

Chapter 90
VEGETATION*

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* **Cross References**--Mobile Homes, Chapter 46; Planning Commission, Chapter 62; Streets, Sidewalks and Other Public Places, Chapter 70; Subdivision Regulations, Chapter 74; Zoning, Chapter 94.

State Law References--Nuisance weeds generally, Wis. Stats. § [23.235](#); noxious weeds generally, Wis. Stats. § [66.0407](#).

VEGETATION

Sec. 90.100. Penalties.

Except where other penalties have been specifically provided under other sections of this chapter, any person violating any of the provisions of this chapter or failing to perform or obstructing the performance of any duties prescribed in this chapter shall be subject to Sec. 1.111.

(Code 1982, § 6.14) [Amended via Ord. No 15-027, 11/18/2015]

Sec. 90.101. Noxious Weeds.

- (a) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Noxious weeds, includes Canada thistle, leafy spurge, field bind weed (creeping jenny) and any weed designated as a noxious weed by the department of natural resources by rule, and any other weed the governing body of the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

Destroy means the complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing livestock or any or all of these in effective combination, at a time and in a manner as will effectually prevent the weed plants from maturing to the bloom or the flower stage.

- (b) **Destruction of noxious weeds.** No person owning, occupying or controlling land within the Village shall permit noxious weeds to grow or pollinate upon said land. It shall be the responsibility of each person who owns, occupies or controls land within the Village to destroy all noxious weeds on said land.
- (c) **Exception.** This section does not apply to Canada thistle or annual noxious weeds that are located on land that the department of natural resources owns, occupies or controls and that is maintained in whole or in part as habitat for wild birds by the department of natural resources.
- (d) **Notice.** The Village President may annually on or before May 15, publish a class 2 notice, under Wisconsin Chapter 985, that every person is required by law to destroy all noxious weeds, as defined in this section, on lands in the Village which the person owns, occupies or controls.

(e) ***Destruction by Village.***

(1) ***Notice to Owner of Record by Certified Mail.***

It shall be the duty of the Weed Commissioner to investigate the existence of noxious weeds. The Weed Commissioner and/or his/her designees are expressly authorized to enter upon private property to investigate the existence of noxious weeds. The Weed Commissioner shall send a notice of violation/abatement order by certified mail to the owner of record of any land which is in violation of this section. Said notice of violation/abatement order shall order the owner of record, occupier and/or person in control of the land to immediately destroy noxious weeds as required under this section or provide written notice to the Village Administrator of the reason for objecting to the notice of violation/abatement order by a specified date and time, not to exceed seven (7) days. If the noxious weeds are not destroyed and no timely objection is received by the Village Administrator, the Weed Commissioner shall destroy, or have destroyed the noxious weeds in the most economical manner. The Weed Commissioner and/or his/her designees are expressly authorized to enter upon the private property for such abatement purposes. All costs associated with destroying the noxious weeds shall be placed on the tax roll of said land as a special charge. In addition, any person who is in violation of this section shall be subject to a forfeiture as set forth in section 1.111.

(2) ***Posting Notice on Land in Violation.*** If the owner of record does not sign for the notice of violation/abatement order that is sent by certified mail, the Weed Commissioner or his/her designee shall post a notice of violation/abatement order upon the land in violation, in letters not less than one inch (1") in height. Said notice of violation/abatement order shall provide the same information as the notice of violation/abatement order described in the previous subsection. If the nuisance is not abated and no timely objection is received by the Village Administrator, the Weed Commissioner shall destroy or have destroyed the noxious weeds in the most economical manner. The Weed Commissioner or his/her designees are expressly authorized to enter upon the private property for such abatement purposes. All costs associated with mowing shall be placed on the tax roll of said land as a special charge. In addition, any person who is in violation of this section shall be subject to a forfeiture as set forth in sec. 1.111.

(3) ***Due process hearing.*** If the owner, occupier and/or controller of the land subject to a notice of violation/abatement order contends that the land does not contain noxious weeds as defined in this section, he/she may object to the notice of violation/abatement order and request a hearing before the Plan Commission. The objection and request for hearing must be made in writing to the Village Administrator by the specified date and time identified in the notice of violation/abatement order. The objection and request for hearing shall include payment of a one hundred-dollar (\$100) bond. If a decision is rendered in favor of the owner, occupier and/or controller of the land, the one hundred dollars (\$100) will be returned. If the owner, occupier and/or controller of the land fails to appear for the hearing, or if the decision is rendered against him/her, the deposit shall be forfeited and applied to the cost to destroy the noxious weeds. When a hearing to challenge a notice of violation/abatement order, the hearing shall be held within

fourteen (14) days from the date of the objection and request for hearing is received by the Village Administrator. At the hearing, the owner, occupier and/or controller of the land may appear in person or by his/her attorney, may present witnesses and may cross-examine witnesses as well as subpoena witnesses for his/her own case. At the close of the hearing, the Plan Commission shall make its determination in writing specifying its findings of fact, and conclusions. If the Plan Commission determines that noxious weeds exist on the land at issue, the Weed Commissioner and/or his/her designee shall destroy the noxious weeds unless the owner, occupier and/or controller of the land destroys the noxious weeds within forty-eight (48) hours of the Plan Commission's decision.

(Code 1982, § 6.135; Ord. of 3-6-2000, § 1, Ord. of 3-6-2000 § 1) [Amended via Ord. No 15-027, 11/18/2015; Ord. No. 19-014, 8/21/2019]

Sec. 90.102. Protection of Trees and Shrubs.

(a) ***Intent and Purpose.*** It is the policy of the Village of Weston to regulate and establish policy for the control of planting, removal, maintenance and protection of trees and shrubs in the Village (See Village of Weston Municipal Code Chapter 94, Article 11):

- (1) Eliminate and guard against dangerous conditions which may result in injury to persons using the streets, sidewalks, or other public areas of the Village;
- (2) Promote and enhance the beauty and general welfare of the Village;
- (3) Prohibit the undesirable and unsafe planting, removal, treatment and maintenance of trees and shrubs located in public areas;
- (4) Guard all trees and shrubs, both public and private, within the Village against the spread of disease, insects, or pests; and
- (5) To prevent damage to any public sewer or water main, street, sidewalk, or other public property.

(b) ***Applicability.*** This article shall apply to tree and shrubs growing or planted after the effective date of the ordinance from which this section is derived in or upon public areas and also to all trees and shrubs growing or to be planted in or upon any private premises which shall threaten the life, safety, or welfare of the public, public areas, or trees within either public or private areas.

(c) ***Village Board.*** The Village Board or Village Arborist is empowered to require landowners to remove, prune, or treat specified trees, shrubs, or plants under certain conditions and to prohibit the planting of certain trees or tree species, shrubs, or plants on private lands within the Village (See Village of Weston Municipal Code Chapter 94, Article 11).

(d) ***Adoption of State Statutes.*** Wis. Stats. §§ [27.09](#) and [86.03](#) are adopted and incorporated in this article by reference.

(e) ***Definitions.*** Whenever the following words or terms are used in this article, they shall be construed to have the following meanings:

- (1) **Boulevard areas**, mean the land between the normal location of the street curbing and sidewalk.
- (2) **Curb**, means an enclosing frame, border or edging along a street.
- (3) **Dbh (diameter at breast height)**; represents the diameter in inches of a trunk cross section measured at 4 ½ above ground level; a basis for estimating or identifying

tree volume, value, management needs and costs, utilization options, etc.

- (4) **Evergreen tree**, means any woody plant normally having one trunk and bearing foliage in the form of limbs with needles, which may extend from the ground level throughout its entire height.
- (5) **Flush cut**, means pruning a branch even with the trunk. This type of pruning is not suggested as the wound will not callus properly. A proper finish cut shall begin at the branch bark ridge and finish just outside of the branch collar.
- (6) **Hazard/Risk Tree**, means any tree or part thereof which the Village Arborist upon examination deems as being a safety concern that may endanger the public using Village property or may cause damage to Village property whether growing upon public or private premises; this shall be declared a public nuisance.
- (7) **Median strip** means the dividing area that is landscaped between opposing traffic lanes within a street.
- (8) **Public areas**, include all public parks and right-of-ways owned, controlled or leased by the Village.
- (9) **Public nuisance**, means any tree or shrub or part thereof which, by reason of its condition, interferes with the use of any public area; 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, plants, or property.
- (10) **Public trees and shrubs**, means all trees and shrubs located or to be planted in or upon public areas.
- (11) **Shrub**, means any woody vegetation or woody plant having multiple stems and bearing foliage from the ground up.
- (12) **Topping**, also known as rounding over is the practice of indiscriminately cutting limbs, creating stubs regardless of branch juncture. This practice creates a momentarily reduced crown that will respond significantly with more and longer weakly attached limbs, which will create a safety concern, this practice is never acceptable.
- (13) **Tree**, means any woody plant, normally having one stem or trunk bearing its foliage or crown well above ground level reaching a mature height of 12 feet or more.

(14) **Village Arborist**, means the person designated by the Village Board as authorized to carry out this article and assure that proper maintenance practices are completed to trees within the Village to create a safe and aesthetically pleasing community forest, this person shall be an International Society of Arboriculture Certified Arborist.

(15) **Vision triangle or vision setback area** is a clear sight triangle formed by a distance of 30 feet from the intersecting street rights of way and a third line connecting that distance to allow for clear views by persons traveling in vehicles or bicycles on the street.

(f) ***Designation of Village Arborist.***

(1) The Village Board may designate a municipal employee to perform the duties of the Village Arborist under Wis. Stat. § [27.09](#) and may authorize such Arborist to perform the duties and exercise the powers imposed on the Village Board by this section.

(2) Annually the Village Arborist shall perform a risk assessment of all Village street trees and park trees in manicured areas and provide such report and recommendations to the Village Board.

(g) ***Abatement of nuisances.*** The Village Arborist shall order, direct, supervise and control the abatement of public nuisances as defined in this section by treatment, pruning, removal, or by other means which is determined to be necessary to prevent as fully as possible the spread of deleterious tree diseases or the insect pests or vectors known to carry such diseases, thus allowing for a structurally sound and safe community forest.

(1) Trees and shrubs on private premises.

a. The Village Arborist, after giving advance notice to the owner or tenant, shall have the authority to enter upon and inspect all premises, at reasonable times (7am to 5 pm), within the Village to determine whether any public nuisance exists thereon. If a request to inspect such trees or shrubs is denied by the person responsible for the property, an inspection warrant may be obtained pursuant to Wis. Stat. § [66.0119](#).

b. ***Notice to Owner of Record by Certified Mail.*** The Village Arborist shall send a notice of violation/abatement order by certified mail to the owner of record of any land which is in violation of this section. Said notice of violation/abatement order shall order the owner of record, occupier and/or person in control of the land to immediately abate the nuisance or provide

written notice to the Village Administrator of the reasons for objecting to the notice of violation/abatement order by a specified date and time, not to exceed fourteen (14) days. If the nuisance is not abated and no timely objection is received by the Village Administrator, the Village Arborist shall abate the nuisance. The Village Arborist or his/her designees are expressly authorized to enter upon a private property for such abatement purposes. All costs associated abating the nuisance shall be placed on the tax roll of said land as a special charge. In addition, any person who is in violation of this section shall be subject to a forfeiture as set forth in sec. 1.111.

c. ***Posting Notice on Land in Violation.*** If the owner of record does not sign for the notice of violation/abatement order that is sent by certified mail, the Village Arborist or his/her designees shall post a notice of violation/abatement order upon the land in violation, in letters not less than one inch (1”) in height. Said notice of violation/abatement order shall provide the same information as the notice of violation/abatement order described in the previous subsection. If the nuisance is not abated and no timely objection is received by the Village Administrator, the Village Arborist shall abate the nuisance. The Village Arborist or his/her designees are expressly authorized to enter upon the private property for such abatement purposes. All costs associated with mowing shall be placed on the tax roll of said land as a special charge. In addition, any person who is in violation of this section shall be subject to a forfeiture as set forth in sec. 1.111.

d. ***Due Process Hearing.*** If the owner, occupier and/or controller of the land subject to a notice of violation/abatement order contends that his/her shrub(s) and/or tree(s) is/are not a nuisance, as defined in this section, he/she may object to the notice of violation/abatement order and request a hearing before the Public Works and Utility Committee . The objection and request for hearing must be made in writing to the Village Administrator by the specified date and time identified in the notice of violation/abatement order. The objection and request for hearing shall include payment of a one hundred dollar bond (\$100). If a decision is rendered in favor of the owner, occupier and/or controller of the land, the one hundred dollars (\$100) will be returned. If the owner, occupier and/or controller of the land fails to appear for the hearing, or if the decision is rendered against him/her, the deposit shall be forfeited and applied to the cost of abating the nuisance. When a hearing is requested to challenge a notice of violation/abatement order, the hearing shall be held within fourteen (14) days from the date of the objection and request for hearing is received by the Village

Administrator. At the hearing, the owner, occupier and/or controller of the land may appear in person or by his/her attorney, may present witnesses and may cross-examine witnesses as well as subpoena witnesses for his/her own case. At the close of the hearing, the Public Works and Utility Committee shall make its determination in writing specifying its findings of fact and conclusions. If the Public Works and Utility Committee determines that a nuisance exists on the land at issue, the Public Works and Utility Committee shall order the Village Arborist and/or his/her designees to abate the nuisance in question unless the owner, occupier and/or controller of the land abates the nuisance within forty-eight (48) hours of the Public Works and Utility Committee's decision.

(h) ***Interference with Arborist.*** No person shall interfere with the Village Arborist and their authorized representative while they are engaged in carrying out any work or activities authorized by this article.

(i) ***Treatment of trees.*** Shall be in accordance with the following:

(1) Whenever the Village Arborist determines that any tree or shrub or part thereof is infected with a deleterious or fatal tree disease or is in a weakened condition or harbors insects (elm bark beetles, gypsy moth caterpillars, emerald ash borer, etc.), the Village Arborist may cause all trees within the infected area to be treated as they see fit which, may mean injecting, spraying, severing interconnected roots, and or removing parts or whole trees along with other best practices to ensure that transfer of the insect or disease to other trees or plants does not occur.

(2) In order to facilitate the work and minimize the inconvenience to the public of any treatments conducted under this section, the Arborist shall give 2 weeks' notice to landowners and or adjacent landowners and shall also post the appropriate warning notices in the areas along the streets where trees are to be treated. The Village shall not allow any claim for damages to any vehicle caused by spraying operations.

(3) When trees on private property are to be treated, the Arborist shall notify the owner of such property and proceed in accordance with the requirements of subsection (i) (2) of this section.

(4) No resident may prune, plant or remove trees on Village property.

(j) ***Assessment of costs of abatement.***

(1) The entire costs to the Village plus a 25% administrative fee for abating any public

nuisance or spraying trees shall be charged to and assessed against the parcel or lot abutting on the street, alley, terrace, boulevard or parkway upon or in which such tree is located on or the parcel or lot upon which such tree stands in accordance with Wis. Stat. § [66.0627](#). The cost of abating any such nuisance or part thereof which is located in or upon any park or right-of-way shall be borne by the village.

- (2) The cost of abating a public nuisance, when done at the direction and under the supervision of the Arborist, shall be assessed to the property to which such nuisance, tree or wood is located as follows:
 - a. The Arborist shall keep a strict account of the costs of such work or treatment and invoice the lot or parcel. Failure to pay within 60 days of the date of the notice will result in the amount charged to be entered on the tax roll as a tax against the property.
 - b. The Village declares that, in making assessments under this section, it is acting under its police power, and no damages shall be awarded to any owner for the destruction of any diseased or infested tree or wood part thereof.

(k) ***Planting of trees and shrubs.***

- (1) ***Purpose.*** The Village Board states its determination that the planting, care and protection of the trees within the Village are desirable for the purpose of beauty, shade, comfort, noise and pollution reduction, storm water control, abatement, and economic betterment and encourages all persons to assist in a program of tree planting, care and protection.
- (2) ***Tree planting program.*** The Public Works and Utility Committee shall recommend to the Village Board, with approval from the Village Arborist, a program for tree planting, care and protection for the public parks and street right of way. Planting and care of trees within public right of way by adjacent property owners, consistent with the program is encouraged. The Village Board shall also encourage the planting, care and protection of trees and shrubs on private premises within the Village.
 - a. ***General planting techniques.***
 - 1. ***Ball and burlap trees.*** When using this type of root stock the wire basket should be removed to prevent girdling in the future width.
 - 2. ***Hole width.*** Shall be a minimum of twice the tree's root ball width.

3. **Hole depth.** Trees shall be planted so the root collar is level with the soil line or slightly higher.

b. **Right-of-way landscaping.** Where a parcel abuts a dedicated public right-of-way, landscaping shall be provided in accordance with the requirements as specified in Section 94.11.02(3)(a) of the Zoning Ordinance.

(3) **Tree types.**

a. The use of trees listed in Section 94.11.02(5) are prohibited and discouraged species in the public right-of-way.

(4) **Unlawfully planted trees.** Trees, plants or shrubs planted within any right-of-way or vision triangle without the authorization and approval of the Village Arborist may be removed without reimbursement. The Village Arborist shall notify the owner in writing, listing the unlawfully planted trees, plants or shrubs; ordering their removal and establishing a reasonable time within which such removal shall be accomplished. If removal is not accomplished within the 2 weeks specified in writing, the Village may remove such trees, plants or shrubs and assess the costs plus administrative fee thereof to the owner.

(1) **Pruning.**

(1) Trees and shrubs standing in or upon public area or upon any private premises adjacent to any public right-of-way or public area shall be kept pruned so that the lowest branches projecting over the public street or sidewalk provide a clearance of not less than 14 feet. The Village Arborist may waive this subsection for newly planted trees if it is determined that they do not interfere with public travel, obstruct the light of any streetlight or endanger public safety (See Sec. 50.100.).

(2) The necessity of the pruning may be determined by the Village Arborist.

(3) No cutting or pruning of oaks from April 1st through Oct. 1st is allowed, this is to prevent the initiation or spread of oak wilt prevention.

(m) **Removal of trees and stumps.**

(1) **Hazardous, obstructive and infected trees.** Any tree or part thereof, whether alive or dead, which the Village Arborist shall find to be infected, hazardous or a nuisance as to endanger the general public or other trees, plants or shrubs growing within the Village or to be injurious to sewers, sidewalks or other public

improvements, growing upon private premises, shall be removed, pruned or treated by the owner of the property upon to which such tree or part thereof is located. If the tree is located within the public right-of-way, the property owner may remove, prune, or treat the hazardous tree as approved by the Village, otherwise the Village shall remove, prune or treat the hazardous tree. If a tree falls from private property into the public right-of-way, the Village will clear the obstruction from the right-of-way at no cost, but removal of the tree on private property is the responsibility of the adjacent property owner. When a private property owner is responsible for the cost of tree removal, the Village Arborist shall give written notice to such owner to remedy the situation which shall be served by certified letter. Such notice shall specifically state the period of time within which the action must be taken, which shall be within not less than 24 hours nor more than 2 weeks, as determined by the Village Arborist on the basis of seriousness of the condition of the tree or danger to the public. If the owner shall fail to remove, treat or prune such tree on private property within the time limits, the Village Arborist shall cause the tree to be removed, treated or pruned and shall report the full costs thereof to the Treasurer, who shall there upon enter such costs as a special charge against the property, plus a 25% administrative fee.

- (2) Tree and stump removal standards. In cutting down trees located in public areas, the tree will be removed with the root stump ground out to a depth suitable for future planting of trees or turf. All wood and debris will be removed from the street prior to the end of each working day, and all holes shall be filled to normal grade level with topsoil and seed within 2 weeks.

(n) ***Prohibited acts.***

- (1) ***Damage to public trees.*** No person shall, without the consent of the Village, perform or cause to be performed by others any of the following acts:

- a. 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.
- b. 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 tree or shrub.
- c. Remove any guard, stake or other device for the protection of a public tree or shrub; close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water and fertilizer.
- d. 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.

e. Cause or encourage any fire or burning near or around any tree.

f. Place or maintain upon the ground any stone, brick, cement or other impervious substance in such manner as may obstruct the free access of air or water to the roots of any tree, shrub or plant in or upon any public way or public place.

(Code 1999, § 6-4-1, Ord. 3-7-2009) [Amended via Ord. No 15-027, 11/18/2015; via Ord. No 17-012, 4/19/2017; Ord. No. 19-014, 8/21/2019]