

## Chapter 17 URBAN FOREST

§ 17-1. Trees included.

§ 17-2. Permit required.

§ 17-3. Permit standards.

§ 17-4. Appeals.

§ 17-5. Appeals procedures.

§ 17-6. Factors considered on appeal.

§ 17-7. Trees in public right-of-way.

§ 17-8. Penalties.

§ 17-9. Remedial action.

§ 17-10. Control of Dutch elm disease.

### **Sec. 17-1. Trees included.**

The chapter (except for Section 17-7 below) shall apply to trees on private property with trunks that measure at least twenty-four (24) inches in circumference at four and one-half (4 1/2) feet above ground level. If a tree divides into branches at less than four and one-half (4 1/2) feet, the trunk shall be measured immediately beneath the dividing point. This chapter shall also apply to trees, regardless of size, that were planted pursuant to a reforestation requirement contained in a decision granting a permit.

(No. 19-12-88, 4-18-88)

### **Sec. 17-2. Permit required.**

No person shall remove or destroy, or cause the removal or destruction, of a tree or undertake any action that will substantially impair the health or growth of a tree without first obtaining a permit from the Village Manager. No permit shall be required for normal and reasonable trimming or other tree care designed to maintain the health, shape or balance of a tree.

(No. 19-12-88, 4-18-88)

### **Sec. 17-3. Permit standards.**

(a) The Village Manager is authorized to issue a permit only if one (1) of the following conditions applies:

- (1) The tree is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration;
- (2) The tree is dead or dying, or is in danger of falling;
- (3) The tree constitutes a hazard to the safety of persons;
- (4) The tree constitutes a hazard and threatens injury to property;

- (5) The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;
- (6) The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner.

(b) If the Village Manager determines that none of the above conditions apply, he shall deny the permit. The Manager is authorized to consult with experts concerning any of the above conditions.

(No. 19-12-88, 4-18-88)

#### **Sec. 17-4. Appeals.**

(a) An applicant who is denied a permit by the Village Manager may appeal the Manager's decision to the Board of Managers in writing within ten (10) days of the Village Manager's denial of the application for a permit.

(b) The Board of Managers shall have the authority to permit the removal or destruction of a tree or the undertaking of any action that will substantially impair the health or growth of a tree if, after a public hearing, the Board finds that such removal, destruction or other action will not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and can be permitted without substantial impairment of the purpose and intent of this chapter.

(No. 19-12-88, 4-18-88)

#### **Sec. 17-5. Appeals procedures.**

(a) Upon the filing of an appeal, the Village Manager shall forthwith transmit to the Board of Managers the record pertaining to the appeal. The Village Manager shall give written notice to the hearing on appeal to the applicant, all abutting property owners and all members of the Village tree committee. Said notice shall be provided to such persons at least ten (10) days prior to the meeting at which the appeal is to be considered. In addition, the property shall be posted with a sign which shall include the case number, nature of the application, and the date, time and place of the hearing. The sign shall be located so as to be readable from the roadway abutting the property and should be placed five (5) feet from the sidewalk, if one exists, or five (5) feet from the curb or the edge of the paved portion of the street if there is not curb. In the case of lots abutting more than one (1) street, a sign shall be posted for each abutting street.

(b) For the conduct of any hearing on an appeal pursuant to this section, a quorum shall be not less than four (4) members of the Board of Managers and the decision on appeal shall be approved by a majority of those board members present and voting.

(c) At the hearing, any party may appear in person or by agent or by attorney. The decision by the Board of Managers shall be made within sixty (60) days following the hearing.

(d) In exercising its powers, the Board of Managers may affirm the denial of a permit, may direct the Village Manager to issue a permit, or may direct the Manager to issue a permit upon such conditions, terms or restrictions as the Board of Managers may deem necessary in order to make the required findings as set forth in section 17-4(b). If the Board of Managers imposes a reforestation requirement as a condition of approving the removal of one or more trees, the Village Manager may extend the deadline for planting the replacement tree(s), for up to six (6) months, if the Village Manager finds that, due to circumstances beyond the permittee's control, it is impossible or impractical to plant the replacement tree(s) on or before the deadline established by the Board of Managers.

(e) The secretary of the Board of Managers shall keep minutes of all appeal hearings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall be filed in the office of the Village Manager and shall be public record.

(No. 19-12-88, 4-18-88; No. 09-01-05, 09-12-05)

#### **Sec. 17-6. Factors considered on appeal.**

The Board of Managers shall consider the following factors in deciding whether to approve, disapprove or modify the decision of the Manager:

- (a) Those specified in section 17-3 above if relevant to the appeal;
- (b) The reasons cited by the applicant for wanting to remove or destroy the tree;
- (c) The reasons, if any, cited by residents who are either in favor of or in opposition to the issuance of the permit;
- (d) Whether tree clearing is necessary to achieve proposed development, construction or land use otherwise permitted under the Village Code, and the extent to which there is no reasonable alternative;
- (e) Whether the applicant proposes reforestation;
- (f) Hardship to the applicant if a permit for the requested action is denied;
- (g) The desirability of preserving a tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen;
- (h) Such other relevant matters as will promote fairness and justice in deciding the particular case.

(No. 19-12-88, 4-18-88)

#### **Sec. 17-7. Trees in public right-of-way.**

No person shall remove or destroy, or cause the removal or destruction of, a tree or undertake any action that will substantially impair the health or growth of a tree of any size or description in the public right-of-way without first obtaining a permit from the Village Manager, whose decision to issue or deny the permit shall be governed by the requirements of state law and relevant Village right-of-way agreements. No person shall prune a tree in the Village Tree Inventory without first obtaining a permit from the Village Manager, who shall not grant a permit unless the Village Manager finds that such pruning is consistent with the Village tree pruning program.

(No. 19-12-88, 4-18-88; No. 01-01-06, 01-09-06)

#### **Sec. 17-8. Penalties.**

(a) Violation of any provision of this Chapter shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to such prosecution and penalties as are provided in Chapters 5 and 6 of this Code. Any person who violates this Chapter or directs or allows another to commit an act that violates this Chapter, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of this Chapter on his or her property, shall be guilty of a violation and shall be jointly and severally subject to prosecution and the penalties provided in Chapters 5 and 6 of this Code. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation.

(b) The Village may institute injunctive or any other appropriate action or proceedings at law or equity for enforcement of this chapter in any court of competent jurisdiction.

(No. 19-12-88, 4-18-88; No. 02-03-09, 02-09-09)

**Sec. 17-9. Remedial action.**

(a) Whenever the Village Manager or his designee finds that any person is in violation of this chapter or is failing to comply with the terms and conditions of a permit issued pursuant to this chapter, in whole or part, he may issue an order to stop the removal of or damage to the tree, unless the Village Manager determines that stopping such work would threaten the public safety.

(b) Continuing work in violation of an order issued pursuant to Section 17-9(a) by the Village Manager or his designee shall constitute a misdemeanor, and upon conviction shall be punishable by a fine in the maximum amount permitted by law.

(c) An order issued pursuant to Section 17-9(a) posted on the property, in a conspicuous location, shall be sufficient service upon all persons physically on the property. A posted notice shall not be removed except under the authority of the Village Manager.

(No. 19-12-88, 4-18-88)

**Sec. 17-10. Control of Dutch elm disease.**

(a) The Village Manager is hereby authorized to inspect any tree within the Village, which, according to the Village Manager's knowledge, information or belief, is or may be infected with the Dutch elm disease or elm blight. If upon such inspection the Village Manager determines that any such tree is infected with either of said diseases, the Village Manager shall, if the tree is in or on a public street or other public place within the Village, remove the same in such manner as to prevent as fully as possible the spread of such disease.

(b) If a tree is infected with Dutch elm disease or elm blight and is located on private property, the Village Manager may serve upon the owner of such property a written notice, in the manner hereinafter provided, that such tree is so affected by the disease and that the owners shall cause the same to be removed and/or take other remedial action in accordance with the notice, or to appear before the Village Manager to show cause why the Village should not remove such tree or trees and/or take other remedial action at the owner's expense. Upon failure of the owner to comply with the provisions of the notice, the Village Manager may cause the tree or trees described in such notice to be removed and/or take other remedial action. If said owner shall appear before the Village Manager pursuant to such notice, the Village Manager may thereafter withdraw the Village Manager's original directive or may issue a final order directing such person to remove said tree or trees and/or take other remedial action within five (5) days from the issuance of such order. Upon failure of any person to comply with such final order, the Village Manager may cause the tree or trees described in such order to be removed and/or take other remedial action.

(c) Any person who feels aggrieved by any final order issued by the Village Manager pursuant to the provisions of this section may, within five (5) days after issuance of such order, petition the board of managers, in writing, for a hearing. After receipt of such petition, the board of managers shall, after due notice to all interested parties, hold such a hearing, after which it may affirm, modify or reverse the order of the Village Manager. No enforcement action shall be taken, nor shall any tree or trees be removed by the Village Manager in any instance during the period within which an appeal to the Board of Managers may be taken or pending final action by the Board of Managers if a hearing is requested as provided above.

(d) All orders and notices issued by the Board of Managers or the Village Manager pursuant to the authority of this section shall be served on the person to whom they are directed either by certified mail or by personal delivery to such person. Service on nonresidents and persons who cannot be found in the Village may be made by publication of such order or notice once in a newspaper of general circulation in the Village and by posting the same on the tree or trees concerned in a conspicuous manner. Service shall be deemed to have been made on the day of such mailing, publication, or posting.

(e) If the Village Manager finds it impossible to determine with certainty the existence of either of the aforementioned diseases in any tree or trees inspected by the Village Manager as aforesaid, the Village Manager may take a specimen or specimens from any such tree, which shall be forwarded for examination, diagnosis and report, and the action of the Village Manager shall await and be based upon the report received from such examination and diagnosis.

(f) Whenever it shall be necessary for the Village Manager to provide for the removal of any tree and/or other remedial action under the procedures herein prescribed, the cost thereof shall constitute a debt owed by the property owner to the Village and shall be collected as are other debts.

(g) Any person who fails to remove a tree infected with Dutch elm disease or elm blight and/ or take other remedial action within five (5) days after having been served with a final order to remove such tree and/or take other remedial action shall be guilty of a municipal infraction and shall be subject to such prosecution and penalties as are provided in Chapters 5 and 6 of this Code. For the purposes of this subsection, a final order is an order to remove a tree and/or take other remedial action issued by the Village Manager, unless said order is timely appealed, in which case the Board of Manager's decision on such appeal shall be the final order. After the five (5) day period in which the tree is to be removed and/or other remedial action is to be taken, each day that the infected tree has not been removed and/or other remedial action has not been taken shall be a separate violation.

(h) Nothing in this Chapter shall be construed to prohibit any property owner from requesting in writing an inspection and/or a permit for removal of any tree or trees within the public right-of-way.

(No. 9-3-95, 9-18-95; No. 05-01-11, 06-13-11)

**Cross reference(s)**--Fine for violation of this section, § 6-3(b.2)(5).

**RESERVED**

**RESERVED**

**RESERVED**

**RESERVED**