

Chapter 38

VEGETATION

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ARTICLE I. IN GENERAL**Sec. 38-1. Purpose and intent.**

(a) *Purpose.* It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the village.

(b) *Intent.* It is the intent of the village board that the terms of this chapter shall be construed so as to promote:

- (1) The planting, maintenance, restoration, and survival of desirable trees, shrubs and other plants within the village; and
- (2) The protection of community residents from personal injury and property damage, and the protection of the village from property damage, caused or threatened by the improper planting, maintenance, or removal of trees, shrubs, or other plants located within the community.

(Comp. Ords. 2000, § 19.32)

Sec. 38-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Arboricultural Specifications and Standards of Practice for the Village of Howard means the manual prepared by the village forester containing regulations and standards for the planting, maintenance and removal of trees, shrubs, and other plants upon village-owned property. Herein-after known as the arboricultural specifications manual.

Property owner means the record owner or contract purchaser of any parcel of land.

Trees, shrubs and other plants means all vegetation, woody or otherwise, except lawn grass and flowers less than 24 inches in height.

Village-owned property means property within the village limits, and the following:

- (1) Owned by the village in fee simple absolute; or
- (2) Implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic or for public easements.

(Comp. Ords. 2000, § 19.33)

Secs. 38-3—38-22. Reserved.

ARTICLE II. ADMINISTRATION

DIVISION 1. GENERALLY

Sec. 38-23. Interference with village forester or agent of the village tree board.

No person shall unreasonably hinder, prevent, delay, or interfere with the village forester or designee of the village tree board while engaged in the execution or enforcement of this chapter. (Comp. Ords. 2000, § 19.38)

Sec. 38-24. Violation and penalty.

Any person who violates any provision of this chapter or fails to comply with any notice issued pursuant to the provisions of this chapter, upon being found guilty of violation, shall be subject to a fine not to exceed \$200.00 for each separate offense, each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this chapter, the injury, mutilation, or death of a tree, shrub, or other plant located on village-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the most recent edition of A Guide to Plant Appraisal published by the International Society of Arboriculture. (Comp. Ords. 2000, § 19.39)

Sec. 38-25. Appeal.

Any party who elects to dispute any action or decision by the village forester or village tree board shall be entitled to file an appeal with the village board for a final determination. (Comp. Ords. 2000, § 19.40)

Secs. 38-26—38-53. Reserved.

DIVISION 2. VILLAGE TREE BOARD

Sec. 38-54. Established.

The village tree board is hereby established. Its functions and duties are limited to those set forth in this chapter. (Comp. Ords. 2000, § 19.34(1))

Sec. 38-55. Composition.

The village tree board shall be composed of seven members. Five members shall be appointed by the village president with the approval of the village board. These five members shall serve

without pay and shall reside within the village. The remaining two members shall be ex officio and shall not vote. The two ex officio members shall be the village park and recreation director and the village forester.

(Comp. Ords. 2000, § 19.34(2))

Sec. 38-56. Appointment of members.

Each village tree board member shall serve a two-year staggered term. The term shall start on the day appointed. The village tree board shall appoint the chair of the village tree board.

(Comp. Ords. 2000, § 19.34(3))

Sec. 38-57. Expiration or vacation of terms.

Within 30 days following the expiration of the term of any appointed village tree board member, a successor shall be appointed by the village president with the approval of the village board, and the successor shall serve for a term of two years. Should any member resign or be removed from the village tree board, a successor shall be appointed by the village president and shall serve for the unexpired term. A member of the village tree board may be removed by the village president with the approval of a majority of the village board.

(Comp. Ords. 2000, § 19.34(4))

Sec. 38-58. Duties.

The village tree board shall perform the following duties:

- (1) Advise and consult the village forester on any matter pertaining to this chapter and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:
 - a. Amendments to the this chapter, development, alterations and/or revisions to the arboricultural specifications manual, and alterations or revisions of the urban forestry plan;
 - b. Policy concerning selection, planting, maintenance, and removal of trees, shrubs, and other plants within the village;
 - c. Allocation of funds to the tree program, and expenditures of funds by the tree program;
 - d. Establishment of educational and informational programs.
- (2) Upon the request of any person who disagrees with the decision of the village forester, hear all issues of the disputes which arise between the village forester and any such person whenever those issues involve matters or the interpretation or enforcement of the arboricultural specifications manual, the urban forestry plan, or of the interpretation or enforcement of this chapter, including disputes regarding the issuance of permits by the village forester and permits required under other ordinances or laws or the abatement of nuisances. The

decision of the majority of the appointed members of the village tree board with regard to such disputes shall be binding upon the village forester. Nothing in this division shall be construed to limit the jurisdiction of any court of law with respect to such disputes.

(Comp. Ords. 2000, § 19.34(5))

Secs. 38-59—38-89. Reserved.

DIVISION 3. VILLAGE FORESTER

Sec. 38-90. Established.

The position of the village forester is hereby established.

(Comp. Ords. 2000, § 19.35(1))

Sec. 38-91. Duties.

The village forester shall perform the following duties:

- (1) Implement, monitor, evaluate and update the urban forestry plan, this chapter, and the provisions of the arboricultural specifications manual.
- (2) Perform whatever acts are necessary, including the planting and maintenance of trees, the removal of undesirable trees, shrubs, and other plants located on village-owned property, to ensure that all trees, shrubs, and other plants located on village-owned property conform to the urban forestry plan, the arboricultural specifications manual, and this chapter.
- (3) Issue such permits as are required by this chapter.
- (4) Make available to any interested person copies of this chapter, information about the activities of the village tree board, copies of the arboricultural specifications manual and copies of the urban forestry plan.
- (5) Implement a program of public information and education that will encourage the planting, maintenance, or removal of trees, shrubs, and other plants on private property in furtherance of the goals of the urban forestry plan.

(Comp. Ords. 2000, § 19.35(2))

Secs. 38-92—38-110. Reserved.

ARTICLE III. PERMITS

Sec. 38-111. Required.

No person except the village forester, a contractor hired by the village tree board, or designee of the village tree board may perform any of the following acts without first obtaining from the village forester a permit, and nothing in this article shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law:

- (1) Plant on village-owned property, or treat, prune, remove, or otherwise disturb any tree, shrub, or other plant located on village-owned property, except that this provision shall not

be construed to prohibit owners of property adjacent to village-owned property from watering or fertilizing without a permit any tree, shrub, or other plant located on such village-owned property;

- (2) Trim, prune, or remove any tree or portions thereof if such tree or portions thereof reasonable may be expected to fall on village-owned property and thereby to cause damage to persons or property;
 - (3) Place on village-owned property, either above or below ground level, a container for trees, shrubs, or other plants;
 - (4) Damage, cut, tap, carve, or transplant any tree, shrub, or other plant located on village-owned property;
 - (5) Attach any rope, sign, poster, or any other manmade object to any tree, shrub, or other plant located on village-owned property;
 - (6) Dig a tunnel or trench on village-owned property.
- (Comp. Ords. 2000, § 19.36(1))

Sec. 38-112. Application.

The village forester shall obtain as a condition precedent to the issuance of such permits, the written agreement of each person who applies for such permits that he will comply with the requirements of this chapter, the urban forestry plan, and with the regulation and standards of the arboricultural specifications manual. The village forester shall have the right to inspect all work performed pursuant to such permits. If the village forester finds that the work performed is not in compliance with the requirements of this chapter, the urban forestry plan, or with the regulations or standards of the arboricultural specifications manual, the village forester shall provide written notice of his finding to the permit applicant. The notice shall contain a copy of section V of the ordinance from which this section is derived, and the following:

- (1) The permit shall be nullified and shall be void;
- (2) The village forester may issue a written order that the permit applicant cease and desist all work for which the permit was required;
- (3) The permit applicant shall be subject to penalty under the terms of this chapter; and
- (4) The village forester may take steps to correct the results of the noncomplying work and the reasonable costs of such steps shall be charged to the permit applicant.

(Comp. Ords. 2000, § 19.35(2)(c))

Sec. 38-113. Issuance.

Within seven days of receipt of the application, the village forester or designee shall issue a permit to perform within 30 days of the day of issuance, any of the acts specified in section 38-111(1) and (2), for which a permit is requested whenever:

- (1) Such acts would result in the abatement of a public nuisance or such acts are not inconsistent with the development and implementation of the urban forestry plan or with any regulations or standards of the arboricultural specifications manual;

- (2) An application has been signed by the applicant and submitted to the village forester or designee detailing the location, number, size, and species of trees, shrubs, or other plants that will be affected by such acts, setting forth the purpose of such acts and the methods to be used, and presenting any additional information that the village forester may find reasonably necessary;
 - (3) The applicant agrees to perform the work for which the permit is sought in accordance with the provisions of this chapter, the urban forestry plan and with the regulations and standards set forth in the arboricultural specifications manual;
 - (4) The applicant certifies that he has read and understands those provisions of the urban forestry plan, this chapter and the arboricultural specifications manual which are pertinent to the work for which the permit is sought; and
 - (5) If the work for which a permit is issued entails the felling of any tree or part thereof, located on private property, which, as a result of such felling reasonably may be expected to fall upon village-owned property, and if such felling is done by one other than the owner of the property on which such felling is done, then the applicant shall agree to indemnify and to hold the village harmless for all damages resulting from work conducted pursuant to the permit and shall deposit with the village clerk a liability insurance policy in the most current dollar amounts per person and per accident for bodily injury liability and aggregate for property damage liability as determined by the village clerk which policy shall name the village as an additional insured.
- (Comp. Ords. 2000, § 19.36(2))

Secs. 38-114—38-139. Reserved.

ARTICLE IV. PUBLIC NUISANCES

Sec. 38-140. Declaration of nuisance conditions.

The following are hereby declared public nuisances:

- (1) Any dead or dying tree, shrub, or other plant, whether located on village-owned property, other publicly owned properties or on private property;
- (2) Any otherwise healthy tree, shrub, or other plant, whether located on village-owned property, other publicly owned properties or on private property, which harbors insects or diseases which reasonably may be expected to injure or harm any tree, shrub, or other plant;
- (3) Any tree, shrub, other plant, or portion thereof, whether located on village-owned property, other publicly owned properties or on private property, which by reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public;
- (4) Any tree, shrub, or other plant or portion thereof whether located on village-owned property, other publicly owned properties or on private property which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street sign on village property;

- (5) Any tree, shrub or other plant or portion thereof whether located on village-owned property, other publicly owned properties or on private property which dangerously obstructs the view as such may be determined by the village forester pursuant to this chapter;
- (6) Any tree, shrub, or other plant which is a noxious weed as defined in Wis. Stats. § 66.0407. (Comp. Ords. 2000, § 19.37(1))

Sec. 38-141. Right to inspect.

The officers, agents, servants, and employees of the village have the authority to enter onto private property, after prior notification to property owner, whereon there is located a tree, shrub, plant or plant part that is suspected to be a public nuisance.
(Comp. Ords. 2000, § 19.37(2))

Sec. 38-142. Abatement.

The following are the prescribed means of abating public nuisances under this chapter:

- (1) Any public nuisance under this chapter which is located on village-owned property shall be pruned, removed, or otherwise treated by the village forester or designee in whatever fashion is required to cause the abatement of the nuisance within a reasonable time after its discovery.
- (2) Any public nuisance under this chapter which is located on other publicly owned property or privately owned property shall be pruned, removed, or otherwise treated by the property owner or his agent in whatever fashion is required to cause the abatement of the nuisance. No property owner may be found guilty of violating this provision unless and until the requirements of notice have been satisfied.
- (3) The village forester is empowered to cause the immediate abatement of any public nuisance provided that the nuisance is determined by the village forester or agent of the village tree board to be an immediate threat to any person, or property.
(Comp. Ords. 2000, § 19.37(3))

Sec. 38-143. Notice.

The village forester or designee shall cause a written notice to be personally served or sent by certified mail to the owner of the publicly owned property or the person to whom the tax bill was sent for the general taxes for the last preceding year. Such notice shall:

- (1) Describe the kind of tree, shrub, or the plant or plant part which has been declared to be a public nuisance, its location on the property and the reason for declaring it a nuisance.
- (2) Describe the premises by legal description or by common description.
- (3) State the actions that the property owner may undertake to abate the nuisance.
- (4) Require the elimination of the nuisance within 30 days after the notice is delivered or sent to the owner of the publicly owned property or the person to whom the tax bill was sent for the general taxes for the last preceding year.

- (5) State in the event that the nuisance is not abated by the date specified in the notice, the village forester or designee is authorized to cause the abatement of said nuisance.
(Comp. Ords. 2000, § 19.37(4))