

CHAPTER 301

REGULATING TREES AND SHRUBS

[History: Ord 2009-4]

301.01 FINDINGS AND DECLARATION OF POLICY.

(1) The Common Council of the City of Richland Center finds and declares that trees or shrubs which are dead or dying; which are infected with a plant disease; which are infested with injurious insects or pests; which are located in areas where they interfere with components of the City's utility systems; which are located in areas where they interfere with safe use of the public streets and sidewalks; which are located in areas where they pose a threat of damage to City property or private property and that trees or shrubs which are not properly pruned or maintained endanger the life, health, safety and welfare of persons and property within the City and constitute public nuisances within said City.

It is the purpose of this chapter to promote and protect the life, health, safety, and general welfare of persons and property by providing for the regulation of the planting, maintenance, removal and protection of trees and shrubs in or upon all public areas and boulevards of the City, to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, alleys, sidewalks or other public areas of the City; to protect persons and property from dangerous conditions; to promote and enhance the beauty and general welfare of the City; to prohibit the undesirable and unsafe planting, removal, treatment and maintenance of trees and shrubs located in public areas; and to guard all trees and shrubs, both public and private, within the City against the spread of disease, insects or pests.

301.02 DEFINITIONS.

Whenever the following words or terms are used in this chapter, they shall be construed to have the following meanings:

(1) **BOULEVARD or BOULEVARD AREA:** That portion of the right-of-way of a public street lying outside the edges of the paved roadway of the street.

(2) **CITY:** The City of Richland Center.

(3) **EVERGREEN TREE:** Any woody plant normally having one stem or trunk and bearing foliage in the form of needles and crowns which generally extend from ground level throughout its entire height.

(4) **HAZARD TREE:** Any tree or tree part which by reason of its condition and location reasonably appears to pose a risk upon failure or fracture of causing injury to people or damage to property, as determined by the City Forester.

(5) PERSON: A natural person, partnership, corporation, limited liability company, trust, voluntary association or other public or private legal entity.

(6) PRIVATE TREE: Any tree located upon private property.

(7) PUBLIC AREA: All public parks and other lands owned, controlled or leased by the City, except boulevard areas.

(8) PUBLIC NUISANCE: Any tree or shrub or part thereof which, by reason of its condition, location or species endangers the life, health, safety or welfare of persons or property and which is declared a public nuisance by this chapter.

(9) PUBLIC TREES AND SHRUBS: All trees and shrubs located or to be planted in or upon public areas including boulevard areas, public alley rights-of-way, City parks, waterways, lands under easements to the City and the City's community forest.

(10) SHRUB: Any woody vegetation or woody plant having multiple stems and bearing foliage from the ground upward or any tree which, when mature normally attains a height less than 16 feet above ground level..

(11) SIGHT TRIANGLE: A triangle formed by measuring 30 feet back in both directions from the point of intersection of the curb lines of ~~the~~ two intersecting streets or, where there is no curb, measured from the intersection of the nearest edge or edges of the paved street roadway.

(12) TOPPING: The severe cutting back of limbs to stubs within a tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

(13) TREE: Any woody plant normally having one stem or trunk bearing its foliage or crown which, when mature, normally attains a height of 16 feet or more above ground level.

301.03. URBAN TREE BOARD ESTABLISHED.

(1) Membership; compensation. There is hereby created and established an Urban Tree Board for the City of Richland Center which shall consist of a minimum of five members, consisting of: at least one member of the Common Council of the City of Richland Center. The other members shall be residents of the City of Richland Center, except that one member may be appointed who resides in the County of Richland outside the City of Richland Center.

Members of the Tree Board shall be appointed by the Mayor and confirmed by the Common Council of the City of Richland Center. Members of the Board shall serve without compensation. The Urban Tree Board may alternatively be referred to in this chapter as the Tree Board.

(2) Appointment of Urban Tree Board members. The term of office shall be four years. The Parks and Grounds Commission, upon approval by the Common Council, may appoint an ex officio member to represent such Commission, in addition to Mayoral appointments. In the event a vacancy shall appear during the term, his or her successor shall be appointed by the Mayor for the unexpired

term.

301.04 APPLICABILITY.

This chapter provides full power and authority over all trees, plants, and shrubs located within the boulevards and public areas of the City and over all trees, plants and shrubs located on private property which constitute a hazard, threat or public nuisance as defined and described herein.

301.05 APPOINTMENT OF CITY FORESTER.

The Urban Tree Board, subject to the approval by the Common Council, may designate a municipal employee or citizen to perform the duties of Forester under Ch. 27, Wis. Stats., and may also appoint an assistant city Forester, and may authorize such Forester to perform the duties and exercise the powers imposed on the City by this chapter. The City Forester shall annually be nominated by the Urban Tree Board for appointment, subject to Common Council confirmation, at the City's organizational meeting.

301.06 AUTHORITY OF URBAN TREE BOARD AND FORESTER.

(1) The Urban Tree Board or, if designated by the Urban Tree Board, the City Forester, shall judge trees on public property as to health and safety and recommend remedial action.

(2) The Urban Tree Board or, if designated by the Urban Tree Board, the City Forester shall review and issue all permits required under this chapter.

(3) The City Forester shall order the removal of the dangerous or diseased trees on private property if he/she deems the tree to be a threat to public safety or if tree has a disease which is communicable so as to affect the health of trees on other properties

301.07 INTERFERENCE WITH FORESTER; REFUSAL TO ABATE NUISANCE.

No person shall:

(1) Interfere with or prevent any acts of the City Forester or his/her agents while he/she is engaged in the performance of duties imposed by this chapter.

(2) Permit any public nuisance to remain on any premises owned or controlled by him/her when ordered by the Urban Tree Board to abate such nuisance.

301.08 BUSINESS LICENSE REQUIRED.

(1) **License required.** No person, firm or corporation shall engage in the business of planting, cutting, pruning, removing, spraying or otherwise treating trees, shrubs or vines within the limits of the City of Richland Center, Wisconsin, without having first obtained a license therefor and having paid an annual license fee in the amount of \$25. Such license fee shall be paid on or before July 1 of each year,

and application for renewal of any license issued pursuant to this chapter shall be made before the first day of June of each year.

(2) License application; required insurance. Application for such license shall be made in writing to the City Clerk/Treasurer in such form as the City Clerk/Treasurer or Common Council may require. No license shall be issued until the applicant has furnished to the City Clerk/Treasurer satisfactory evidence that the applicant is covered by workers' compensation insurance, if required by law, and by a currently effective policy of public liability insurance issued by an insurance company duly authorized to carry on an insurance business in the State of Wisconsin with minimum policy limits of not less than \$1,000,000 for bodily injury or death and \$100,000 for property damage, indemnifying the City or any person injured or damaged by the applicant in its operation of planting, cutting, pruning, spraying or otherwise treating trees. Such insurance policy or contract shall not be cancelable without at least 10 days notice' to the City Clerk/Treasurer. An applicant for a license shall be furnished by the City Clerk/Treasurer with a copy of the ordinances adopted by the City of Richland Center concerning planting, pruning and removal of trees, and the applicant shall acknowledge, as part of the application, receipt of such ordinances and agree to obey and abide by such ordinances and that failure to do so shall be grounds for cancellation of any license issued hereunder, in addition to any other penalties imposed for violations.

301.09 PERMIT FOR TREE PLANTING OR TREE REMOVAL OR EXCAVATIONS NEAR TREES IN BOULEVARD AREAS.

(1) Permit required. No person shall plant or remove any tree or shrub or excavate next to trees in the boulevard area without first completing an application for permit to be approved by the City Forester or Urban Tree Board. The applicant shall comply with the tree planting and removal guidelines set forth in sections 301.10 and 301.12.

(2) Permit exemptions. No permit shall be required to cultivate, mulch, fertilize or water trees or shrubs or for work by City personnel or volunteers working under the supervision of the City, which includes but is not limited to planting, pruning or removing trees on park properties. However, all City personnel or volunteers shall file a report with the City Forester by the 10th day of each month for all work done in the previous month.

(3) Permit requirement and conditions. If the City Forester or Urban Tree Board determines the proposed work or planting described in an application for permit is necessary and in accord with the purposes of this chapter, taking into account the safety, health, and welfare of the public, the location of utilities and sidewalks, driveways, and streetlights, the Master Street Tree Plan, and the height and space requirements for the genus, species, and variety of shrub, the City Forester or Urban Tree Board shall issue the permit to the applicant. All trees planted in accordance with the provisions of this section upon any boulevard areas may be maintained by the adjacent property owner under the provisions of this chapter.

(4) Permit form; expiration; inspection. Every permit shall be issued on a standard form and shall include a description of the work to be done and shall specify the genus, species, variety, size, nursery grade and location of any trees or shrubs to be planted in accordance with the City Tree Inventory System. Any work performed under such permit must be performed in strict accordance with

the terms thereof and the provisions of this chapter. Permits shall expire six months after the date of issuance.

301.10 PLANTING REQUIREMENTS; SPECIES OF TREES AND SHRUBS PROHIBITED IN THE CITY.

(1) Purpose. The Common Council hereby states its determination that the planting, care and protection of the trees within the City is desirable for the purposes of beauty, shade comfort, noise abatement and economic betterment and hereby encourages all persons to assist in a program of tree planting, care and protection.

(2) Tree planting program. The Urban Tree Board shall prepare and update annually a program for tree planting, care and protection for public areas. The Urban Tree Board shall also encourage the planting, care and protection of trees and shrubs on private premises with the City.

(3) Cottonwood and Box Elder trees prohibited in the City. No person shall plant, keep or maintain within the City of Richland Center any tree of the species *Populus deltoides*, commonly called "Cottonwood," or any tree of the species *Acer negundo*, commonly called the "seed-bearing Box Elder," and such trees are hereby declared a nuisance. Any person planting any such trees on his/her premises shall cause the same to be removed. If any owner shall fail to remove any such tree within 30 days after receiving written notice from the City Forester, the City shall cause the removal of such tree and report the full cost thereof to the City Clerk/Treasurer, who shall place such charge upon the next tax roll as a special charge against the premises.

(4) Prohibited shrubs in the City. The following shrubs shall not be planted, kept or maintained anywhere within the City:

- (a) Multiflora Rose (*Rosa*).
- (b) Buckthorn (*Rhamnus cathartica*).
- (c) Autumn Olive (*Elaeagnus umbellata*).
- (d) Prickly Ash (*Zanthoxylum americanum*)

and all such shrubs are hereby declared to be nuisances. Any person planting, keeping or maintaining any of said shrubs on his/her premises shall cause the same to be removed. If any owner shall fail to remove any such tree within 30 days after receiving written notice from the City Forester, the City shall cause the removal of such tree and report the full cost thereof to the City Clerk/Treasurer, who shall place such charge upon the next tax roll as a special charge against the premises.

(5) Shrubs in boulevards prohibited. No shrubs shall be planted in a boulevard.

(5) Shrubs in boulevards or within sight triangle prohibited. No shrubs shall be planted or maintained in a boulevard or within any sight triangle.

(6) Planting trees in boulevards. Any tree planted in a boulevard must meet the following requirements:

(a) No trees shall be planted within a sight triangle.

(b) The following trees shall not be planted in the boulevards of the City:

1. Box Elder (*Acer negundo*)
2. Catalpa (*Catulpa speciosa*)
3. Chinese Elm (*Ulmus parvifolia*)
4. Siberian Elm (*Ulmus pumila*).
5. Cottonwood (*Popular deltoides*)
6. Black Locust (*Robinia pseudoacacia*)
7. Honey Locust (*Gleditsia triacanthos*).
8. Silver Maple (*Acer saccharinum*).
9. Poplar (*Populus grandidentata*)
10. Quaking Aspen (*Populus tremuloides*)
11. Black Willow (*Salix*).
12. Weeping Willow (*Salix*).
13. Any coniferous (Evergreen) tree.
14. Any fruit- or nut-bearing tree, except for the following varieties:
 - [1] Service Berry (*Amelanchier*).
 - [2] Mountain Ash (*Sorbus*).
 - [3] Apple varieties known as ornamental or flowering crab varieties (*Malus*).
 - [4] Oaks (*Quercus*).
 - [5] Hickories (*Carya*).
 - [6] Callery Pears (*Pyrus calleryana*).
 - [7] Cherries (*Prunus*).
 - [8] Hackberry (*Celtis occidentalis*).

(c) Large trees with a normal height at maturity of over forty (40) feet shall not be planted closer than thirty (30) feet apart, measured from the center of the trunk..

(d) Smaller trees with a normal height at maturity of less than forty (40) feet shall not be planted closer than twenty (20) feet apart, measured from the center of the trunk.

(e) No tree shall be planted within eight (8) feet from the edge of a driveway.

(f) No tree which has a normal height at maturity of greater than thirty-five (35) feet shall be planted under or within ten (10) feet parallel to any overhead utility wire or over or within five (5) lateral feet of any municipal underground water line or sewer line, municipal underground electric line or other municipal utility line.

(g) Trees may be planted, at the property owner's risk, closer than five (5) lateral feet to any lateral water or lateral sewer line. The cost of repairing any damage caused to the lateral water line or lateral sewer line by any tree so planted shall be borne by the property owner.

(7) Setback of trees from public sidewalks. No tree shall be planted closer than ten (10) feet from any public sidewalk. This prohibition shall not apply to trees planted by the City within a boulevard or on any other public area. An owner of private property desiring to plant a tree within such ten (10) feet may do so only pursuant to a permit from the Tree Board.

(8) Species and placement of trees planted by the City in boulevards. If the City desires to plant a tree within a boulevard, the City's representative will make a reasonable effort to consult with the landowner of the lot fronting on the boulevard to secure the landowner's input as to the species and placement of the tree. However, the City has the ultimate right to determine the species and location of all trees planted in boulevard areas

(9) Unlawfully planted trees.

(a) Trees, plants or shrubs planted within any boulevard or street right-of-way without the authorization and approval of the City Forester shall be removed.

(b) The City Forester shall notify the owner of the real estate abutting the unlawfully planted tree, plant or shrub, listing the unlawfully planted trees, plants or shrubs, ordering their removal, and establishing a reasonable time within which such removal shall be accomplished.

(c) In the event that removal is not accomplished within the time specified, the City Forester may cause such offending tree, plant or shrub to be removed and shall forthwith report to the City Clerk-Treasurer in writing all costs incurred therefor. The Clerk-Treasurer shall then bill the landowner for the costs thereof. If the costs are not paid by the landowner within 45 days after such billing, the Clerk-Treasurer shall take the steps necessary to collect such costs as a special charge pursuant to sec. 66.0627 Wis. Stats.

(d) All notifications to the landowner and under this chapter and any billings provided for herein shall be made by personal delivery to at least one landowner or record of the abutting real estate or by mailing to the person and address of record to which the most recent real estate tax bills for the property were sent as shown in the records of the Richland County Treasurer.

301.11 REMOVAL OF TREES AND STUMPS IN BOULEVARDS.

(1) Criteria for granting boulevard tree removal permits. Any tree removal in boulevards must be consistent with the City Tree Plan. A permit for removal of a tree in a boulevard may be issued for the following reasons:

(a) A tree poses a safety hazard to pedestrian or vehicular traffic or if unmanaged threatens to cause disruption to a public utility service.

(b) A tree poses a safety hazard to a legally existing building or structure.

(c) A tree completely prevents access to a lot or parcel.

(d) A tree unreasonably prevents otherwise permitted development of a lot or permitted physical use thereof. No permit for removal of a tree in a boulevard shall be issued until the applicant furnishes to the City a legible scale map or drawing depicting the location of all of the following: The curb line of the street or edge of the paved roadway of the street; the location of any sidewalks; the location of any driveway or proposed driveway, the location of any existing or proposed improvements on the abutting lot.

(e) A tree is diseased or is so weakened by age, storm, fire, or other injury as to pose a danger to persons, property, improvements or other trees if so determined by the City Forester.

(f) Tree removal would not negatively impact the urban forest, as determined by the City Forester.

(2) Removal standards. In cutting down trees located in public boulevard areas, the tree shall be removed with the stump and roots grubbed out or ground out to a depth of at least six (6) inches below grade measured in a straight line with the normal grade of the top surface of the sidewalk or six (6) inches below grade measured as a straight line from the normal grade of the sidewalk to the top of the curb. All wood and debris shall be removed from the street roadway prior to the end of each working day, and all holes shall be filled to normal grade level with topsoil as soon as practicable. The abutting property owner shall have a right of first refusal to keep the wood, provided that such wood is not diseased and further provided that the wood is removed from the boulevard immediately after the tree is cut down.

301.12 EXCAVATIONS NEAR TREES LOCATED IN BOULEVARDS OR OTHER PUBLIC AREAS.

All trees on any boulevard, parkway or other publicly owned property near any excavation or construction of any building structure or street work shall be sufficiently guarded and protected by the person performing such work sufficiently to prevent any injury to said trees. No person shall excavate any ditch, tunnel, or trench or install pavement, excluding sidewalks, within a radius of eight (8) feet from the trunk of any public tree without a permit from the Tree Board.

301.13 PRUNING.

Trees and shrubs standing in or upon any boulevard or upon any private premises adjacent to any public right-of-way or public area shall be kept pruned by the owner of the land upon which the trunk of the tree is located or, in the case of a boulevard tree, the owner of the land immediately adjacent to the boulevard, in accord with the following standards:

(a) The lowest branches projecting over the paved roadway of any public street or public alley shall be pruned to provide a clearance of not less than 14 feet above the pavement of the street or alley. The City Forester may waive the provisions of this paragraph for newly planted trees if he determines that they do not interfere with public travel, obstruct the light of any streetlight or endanger public safety.

(b) The lowest branches projecting over the paved surface or any sidewalk shall be pruned to provide a clearance from the surface of the sidewalk to the lowest branches of not less than 10 feet. No tree shall be permitted to grow in such a manner as to obstruct the proper diffusion of light from any public street lighting, and trees shall be kept pruned to avoid such obstruction..

(c) All saw cuts to any branch shall be in accordance with standard arboricultural procedures. Flush and topping cuts on any public tree are hereby prohibited.

(d) All deadwood, shrubs, broken branches, badly formed branches, diseased and insect-infested branches, and branches that interfere with public travel, lighting, existing buildings and traffic

signs shall be removed during the pruning operation with consideration given to the symmetry and beauty of the tree or shrub.

(e) The necessity of pruning may be determined by the City Forester.

(f) No oak tree within the limits of the City of Richland Center shall be pruned between April 1 and July 1 of each year, to avoid the spread of oak wilt.

301.14 DECLARATION OF PUBLIC NUISANCES; ABATEMENT OF NUISANCES.

(1) Finding. The Common Council determines that there are many trees or shrubs growing on public and private premises within the City, the loss of which would substantially depreciate the value of public and private property, impair the use and enjoyment of public and private premises and erode the tax base of the City, and that the health and life of such trees or shrubs are threatened by fatal diseases. Further, the Common Council finds that dead, damaged or diseased trees or other hazard trees may pose a threat to persons or property in public areas and/or to improvements on nearby private properties and persons lawfully using such private properties.

Accordingly, the Common Council hereby declares its intention to control and prevent the spread of such diseases and the insect pests and vectors which carry such diseases and trees which pose hazards to persons and improvements on nearby public and private properties.

(2) Declaration of Public Nuisances. The following are hereby declared to be public nuisances:

(a) Any tree or part thereof afflicted with Oak wilt.

(b) Any tree or part thereof afflicted with Dutch Elm disease.

(c) Any tree or part thereof afflicted with Elm bark beetles *Scolytus multistriatus* (Eichb.) or *Hylurgopinus rufipes* (Marsh.).

(d) Any living or standing elm tree or part thereof infected with the Dutch Elm disease fungus or in a weakened condition which harbors any of the elm bark beetles, *Scolytus multistriatus* (Eichb.) or *Hylurgopinus rufipes* (Marsh.).

(e) Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.

(f) Any tree or part thereof which is infested by the eastern tent caterpillar or other defoliating larvae.

(g) Any tree infested with the Gypsy moth.

(h) Any tree infested with Emerald Ash Borer.

- (i) Any tree or part thereof afflicted with any other deleterious or fatal tree disease.
- (j) Any private or public tree or part thereof which by reason of its condition and location is hazardous or dangerous to persons and property using or passing upon any public street, sidewalk, alley, park or other public area, including boulevard areas between the curb and lot line.
- (k) Any private or public tree or part thereof which by reason of its condition and location is hazardous or dangerous to improvements on adjoining properties or to persons or permitted uses on adjoining properties.
- (l) Any tree or shrub prohibited within the City.

(3) Inspection.

- (a) The City Forester may inspect or cause to be inspected all public land within the City to determine whether any public nuisance exists thereon.
- (b) Whenever necessary to determine the existence of a tree or shrub that might be a public nuisance, the person inspecting such tree or shrub may remove or cut specimens from the tree or shrub in such manner as to avoid fatal injury thereto and deliver such specimens to the City Forester, who shall forward them to the Wisconsin Department of Agriculture, Trade and Consumer Protection at Madison for analysis to determine the presence of such nuisances.
- (c) The City Forester or his/her agents or employees shall have authority to enter upon private lands at reasonable times for the purpose of carrying out any of the provisions of this section with permission of the landowner or pursuant to an administrative warrant under § 66.0119, Wis. Stats. if permission is denied.

(4) Abatement of nuisances.

- (a) The Urban Tree Board or City Forester may order, direct, supervise and control the abatement of public nuisances as defined in this chapter by spraying, burying, burning or by other means which it or he/she determines to be necessary to prevent as fully as possible the spread of communicable or deleterious tree diseases or the insect pests or vectors known to carry such diseases.
- (b) **Nuisances on Public Land.** Whenever the Urban Tree Board or City Forester after inspection or examination may determine that a public nuisance as herein defined exists on public property in the City, it or he/she shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of deleterious tree or shrub diseases or the insect pests or vectors known to carry such disease fungus.

(c) Nuisances on Private Land.

1. When the Urban Tree Board or City Forester shall determine with reasonable certainty that a public nuisance exists upon private land, it or he/she shall immediately serve or

cause to be served personally or by registered mail upon the owner of such property, if he/she can be found, or upon the occupant thereof, a written notice of the existence of such nuisance and a time and place for a hearing before the Urban Tree Board, not less than 14 days after service of such notice, on the abatement action to be taken. Such notice shall describe the nuisance and recommend procedures for its abatement and shall further state that unless the owner shall abate the nuisance in the manner specified in the notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of the trees in the City, the City Forester shall cause the abatement thereof at the expense of the property served. If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the City.

2. If, after hearing held pursuant to this section, it shall be determined by the Urban Tree Board that a public nuisance exists, it shall forthwith order the immediate abatement thereof. Unless the property owner abates the nuisance as directed within five days after such hearing, the Urban Tree Board may proceed to abate the nuisance and cause the cost thereof to be assessed against the property in accordance with the procedures provided in this section. The Urban Tree Board may extend the time allowed the property owner for abatement work but not to exceed 10 additional days.

(5) Spraying.

(a) Whenever the Urban Tree Board or Forester shall determine that any tree, shrub, or part thereof is infected with a deleterious or fatal tree disease or is in a weakened condition or harbors insect pests or vectors, the Board may cause all trees or shrubs within an appropriate distance thereof to be sprayed with an effective disease-destroying concentrate or other insecticide, following the prior authorization by the Common Council.

(b) In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this section, the Urban Tree Board or City Forester shall cause to be given advance public notice of such operations by newspaper, radio, television, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees or shrubs are to be sprayed at least 24 hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Urban Tree Board or City Forester shall also notify the Police Department, which shall take all necessary steps to make and enforce temporary parking and traffic regulations on such streets as conditions require. Temporary "No Parking" notices shall be posted in each block of any affected street at least 24 hours in advance of spraying operations.

(c) When appropriate warning notices and temporary "No Parking" notices have been given and posted in accordance with Subsection E(2) of this section, the City shall not allow any claim for damages to any vehicle caused by such spraying operations.

(d) When trees on private property are to be sprayed, the City Forester shall notify the owner of such property and proceed in accordance with the requirements of subparagraphs (a) and (b).

301.15 PROHIBITED ACTS.

(1) No person shall, without the consent of the owner in the case of a private tree or shrub, or without a permit from the Tree Board in the case of a boulevard area tree or a public tree or shrub, perform or cause to be performed by another any of the following acts:

(a) Secure, fasten or run any rope, wire sign, unprotected electrical installation or other device or material to, around or through a tree or shrub.

(b) 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.

(c) 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 same.

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

(e) Attach any sign, poster, notice or other object on any tree, or fasten any guy wire, cable, rope, nails, screw or other device to any tree, except that the City may tie temporary "No Parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance or parades.

(f) Cause or encourage any fire or burning near or around any tree.

(g) Except with a written permit from the Urban Tree Board, 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 and water to the roots of any tree, shrub or plant in or upon any public way or public place.

(h) Tap any public tree and/or attach any device to such a tree in an attempt to collect sap.

(2) This section shall not be deemed to prohibit or prevent abatement of a nuisance by or at the direction of the Urban Tree Board

(3) Notwithstanding the foregoing, property owners shall retain their common law right to trim parts of private trees which intrude over their boundary lines.

301.16 APPEALS OF ORDERS OF THE CITY FORESTER OR URBAN TREE BOARD.

(1) Any person who receives a determination or order under this chapter from the City Forester and who objects to all or any part thereof shall have the right to appeal such determination or order to the Urban Tree Board.

(2) An appeal shall be made by delivering to the City Clerk, within seven (7) days of delivery or mailing of the determination or order, a written notice of appeal, which sets forth all of the following:

- (a) The substance of the determination or order appealed from.
- (b) The basis of the appeal,
- (c) The mailing address of the appellant, and
- (d) The signature of the appellant.

(3) The Urban Tree Board shall hear such appeal as soon as is reasonably practicable. Notice of the time, date and location of the hearing shall be mailed to the appellant at the address set forth in the notice of appeal not less than 5 working days prior to the hearing of the appeal, and the appellant shall have the right to appear at the hearing in person or by attorney and present any relevant evidence. After such hearing, the Urban Tree Board may reverse, affirm or modify the order or determination appealed from and the grounds for its decision shall be stated in writing. The Urban Tree Board shall, by letter, notify the party appealing the order or determination of its decision within 10 days after the hearing has been concluded. The Urban Tree Board shall file its written decision with the City Clerk/Treasurer.

(4) If the appellant is not satisfied with the determination made by the Urban Tree Board on appeal, he/she may appeal the Urban Tree Board's determination to the Common Council by filing a notice of such appeal with the City Clerk within seven (7) days after mailing of the notice from the Urban Tree Board of its determination. The Common Council may review the Urban Tree Board's determination based upon the record made before the Urban Tree Board or may hear additional evidence, in the Council's discretion, and shall thereafter affirm, reverse, or modify the Urban Tree Board's determination.

301.17 RECOVERY OF COSTS.

(1) **Assessment on public lands.** The entire cost of planting, removal, spraying, pruning or treatment of trees, shrubs and plants in front of or upon any lot or parcel of land abutting on any public way may be chargeable to and assessed upon such lot or parcel of land. The Common Council of the City of Richland Center shall determine what percentage of said costs may be chargeable and assessed by July 1 prior to the year of assessment.

(2) **Assessment on private lands.** The entire cost of planting, removal, spraying, pruning or treatment of trees, shrubs and plants on private land, but excluding any cost for the employment of the City Forester, shall be chargeable to and assessed upon such lot or parcel of land on which the work was performed.

(3) **Account to be kept.** The City Forester shall keep a strict account of the cost of planting, removing, pruning or treating any tree, shrub or plant in front of or on each lot or parcel of land and prior to the 10th day of November in each year shall make a report to the City Clerk/Treasurer of all work done which are chargeable to any lot or parcel of land for which assessments are to be made, stating and certifying the description of the land, lot, parts of lots or parcels of land as to which any such work shall have been done and the amount chargeable to each piece of property. The description may be made by using the tax parcel number of the land. The City Clerk/Treasurer at the time of making the annual report to the Common Council of the lots or parcels of land subject to special assessments shall include therein the lots or parcels of land so reported during the preceding year.

(4) Basis for calculating costs. The cost of abating any nuisance declared as such by this Chapter and all other costs chargeable to a landowner pursuant to this Chapter shall be calculated as follows:

(a) If the work is done by a private contractor hired by the City, the actual cost of the contracted work.

(b) If the work is done by City employees, the cost shall be based upon the hours expended and equipment used, priced at the current Wisconsin state equipment rates for equipment used and for labor at the current City employee labor rates as set by the Common Council.

(c) As to any trees or shrubs procured by the City, the actual the purchase price paid by the City.

(5) Amounts chargeable as lien. The amounts so reported to the Council shall be levied as a special tax or charge on said lots or parcels of land, respectively, to which they are chargeable and shall constitute a lien thereon and shall be collected by the City. The Board shall advance out of the proper fund sufficient money for doing said work, and said special assessment shall be credited to said fund of the City and shall not be diverted or used for any other purpose.

301.18 ANNUAL INSPECTION.

An annual inspection under the supervision of the Urban Tree Board shall be made of all trees and shrubs within the boulevard along every public way within the City, and also those trees on private lands which are located within falling distance of any public way or public place.

301.19 VIOLATIONS AND PENALTIES.

(1) Forfeiture. Any person, partnership, corporation, limited liability company, voluntary association or other legal entity who shall violate or fail or refuse to comply with any section of this ordinance may be prosecuted for such violation and shall, upon conviction, forfeit to the City of Richland Center not less than \$100.00 nor more than \$400.00, plus all applicable costs, fees and surcharges imposed under Ch. 814 Wis. Stats., and in the event such forfeiture, costs, fees and surcharges are not paid, such person, any partner of such partnership, or any officer, director or managing member of any corporation or limited liability company or any officer of such voluntary association may, upon order of the Circuit Court, be imprisoned in the Richland County jail until such forfeiture, costs and assessment are paid, but not to exceed 90 days, or may be subject to any other sanctions imposed by the Court for such failure to pay. Each day that a violation is maintained or permitted to exist shall constitute a separate violation.

(2) Other Remedies. In addition to the imposition of a forfeiture for a violation, the City may in circumstances deemed appropriate by the City proceed by court action against any violation or violator of this Chapter for injunction, **abatement of a nuisance** or other remedy available to it.

(3) Remedies Not Exclusive. A proceeding seeking other remedies shall not be deemed waived or barred by the imposition of a forfeiture for the same violation, nor shall the imposition of a forfeiture be deemed a waiver of or a bar to a proceeding seeking other remedies. Abatement of a nuisance by or at the direction of the Urban Tree Board shall not be a bar to imposition of a forfeiture or any other remedy.

SECTION 2:

Chapter 302 of the Code of Ordinances of the City of Richland Center is repealed.

Enacted the 7th day of April, 2009

Date Published: _____, 2009