

ORDINANCE

An Ordinance to amend Section 8.190 of the Manitowoc Municipal Code regulating the planting of trees, shrubs and plants in the City's public right-of-way.

The Mayor and Common Council of the City of Manitowoc do ordain as follows:

Section 1. Section 8.190 is amended to read as follows:

"8.190 Trees, ~~and~~ Shrubs and Plants.

This section shall be known as the City of Manitowoc urban forestry ordinance.

(1) Statement of Policy and Rationale of Chapter.

(a) Purpose and intent. It is the policy of the City to promote, maintain and improve the urban forest by addressing the planting, maintenance, and removal of trees within the City of Manitowoc.

(b) The provisions of this chapter shall be effective the date following publication of the ordinance and shall apply to all public trees, ~~or~~ shrubs ~~and plants~~ and to trees or shrubs located on private property that constitute a hazard or public nuisance as described herein.

(2) Administration and Enforcement Body.

(a) The Municipal Tree Commission shall administer and direct the enforcement of this section, subject to the supervision and control as reserved by the Manitowoc Common Council.

(b) The City Forester shall provide technical advice on urban forestry matters to City residents and enforce the provisions of this section, subject to the supervision and control of the Municipal Tree Commission.

(c) The City Forester shall develop and maintain an approved Street Tree Management Plan which shall detail accepted tree planting and maintenance standards for the City of Manitowoc and shall act as a guide for the general public.

(d) City public works projects involving street tree design shall be coordinated by the City Forester in conjunction with the Manitowoc City Engineering, Planning Department and Manitowoc Public Utilities.

(3) Definitions. Unless specifically defined below, the words or phrases used in this chapter shall be so interpreted as to give them their common meaning and to give this chapter its most reasonable application:

City is the City of Manitowoc, Wisconsin.

City Forester shall mean the Director of Parks and Recreation and/or designee.

Clear sight triangle shall mean the same as vision clearance as defined in MMC 15.030.

Director means the Director of Public Works or his/her designee.

Hazard means any tree or shrub with an infectious disease or insect problem; dead or dying trees; a tree or limb(s) that obstructs street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to safety.

Manitowoc Urban Forestry Program means a comprehensive management plan including inventory, maintenance, new plantings and budget, with projections for annual and long range implementation.

Municipal Tree Commission means a five-member commission created pursuant to MMC 3.190, whose purpose is to formulate plans and policies related to urban forestry.

Person means a corporation, limited liability company, association, society, firm, partnership, or joint stock company, as well as an individual, a state, and all political subdivisions of a state or any agency or instrumentality thereof.

Plants include any form of green, flowering or seed producing plants approved by the Department of Public Infrastructure.

Public areas include all lands owned or controlled by the City.

Public nuisance means any tree or shrub or part thereof which encroaches into and interferes with any public right-of-way or use of any public area or interferes with the enjoyment and use of the public property. Public nuisance also means any tree or shrub or part thereof that is infected with a plant disease; infected with injurious insects or pests; injurious to public improvements or endangers the life, health or safety of person or property.

Public street trees and shrubs means all street trees and shrubs located on or designated to be planted upon public areas, including land lying between property lines on either side of all streets or avenues within the City, and all other areas owned by the City or to which the public has free access.

Public utility means Manitowoc Public Utilities and such other utilities furnishing other public works or utility services in the City including utilities defined in Wis. Stat. § 196.01(5).

Terrace areas shall mean the land between the normal location of the established street curbing and street right-of-way lines.

(4) Street Tree Management Plan. It shall be the duty of the Municipal Tree Commission to study, investigate, develop and/or update the Street Tree Management Plan as needed, and to forward recommendations to the Manitowoc Common Council for implementation. This plan shall consist of a written evaluation of all space and site factors affecting public areas which will aid in the determination of the tree species best suited to a particular planting site in regard to growth habits, shape, form, health, disease and pest resistance, and conflicts with wires, lights, pavements, traffic, pedestrians, sidewalks, environmental pollution, sewers and space availability. The evaluation of the space and site factors and species selection for a particular street shall be made by the City Forester.

(5) Public Street Tree Species.

(a) Public Street Trees Forbidden. Trees listed as forbidden in the City of Manitowoc Street Tree Planting Policy shall not be planted in terrace areas.

(b) Public Street Trees Permitted. Trees listed in the City of Manitowoc Street Tree Planting Policy are eligible for planting in terrace areas. Trees not listed may be permitted with approval of the City Forester.

(6) Authority to Preserve or Remove City Trees and Shrubs and Abate Public Nuisances.

(a) Authority Over Public Street Trees and Shrubs. The City Forester may plant, prune, spray, preserve, renew and remove public street trees and shrubs, or cause such work to be done as may be necessary, to ensure public safety, preserve the beauty of public areas, and to protect public property, sewers, water and electrical utilities from damage or injury in accordance with the City adopted policy.

(b) Authority Over Private Trees, Shrubs, and Terrace Trees.

1. Notice to Abate Public Nuisances. Whenever the Director finds, upon examination, that any tree or shrub or part thereof growing or located upon private premises is a hazard or public nuisance, it shall be pruned, sprayed, removed or otherwise abated by the owner or occupant of such property. A written notice from the Director shall be sent by certified mail to the affected homeowner. Said notice shall include a detailed explanation of any required abatement.

Abatement shall take place within 30 days of receipt of said written notice unless specified otherwise and unless the Director shall determine that immediate action is necessary for public safety. At the discretion of the Director, Manitowoc Public Utilities and the Director of Public Works herein are authorized to complete emergency pruning that, in the opinion of the Director, constitutes a hazard or public nuisance.

2. Abatement of Nuisances. If the owner of such premises or owner's agent and/or tenant refuses or neglects to comply with the written notice within the time specified, the City Forester shall cause the nuisance to be sprayed, pruned, removed or otherwise abated, and shall report the expense to the Municipal Tree Commission as a proposed assessment against the property. Prior to November 10th of each year, the Commission shall make a report to the Common Council of the work performed on each parcel and the amount chargeable to the property. The Common Council shall hold a public hearing on the proposed assessments and shall give notice thereof by publishing a Class 2 notice under Wis. Stat. Ch. 985. At the direction of the Common Council, the assessment amounts shall be reported to the City Clerk to be levied against each affected parcel and shall constitute a lien collectable as a special assessment.

(7) Authority of the Director to Enter Private Premises. The Director shall request permission of a property owner, at least 48 hours in advance of an inspection, for the right to enter upon private land to inspect and abate a suspected hazard or public nuisance. Notice shall be in written form by certified mail to the property owner and occupant, if not the property owner. If permission is denied, the Director shall apply to the court having jurisdiction for an order to enter the land to inspect and abate a suspected hazard or public nuisance.

In the case of an emergency defined herein as a situation which creates an immediate danger or harm to the health, safety or welfare of the public, the Director may enter private property to abate a hazard or public nuisance without compliance with the notice requirement detailed in this section. If the Director shall abate the nuisance on private property, the cost of the abatement shall be reported to the Municipal Tree Commission as a proposed assessment against the property. The Commission shall make a report to the Common Council and the Common Council shall hold a public hearing, and report to the City Clerk as set forth in subsection (6)(b)(2) of this section.

(8) Interference with the City Forester Prohibited. No person shall interfere with the City Forester in carrying out any lawful work or activity authorized by this chapter.

(9) Assessment of Costs of Abatement. The entire cost of abating any hazard or public nuisance resulting from any tree or shrub growing or located upon private property shall be a minimum charge of \$300.00 borne by the owner of such property. For any abatement that takes longer than 60 minutes, there will be an additional charge of time and material at 120 percent of the total cost to the City.

(10) Permit for Planting, Maintenance, and Removal of Public Trees and Shrubs.

(a) Permit Required. No person, except upon order of the City Forester, shall plant or remove a tree or shrub in a public right-of-way or any terrace area, or cause such act to be done by others, without first obtaining a permit for such work from the City Forester. Prior to removal of any tree or shrub said person(s) shall be bonded and trained in proper techniques of forestry. The owner or their agent may remove trees or plant trees after receiving a written permit which shall include a statement whereby the owner or agent holds the City harmless from any liability claims of any kind. Any activities located in an area reserved for utility and drainage easements shall be done in compliance with "Standard Utility Easement Conditions," dated November 3, 1997, and recorded at v. 1252 p. 498 of Records as Document No. 798738, Manitowoc County, Wisconsin.

(b) Permit Exemptions. No permit shall be required to cultivate, prune, fertilize or water trees or shrubs. No permit is necessary to plant trees on private property.

(c) Permit Requirements and Conditions. If the City Forester determines that the proposed work or planting described in an application for a permit is necessary and in accordance with the purposes of this chapter, the City Forester may issue a permit to the applicant.

(d) Permit Form – Expiration, Inspection. Every permit shall be issued by the City Forester on a standard form. Permits issued under this section shall expire 90 days after date of issuance. There shall be no charge for the permit.

1. Permits to Public Utilities. Whenever a permit is issued under this section to a public utility or its agent to remove, cut, disturb, alter or perform surgery on any public tree or shrub, the City Forester shall limit the work to be performed to fit the actual necessities of the utility and may

assign an inspector to supervise the work performed under the provisions of the permit. This permit shall be included as part of the annual working agreement with Manitowoc Public Utilities or any other utility/agency that may have an annual working agreement with the City.

(11) Planting and Pruning Trees and Shrubs.

(a) Planting.

1. Any person desiring to plant trees or shrubs in public areas or terrace areas shall submit the size, species and variety of the tree or shrub to the City Forester and receive approval therefrom prior to commencement of such planting. The request shall be on a standard planting permit form.
2. The City Forester shall determine the species of tree that will be allowed to be planted in accordance with the City of Manitowoc Street Tree Planting Policy. The City Forester may coordinate proposed street trees with local landscapers according to availability.

(b) Pruning.

1. The Manitowoc Parks and Recreation Department shall work in conjunction with property owners or their agents to maintain and prune public street trees.
2. Trees in or on any public areas or on any private premises adjacent to any public right-of-way or terrace areas shall be kept pruned so that the lowest branches projecting over the public street or alley provide a clearance of not less than 14 feet above the street surface. All public street trees shall be pruned to a minimum clearance height of 10 feet above the sidewalk for pedestrian safety. The City Forester may waive the provisions of this subsection for newly planted trees and shrubs if determined they do not interfere with public travel, obstruct the light of any street light, obstruct any street sign or endanger public safety.
3. Oak trees on private or public property shall not be pruned between April 15th to September 1st, except by written permission from the City Forester.

(12) Obstruction of View at Intersections Prohibited. A vision clearance area shall be maintained in accordance with MMC 15.030.

(13) Injury to Trees and Shrubs Prohibited.

(a) No person shall, without the written consent of the owner or occupant in the case of a tree or shrub on private property, or without a written permit from the City Forester in the case of a tree or shrub on public property, cause, proximately cause or cause others to commit the following acts:

1. Damage any tree or shrub by any physical means.
2. Permit fires to burn causing injury to trees or shrubs.
3. Permit any toxic chemical, petroleum products, smoke, oil or injurious substances to seep, drain, or be emptied upon or near any tree or shrub.
4. Erect, alter, repair, raze or excavate without placing suitable guards as approved by the City Forester around all trees or shrubs which may be injured by such operations.
5. Remove any guard, stake or other device or material intended for the protection of a tree or shrub, or close or obstruct any open space about the base of a tree or shrub designed to permit access of air, water and fertilizer.

(b) Topping of Public Street Trees Is Prohibited. **Topping**, defined as a severe cutback of leaders and main scaffold branches to stubs within the tree, so as to remove the normal canopy and disfigure the tree, is prohibited. Trees damaged by storms, when proper pruning practices are impractical, may be exempted from this prohibition at the determination of the City Forester.

(14) Removal of Trees and Stumps. Trees cut down in public areas shall be removed and the root stump grubbed out, or ground out to a depth of at least nine inches below grade measured in a straight line. If no sidewalk exists, the grade of grubbing should be one-third inch per foot from a point nine inches below the curb. All brush and debris must be removed from the public areas by the property owner or their agent. All holes shall be filled to normal grade level with topsoil or native soil as soon as practical. When it is necessary for the City to cut down a street tree, stumps will be removed as funds are available.

(15) Cost of Planting, Removal, and Protection of Trees and Shrubs in Terrace Area. The cost of planting trees in terrace areas in the City and the cost of removal and protection when requested by a property owner who obtains the proper permit shall be paid by the property owner. Planting of street trees on newly platted residential subdivisions shall be performed in accordance with the City of Manitowoc Engineering Design Manual – Chapter 10.

(16) Planting in City Right-of-Way. Anyone wishing to plant approved species in the public right-of-way must apply to the Department of Public Infrastructure for approval. The Director of Public Infrastructure, or designee, shall have sole authority to approve or deny plantings. Planting in the right-of-way shall be permitted as long as there is no encroachment on pedestrian paths or obstruction of any vision triangles or vision of motorists. Plantings that are so approved may be ordered removed at the planter's expense upon 30 days notice. Failure to remove said plants will result in a bill from the Department of Public Infrastructure. The City bears no liability for any right-of-way plantings and any application to plant in the right-of-way shall include a hold harmless agreement.

(17) Appeal from Determinations or Orders. Any person who receives a written determination or order from the Director and objects to all or any part thereof may file with the Director a written appeal to the Public Safety Committee within seven days of receipt of the written order. The Public Safety Committee shall hear such appeal within 15 days of receipt of written notice of the appeal. After such hearing, the Public Safety Committee may reverse, affirm, or modify the order or determination, and shall state the grounds for its decision in writing. The chairperson of the Public Safety Committee shall, by letter, notify the party appealing the order or determination of its decision within 10 days after the decision has been made. The decision of the Public Safety Committee shall be final.

(18) Adoption of State Law. Wis. Stat. §§ 27.08, 27.09, 86.03, and 800.093 as amended, and as may be amended, are hereby adopted and incorporated herein by reference.

(19) Violations and Penalty. Violation of any offense for the cutting, damaging or mutilation of trees or shrubs located in public and terrace areas, or any provision of Wis. Stat. § 86.03, is subject to a forfeiture amount not to exceed \$25.00 per tree or shrub damaged. In addition to the forfeiture, court-ordered restitution will be sought for all damage or loss in an amount not to exceed \$4,000, as authorized pursuant to Wis. Stat. § 800.093. All other violations in this section shall be limited to a forfeiture in an amount not to exceed \$500.00 for each offense.

(20) Conflicts with Site Plan Requirements. In instances where a provision of this chapter conflicts with site plan requirements under MMC 15.370(2) or landscaping and off-street parking requirements under MMC 15.690, for commercial, industrial, and residential developments having five or more dwelling units, the requirements under MMC 15.370(2) and 15.690 shall prevail and shall define the requirements for compliance.”

Section 2. This Ordinance shall take effect the day after publication.

Introduced _____

Adopted _____

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Approved _____

Justin M. Nickels, Mayor

This instrument drafted by Kathleen M. McDaniel, City Attorney

Fiscal Impact: n/a
Funding Source: n/a
Finance Director Approval: /sc
Approved as to form: /kmm