any part thereof shall have the right to appeal such determination or order, subject to the provisions of Ch. 68, Wis. Stats., to the Village Board within seven days of receipt of the order, and 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 from 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 has been concluded. The Board shall file its written decision with the Village Clerk-Treasurer.

§ 424-13. Adoption of standards.

Sections 27.09 and 86.03, Wis. Stats., are hereby adopted and incorporated herein by reference.