

ORDINANCE # 21-08

AN ORDINANCE TO AMEND CHAPTER SEVEN OF THE WAUPUN MUNICIPAL ENTITLED "STREETS AND SIDEWALKS" AND CHAPTER NINE OF THE WAUPUN MUNICIPAL CODE ENTITLED "PUBLIC NUISANCES."

THE COMMON COUNCIL OF THE CITY OF WAUPUN ORDAINS:

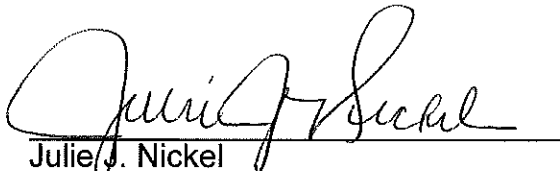
SECTION 1: Section 7.09 of the Municipal Code of the City of Waupun entitled "Tree Planting" is amended as provided in Exhibit A to this ordinance.

SECTION 2: Section 9.03 of the Municipal Code of the City of Waupun entitled "Tree or Plant Diseases" is amended as provided in Exhibit B to this ordinance.

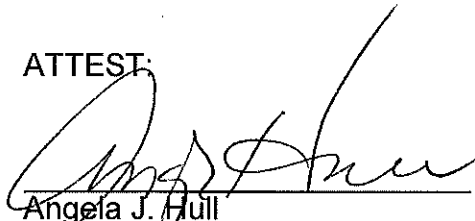
SECTION 3: All ordinances or portions of ordinances inconsistent with the provisions of this ordinance are repealed.

SECTION 4: This Ordinance shall be in full force and effect on its passage and publication as provided by law.

Enacted this 28th day September, 2021.


Julie J. Nickel
Mayor

ATTEST:


Angela J. Hull
City Clerk

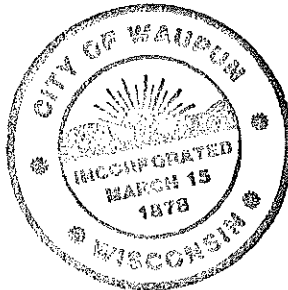


EXHIBIT A

7.09 – PLANTING AND MAINTENANCE OF TREES, BUSHES AND SHRUBS.

- (1) Purpose and Intent. The intent of this section is to regulate the planting, trimming, maintenance, pruning, and removal of trees growing on public and private property in the City of Waupun, particularly because of tree losses in the City due to age, disease, and wind and storm activity. It is the policy of the City to encourage residents to plant and replace trees to provide shade, to enhance the beauty of their property, promote energy efficiency and environmental sustainability, and to provide an asset to the community. In furtherance of this policy, the following regulations shall apply.
- (2) General Restrictions. No property owner shall plant or allow to remain any of the following conditions with respect to trees, bushes and shrubbery located on the owner's property, or located within the public right of way immediately adjacent to the owner's property:
 - (a) Street or Sidewalk Encroachment. Limbs, branches or other growth from trees, bushes and shrubs are prohibited where they extend less than eight (8) feet above the surface of any public sidewalk, or where they extend less than fifteen (15) feet above the surface of any paved public street.
 - (b) Interference with Public Right of Way. Dead or diseased limbs, branches or other growth from trees, bushes or shrubs, regardless of height, are prohibited where they extend onto or encroach on the public right of way so as to obstruct or render dangerous for passage or otherwise constitute a hazard to the safety of persons travelling on public sidewalks, streets, alleys or other public rights-of-way, as determined in the sole discretion of the Code Enforcement Officer.
 - (c) Interference with Vision Triangle. Trees, bushes or shrubs are prohibited within the vision clearance triangle as set forth in §16.02(46m) of the Zoning Code of the City of Waupun, or within twenty (20) feet of any traffic signal.
 - (d) Interference with Utility Services. Trees, bushes or shrubs are prohibited where planted less than ten (10) feet from the location of any sewer or water main or lateral. Trees, bushes or shrubs that reach a mature height greater than eighteen (18) feet are prohibited beneath overhead utility lines.
 - (e) Interference with Established Watercourses. Dead or diseased limbs, branches or other growth from trees, bushes or shrubs are prohibited where they extend onto or encroach on any navigable body of water or public watercourse within the City so as to obstruct or render dangerous for passage or otherwise

constitute a hazard to public safety, as determined in the sole discretion of the Code Enforcement Officer. Every person owning property immediately adjacent to or through which a navigable body of water or public watercourse passes, shall keep and maintain that part of their property free of trash, debris, excessive vegetation or other obstacles that would pollute, contaminate, or significantly restrict the flow of water.

(f) Municipal Terrace Restrictions. Trees, bushes or shrubs are prohibited within the municipal terrace, except as specifically authorized in subsection (3) below. As used here, "municipal terrace" shall be defined as the area of municipal right of way lying between the sidewalk and the street curb, or street pavement where there is no curb.

(g) Tree or Plant Diseases. Trees, bushes and shrubs, including limbs, branches and other growth, are prohibited where they are in a deteriorated condition and are likely to cause the spread of disease or otherwise endanger persons as specified in section 9.03 of the Waupun Municipal Code, as determined in the sole discretion of the Code Enforcement Officer.

(h) Other Hazardous or Nuisance Conditions. Trees, bushes and shrubs, including limbs, branches or other growth, are prohibited where they constitute a hazard or public nuisance as specified in section 9.03 of the Waupun Municipal Code, as determined in the sole discretion of the Code Enforcement Officer.

(3) Permitted Plantings in Municipal Terrace. Property owners may plant and maintain trees, bushes and shrubs within the municipal terrace immediately adjacent to the owner's property, subject to the following restrictions:

(a) General Restrictions. No person shall plant, trim, prune or remove trees, bushes or shrubs on any public property, including without limitation the municipal terrace, except as specifically provided here. As used here, "municipal terrace" shall be defined as the area of municipal right of way lying between the sidewalk and the street curb, or street pavement where there is no curb.

(b) Required Permit. Property Owners may plant, trim, prune or remove trees, bushes or shrubs within the municipal terrace immediately adjacent to the owner's property only after first obtaining a permit issued by the Director of Public Works or his or her designee, and only in full compliance of the terms of the permit. There shall be no charge for this permit. No permit shall be required to prune, cultivate, fertilize, or water trees, bushes or shrubs within the municipal terrace, provided that this is done in a manner consistent with the terms and restrictions of this section.

(c) Permit Restrictions. The following restrictions shall apply to the issuance of a permit for the planting and maintenance of trees, bushes and shrubs within the municipal terrace:

1. Trees, bushes or shrubs are prohibited within any municipal terrace that is less than four (4) feet wide.
2. There shall be a minimum distance of thirty-five (35) feet between small sized trees, and fifty (50) feet between large or medium sized trees.
3. Small sized trees shall be planted not less than five (5) feet from driveways or public alleys and large and medium sized trees shall be planted not less than fifteen (15) feet from driveways or public alleys.
4. No trees shall be planted within twenty (20) feet from any utility pole or utility service box. No trees shall be planted within ten (10) feet of any utility water or gas shutoff valve.
5. No trees greater than six (6) feet in height or having a trunk greater than one and one-half (1½) inches in diameter shall be planted in the municipal terrace.
6. No trees, bushes or shrubs shall be planted in the municipal terrace in violation of the general restrictions contained in subsection (2) above.
7. Only trees of the genus, species and variety approved by the City may be planted in the municipal terrace, except as otherwise approved by Public Works Director or his or her designee. A list of approved trees may be obtained from the Public Works Director or his or her designee.
8. The Public Works Director or his or her designee may refuse a tree permit within the municipal terrace if, in his or her sole discretion, this will interfere with the safety, health, and welfare of the public, location of utilities, public sidewalk, driveways and streetlights, general character of the area in which the tree is located or proposed to be located, type of soil, or characteristics and physiological need for the genus, species and variety of trees.

- (4) Enforcement and Penalties. This section shall be subject to the following enforcement and penalty provisions:
- (a) Code Enforcement Officer. This section shall be administered by the Public Works Director, or such other Code Enforcement Officer as may be designated by the mayor.
 - (b) Notice. If the Code Enforcement Officer determines that any property owner is in violation of this section, then the Code Enforcement Officer may issue a written notice to the property owner ordering such corrective action as may be necessary to bring the property into full compliance with the provisions of this section. Any notice issued under this section shall provide a reasonable period of time, which shall not be less than seventy-two (72) hours, in which the property owner shall be required to take such corrective action. The notice shall also state the facts and circumstances which gave rise to the notice, and may provide general notice of the provisions of this section and the enforcement and penalties that may be imposed should the property owner fail to timely comply with the terms of the notice.
 - (c) Compliance Costs. Any property owner in violation of this section shall be responsible for all corrective action necessary to remedy the situation which gave rise to the notice provided under subsection (4)(b) above, including without limitation, any repair to sidewalk, curb, sewer or water main or lateral, or other utility equipment, or other municipal property.
 - (d) Enforcement Action. If all required corrective action set forth in the notice is not taken by the property owner within the time prescribed, then the Code Enforcement Officer take such enforcement action and imposed such penalties as may be authorized under the Waupun Municipal Code, including without limitation, any or all of the following:
 - 1. Issue citations to the property owner as specified in section 18.04 of the Waupun Municipal Code, in which case each day a violation continues or occurs shall constitute a separate offense.
 - 2. Pursue summary abatement of the condition under section 9.03 of the Waupun Municipal Code and Ch. 823, Wis. Stats. In this event, all costs of summary abatement shall be invoiced to the property owner and collected as a debt or assessed against the real estate and collected as a special assessment against the property.
 - 3. Pursue abatement of the condition as a public nuisance under section 9.03 of the Waupun Municipal Code and Ch. 823, Wis. Stats.

EXHIBIT B

9.03 - TREE OR PLANT DISEASES.

(3) ABATEMENT PROCEDURE.

- (a) Notice. If the Code Enforcement Officer determines that a dead or diseased tree or plant exists on any private property in violation of this section, a notice may be issued, in writing, by the Code Enforcement Officer to the property owner directing, as appropriate, that such tree or plant be removed or treated as therein specified to protect surrounding trees or plants. A notice issued under this section shall provide a reasonable period of time, which shall not be less than 72 hours, within which to perform. The notice shall also state that the existence of the facts which gave rise to the notice constitute a public nuisance which may be abated by the City upon failure of the property owner to comply with the terms of the notice.
- (b) Court Proceedings. If the corrective action set forth in the notice is not taken by the property owner within the time set forth in the notice, and likelihood that other trees or other plants will be infected, damaged or destroyed, or that persons will be injured, the Code Enforcement Officer shall request the commencement of a nuisance abatement action under Ch. 823, Wis. Stats..
- (c) Summary Abatement. If, in the judgment of the Code Enforcement Officer, delay is likely to cause injury to persons or the spread of disease to other trees or plants, then the Code Enforcement Officer may enter upon the property and take all necessary action including, but not limited to, trenching to separate root systems, inoculation or other treatment, or removal of the nuisance.
- (d) Appeal. Appeal from the determination of the Code Enforcement Officer as contained in any order under this section shall be to the Board of Public Works in accordance with the procedures set forth in Ch. 68, Wis. Stats. A written request for an appeal shall be made in writing within 10 days of the date of delivery of the notice. An appeal shall not delay the right of the Public Works Director or the Recreation Coordinator to summarily abate the nuisance as set forth in subsection (3)(c) of this section, but a ruling of such appeal in favor of the property owner shall relieve the owner of any obligation to pay the costs of such summary abatement.
- (e) Costs. Costs of judicial abatement of any nuisance under this section shall be taxed and collected pursuant to Ch. 823, Wis. Stats. Costs of summary abatement shall be invoiced to the property owner and collected as a debt or, if permitted by law, may be assessed against the real estate and collected as a special tax against the property.

- (f) Code Enforcement Officer and City Forester. As used here, the Code Enforcement Officer shall mean the Public Works Director or other Code Enforcement Officer designated by the mayor. The Code Enforcement Officer shall consult with the City Forester or other arborist as he or she shall deem necessary in carrying out the provisions of this ordinance.