

Ordinance 0010-24 – Repeal and Recreation of the Trees and Vegetation Ordinance

An ordinance to repeal and recreate Chapter 102 and Chapter 82, Article III, Division 2, Section 82-139 of the Municipal Code of the City of Racine, Wisconsin.

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

Part 1: Chapter 102 is repealed and recreated as follows:

Chapter 102 – TREES AND VEGETATION

ARTICLE I. – IN GENERAL

Sec. 102-1. – Definitions.

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

Forestry program means a comprehensive plan focused on the 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, which has a tendency to spread to a degree capable of causing damage to the environment, human economy, or human health.

Person means an individual, association, organization, partnership, firm, corporation, utility, or other entity or agent or contractor thereof.

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, or portion thereof, 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 is designated by the city forester to be a shrub.

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

Sec. 102-2. – Findings and purpose; civil liability; applicability.

(a) *Findings and purpose.* The common council finds that the city’s urban forest and tree canopy are assets that represent a significant infrastructure for public benefit that warrant consideration, protection, and preservation. As such, the common council declares it necessary to regulate and control the planting, removing, maintaining, and safeguarding of public trees, plants, and shrubs located or planted in or upon all public areas within the city in order to:

- (1) Prevent personal injury and property damage caused or threatened by improper planting, pruning, maintenance, or removal of trees, plants, and shrubs.
- (2) Protect investments in infrastructure assets, such as the tree canopy, stormwater system, and public utilities, among others.
- (3) Reduce stormwater runoff by capturing and storing rainfall in the tree canopy and creating soil conditions that promote the infiltration of rainwater into soil.
- (4) Improve aesthetic appearances visual relief through natural and scenic settings.
- (5) Enhance property values, economic vitality, and neighborhood characterizations.
- (6) Reduce erosion, flooding, extreme temperatures, surface and groundwater impairment, and air and light pollution.

(b) *Civil liability.* The provisions of this chapter are not intended to create civil liability against the city or its departments, officers, agents, or employees.

(c) *Applicability.* The provisions of this chapter apply to all trees, plants, and shrubs located or planted in or upon any public area or that threaten the health, safety, or welfare of the public.

Sec. 102-3. – Severability.

In the event any section, subsection, clause, phrase or portion of this chapter is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remainder of this

chapter. It is the legislative intent of the common council that this chapter would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Sec. 102-4. – Administrative rules and procedures.

The board of parks, recreation, and cultural services commissioners may create and approve policies and procedures that further the purposes of this chapter. These policies and procedures are collectively referred to as the Tree Manual, which may be amended by this board from time to time.

State Law reference – City park board, powers, Wis. Stat. § 27.08.

Sec. 102-5. – 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 supervision and control 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 similar 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.*
 - (1) *Jurisdiction.* The city forester shall have jurisdiction, authority, control, supervision, and direction over all public trees, plants, and shrubs located or planted in or upon any public area within the city.
 - (2) *Enforcement.* The city forester shall enforce the provisions of this chapter.
 - (3) *Maintenance and protection.* The city forester shall direct, control, and regulate the renewal, planting, removal, trimming, treating, spraying, maintenance, preservation, and protection of all public trees, plants, and shrubs located or planted in or upon any public area.
 - (4) *Consultation.* The city forester may consult with and/or review the plans of all city departments, staff, and/or contractors prior to any action that may cause or result in damage or injury to or the removal or planting of any public tree, plant, or shrub.

- (5) *Finance.* The city forester shall be responsible for the maintenance and accounting of an accurate budget and the costs of a forestry program.
- (6) *Authority.* The city forester shall have the powers and duties under Wis. Stat. § 27.09, this Code, and those granted by the board of parks, recreation, and cultural services commissioners.
- (7) *Accessibility.* The city forester may enter upon private property with the consent of the owner in furtherance of the city forester's duties that are prescribed by this chapter. If the city forester is denied entry upon private property to perform these duties, then the city forester may apply to the municipal court for a special inspection warrant under Wis. Stat. § 66.0119.
- (8) *Information.* The city forester shall provide information to the public pertaining to the city's forestry program upon request.

State Law reference – City forester, duties; tree planting, Wis. Stat. § 27.09; special inspection warrants, Wis. Stat. § 66.0119; jurisdiction, Wis. Stat. § 755.045(2).

Sec. 102-6 – 102-10. – Reserved.

ARTICLE II. – PUBLIC TREES, PLANTS, AND SHRUBS

Sec. 102-11. – Permits.

- (a) *Requirements.* No person shall plant, remove, replace, prune, cut above or below ground, spray, fertilize, alter, chemically treat, or otherwise injure or disturb any public tree, plant, or shrub, or excavate within eight feet of a 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) *Application.*
 - (1) *Submittal.* An applicant shall submit a completed permit application, along with any permit fees, to the city forester.
 - (2) *Contents.*
 - (i) *All projects.* The permit application shall include:
 - (a) contact information of the applicant;
 - (b) contact information of the person performing the work;
 - (c) a description of the work to be performed;
 - (d) anticipated start and end dates of the proposed work; and

- (e) an acknowledgement of the receipt and agreement to abide by the provisions of this chapter and any conditions of approval as set forth by the city forester.
- (ii) *Underground projects.* The permit application shall include all contents listed in subsection (i) and a drawing that identifies:
 - (a) the location of the proposed work;
 - (b) overall dimensions and depth from ground surface; and
 - (c) all trees, plants, and shrubs to be maintained or impacted by the proposed work or within eight feet of any proposed excavation.
- (3) *Fees.* Permit fees shall be determined by the budget as set forth in the fee schedule and established by the common council.
- (4) *Timeliness.* Unless otherwise permitted by the city forester, or to abate an immediate hazard, a permit application must be submitted not less than two weeks prior to the start date of any work for which the permit is requested.
- (5) *Conditions and issuance.* If the city forester determines that the proposed work described in the permit application is in accordance with the purposes and provisions of this chapter, taking into account the health, safety, and welfare of the public; location of utilities, sidewalks, driveways, and street lights; general character of the area in which the tree is located or proposed to be located; type of soil; characteristics and physiological need of the genus, species, and variety of tree; then the city forester shall issue a permit, with or without conditions, to the applicant.
- (6) *Adherence.* The permit holder shall abide by all of the representations made in the permit application and all of the conditions stated on the permit.
- (7) *Completion.* The permit holder shall complete any such work for which a permit has been issued by the expiration date on the permit. 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 chapter.
- (c) *Annual permits.* Any public or private utility or its contractor 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 (b), except that the application shall include details of any proposed vegetation management operations for that calendar year.
- (d) *Exemptions.*

- (1) *Utility companies; emergencies.* 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 operation 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) *Storm damage.* 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) *Public improvement projects.* No permit is required for the following public improvement projects:
 - (i) Work performed, coordinated, or supervised by the city forester or department of parks, recreation, and cultural services.
 - (ii) Work performed on any public tree, shrub, plant, or any part thereof, when the same shall be necessary for the construction of any sidewalk, roadway, street, avenue, alley, pavement, sewer, water main, or other public improvement, and where such public improvement is authorized by a governmental agency, so long as 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. Public trees within a construction zone or work area shall receive adequate protection.
- (4) *Watering.* No permit is required for an abutting property owner or contractor for the abutting property owner to water public trees, plants, or shrubs.
- (5) *Waiver.* Permit requirements may be waived by the director of parks, recreation, and cultural services, city forester, or designee thereof 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. 102-12. – Costs of permit holder.

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

Sec. 102-13. – Tree obstructions and pruning.

- (a) *Obstructions.* Trees, plants, or shrubs planted in or upon any private property that obstruct the view of intersections or traffic signs or signals, shall be kept trimmed by the owner of the property. Trees, plants, or shrubs planted in or upon any public area that obstruct or tend to obstruct the view of intersections or traffic signs or signals, shall be kept trimmed by the city forester.
- (b) *Pruning.* The city forester shall determine when a tree, plant, or shrub located or planted in or upon a public area needs to be pruned or otherwise maintained. Any person performing such work at the city forester’s direction shall be fully insured to the satisfaction of the city.

Sec. 102-14. – Planting requirements.

Any tree, plant, or shrub planted in, upon, or affecting a public area must be approved by the city forester prior to being planted. Upon approval, the planter shall:

- (a) Contact Digger’s Hotline at least three days before beginning the planting process.
- (b) Follow the American National Standards Institute A300 standards for planting.
- (c) Adhere to any conditions of approval.

Sec. 102-15 – 102-20. – Reserved.

ARTICLE III. – ENFORCEMENT

Sec. 102-21. – Prohibited acts.

- (a) *Interference.* No person shall prevent, delay, or otherwise interfere with the city forester or any designees, agents, contractors, or assisting employees thereof while any of such are engaged in those duties imposed by this chapter.
- (b) *Acts without a permit.* No person shall do or cause to be done any of the following acts to a public tree, plant, or shrub without obtaining the appropriate permit.
 - (1) Secure, fasten, or wrap any rope, wire, device, or other material to, around, or through any tree, plant, or shrub, such that it causes or tends to cause any injury or damage to such tree, plant, or shrub, regardless of whether such damage is immediately apparent.
 - (2) Break, injure, mutilate, deface, kill, or destroy any tree, plant, or shrub, by any means.

- (3) Permit any toxic chemical, gas, oil, or other injurious substance to seep, drain, or be emptied upon or about any tree, plant, or shrub.
 - (4) Excavate any ditch, tunnel, trench, or lay any drive within the dripline of any tree, plant, or shrub.
 - (5) Erect, alter, repair, raze, or excavate any tree, plant, or shrub in such a way as to injure such tree, plant, or shrub.
 - (6) Remove any guard, stake, or other device or material intended for the protection of a tree, plant, or shrub, or to close or obstruct any open space about the base of a tree, plant, or shrub designed to permit access to air, water, and fertilizer.
 - (7) Place or maintain upon the public right-of-way any stones, cement, construction materials, vehicles, deleterious materials, or devices of any kind that would prevent the free passage of air or water to any tree, plant, or shrub located or planted in or upon any public area.
- (c) *Noncompliance.* No person shall fail to comply with an order to abate a nuisance under section 102-22 of this chapter.

Sec. 102-22. – Nuisances.

- (a) *Nuisance declared and prohibited.* 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 health, safety, or welfare of persons or property, is declared to be a public nuisance and is prohibited. Specifically, the following conditions, whether on private or public property, are declared to be a public nuisance:
- (1) 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.
 - (2) Any tree, plant, or shrub that is determined by law or the city forester to be an invasive species.
 - (3) 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.

- (b) *Notice of violation.* Whenever the city forester finds, pursuant to an inspection, any violation of this section, the city forester shall notify the property owner by means of a written notice of the violation. The notification shall set forth the specific violation and order the property owner to spray, treat, prune, remove, or otherwise abate the violation as directed in the notice within the time frame specified. The time frame shall not be less than 14 days, unless the city forester determines that immediate action is necessary for public health, safety, or welfare. The notice shall be mailed via first-class to the property owner's last known address or personally delivered.
- (c) *Abatement; costs.* If the property owner fails to comply with the notification of violation and order to abate the 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, plant, or shrub is located.
- (d) *Appeals.* Any person aggrieved by the city forester's determination or order to abate a nuisance may appeal such determination or order under section 102-23 of this chapter.

Sec. 102-23. – Appeals.

Any person aggrieved by the city forester's determination or order may within 15 days of the date of such determination or order appeal in writing to the board of parks, recreation, and cultural services commissioners by filling with or mailing to the city forester written notice of appeal. The notice of appeal shall state the grounds upon which the appellant contends that the determination or order should be modified or reversed. Not more than 30 days from receipt of the notice of appeal, the board of parks, recreation, and cultural services commissioners shall convene for a hearing on the appeal. The city shall serve the appellant with notice of such hearing by mail or personal service at least 7 days before such hearing. At the hearing, the parties may present evidence, call and examine witnesses, and cross examine witnesses of the other party. Within 10 days of the completion of the hearing, the board of parks, recreation, and cultural services commissioners shall mail or deliver to the appellant its written decision to affirm, reverse, or modify the determination or order on appeal and therein shall state the reasons therefor. The decision shall advise the appellant of the right to judicial review of the decision

Sec. 102-24. – Penalties.

- (a) *Bond amount.* Any person charged with violation of this chapter may pay a deposit of \$400 plus costs in lieu of a court appearance.
- (b) *Forfeiture range.* Any person found in violation of this division shall forfeit not more than \$1,000.

(c) *Restitution*. In addition to any judgment, any person who damages or causes to be damaged any a public tree, plant, or shrub is liable to the city for the cost of such tree, plant, or shrub, along with any removal or replacement costs.

(d) *Continuous violation*. Each day that a violation continues may be considered a separate violation.

Sec. 102-25 – 102-30. – Reserved.

Part 2: Chapter 82, Article III, Division 2, Section 82-139 is repealed and recreated as follows:

Sec. 82-139. – City construction.

- (a) *City trees*. If any public tree, plant, or shrub, as that term is defined in section 102-1 of this Code, causes damage to any sidewalk to a degree that renders it in need of repair or replacement, as such is determined by the city engineer or city forester, then the city shall repair or replace that sidewalk at no cost to any abutting property owner.
- (b) *Appeals*. Any person aggrieved by the city engineer’s or the city forester’s determination under subsection (a) may appeal such determination pursuant to the prescribed requirements and procedure under section 102-23 of this Code.
- (c) *Labor and materials*. Any work, labor, and materials utilized in the construction, repair, and/or replacement of sidewalks, curbs, and/or gutters within the city may be furnished directly by the city and without advertising or bidding.

Cross-reference – Definitions, § 102-1; Appeals, § 102-23.

Part 3: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: Permit fees as determined by the budget as set forth in the fee schedule and established by the Common Council.

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the common council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor’s signature, or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor’s objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.