

CHAPTER 11

CITY FORESTER AND FORESTRY

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11.01 INTENT AND PURPOSE.

(1) Having determined that a well managed urban forest provides many benefits to the city, its residents and visitors, It is hereby declared to be the policy of the City of Stevens Point, Wisconsin, to regulate, finance and control the planting, removal, maintenance, and protection of trees and shrubs upon or in all public areas of the city in order to:

(a) Promote and enhance the aesthetics and general welfare of the city.

(b) Eliminate and guard against dangerous conditions which may result in injury to persons using the public areas of the city.

(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 city 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 also 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.

11.02 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 City of Stevens Point, Wisconsin that there shall exist at all times, a policy of open communication and coordination between the various departments and divisions of city government regarding the management, installation and maintenance of the plants or improvements for which they are each responsible.

11.03 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) "City" is the City of Stevens Point, Wisconsin.

(b) "City forester" shall mean the person designated by the city under section 11.05 of this chapter, or his/her duly authorized representative designated to perform inspection or otherwise enforce the provisions of this chapter.

(c) Repealed.

(d) "Commission" shall mean the board of park commissioners of the City of Stevens Point as constituted under the Municipal Code of the City of Stevens Point.

(e) "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.

(f) "Permit" shall mean written permission from the city forester to perform maintenance and protection on any public tree or shrub, or do construction (as defined in section 11.09) 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.

(g) "Person" shall mean any individual, firm, partnership, association, corporation or government entity.

(h) "Public way" shall include all public streets, roads, boulevards, median strips, alleys, and sidewalks.

(i) "Public area" shall include all public ways, parks, and other lands owned, controlled, or leased by the city.

(j) "Public nuisance" shall mean any tree or shrub or part thereof which by reason of its condition and location has been declared to be a public nuisance under section 11.06 of this ordinance.

(k) "Tree" shall mean a woody plant usually with a single stem unbranched at the base, reaching a height of twelve feet or more.

(l) "Shrub" shall mean a woody plant usually with multiple stems branched at or near the base, reaching a height of less than twelve feet.

(m) "Public trees and shrubs" shall mean any tree or shrub as herein defined, presently or hereafter planted in or upon any public area.

(n) "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.

(o) "Topping", also known as heading, hatracking, 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.

(p) "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 11.04 of this ordinance.

11.04 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) "City of Stevens Point 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"

11.05 CITY FORESTER.

(1) Powers and Duties. The city forester, subject to the direction and supervision of the, Director of Parks & Recreational Services, shall have the following general powers and duties:

(a) To direct, manage, supervise, and control the city'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 city; 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 city 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 and tree and shrub care. The city 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 effected by the owner at his expense. There shall be no charge to the owner for the examination.

(e) To implement and direct a city 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, by ordinances of the City of Stevens Point, and by direction of the commission.

(2) Authority to Preserve and Remove Public Trees and Shrubs. The city 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 city 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 11.06 of this ordinance may be appropriately marked by the city forester.

(4) Interference Prohibited. No person shall interfere with the city forester or his/her authorized representative while engaged in the execution or enforcement of this ordinance.

11.06 PUBLIC NUISANCE, DECLARATION AND ABATEMENT.

(1) The common council 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, that 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 city.

(3) Abatement of Public Nuisances.

(a) Public Areas. Whenever the city 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 city forester.

(b) Private Premises. If the city forester shall determine with reasonable certainty upon inspection or examination that any nuisance tree or shrub as herein defined exists in or upon any private premises within the city, he/she shall notify the owner of such premises, or his agent, in writing that said nuisance tree or shrub must be treated, trimmed, removed, or otherwise abated. Said written notice shall specify the nature and exact location of the nuisance, the manner in which the nuisance shall be abated, and the time limited in which the nuisance shall be abated which shall not be less than fifteen (15) days after issuance of said notice unless the city forester shall determine that immediate action is necessary for the public safety.

(c) Abatement by City. 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 city forester shall cause the public nuisance to be abated and shall report the expense thereof to the city 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.

11.07 PROHIBITED ACTS REGARDING PUBLIC TREES AND SHRUBS.

(1) Injury to Public Trees and Shrubs Prohibited. No person shall, without written permission from the city 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 or make topping cuts on any public tree.

(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 City Departments.

(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 city 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) Repealed.

(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 city 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 street light, 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 (3) of this section shall be declared to be a public nuisance and shall be subject to abatement as set forth in section 11.06(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 city forester and shall have such rights as are provided in Chapter 32 of the Wisconsin statutes relating to the "taking of real property."

11.08 PLANTING, REMOVAL, MAINTENANCE AND PROTECTION OF PUBLIC TREES AND SHRUBS.

(1) 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 city forester.

(2) Application and Approval. Any person desiring to plant, remove, maintain or protect any public tree or shrub shall apply in writing to the city forester for a permit to do such work. Such application shall specify the location and description of the proposed work. If the city 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 street lights, 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.

(3) Permit Form, Expiration, Compliance, Inspection. Permits shall be issued by the city 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 city 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.

(4) 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.

(5) 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 city.

(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.

4. All street trees hereafter planted shall be spaced not less than twenty-five (25) feet apart except that a tree planted for the purpose of future replacement of an existing declining tree may be planted less than twenty-five (25) feet from the declining tree. The actual spacing, location and alignment of street trees shall be determined by the city forester based on the mature size of the species to be planted and the specific site limitations.

5. The following shall not be planted in the public ways of the city: any conifer, any species of the genus *Populus*, any *Ailanthus*, *Catalpa*, *Mountain Ash*, *Box Elder*, *Silver Maple*, *Willow*, *White Bark Birch*, *Black Locust*, *Siberian Elm*, or such other species that shall be determined to be unsuitable for street planting.

(b) Pruning.

1. All pruning of public trees and shrubs shall conform with the standards set forth in ANSI A300 - 1995 or the most recent version thereof as adopted in section 11.04 of this ordinance.

(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 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.

11.09 TREE PROTECTION DURING CONSTRUCTION IN A PUBLIC AREA

(1) Definitions.

(a) For the purposes of this section, "public tree" as defined in section 11.03 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, street light, 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) Forestry Specifications. The "City of Stevens Point Forestry Specifications for Construction on Public Lands", a separate document as adopted in section 11.04(1)(a) of this ordinance shall by reference or inclusion, be made a part of any permit issued pursuant to this section, and also be made a part of any contract for construction in any public area.

(3) Permit required. 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 city prior to issuance by the city forester of a valid Forestry Special Construction Permit.

(4) Permit Application, Plan Review, Approval. Any person proposing to do construction work in a public area shall apply in writing to the city forester for a permit to do such work. Such application shall specify the location and description of the proposed work, and the estimated start and completion dates. A complete copy of the construction plans shall be provided along with said application. If, upon review of the construction plans and any supplemental information provided by the applicant, the city forester determines that the work is necessary and can reasonably be expected to progress in compliance with all forestry specifications and conditions, he/she shall issue the permit

(5) Permit Form, Expiration, Compliance, Inspection. Permits shall be issued by the city forester on the standard form for this purpose. The permit shall specify the forestry specifications and any special conditions or requirements to be satisfied in connection with the work. Permits issued under this section shall specify an expiration date not to exceed twelve (12) months after the date of issuance. The city forester shall inspect the work in progress on a regular basis to ensure compliance with the terms of the permit.

(6) Permit Exemption. No permit shall be required for construction proposed by any department or division of city government, however, all other provisions of this section shall apply. Any contract entered into between any city department or division and a contractor for hire shall contain the construction specification provisions of subsection (2) of this section. Any city employee performing construction work under this subsection shall also comply with the provisions of subsection (2) of this section.

(7) Standing Permit for Repair by Utility Providers. Any firm or corporation which owns facilities for the distribution and service of water, sewer, gas, electricity and communications may request a "Standing Permit for Repair". The purpose of such permit shall be to expedite the process of minor repair or replacement of facilities by eliminating the requirement for a separate written permit for each repair occurrence. Such permit shall be valid for a term of one calendar year (January 1 through December 31) and shall apply to all repair occurrences at various single locations and times as needed.

(a) Conditions of permit.

1. Notification. Permittee shall notify the city forester by phone, fax or other means prior to commencing a necessary repair, and shall give the location, date and time of the work. Emergency repairs necessary to protect life and property, and other necessary repairs during non business hours shall be exempt from pre-notification but shall be reported on the next business day.

2. All work performed in accordance with this subsection shall be subject to the specifications set forth in subsection (2) of this section, and any special conditions specified in the permit.

3. Any construction which exceeds the scope, magnitude and purpose of this subsection shall require the standard permit set forth in subsection (4) of this section.

(b) Permit Form, Issuance, Renewal, Compliance, Inspection. Standing Permits shall be issued by the city forester on the standard form for this purpose. The permit shall specify the forestry specifications and any special conditions or requirements to be satisfied in connection with the work. Permits issued under this section shall be valid from January 1 through December 31 and shall be automatically renewed for a like term. The city forester shall inspect the work and worksite from time to time to ensure compliance with the terms of the permit.

11.10 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 city when performed by department employees or their contractors at the direction of the city forester, shall be borne by the city out of the department budgets, or from funds donated or otherwise acquired for this purpose. When a private party other than the city plants, removes, maintains, or protects public trees or shrubs pursuant to Section 11.08(1) of this ordinance, said party shall incur all expenses connected therewith.

11.11 APPEAL FROM ORDER OF THE CITY FORESTER.

(1) A person who receives an order from the city forester and objects to all or part thereof may, within ten(10) days of receipt of order, notify the City Forester in writing of the nature of the objection and request a conference with the City Forester and Director of Parks & Recreational services. The director of Parks & Recreational Services 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 Commission. The Commission shall schedule a hearing of the appeal within fifteen(15) days of receiving the appeal. Within ten(10) days of the hearing the commission shall notify the appellant of its decision in writing. The commission 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 commission shall become final after it is reviewed by the Common Council.

(2) Notwithstanding anything to the contrary contained within ordinance, in the event the Director of Public Works indicates that his/her department is unable to comply with any provision of this ordinance he/she shall notify the Forester, who may issue a waiver from any provision of this ordinance. In the

event a waiver is not granted, the Director of Public Works may appeal to the Chairperson of Board of Public Works.

11.12 PENALTIES. Every person convicted of a violation of this section shall suffer a 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 city 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.

11.13 SEVERABILITY

(1) 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.