

Chapter 241

TREES AND SHRUBS

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[HISTORY: Adopted by the Village Board of the Village of Albany 5-11-1992 as Title 6, Ch. 4 of the 1992 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Administrative review -- See Ch. 8.

Public nuisances affecting peace and safety -- See Ch. 194, § 194-11.

Streets and sidewalks -- See Ch. 232.

Vehicles and traffic -- See Ch. 260.

§ 241-1. Statement of policy; applicability.

A. Intent and purpose. It is the policy of the Village of Albany 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.

§ 241-2. 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 curbline 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 -- Any tree or shrub or part thereof which, by reason of its condition, interferes with the use of any public area; is infected with a plant disease; is infested with injurious insects or pests; is injurious to public improvements; or endangers the life, health, safety or welfare of persons or property.

PUBLIC TREES AND SHRUBS -- All trees and shrubs located or 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.

§ 241-3. 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 W.S.A. ch. 27 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.

§ 241-4. Interference with Village Forester.

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

§ 241-5. 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.

B. Definitions. As used in this section, unless otherwise clearly indicated by the context, the following terms shall have the meanings indicated:

PERSON -- Person, firm or corporation.

PUBLIC NUISANCE:

(1) Fatal or deleterious tree diseases.

(2) Elm bark beetles *Scolytus multistriatus* (Eichb.) or *Hylurgopinus rufipes* (Marsh.); Dutch Elm disease.

(3) 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.).

(4) 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.

(5) Any other deleterious or fatal tree disease.

(6) 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.

(7) 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.

C. 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 at Madison for analysis to determine the presence of such nuisances.

(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 section.

D. 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 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 insects, pests or vectors known to carry such disease fungus.

(3) Notice; abatement.

(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.

E. 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 one-thousand-foot radius thereto to be sprayed with an effective disease-destroying concentrate or other insecticide, following prior authorization by the Village Board.

(2) In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this section, 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 Police Department, 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 B, 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 D(3).

§ 241-6. 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 W.S.A. s. 66.60(16) or W.S.A. s. 27.09. The cost of abating any such nuisance or part thereof which is located in or upon any park shall be borne by the village.

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.

§ 241-7. 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. Cottonwood and Box Elder trees prohibited. No person shall plant within the Village of Albany any female tree of the species *Populus Deltoides*, commonly called the "Cottonwood," or any tree commonly called the "seed-bearing Box Elder *Acer Negundo*," which may now or hereafter become infested with Box Elder bugs, and such trees are hereby declared a nuisance. Any person planting any such trees on his premises shall cause the same to be removed. If any owner shall fail to remove any such tree within 30 days after receiving written notice from the Village Forester, the village shall cause the removal of such tree and report the full cost thereof to the Village Clerk-Treasurer, who shall place such charge upon the next tax roll as a special charge against the premises.

D. Planting of certain trees restricted. No person shall hereafter plant any Catalpa, Chinese Elm, White Poplar, Weeping Willow, Evergreen, Lombardy Poplar or any fruit or nut tree in or upon any public street, parkway, terrace or other public place within the Village of Albany unless he shall first secure written permission from the Village Forester, who shall not approve any such planting if, in his opinion, said tree will constitute a nuisance to the public or adjoining property owners or interfere with the safety of the public or the operation of any sewer or water system. The Village Forester shall cause the removal of any tree planted in violation of this subsection.

E. Tree and shrub planting. Tree care, tree types, tree maintenance and tree removal shall be done according to the Village of Albany Tree Specification Manual of December 1996. A copy of said Manual is available at the Village Hall.¹

¹ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Former Subsections F, Unlawfully planted trees, and G, Frames, and former §§ 241-8 through 241-12, which immediately followed this subsection, were deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).