

CHAPTER XXIII

TREES AND SHRUBS

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23.01 Statement of Policy and Applicability of Chapter

That Chapter 23.01(1) of the Municipal Code of the Village of Elkhart Lake is repealed and hereby re-created and reads as follows:

(1) Intent and Purpose. It is the intent and purpose of the Village to plant and maintain trees in the public areas of the community and to removed and replace trees that become diseased or injured to the extent that they will continue to decline in health and vigor. The importance of trees and woodlands is recognized because they contribute to the beauty of the Village, provide habitat for birds and other wildlife, reduce pollution, improve air quality, reduce noise, help overcome global warming and protect property values.

It is important to protect, preserve and encourage trees in public locations throughout the village. When necessary and desirable additional trees of a variety of types are planted. Trees are replaced when nurturing is not successful or when trees are seriously injured.

The Village is moving toward a more proactive stance when construction and building activity takes place on residential and business property. Planting of new trees is encouraged. Protection of existing trees is stressed. It is important that the Village and private property owners work in harmony to achieve the goal of increasing the number of trees in the Village while protecting and fostering existing trees.

The Village tree ordinance recognizes that trees are a public benefit and are important to the health, safety and welfare of its citizens.

It is the policy of the Village to regulate and establish policy for the control of planting, removal, maintenance and protection of trees and shrubs in or upon all public areas and terrace/parkway areas of the Village to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, alleys, sidewalk or other public areas; 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.

(2) Application. The provisions of this Chapter shall apply to trees and shrubs growing or hereafter planted in or upon public areas and terrace/parkway 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.

23.02 Definitions.

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

(1) Person. Person, owner, firm, association, corporation, or group.

- (2) **Public Areas.** Includes all public parks and other lands owned, controlled or leased by the Village except terrace/parkway areas.
- (3) **Street Trees/Shrubs.** Trees, shrubs, bushes and all other woody vegetation on land lying within the street right-of-way on either side of all streets, avenues, drives, lanes or ways within the Village.
- (4) **Park Trees.** Trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all areas owned by the Village or to which the public has free access as a park.
- (5) **Public Nuisance.** Any tree, shrub or part thereof which by reason of its condition interferes with the use of any public area and/or 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 due to size and/or density of trees or shrubs.
- (6) **Parkway/Terrace Areas.** The land between the normal location of the street curbing and sidewalk. Where there is no sidewalk, the area from the curb line or road edge to the street right-of-way shall be deemed to be a parkway/terrace for the purpose of this Chapter. “Parkway” shall have the same meaning as “terrace.” Where there are only sidewalks, the area from the curb to the street right-of-way shall be deemed parkway areas under this chapter.
- (7) **Major Alteration.** Trimming a tree beyond necessary trimming to comply with this Chapter.

23.03 Creation and Establishment of Tree Commission

- (1) **Composition.** There is hereby created and established a Tree Commission for the Village of Elkhart Lake which shall consist of five (5) members [four (4) residents of the Village, and one (1) Village Board member] who shall be appointed by the Village President with the approval of the Village Board.
- (2) **Term of Office.** The term of the five (5) persons to be appointed by the Village President shall be three (3) years except that the term of two (2) of the members appointed to the first commission shall be for only one (1) year and the term of two (2) members of the first commission shall be for two (2) years. In the event that vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.
- (3) **Compensation.** resident members of the commission shall serve without compensation. The Village Board member will be compensated at regular meeting rates.

(4) Duties and Responsibilities. It shall be the responsibility of the Tree Commission to study, investigate, develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the Village Board and upon their acceptance and approval shall constitute the official comprehensive Village tree plan for the Village of Elkhart Lake. The Tree Commission when requested by the Village Board, shall consider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.

(5) Operation. The Tree Commission shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

23.04 Planting of Street Trees.

(1) Street Tree Species to Be Planted. The following list constitutes the official Street Tree species for the Village of Elkhart Lake. No species other than those included in this list may be planted as Street Trees without written permission of the Village Tree Commission.

See Appendix A

(2) Spacing. The spacing of street trees will be in accordance with the three (3) species size classes listed in Subsection (1), and no trees may be planted closer together than the following:

- (a) Small Trees – thirty (30) feet; except.....
- (b) Medium Trees – forty (40) feet, except
- (c) Large Trees -- fifty (50) feet, (except in special plantings designed or approved by a landscape architect)
- (d) Shrubs – May be spaced according to use and permitted by the Tree Commission.

(3) Distance From Curb and Sidewalks. The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three (3) species size classes listed in Subsection (1), and no trees may be planted closer to any curb or sidewalk than the following:

- (a) Small trees/shrubs –two (2) feet;
- (b) Medium trees/shrubs – three (3) feet;
- (c) Large trees/shrubs – four (4) feet.

(4) Distance from Street Corners and Fire Hydrants. No street tree shall be planted closer than thirty (30) feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than twenty (20) feet of any fire hydrant.

(5) Utilities. No street trees other than those species listed as SMALL TREES in Subsection (1) may be planted under or within ten (10) lateral feet of any overhead

utility wire, or over or within five (5) lateral feet of any underground water line, sewer line, transmission line or other utility.

(6) Nuisance Trees. The planting of willows, poplar, silver maples, catalpa, black locust, box elder, horse chestnut, or any other fruit or nut bearing trees shall not be permitted:

23.05 Public Care.

The Village shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all street, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The property owner shall be responsible for the systematic watering of new plantings. The Village Tree Commission may remove or cause to order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This Section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of said trees is in accordance with Section 23.04(1).

23.06 Tree Topping.

It shall be unlawful as a normal practice for any person or firm to top any street tree, park tree, or other tree on public property without the permission of the Village Tree Commission. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Chapter at the determination of the Tree Commission.

23.07 Trimming.

(1) Clearance Trimming.

(a) Trees and shrubs standing in or upon any public right-of-way between the lot line and the curb or ledge of the improved street or upon any private premises adjacent to any public street, right-of-way, park, playground, or place will be kept trimmed by the Village Tree Commission or in front of which such trees or shrubs are standing so that the lowest branches projecting over the public street or right-of-way provide a clearance of not less than thirteen and one-half (13-1/2) feet and over all other public places of not less than eight (8) feet. The Village Tree Commission may waive the provisions of this Section for newly planted trees if they determine that they do not interfere with public travel, obstruct the light of any street light, or endanger public safety.

(b) Clearance from sidewalk to lower branches shall not be less than eight (8) feet. All trees standing upon private property in the Village of Elkhart Lake, 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 eight (8) 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.

(2) Pruning; Corner Clearance.

(a) Notwithstanding any other provision of this Chapter, no person shall maintain, plant or permit to remain on any private or public premise situated at the intersection of two (2) 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. In any event, such trees must be planted at least thirty (30) feet from the intersection and no less than thirty (30) feet from each other.

(b) The Tree Commission of the Village of Elkhart Lake shall prune the branches of any tree overhanging any street or right-of-way within the Village so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight (8) feet above the surface of the street or sidewalk. The Village Tree Commission shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The Village shall have the right to prune any shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign, or is a safety concern to pedestrians.

(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 Tree Commission may by written notice inform 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 that steps will be necessary to remove such interference. Owner may within ten (10) days of receipt of notice appeal to the Tree Commission in writing.

23.08 Prohibited Acts.

(1) Damage to Public Trees. No person shall, without the consent of the Village of Elkhart Lake Tree Commission in the case of a parkway/terrace area tree, public tree or shrub, perform or cause to be performed by others any of the following acts:

(a) Secure, fasten or run any rope, wire sign, unprotected electrical installation or other device or material to, around or through a tree or shrub.

(b) 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.

(c) 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.

(d) 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.

(e) 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 or staple temporary “no parking” signs to trees when necessary in conjunction with street improvement work, tree maintenance work, parades, or other Village activity.

(2) 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 ten (10) feet from any public tree without a permit from the Village Tree Commission.

23.09 Interference with Village Tree Commission.

It shall be unlawful for any person to prevent, delay or interfere with the Village Tree Commission any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees, or park trees. Furthermore, the Tree Commission or its duly contracted arborist shall have the authority to enter onto private property whereon there is located a tree, shrub or plant part that is suspected to be a public nuisance.

23.10 Dead or Diseased Tree Removal on Private Property.

The Village of Elkhart Lake shall have the right to cause the removal of any dead or diseased trees on private property within the Village, when such trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the Village. The Village Tree Commission shall cause a written notice to be personally served or sent by registered mail to the person to whom was sent the tax bill for the general taxes for the preceding year. Such notice shall describe the kind of tree, shrub, or other plant or plant part which has been declared to be a public nuisance; its location on the property; the reason for declaring it a nuisance; and the actions that the property owner may undertake to abate the nuisance. Removal or contract for removal shall be done by said owners at their own expenses within sixty (60) days after the date of service of notice. In the event of failure of owners to comply with such provisions, the Village Tree Commission shall have the authority to remove such trees and charge the cost of removal on the owner’s property tax notice.

23.11 Removal of Stumps.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

23.12 Arborist's/Tree Service License and Bond.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the Village without first applying for and procuring a license. The license fee shall be Twenty-Five Dollars (\$25.00) annually in advance; provided, however, that no license shall be required of any public service company or Village employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of Fifty Thousand Dollars (\$50,000.00) for bodily injury and One Hundred Thousand Dollars (\$100,000.00) property damage indemnifying the Village or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

23.13 Review by Village Board.

The Board of Trustees of the Village of Elkhart Lake shall have the right to review the conduct, acts and decisions of the Village Tree Commission. Any person may appeal from any ruling or order of the Village Tree Commission to the Village Board who may hear the matter and make a final decision.

23.14 Penalty.

Any person violating any provision of this Chapter shall be, upon conviction or a plea of guilty, subject to a forfeiture not to exceed Five Hundred Dollars (\$500.00). If as a result of the violation of any provision of this Chapter, the injury, mutilation, or death of a tree, shrub, or other plant located on Village-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined by the Village Tree Commission.

23.15 Refer to Streets and Sidewalks Chapter 10

APPENDIX A

ALLOWABLE STREET TREES/SHRUBS

<u>Botanical Name</u>	<u>Common Name</u>	<u>Growth Rate</u>	<u>Form</u>	<u>Adaptation and Remarks</u>
*Wisconsin Native				
TALL TREES – (40-100 FEET)				
<u>DECIDUOUS TREES</u>				
<i>*Acer x freemanii</i>	Freeman Maple	Fast	Upright	Urban; smooth gray bark.
<i>Acer plantanoides</i>	Norway Maple	Medium	Round	Urban; dense canopy; competitive roots; late, yellow fall color.
<i>*Acer rubrum</i>	Red Maple	Fast	Round	Moist, acid soil; tolerates poor drainage; smooth gray bark; yellow, orange, or red fall color.
<i>*Celtis occidentalis</i>	Common Hackberry	Medium	Vase	Tolerates alkaline soils; “pebbled” bark; yellowish fall color; pest or disease problem may limit use.
<i>‘Autumn Purple’</i>			Round	Seedless; superior fall color.
<i>Fraxinus pennsylvanica</i>	Green Ash	Fast	Oval-irregular	Dry to wet soil; tolerates poor drainage; salt-tolerant; twiggy and weak-wooded; yellow fall color; pest or disease problem may limit use.
<i>Tastigiata</i>	Sentry Ginkgo		Columnar	No fruits

<u>Botanical Name</u>	<u>Common Name</u>	<u>Growth Rate</u>	<u>Form</u>	<u>Adaptation and Remarks</u>
*Wisconsin Native				
TALL TREES – (40-100 FEET)				
<u>DECIDUOUS TREES</u>				
<i>*Gleditsia triacanthos</i>	Common Honeylocust	Fast	Vase	Urban; tolerates poor drainage; salt-tolerant; dioecious, females produce pods; fine-textured foliage; wicked thorns; yellow fall color; pest or disease problems may limit use.
<i>Liriodendron tulipifera</i>	Tuliptree	Fast	Upright	Rich, moist soil; unique leaves; interesting June flowers; yellow fall color; purchase from northern source
<i>Quercus robur</i>	English Oak	Medium	Round	Well-drained soil.
<i>*/quercus rubra</i>	Red Oak	Medium	Round	Urban; pyramidal when young; red fall color; well drained soil; often sold as <i>Q. borealis</i> .
<i>Tilia x 'Redmond'</i>	Remond Linden	Medium	Pyramidal	Urban; dark green foliage.
<i>Tilia tomentosa</i>	Silver Linden	Slow	Pyramidal	Tolerates heat and drought.
<i>Ulmus x 'New Horizon'</i>	Hybrid Elm	Fast	Upright	Dutch elm disease resistant; urban
<i>'Regal'</i>				Dutch elm disease resistant; urban

<u>Botanical Name</u>	<u>Common Name</u>	<u>Growth Rate</u>	<u>Form</u>	<u>Adaptation and Remarks</u>
*Wisconsin Native				
TALL TREES – (40-100 FEET)				
<u>EVERGREEN TREES</u>				
<i>Abies concolor</i>	White Fir	Medium	70' High	Dry soil; heat; gray-green foliage
MEDIUM TREES --- (30-40 FEET)				
<u>DECIDUOUS TREES</u>				
<i>Aesculus x carnea</i> 'Briotii'	Ruby Horsechestnut	Slow	Round	Rich, moist soil; red flowers subject to sunscald.
<i>Aesculus glabra</i>	Ohio Buckeye	Slow	Round	Rich, moist soil; yellow-green flowers; orange fall color.
* <i>Betula nigra</i>	River Birch	Medium	Vase	Wet to dry soil; intolerant of alkaline soils; tolerates poor drainage; pinkish peeling bark.
'Heritage'				Lighter bark color.
<i>Betula platyphylla var. japonica</i> 'Whitespire'	Whitespire Birch	Medium	Pyramidal	White bark; heat tolerance results in greater resistance to bronze birch bore.
<i>Magnolia acuminata</i>	Cucumbertree	Fast	Pyramidal	Inconspicuous, greenish flowers; pink to red fruits coarse foliage; no fall color.
<i>Phellodendron amurense</i> 'Macho'	Macho Amur Corkree	Medium	Vase	Urban; dry soil; seedless; compound leaves; corky bark; yellow fall color.

<u>Botanical Name</u>	<u>Common Name</u>	<u>Growth Rate</u>	<u>Form</u>	<u>Adaptation and Remarks</u>
*Wisconsin Native				
MEDIUM TREES -- (30-40 FEET)				
<u>DECIDUOUS TREES</u>				
<i>Prunus maackii</i>	Amur Chokecherry	Medium	Round	Amber, exfoliating bark; does well in containers.
<i>Ulmus parvifolia</i>	Lacebark Elm	Medium	Vase	Disease resistant; exfoliating bark
<u>EVERGREEN TREES</u>				
<i>Picea pungens</i> var. <i>glauca</i>	Blue Colorado Spruce	Slow	60' high	Sun; urban; blue needles; stiff, formal habit.
LOW TREES -- (15-30 FEET)				
<u>DECIDUOUS TREES</u>				
<i>Acer ginnala</i>	Amur Maple	Medium	Round	Partial shade; red fruits; red fall color.
	'Bailey Compact'			More Compact; 10' high
	'Autum Briliance'			Bright red-orange fall color.
* <i>Amelanchier laevis</i>	Alleghany Serviceberry	Slow	Upright	Moist soil; white flowers; orange to red fall color; edible fruits.
var. <i>inermis</i>	Thornless Cockspur Hawthorn		Spreading	No thorns.
<i>Crataegus phaenopyrum</i>	Washington Hawthorn	Medium	Upright	Urban; sun; latest blooming; small, persistent, orange-red fruits in clusters; orange fall color.

<u>Botanical Name</u>	<u>Common Name</u>	<u>Growth Rate</u>	<u>Form</u>	<u>Adaptation and Remarks</u>
*Wisconsin Native				
LOW TREES – (15-30 FEET)				
<u>DECIDUOUS TREES</u>				
<i>M.</i> ‘Donald Wyman’	Donald Wyman Crab	Medium	Rounded-spreading	Disease resistant; white flowers; 3/8” diam., persistent bright red fruits.
<i>M.</i> ‘Indian Summer’	Indian Summer Crab	Medium	Rounded	Disease resistant; rose-red flowers; 5/8-3/4” diam., persistent red fruits.
<i>M.</i> ‘Professor Springer’	Professor Sprenger Crab	Medium	Upright	Disease resistant; white flowers; 1/2” diam., persistent orange fruits.
<i>M.</i> ‘Ralph Shay’	Ralph Shay Crab	Medium	Rounded-spreading	Disease resistant; white flowers; 1-1 1/4” diam., bright red, persistent fruits for culinary purposes.
<i>M.</i> ‘White Cascade’	White Cascade Crab	Slow	Weeping	Disease resistant; white flowers; 1/2” diam., yellowish fruits.
<i>Prunus x</i> ‘Newport’	Newport Plum	Medium	Round	Sun; reddish-purple summer foliage.
<i>Sorbus aucuparia</i> and cvs.	European Mountainash	Medium	Oval	Cool soil; orange fruits; pest or disease problem.
‘Ivory Silk’			Oval	Straight, single trunk

<u>Botanical Name</u>	<u>Common Name</u>	<u>Growth Rate</u>	<u>Form</u>	<u>Adaptation and Remarks</u>
*Wisconsin Native				
LOW TREES -- (15-30 FEET)				
<u>EVERGREEN TREES</u>				
'Hillii'	Hill Dundee E.R.			Gray-green foliage turns purple in winter; no fruits.
var. <i>densata</i>	Black Hills Spruce	Slow	20' high	Dry soil; sun; narrow, dense habit.
<i>Taxus cuspidata</i>	Japanese Yew	Slow	20' high	Shade; urban; deep green needles; often sold as <i>T. cuspidata</i> 'Capita.'
TALL SHRUBS				
<u>DECIDUOUS SHRUBS</u>				
<i>Cornus mas</i>	Corneliancherry Dogwood		Oval	Shade; urban; yellow flowers in April; flower buds may be injured or killed during some winters; edible red fruits
<i>Cotinus coggygia</i>	Smoketree		Rounded	Sun; dry soil; pinkish "smoke like" inflorescence; subject to verticillium wilt.
<i>Cotoneaster multiflorus</i>	Manyflowered Cotoneaster		Mounded	Sun; well-drained soil; white flowers; red fruits; very wide-spreading; subject to fire blight.
<i>Enonymus europaea</i>	Spindletree or European Euonymus		Tree-like	Dry soil; urban; striped bark; persistent; pink fruits; orange to purple fall color.

<u>Botanical Name</u>	<u>Common Name</u>	<u>Growth Rate</u>	<u>Form</u>	<u>Adaptation and Remarks</u>
*Wisconsin Native				
TALL SHRUBS				
<u>DECIDUOUS SHRUBS</u>				
'Red Cap'	Red Cap E.E.			Bright pink fruits.
<i>Hydrangea paniculata</i>	Peegee Hydrangea		Upright	Moist soil; white to pink flowers in August; persistent, tan flower clusters.
<i>Ligustrum vulgare</i> 'Cheyenne'	Cheyenne Privet		Erect	Dry soil; urban; white flowers; black fruits; hedge plant.
* <i>Physocarpus opulifolius</i>	Common Ninebark		Vase	Dry soil; semi-shade; white flowers; red, capsular fruits; shredded bark; coarse.
<i>Prunus triloba</i>	Double Flowering Plum		Rounded	Sun; double, pink flowers; no fruit.
'Asplenifolia'	Feathery Glossy Buckthorn		Vase	Moist soil; shade; finely divided leaves.
<i>Syringa x chinensis</i>	Chineses Lilac		Vase	Dry, alkaline soil; purple-lilac flowers; fine-textured; good screening plant.
<i>Syringa reticulata</i>	Japanese Tree Lilac		Tree-like	Sun; white flowers in June; tan fruits; cherry-like bark; often sold as <i>S.amurensis japonica</i> .

Botanical Name

Common Name Growth Rate Form Adaptation and Remarks

*Wisconsin Native

TALL SHRUBS

DECIDUOUS SHRUBS

Tamarix ramosissima

Tamarisk

Irregular-
upright

Dry soil; sun; salt-tolerant;
tiny, pink flowers; very
fine-textured; often sold as
T.pentandra.

Viburnum dentatum

Arrowwood Viburnum

Vase

Moist soil; shade; white
flowers in June; blue fruits;
maroon fall color.

var. *pubescens*

Lower growing; later