

Ordinance 0014-19 – Ch. 102 Vegetation

The Common Council of the City of Racine do ordain as follows:

Part 1: To delete and re-create Article II, Chapter 102. – Vegetation so that it reads as follow:

“ARTICLE II. - TREES [\[2\]](#)

DIVISION 1. - GENERALLY

Sec. 102-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City forester means a qualified forestry professional who shall be responsible for the enforcement of this ordinance, as related to public trees, shrubs and plants in public areas or areas affecting the public right of way within the city, and includes his or her designee.

Forestry program means a comprehensive annual plan focused on management of the city’s tree canopy, including maintenance, inventory, new planting, budget, and projections thereof.

Invasive species means an introduced species, not native to a specific location, that has a tendency to spread to a degree capable of causing damage to the environment, human economy or human health.

Public area means any public right-of-way, boulevard, park, and other land owned, controlled or leased by the city.

Public right-of-way or *right-of-way* means any real property over which an easement has been granted or reserved to the local, state or federal government for transportation purposes, and includes that part of every street and alley, the grade of which has been established, between the lot line and the curb and from property line to property line, including tree planting easements.

Public tree, plant or shrub means any tree, plant or shrub located or planted, in or upon, a public area.

Shrub means a woody perennial plant typically having several stems that may be erect or close to the ground, is typically smaller than a tree, and designated by the city forester to be a shrub.

Tree means the leaves, twigs, branches, trunk, roots or any other part or whole of a woody perennial plant with a singular trunk, or multiple trunks, which typically develop into a mature size of over several inches in diameter and ten or more feet in height, and designated by the city forester to be a tree.

Sec. 102-27. – Purpose; applicability.

- a) *Intent and purpose.* The City of Racine’s urban forest and its tree canopy represents a significant public infrastructure asset that warrants consideration and protection for the benefit of the entire community. It is hereby declared to be the policy of the city to regulate and control the planting, removal, maintenance and protection of trees, plants and shrubs located in or upon, or those that affect, any public areas within the city in order to:
- (1) Guard community residents from personal injury and property damage caused or threatened by improper planting, pruning, maintenance or removal of trees located in, upon, or affecting any public area within the city;
 - (2) Protect public investments in city infrastructure assets such as the tree canopy, stormwater systems, public utilities, streets, and any other public infrastructures;
 - (3) Reduce stormwater runoff by capturing and storing rainfall in the tree canopy and creating soil conditions that promote the infiltration of rainwater into the soil;
 - (4) Conserve energy, reduce urban heat islands, mitigate and adapt for climate change;
 - (5) Improve psychological health through the aesthetic, restorative qualities of natural and scenic settings that provide visual relief to the built environment;
 - (6) Preserve, maintain, enhance, and increase the urban tree canopy within the city;
 - (7) Create a healthy, resilient, and sustainable environment that ensures a livable habitat for people and wildlife;
 - (8) Protect and enhance property values, quality of life, and the character of residential neighborhoods;
 - (9) Maintain and enhance the attractiveness and economic vitality of business and commercial areas;
 - (10) Reduce erosion, flooding, extreme temperatures, surface and groundwater impairment, air pollution, and light pollution; and
 - (11) Allow for and promote innovation in urban forest preservation and expansion.
- b) *Applicability.* The provisions of this article shall apply to all trees, plants and shrubs planted in or upon any public area, as well as to any trees, plants and shrubs planted in or upon any private premises that threaten the life, health, safety or welfare of the public or any public area.

Sec. 102-28. – Severability.

If any provision of this article or application thereof to any person or circumstance is held unconstitutional or invalid by a court of competent jurisdiction, the other provisions or applications of this article which can be given effect, without the invalid provision or application thereof, shall not be affected.

Sec. 102-29. – Administrative rules and procedures.

- a) *Creation and approval.* The board of parks, recreation and cultural services commissioners shall create and approve a set of administrative rules and procedures for carrying out the purpose and intent of this article. Such rules and procedures shall be referred to as the city's Tree Manual and Standards of Practice. The board shall also determine by resolution any fees associated with the administration of this article.
- b) *Implementation.* The city forester shall carry out all rules and procedures contained within the Tree Manual and Standards of Practice. Notwithstanding the above, the city forester is authorized to exercise discretion in the application of any rules or procedures promulgated hereunder, in cases where there are practical difficulties in carrying out the strict letter of such rule or procedure, or where doing so would result in an undue hardship to the affected person or persons. Such applications, however, may not impair the overall purposes and intent of this article.

Sec. 102-30 - 102.40 – Reserved.

DIVISION 2. – ADMINISTRATION [\[3\]](#)

Sec. 102-41. – City forester.

- a) *Designation.* The director of parks, recreation and cultural services shall perform the duties of the city forester, or may designate one or more qualified persons to perform those duties, subject to the approval of the board of parks, recreation and cultural services commissioners.
- b) *Qualifications.* The city forester shall have a bachelor's degree from an accredited college or university with a major in urban forestry, forest management, or a closely related field. The city forester shall, at a minimum, be an International Society of Arboriculture (ISA) Certified Arborist or preferably, an ISA Certified Arborist Municipal Specialist. The city forester shall have at least six years of experience in urban forestry, with at least three of those years in a supervisory capacity.
- c) *Powers and duties.* The city forester shall, subject to the supervision and control of the board of parks, recreation and cultural services commissioners, exercise the following powers and duties:
 - (1) The city forester shall have jurisdiction, authority, control, supervision and direction over all public trees, plants and shrubs planted in, upon, or affecting any public areas, as well as those that are a part of a city-approved forestry program;

- (2) The city forester shall provide information to the public pertaining to the city's forestry program, including information and orders related to public tree removal;
- (3) The city forester shall have the authority to enforce any provisions of this article and any rules promulgated by the board of parks, recreation and cultural services commissioners, including those stated in the Tree Manual and Standards of Practice;
- (4) The city forester shall direct, control and regulate the planting, removal, trimming, treating, spraying and otherwise maintain and protect all public trees, plants and shrubs in or upon any public area, or those that affect the public area;
- (5) The city forester shall have the authority to plant, trim, spray, treat, preserve, renew and remove any public trees, plants and shrubs, or cause such work to be done as may be necessary to protect the public safety, preserve the aesthetics of public areas or vision clearance triangles, or protect public property, sewers and water infrastructure from damage or injury;
- (6) The city forester shall have the authority and duty to consult with other city departments, staff, or contractors (including the review of plans) prior to any actions that may result in damaging, removing, planting, or otherwise injuring any public tree;
- (7) The city forester shall be responsible for the maintenance and accounting of an accurate budget and the costs of a responsible forestry program;
- (8) The city forester shall perform such other powers and duties as are provided by the laws of Wis. Stats. § 27.09, by the ordinances of the city, and by the direction of the board of parks, recreation and cultural services commissioners; and
- (9) The city forester shall have the authority to enter upon private premises at all reasonable times with the consent of the owner for the purposes of examining any tree, plant or shrub located upon or over such premises and to enforce the provisions of this article. If the city forester is denied entry upon any private lands or property, s/he is authorized to make application to the proper court for an inspection warrant, as provided by state statute.

State law reference – City forester, duties; tree planting, Wis. Stat. § 27.09; special inspection warrants, Wis. Stat. § 66.0119.

Sec. 102-42. – Interference with city forester prohibited.

No person, firm or corporation shall prevent, delay or interfere with the city forester, or any of his or her designee, agents, or employees, while they are engaged in the performance of duties imposed by this article.

Sec. 102-43 - 102-55. – Reserved.

DIVISION 3. – TREES, SHRUBS AND PLANTS IN PUBLIC AREAS.^[4]

Sec. 102-56. – Permits.

- a) *Permit required.* No person, city agency, utility or contractor shall plant, remove, replace, prune, cut above or below ground, spray, fertilize, alter, chemically treat or otherwise injure or disturb any public tree, or cause such act to be done by another, without first obtaining a permit for such work from the city forester, as provided in this article.
- b) *Fees.* Permit fees shall be listed in the Tree Manual and Standards of Practice, as approved by the board of parks, recreation and cultural services commissioners.
- c) *Application, issuance, and conditions.*
 - (1) An applicant shall submit a completed application, along with any applicable permit fees, to the city forester. Unless otherwise permitted by the city forester, or to abate an immediate hazard, an application for a permit must be submitted not less than two weeks prior to the start date of any work for which the permit is requested.
 - (2) If the city forester determines that the proposed work described in the permit application is in accordance with the purposes and provisions of this article, taking into account the safety, health and welfare of the public, location of utilities, public sidewalks, driveways and street lights, general character of the area in which the tree or shrub is located or proposed to be located, type of soil, characteristics and physiological need of the genus, species and variety of tree or shrub, s/he shall issue a permit to the applicant.
 - (3) The permit holder shall abide by all of the conditions stated on the permit and by the standards established in the Tree Manual and Standards of Practice.
 - (4) The permit holder shall complete any such work for which a permit has been issued by the expiration date on the permit.
 - (5) The permit holder shall notify the city forester within five days after completing such work, at which time, the city forester shall cause an inspection to be conducted to ensure compliance with this section.
- d) *Annual permits.* Any public or private entity, utility, contractor, skilled tradesmen, or private tree firm that performs tree maintenance operations or otherwise handles public trees as part of regularly scheduled utility work or infrastructure vegetation management operations shall be required to obtain an annual permit for such work. The procedures for applying and obtaining such permit shall be the same as for a general permit under subsection (c), except that the application shall include a timeline and details of any proposed vegetation management activities for that calendar year.

e) *Public utilities and contractors working in public areas.*

- (1) Public utilities and contractors are required to obtain a permit for any work that is likely to affect the above or below portions of trees, shrubs or plants within a public area.
- (2) Public utilities or contractors are required to submit, as part of the permit application process, a drawing of the project area that identifies the location of the proposed installation and its overall dimensions and depth from ground surface, the anticipated date of installation, and the identification of any trees located along the project route within eight feet of any proposed excavation. Such information shall be submitted to the city forester for review not less than two weeks prior to the start of any construction or excavation.

f) *Permit exemptions.*

- (1) No permit is required for a utility company to perform work related to the emergency abatement of storm damage, or to conduct emergency operations necessary for the public health, safety, or welfare, or where necessary for the immediate restoration of disrupted utility service. The utility shall notify the city forester as soon as possible following any emergency operations or storm response work, along with notice of any debris left on the right-of-way or public area as a result of such work.
- (2) No permit is required for an abutting property owner, contractor for the abutting property owner, utility, or the city, to perform work on any public tree in order to abate storm damage immediately following such damage.
- (3) No permit is required for the following public improvement projects:
 - a. Work performed, coordinated or supervised by the city forester or department of parks, recreation and cultural services.
 - b. Work performed on any public tree, shrub, plant, or any part thereof, when the same shall be necessary for the construction of any new sidewalk projects, roadways, streets, avenues, alleys, pavements, sewers, water mains, or other public improvements, and where such public improvement is authorized by any governmental agency. Prior to the commencement of the project, however, the person or entity performing such work shall obtain a plan review and approval by the city forester with respect to any public trees that may be impacted by such work.
- (4) Permit requirements may be waived by the director of parks, recreation and cultural services in cases of emergency, storm damage, disease outbreak, insect infestations, or any situation where the immediate abatement of a hazard is necessary to protect the public health, safety and welfare.

Sec. 102-57. – Costs of planting, removing and maintaining trees and shrubs.

Whenever a permit is issued by the city forester pursuant to this article to plant, remove, maintain or otherwise impact, damage, injure, or affect public trees, plants or shrubs, the permit holder shall be responsible for paying all costs associated with such work.

Sec. 102-58. – Tree clearance.

- a) Trees, plants or shrubs standing in, upon, or overhanging any public areas, or obstructing the view of intersections or traffic signals, shall be kept trimmed by the owner or occupant of the property in accordance with the minimum clearance requirements established in the Tree Manual and Standards of Practice. The city forester shall determine when a tree, plant or shrub needs to be pruned or otherwise maintained.
- b) The provisions of this section may be waived for newly planted trees only if such trees, plants or shrubs do not interfere with traffic, obstruct the light of any street light, or endanger public safety, as determined by the city traffic engineer.

Sec. 102-59. – Enforcement.

- a) *Notice of violation.* Whenever the city forester finds, on inspection, any violation of section 102-58(a), s/he shall notify the owner or occupant of the premises by means of a written notice of violation. The notification shall set forth the specific violation and direct the person to spray, treat, prune, remove, or otherwise abate the violation as directed in the notice within the time frame specified, which shall not be less than 14 days, unless the city forester determines that immediate action is necessary for public safety. The notice shall be mailed via first-class to the person's last known address or personally delivered.
- b) *Abatement by city.* If the owner or occupant of such premises fails to comply with the notice to abate the violation as directed, the city forester shall cause the tree, plant or shrub to be sprayed, treated, pruned, removed or otherwise abated, and shall report the expense thereof to the city treasurer, who shall enter it as a charge against the property upon which the tree, plant or shrub is located. Any person who fails to comply with a notice of abatement under this section may also be subject to forfeitures pursuant to section 102-65 of this Code.

Sec. 102-60–102-63. – Reserved.

Sec. 102-64. – Prohibited acts.

No person shall do or cause to be done any of the following acts to a public tree, plant or shrub without first obtaining the appropriate permit.

- a) Secure, fasten, or run any rope, wire, device or material around, to or through a tree, plant or shrub, so as to cause any injury or damage to any such tree, plant or shrub, whether or not such damage is immediately apparent.
- b) Break, injure, mutilate, deface, kill or destroy any tree, plant or shrub, by any means.
- c) Permit any toxic chemical, gas, oil, or other injurious substance to seep, drain or be emptied upon or about any tree, plant or shrub.
- d) Excavate any ditch, tunnel, trench, or lay any drive within the dripline of any tree or shrub.
- e) Erect, alter, repair, raze, or excavate any public trees, plants or shrubs, in such a way as to injure the tree, plant or shrub.
- f) Remove any guard, stake or other device or material intended for the protection of a public tree or shrub, or to close or obstruct any open space about the base of a public tree or shrub designed to permit access to air, water and fertilizer.
- g) Place or maintain upon the public right-of-way any stone, cement, construction materials, vehicles, deleterious materials, or device of any kind that would prevent the free passage of air or water to any tree, plant or shrub in or upon any public area.

Sec. 102-65. – Penalties.

Any person violating any provisions of this article shall, upon conviction, be subject to the forfeiture set out in section 1-15 of this Code, together with the costs of prosecution. In addition, any person causing damage to a public tree, plant or shrub is also liable to the city for the cost of such tree, plant or shrub, along with any removal or replacement costs.

Secs. 102-66—102-74. – Reserved.

DIVISION 4. - NUISANCES [\[5\]](#)

Sec. 102-75. - Nuisance prohibited on public or private property.

Declaration of nuisance. Any part of a tree, plant or shrub growing on public or private property, which interferes with the use of any public area, is infected with an infectious plant disease, is infested with injurious insects or pests, or which by reason of its location or condition endangers the life, health or safety of persons or property, is declared to be a public nuisance. Specifically, the following conditions, whether on private or public property, are declared to be a public nuisance:

- a) Any tree, plant or shrub infected with any lethal communicable disease, fungus, noxious insect, or other pest that is likely to infect other trees or become an epidemic unless otherwise controlled under emergency conditions.
- b) Any tree, plant or shrub as listed in the Tree Manual and Standards of Practice as an invasive species.
- c) Any tree or part thereof that is decayed, injured, damaged, or is otherwise in such a condition as to likely fail, fall, obstruct, impact, cause damage, or negatively affect any public area, as determined by the city forester.

Sec. 102-76. - Abatement.

- a) Notice of violation. Whenever the city forester finds, on inspection, any violation of section 102-75, s/he shall notify the owner or occupant of the premises by means of a written notice of violation. The notification shall set forth the specific violation and direct the person to spray, treat, prune, remove, or otherwise abated the violation as directed in the notice within the time frame specified, which shall not be less than 14 days, unless the city forester determines that immediate action is necessary for public safety. The notice shall be mailed via first-class to the person's last known address or personally delivered.
- b) Abatement by city. If the owner or occupant of such premises fails to comply with the notice to abate a nuisance under this section within the time specified, the city forester shall cause the nuisance to be sprayed, treated, pruned, removed or otherwise abated, and shall report the expense thereof to the city treasurer, who shall enter it as a charge against the property upon which the tree or shrub is located. Any person who fails to comply with a notice of abatement under this section may also be subject to forfeitures pursuant to section 102-65 of this Code.

Sec. 102-77. - Appeals.

Any person aggrieved by any determination or order of the city forester may appeal to the board of parks, recreation and cultural services commissioners by submitting a written request to appeal within 14 days of the date of the determination or order. The board shall hear such appeal within 30 days after receiving the written request. The person appealing the order shall be allowed an opportunity to present evidence to the board as to why the determination or order should be reversed. Within ten days after the conclusion of such hearing, the board shall issue its decision to revise, modify or affirm the determination or order of the city forester. A copy of the board's decision, which must include the reasons therefor, shall be mailed first-class to the person who requested the appeal."

Part 2: This ordinance shall take effect upon passage by a majority vote of the members-elect of the Racine Common Council and publication or posting as required by law.

Fiscal Note: N/A