

CHAPTER 33
URBAN FORESTRY

33.01 INTENT AND PURPOSE:

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

- (a) Promote and enhance the aesthetics and general welfare of the Village.
- (b) Eliminate and guard against dangerous conditions which may result in injury to persons using the public areas of the Village.
- (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 Village against the spread of disease, insects, or pests.
- (g) The Village shall have the authority and jurisdiction to plant, prune, maintain, and remove trees within the rights-of-way of all streets, alleys, avenues, lanes and public properties and parks and tree-planting easements as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public property.
- (h) The Village shall have the right to treat or cause the treatment or removal of any diseased or infested trees on private property when such trees constitute a potential hazard to trees and shrubs in public areas.

(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 is diseased or infested or endangers the life, health, or safety of persons or property on public areas.

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

33.03 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 shall include 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) "Village" is the Village of Deerfield, Wisconsin.
- (b) "Village forester" shall mean the person designated by the Village under section 33.06 of this chapter, or his/her duly authorized representative(s) designated to perform the duties or otherwise enforce the provisions of this chapter.
- (c) "Tree Advisory Board" shall mean the Board established under Section 33.05 of this ordinance
- (d) "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.
- (e) "Permit" shall mean written permission from the Village Forester to perform maintenance and protection on any public tree or shrub, or do construction (as defined in section 33.09) 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.
- (f) "Person" shall mean any individual, firm, partnership, association, and corporation or government entity.
- (g) "Public way" shall include all public streets, roads, boulevards, median strips, alleys, and sidewalks and areas within the right-of-way.

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

(i) "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 33.07 of this ordinance.

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

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

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

(m) "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.

(n) "Topping", also known as heading, hat racking, 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.

(o) "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 the outermost edge of the branches (drip line), and is further defined in the "Forestry Specifications for Construction on Public Areas" as adopted in section 33.04 of this Ordinance.

(p) "Urban Forest" shall mean the total population of trees and shrubs located within the Village of Deerfield that are subject to management by the Village under the terms of this ordinance.

33.04 STANDARDS AND SPECIFICATIONS

(1) The following standards and specifications, including any modifications or amendments thereto, are hereby adopted and by this referral are made a part of this ordinance and incorporated herein:

(a) Village of Deerfield Forestry Specifications for Construction on Public Areas.

(b) ANSI A300-1995 "American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices" or most recent version thereof.

(c) ANSI Z60.1-1996 "American Standard for Nursery Stock" or most recent version thereof.

33.05 TREE ADVISORY BOARD

(1) Composition of Board. The Tree Advisory Board shall consist of three members, appointed by the Village President, subject to confirmation by the Village Board. Two members shall be citizens of the Village; one member shall be a Board member. The terms of the citizen members shall be for three years. The Board representative's term shall be for one year. Terms shall expire on May 1. Citizen members may be reappointed to a second term, but may not then be reappointed until one year shall have elapsed between terms. The Village Forester, Director of Public Works, and Parks and Recreation Directors shall serve as ex-officio, non-voting members of the Board.

(2) Powers and Duties. To serve in an advisory capacity to the Village Board relating to trees and shrubs located within street right-of-ways, parks, cemeteries, and other public places in the Village; and to trees and shrubs located on private property that are diseased or infested or endangers the life, health or safety of persons or property on public areas.

(b) To prepare and maintain an inventory of trees and shrubs located on public areas within the Village and on private property along streets where street trees cannot be planted due to site limiting factors.

(c) To prepare and recommend to the Village Board a management plan for the planting, care and maintenance of trees in the Village, including the number, species and location.

(d) To identify, improve and promote desirable tree and shrub species within the Village.

(e) To apply for county, state, federal and private grant funds for the Village's tree program.

(f) To recommend such persons or firms who are qualified in urban forestry to assist with the Village's urban forestry tree program.

(g) To provide a forum for and encourage public comments on Village tree and shrub projects and the urban forestry program.

(h) To encourage public participation in urban forestry within the Village of Deerfield and the surrounding extraterritorial area.

(i) To conduct an Arbor Day observance each year.

(j) To inform and educate Village residents about the care of natural areas in their neighborhoods.

(k) To maintain "Tree Village USA" status of the Village of Deerfield.

33.06 VILLAGE FORESTER.

(1) Powers and Duties. The Village Forester, subject to the direction and authorization of the Tree Advisory Board together with the supervision of the Directors of Public Works and Parks Committee, shall have the following general powers and duties:

(a) To direct, manage, supervise, and control the Village's urban forestry program to include the planting, removal, trimming, maintenance, and protection of all trees and shrubs in or upon all public areas of the Village; to supervise the planting, removal, trimming, maintenance, and protection of said trees and shrubs. The Village Forester shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of trees on public property to insure safety or preserve the aesthetics of such public sites.

(b) To cause the provisions of this Ordinance to be enforced.

(c) The Village Forester may inspect any trees, shrubs, vines, hedges, plants, logs or branches existing or growing upon any property within the Village. The Village Forester may conduct surveys to determine if any destructive or communicable disease or other pest exists which may be detrimental to or endanger the good health and well being of trees or other plant life in public areas. The Village Forester shall have the authority and jurisdiction to restrict tree maintenance activities within the Village limits to reduce the spread of infectious diseases and/or insects. Restrictions are to be listed in the Forestry Program Manual and presented annually in the local media.

(d) To provide information to the public concerning the urban forestry program and tree and shrub care.

(e) To implement and direct a Village 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 Village of Deerfield, and by direction of the Board.

(2) Authority to Preserve and Remove Public Trees and Shrubs. The Village 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 Village Forester or his/her authorized representative shall have the authority to enter upon private real estate, excluding any buildings thereon, at reasonable times and upon reasonable prior notice 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. If necessary, the Village Forester may obtain an inspection warrant from the municipal court or other court of competent jurisdiction to authorize entry if a property owner refuses to grant access for any necessary or proper inspection. The Village Forester may appropriately mark all nuisance trees and shrubs to be removed pursuant to Section 33.07 of this ordinance.

(4) The Village Forester shall enforce such rules, regulations, permit, and penalty procedures as deemed necessary and may do so by the issuance of municipal citations to effectuate the

intent of this chapter. No person shall unreasonably hinder, prevent, delay, or interfere with the Village Forester or his/her agents while engaged in the execution of this ordinance.

33.07 PUBLIC NUISANCES, DECLARATION AND ABATEMENT.

(1) The Village forester or his/her designee shall have the right to declare as a public nuisance any tree or shrub or part thereof, including firewood, existing anywhere in the Village which is:

- (a) Interfering with the use of any public area,
- (b) Infected with a plant disease,
- (c) Infested with insects, or
- (d) Endangering the life, health or safety of other trees/shrubs, persons or property located in public areas.

(2) Village Forester will keep a list of nuisances as approved by the Tree Advisory Board.

(3) Abatement of Public Nuisances.

(a) Public Areas. All trees, shrubs or parts thereof on public property shall be subject to treatment and/or removal when it is determined by the Village forester or his/her designee that the trees or shrubs constitute an immediate or future health or safety hazard or when they have become unsightly, infested, diseased or dead. The Village forester or his/her designee shall have the discretion to determine the most appropriate course of action to prevent or treat such conditions.

(b) Private Premises. No person shall permit any public nuisance as defined in subsection 33.07(1) of this section to remain on any premises owned or controlled by him within the Village. Upon determination by the Village forester or his/her designee that any nuisance tree or shrub, as herein defined, exists in or upon any private premises, he/she shall give written notice to the owner or tenant having charge of such premises to treat, remove or otherwise control such tree or shrub in such manner as will abate such nuisance. Within thirty (30) days after the issuance of such notice, the person shall cause treatment, removal or control of the nuisance tree or shrub as directed in the written notice.

(c) A property owner receiving notice to abate a public nuisance as specified in this subsection (3) shall have the right to appeal as provided in section 33.12 of this Ordinance.

(d) Should the owner or tenant neglect to comply with the terms of the written notice after receiving it, the Village forester or his/her designee shall cause the treatment, removal or other control of the nuisance tree. 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 Village Forester shall cause the public nuisance to be abated and shall report the expense thereof to the Village Clerk.

(e) The Village Clerk shall enter any such costs or expenses as a special charge against the property upon which the nuisance is located. An Administrative Fee shall be added to the actual cost of abatement. The amount of the fee shall be as established by the Village Board from time to time. Any amount not paid within 30 days shall bear

interest at the rate of one percent per month until fully paid, and may become a lien or special charge against the property pursuant to Wis. Stats. § 66.0267.

33.08 PROHIBITED ACTS REGARDING PUBLIC TREES AND SHRUBS.

(1) Injury to Public Trees and Shrubs Prohibited. No person shall, without written permission from the Village 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 (except for purposes of clearing the branches of any public tree from existing overhead electrical or telecommunication wires).
- (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, excluding routine winter street maintenance by Village Departments.
- (e) Engage in any activity which violates the Village of Deerfield Forestry Specifications For Construction on Public Areas.

(2) 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 7 ½ feet above the public sidewalk. The Village 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 streetlight, obstruct the view of any traffic sign or signal, or endanger public safety.

(3) Any tree or shrub or part thereof found to be in violation of the provisions of subsection (2) of this section shall be declared to be a public nuisance and shall be subject to abatement as set forth in section 33.07(3) of this Ordinance.

- (a) A property owner receiving notice to abate a public nuisance as specified in subsection (3) of this section shall have the right to appeal as provided in section 33.12 of this Ordinance.

33.09 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 Village 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 Village Forester for a permit to do such work. Such application shall specify the location and description of the proposed work. If the Village 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, and Inspection. Permits shall be issued by the Village 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 Village 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. No permit shall be required for work proposed or conducted by any department or division of Village government; however, all other provisions of this section shall apply.

(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 Village.

(a) Planting. Refer to separate planting specifications guidelines on file with the Village Forester as approved by the Tree Advisory Board.

(b) Pruning. 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 33.04 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 as recommended by the Village's insurance carrier and shall be responsible 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.

33.10 TREE PROTECTION DURING CONSTRUCTION IN A PUBLIC AREA

(1) Definitions.

(a) For the purposes of this section, "public tree" as defined in section 33.03 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) Village of Deerfield Forestry Specifications for Construction on Public Areas as adopted in section 33.04(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 Village prior to issuance by the Village Forester of a valid Special Construction Permit.

(4) Permit Application, Plan Review, and Approval. Any person proposing to do construction work in a public area shall apply in writing to the Village 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 Village 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. This section shall be construed as to allow construction activities in most instances.

(5) Permit Form, Expiration, Compliance, and Inspection. The Village Forester on the standard form shall issue permits 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 Village 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 Village government; however, all other provisions of this section shall apply. Any contract entered into between any Village department or division and a contractor for hire for construction work as defined in subsection (1) (b) shall contain the construction specification provisions of subsection (2) of this section. Any Village 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 natural gas, electricity and telecommunications 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 Village Forester by phone, fax or other means prior to commencing a necessary repair, and shall give the location, date and time of the work. This may be done through the Digger's Hotline process. When a Digger's Hotline request is received, the Village staff shall provide a copy of the notification to the Village Forester in addition to the Water and Sewer Utility and the Street Department. 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, and Inspection. The Village Forester on the standard form shall issue standing Permits 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 Village Forester shall inspect the work and worksite from time to time to ensure compliance with the terms of the permit.

33.11 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 Village when performed by Village employees or their contractors at the direction of the Village Forester, shall be borne by the Village out of the

department budgets, or from funds donated or otherwise acquired for this purpose. When a private party other than the Village plants, removes, maintains, or protects public trees or shrubs pursuant to Section 33.09 of this Ordinance, said party shall incur all expenses connected therewith.

33.12 APPEAL FROM ORDER OF THE VILLAGE FORESTER.

(1) A person who receives a notice or order from the Village Forester and objects to all or part thereof may, within ten (10) days of receipt of such notice or order, notify the Village Forester in writing of the nature of the objection and request a meeting with the Tree Advisory Board. The Board shall schedule a meeting within ten (10) days of receiving the request. The decision of the Board may be appealed and reviewed by the Village Board. Such appeal shall be made in writing and shall be filed with the Village Clerk within thirty (30) days of date of the Tree Advisory Board's decision. The Village Board shall hear the appeal within thirty (30) days thereafter and may affirm, cancel or modify the order, in its discretion, to best conform to the intent of this ordinance. Such decision by the Village Board shall be considered a final decision. Any person affected by such final decision shall, within thirty (30) days of the date of the decision, apply to the Circuit Court for an order restraining the Village and any of its authorized agents from enforcing such decision, entering any property and/or abating or removing any nuisance, or be forever barred. The Court shall determine the reasonableness of the Village's final decision.

33.13 PENALTIES. The penalty for violation of any provisions of this chapter shall be forfeiture as herein after provided, together with the costs of prosecution and any penalty assessment imposed by Wisconsin Statutes. The penalty for violation of any provision of this chapter shall be as set forth on the forfeiture schedule adopted by Section 23.04 of the municipal code, with a maximum forfeiture of \$150.

In addition to the forfeiture the Village 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.

33.14 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. 