

**CHAPTER 9**  
**TREE, SHRUB, WEED AND GRASS REGULATIONS**  
(Repealed and Recreated May 6, 2014, 2084)

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**9.01 STATEMENT OF POLICY AND APPLICABILITY OF CHAPTER.**

- (a) It is the policy of City of South Milwaukee to:
  - 1. Regulate and establish policy for the control of planting, removal, maintenance and protection of trees and shrubs in or upon all public areas and terrace areas of the City to reduce and guard against dangerous conditions which may result in injury to persons using the streets, alleys, sidewalks or other public areas; and
  - 2. Promote and enhance the beauty and general welfare of the City; and
  - 3. Prohibit the undesirable and unsafe planting, removal, treatment and maintenance of trees and shrubs located on public areas; and
  - 4. To prevent the spread of disease and to eliminate dangerous conditions involving trees and shrubs on private property which may result in injury to persons using public areas.
  - 5. To prohibit noxious weeds and require lawn areas to be maintained, at a height not to exceed 6 inches.
- (b) Application. The provisions of this Chapter shall apply to trees, shrubs, grass, weeds, or other plant material growing or hereafter planted in or upon public areas and terrace areas and also applies to all trees, shrubs, grass, weeds, or other plant materials growing or to be planted in or upon any private premises which shall threaten the life, health, safety or general welfare of the public or of any public areas.

**9.02 DEFINITIONS.**

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

- (a) **Person.** Person, firm, association or corporation.
- (b) **Public Areas.** Includes all public roads, parks, and other lands owned, controlled or leased by the City.
- (c) **Public Trees and Shrubs.** All trees and shrubs located or to be planted in or upon public areas, except private trees and shrubs as defined herein.

- (d) **Public Nuisance.** Any tree or shrub or part thereof which, by reason of its condition, interferes with the use of any public area; infected with a plant disease; infested with injurious insects or pests; injurious to public improvements, or endangers the life, health, safety of welfare of persons or property.
- (e) **Boulevard or Terrace Areas.** The land between the curbing and sidewalk. Where there is no sidewalk, the area four (4) feet behind the curb shall be deemed the terrace. Where there is no curb, the area four (4) feet from the edge of the pavement shall be deemed the terrace area.
- (f) **Private Trees and Shrubs.** All trees and shrubs located on land not owned by the City and also any tree or shrub within the public area that is not within the terrace area, as defined herein, and has not been planted pursuant to City planting plan or a development plan specifically approved by the City.
- (g) **Shrubs.** Any woody vegetation or a woody plant having multiple stems and bearing foliage from the ground up.
- (h) **Street Tree.** Any tree in the boulevard or terrace area, except private trees and shrubs as defined herein.
- (i) **Tree.** Any woody plant, normally having one stem or trunk bearing its foliage or crown well above ground level to heights of ten feet or more.
- (j) **Forester.** Person or City employee designated by the City Council as authorized to carry out provisions of this Chapter.
- (k) **Permit.** The written permission of the City Forester.
- (l) **Urban Forest.** A collection of trees in and around the City, including park and street trees on public property and on private property.
- (m) **Public Nuisance.** Any tree with an infectious disease or insect problem; dead or dying trees; a tree or limb(s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to safety.
- (n) **Hazardous Tree or Condition.** Any public or private tree with an infectious disease or insect infestation, dead or dying trees or limbs, or a tree with a split trunk, broken limbs, trunk decay or cavity that poses a threat to safety of persons, or potential damage to private or public property by nature of its condition, as determined by the City Forester.
- (o) **Top, Topping.** The severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove normal canopy and disfigure the tree.
- (p) **Noxious Weeds.** Canadian thistle, leafy spurge, creeping Jenny, and any other such weeds as determined by the Weed Commissioner to be noxious.
- (q) **Lawn Area.** Any area where grass is the predominant vegetation and does not constitute a garden devoted to flower, vegetable or fruit plants, bushes, or natural areas or rain gardens, as allowed under the Municipal Code..

### 9.03 DUTIES, POWER, AND AUTHORITY OF CITY FORESTER.

- (a) The City Engineer or his designated representative is hereby appointed as the Forester hereunder and under Chapter 27, Wis. Stats, and is authorized to perform the duties and exercise the powers imposed by this Chapter.

- (b) The City Forester or his/her designee shall direct, regulate and control the planting, care, and removal of all public trees and shrubs within the City and shall cause the provisions of this ordinance to be enforced. In enforcing this ordinance the City Forester shall exercise his/her discretion and operate with due regard for existing hazards while being conscious of funds appropriated by the Common Council for the care of public property and the cost of enforcement to private citizens.
- (c) The City Forester or his/her designee, shall have the authority to enter upon private premises for the purpose of examining any tree for disease, insect, nuisance or hazard, located upon or over such premises and carrying out any of the provisions of this ordinance. In all non-emergency circumstances, the Forester or his designee shall first obtain the consent of the property owner and if consent is refused or unobtainable the Forester shall obtain a special inspection warrant before entering private lands to inspect or do any work authorized under this chapter.
- (d) No person shall interfere with the City Forester or his authorized representative while they are engaged in carrying out any work or activities authorized by this Chapter.

#### **9.04 STREET TREE REGULATIONS**

- (a) Inspection.
  - 1) City Forester shall cause a periodic inspection of street trees to determine trees that are dead, dying, or will potentially die due to disease and cause any known dead, dying, diseased or otherwise hazardous tree to be removed.
  - 2) Property owner adjacent to any public area shall report any street tree known to be dead, dying or diseased to City Forester.
  - 3) It shall be the City Forester's sole discretion as to whether a street tree is removed due to potential hazards, potential disease, or other public nuisance, or hazardous condition.
- (b) Street Tree Removal and Disposal.
  - 1) If a street tree has died for whatever reason, the City shall remove and dispose of tree.
  - 2) City will cause stumps of street trees to be removed on a regular basis.
  - 3) The owner of property adjacent to a street tree may only remove a street tree at their own expense and after first obtaining a permit issued by the City Forester. Removal and disposal shall be subject to the terms of the permit and the terms of this ordinance.
  - 4) No property owner shall be entitled to reimbursement for costs incurred for removal of a public tree or stump prior to adoption of this ordinance, or if property owner removes a tree pursuant to Section 3.
- (c) Street Tree Planting
  - 1) City shall not be obligated to replace any street tree removed under Section (b).
  - 2) Planting of Certain Trees Prohibited. No person shall hereafter plant any tree listed on the "Prohibited Tree List" upon any public area, boulevard or terrace

within the City. The “Prohibited Tree List” shall be developed and updated by the City Forester on a periodic basis.

- 3) Permitted Trees. The City Forester shall maintain, and periodically update, a list of street trees permitted in boulevards or terraces, and may require certain species of trees based on a development or neighborhood planting plan. The City Forester shall plant or permit only species desirable for planting in boulevards according to their mature height, the width of the boulevard, or other conditions such as overhead wires. The City Forester shall maintain criteria for minimum trunk diameter and height for all newly planted public trees.
  - 4) Unless otherwise approved by permit, trees shall not be planted in any boulevard or terrace closer than:
    1. Twenty (20) feet to a utility or street lighting pole;
    2. Fifteen (15) feet to a driveway or alley;
    3. Six (6) feet to a fire hydrant, water stop box or gas shut off. If possible, allow more distance than six (6) feet;
    4. Twenty-Five (25) feet to another tree;
    5. Twenty-Five (25) feet to the intersection of two (2) streets from either corner measured on the property line.
  - 5) Prior to planting or replanting any street tree, property owners shall obtain a permit from the City Forester/ Engineering Department. Upon issuance of the permit, the property owner shall comply with the terms of the permit and all City regulations for species, size, and location.
  - 6) If any tree or shrub is planted contrary to City regulations, the City Forester shall cause a written notice to be sent to the owner, agent or occupant of the premises abutting the public right-of-way ordering removal or relocation of said tree. If the owner, agent or occupant fails to comply with the direction of the City Engineer within 30 days of receipt thereof, the City Engineer shall cause the removal or relocation, at his discretion, to insure conformance with the provisions of this ordinance.
- (d) Street Tree Trimming and Pruning
- 1) City shall cause a periodic inspection of street trees to determine public trees that require pruning to remove dead or dying limbs, or removal of limbs for clearance of vehicles or pedestrians, or pruning as determined necessary by the City Forester for shaping of public trees.
  - 2) Costs of trimming or pruning activity of public trees performed by the City (or its Contractor) shall be the responsibility of the City.
  - 3) Lowest branches projecting over a public sidewalk shall not be less than eight (8) feet, and lowest branches projecting or overhanging a public alley or street shall not be less than fourteen (14) feet. The City Forester or designee may waive the provisions of this section for newly planted trees or if the integrity or health of the tree is adversely affected.

- 4) City shall not be required to trim or prune public trees overhanging property.
- 5) After first obtaining a permit from the Forester, the owner of property adjacent to a street tree may prune or trim a public tree at their own cost subject to the terms of the permit issued by the City Forester.
- 6) No property owner shall be entitled to reimbursement of costs incurred for trimming a tree prior to adoption of this Ordinance, or if a property owner trims a public tree pursuant to Section 5 or 7.
- 7) Periodic inspection, trimming, and pruning of any street trees by the City shall not relieve the adjacent property owner from the responsibility to regularly inspect, maintain, trim, and prune street trees and to remove unsafe conditions that may cause damage to public or private property.

(e) Prohibited Acts

- 1) It shall be unlawful for any person to plant, prune, or remove any tree (or portion thereof), shrub, or other plant, upon any public property without a permit.
- 2) It shall be unlawful for any person to “top” any tree on public property.
- 3) Trees on public property shall be protected from damage by any means unless otherwise authorized by a permit issued by the City Forester. Tree crowns and trunks shall not suffer any branch or bark loss. Roots shall be protected from compaction, storage of materials, and severing.
- 4) It shall be unlawful for any individual to place salt, brine, petroleum products, herbicides, or any other substances in such amount as to be toxic or injurious to the health, growth, or vitality of any public tree.
- 5) No individual shall be allowed to drive nails, staples, screws, or fasten any rope, wire, electric attachment, sign (including any bills, advertisements, cards, or notices of any kind) or other devices to a public tree or to any guard about such tree.
- 6) No individual shall deposit, place, store, or maintain upon any public property any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, or fertilizer to the roots of any tree growing therein, except by written permit of the City Forester.
- 7) All work performed must be performed in compliance of accepted arboricultural standards.

## 9.05 PRIVATE TREE AND VEGETATION REGULATIONS

- (a) The owner of any tree or shrub overhanging any street, alley, sidewalk, parkway, or other public place or right-of-way within the City shall prune the tree or shrub before it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign or sight triangle at intersections or interferes with the passage of pedestrians or vehicles in the public right-of-way.

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- 1) If the owner of the property fails or refuses to take remedial action, the City or the agent of, may perform the remedial action without compensation to such owner or any person who planted or caused to be planted such tree or shrub.
  - 2) The City may charge the owner for the expense incurred.
- (b) If the City Forester ascertains that a tree or shrub growing on private property suffers from a communicable disease or insect infestation which threatens the health of the urban forest, the City Forester may notify the owner of the property in writing, that the tree or shrub must be treated or removed within 14 days of the notification.
- 1) If the owner of the property fails or refuses to take remedial action, the City, or the agent of, shall have the authority to enter the property and perform the remedial action without compensation to such owner or any person who planted or caused to be planted such tree or vegetation.
  - 2) The City shall charge the owner for the expense incurred.
- (c) The City shall have the right to cause the removal of any public nuisance or hazardous tree (or portion of tree) on private property within the City. The City Forester will notify the owner of the property in writing that the tree or shrub must be treated or removed within 14 days of the notification.
- 1) If the owner of the property fails or refuses to take remedial action, the City, or the agent of, shall have the authority to enter the property and perform the remedial action without compensation to such owner or any person who planted or caused to be planted such tree.
  - 2) The City shall charge the owner for the expense incurred.
- (d) The City shall have the right to cause removal of any private tree causing damage or potentially causing damage to public facilities, including, but not limited to, curb, pavement, sidewalk, fire hydrants, water valves, or gas shut offs.
- 1) If the owner of the property fails or refuses to take remedial action, the City, or the agent of, shall have the authority to enter the property and perform the remedial action without compensation to such owner or any person who planted or caused to be planted such tree.
  - 2) The City shall charge the owner for the expense incurred.
- (e) Trimming.
- 1) Any person growing a tree, plant or shrub on any private property abutting public streets or public places shall:
    - a) Trim them so as not to be a hazard to persons using the streets or to interfere with the proper lighting of the streets.
    - b) Treat or remove any tree, plant or shrub which the City Forester determines is diseased, insect-ridden, or a hazard to persons using the streets.
    - c) Remove and refrain from planting any tree, plant or shrub designated by the Wisconsin Department of Agriculture Trade and Consumer Protection and published in its regulations to be a host or carrier of a dangerous plant disease or insect pest.

- 2) Lowest branches overhanging a public sidewalk shall be kept trimmed so that they provide clearance of not less than eight (8) feet. Lowest branches projecting over or overhanging a public street or alley shall be kept trimmed so that they provide clearance of not less than fourteen (14) feet. The City Forester may waive the provisions of this Section for newly planted trees if he/she determines that they do not interfere with public travel, obstruct the light of any street light, or endanger public safety.
- 3) The necessity of pruning may be determined by the City Forester. Pruning or trimming costs associated with trees growing on private property shall be the responsibility of the property owner.

### **9.06 EMERGENCIES**

The City Forester with approval of the Mayor, in the case of emergencies, such as windstorms, ice storms, insect/disease outbreaks or other disasters, may waive the requirements of this ordinance so that they in no way shall hinder private or public work to restore order in the City.

### **9.07 APPEAL FROM DETERMINATIONS OR ORDERS**

Any person who receives a determination or order under this Chapter from the City Forester and objects to all or any part thereof shall have the right to appeal such determination to order, subject to the provisions of this Code of Ordinances and Chapter 68, Wis. Stats., to the City Council within seven (7) days of receipt of the order, and the City Council shall hear such appeal within thirty (30) days of receipt of written notice of the appeal. After such hearing, the City Council may reverse, affirm or modify the order or determination appealed from and the grounds for its decision shall be stated in writing. The City Council shall, by letter, notify the party appealing the order or determination of its decision within ten (10) days after the hearing has been concluded. Any appeal may first be submitted to the Public Works and Public Property Committee for review and recommendation. The Council shall file its written decision with the City Clerk.

**9.08** All expenses incurred by the City in enforcing remediation orders issued pursuant to the terms of this ordinance, and in removing and disposing of or relocating any trees or shrub planted without a required permit in violation of this chapter or contrary to the terms of a permit issued under this chapter shall be charged to the adjacent property owner at the rates designated in the Administrative Fee Schedule adopted by the Common Council. Any such charge which is not paid within 30 days shall become a special charge and may be collected as provided in Wis. Stats. §66.0627.

### **9.09 (Future Use)**

**9.10 DUTIES, POWER, AND AUTHORITY OF WEED COMMISSIONER**

- (a) Appointment – The Street Superintendent or his designee shall be the appointed Weed Commissioner unless otherwise determined by the Common Council.
- (b) Weed Commissioner shall have all powers and duties authorized under Sec. 66.0517 Wisc. Stats.
- (c) Weed Commissioner or designee shall cause any lawn areas exceeding 6” in length to be cut and property owner shall be invoiced for grass cutting on private property in accordance with the Administrative Fee Schedule approved by the Common Council. In all non-emergency circumstances, the Weed Commissioner or his designee shall first obtain the consent of the property and if consent is refused or unobtainable the Weed Commissioner shall obtain a special inspection warrant before entering private lands to inspect or do any work authorized under this chapter.

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