

Chapter 295

TREES AND SHRUBS

[HISTORY: Adopted by the Village Board of the Village of Hustisford 3-28-1994 as Title 6, Ch. 4 of the 1994 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Nuisances — See Ch. 229.

Parks and recreation — See Ch. 236.

Property maintenance — See Ch. 245.

Subdivision of land — See Ch. 281.

§ 295-1. Statement of policy; applicability.

- A. It is the policy of the Village of Hustisford to regulate and establish policy for the control of the 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. 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.

§ 295-2. Definitions.

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

BOULEVARD OR TERRACE AREA — The land between the normal location of the street curbing and sidewalk. Where there is no sidewalk, the area four feet from the curblines 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 a boulevard area 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 or Village employee designated by the Village Board as authorized to carry out the provisions of this chapter.

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

PERSON — Person, firm, association or corporation.

PUBLIC AREA — 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.

SHRUB — 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.

§ 295-3. Authority of Forester.¹

- A. The Village Board may designate a municipal employee or citizen to perform the duties of Forester under Ch. 27, Wis. Stats., and may authorize such Forester to perform the duties and exercise the powers imposed on the Village Board by this chapter.
- 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. No person shall 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 chapter.

§ 295-4. Interference with 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.

§ 295-5. 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 are

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

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 disease 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, the following terms will have the meanings indicated unless otherwise clearly indicated by the context:²

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 the 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 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

2. Editor's Note: The definition of "person" which appeared in this subsection was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. II). See the definition of "person" in § 295-2.

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.

- (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) Following authorization by the Village Board, the Forester shall order, direct, supervise and control the abatement of public nuisances as defined in this section by spraying, removal, burning or 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 insect pests or vectors known to carry such disease fungus.
- (3) 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.
- (4) If, after a hearing held pursuant to Subsection D(3), 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 chapter. 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 Public Works Superintendent, 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 E(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 D(3) and (4).

§ 295-6. Recovery of abatement costs.

- A. Public premises. The entire cost of abating any public nuisance or spraying any elm tree, or part thereof, when done at the direction of the Forester, shall be borne by the Village as to any growth, tree or shrub located upon property owned by the Village. The abating of a public nuisance or spraying elm trees or elm wood located upon a terraced strip between the lot line and the curb shall be considered public property.³
- B. Private premises. The cost of abating a public nuisance or spraying diseased trees 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,

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

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 Village Board, or a designated standing committee thereof, 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, or a designated standing committee thereof, 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.

§ 295-7. Planting, care and protection.

- 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 Hustisford 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 Hustisford 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. Planting requirements.
 - (1) General.
 - (a) All new street trees must be selected from a list of approved trees compiled by the Village Forester. No other species may be planted without the written approval of the Village Forester. New trees must be single stemmed with a minimum diameter of 1 1/4 inches measured at six inches above ground level.
 - (b) The tree shall be planted in a well-prepared hole at the same depth as it was originally growing. All trees less than 12 feet high shall be staked. All trees 12 feet or more in height shall be supported by guy wires in such a way as not to injure the bark. The support shall be removed after a year.
 - (c) The tree shall be kept well watered and mulched or cultivated in a two-foot diameter around its base to conserve moisture and as a protection from lawn mower damage.
 - (d) The good health of all trees planted hereunder shall be guaranteed for one year by the applicant, after which time such trees shall become the property of the Village.
 - (2) Where required, curbs and sidewalks must be installed prior to street tree planting. The distance between the face of the curb and the outer edge of the sidewalk must be at least eight feet. Trees must be planted halfway between the sidewalk and curb unless underground utilities prevent such planting. No tree shall be planted closer than four feet to the curb.⁴
 - (3) Trees may not be planted in the terrace closer than:
 - (a) Twenty feet to a utility or streetlight pole.

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- (b) Fifteen feet to a driveway or alley.
 - (c) Ten feet to a fire hydrant, water stop box or gas shutoff. If possible, allow more distance than 10 feet.⁵
 - (d) Twenty-five feet to the intersection of two streets from either corner measured on the property line.
 - (e) Twenty-five feet to another tree. (If the other tree is an elm or other species which is damaged, injured or diseased and likely to be removed in the future, then a thirty-five-foot distance to the next nearest healthy tree will prevail.)
- (4) New street trees shall not be planted over an existing tree stump within two years of removal unless the stump is removed to a depth of four feet.
 - (5) The property owner has the responsibility to locate underground utilities before digging.
 - (6) Evergreen trees shall not be planted in a terrace area.
- F. 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.
- G. 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.

§ 295-8. Trimming.

- A. Any person growing a tree, plant or shrub on any private property abutting on public streets or public places shall:
- (1) Trim it so as not to be a hazard to persons using the streets or to interfere with the proper lighting of the streets.
 - (2) Treat or remove any tree, plant or shrub which the Village Forester shall determine is diseased or insect ridden or a hazard to persons using the streets.
 - (3) Remove and refrain from planting any tree, plant or shrub designated by the State 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.

⁵. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- B. Owners of any property may arrange to have any tree, plant or shrub sprayed, trimmed or removed by the Village and pay for such service at the rates established by the Village Board.
- C. Trees and shrubs standing in or upon any boulevard or 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.
- D. The necessity of the pruning may be determined by the Village Forester.
- E. Clearance from sidewalk to lower branches shall not be less than seven 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 seven 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.
- F. The trimming or pruning of more than 2/3 of the crown shall be considered to be a major alteration and shall require authorization from the Village Forester.

§ 295-9. Obstruction of sight lines.

- 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 other Village employees shall order 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 a 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, § 1-3 of this Code.

§ 295-10. 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 permit 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 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.⁶
- C. 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.
- D. Penalties. Any person, owner, firm or corporation performing any of the prohibited acts of this section shall be subject to a penalty as provided in Chapter 1, § 1-3 of

⁶. Editor's Note: Original § 6-4-10(c), Interference with Forester, which immediately followed this subsection, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

this Code.⁷

§ 295-11. Appeals.

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 Chapter 5, Administrative Determinations Review, of this Code and 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.

§ 295-12. Adoption of statutes.

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

⁷. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II).