

Chapter 26 VEGETATION*

*State law references: Care of trees and shrubs, MCL 247.241 et seq.

Art. I. In General, §§ 26-1--26-25

Art. II. Tree Regulations, §§ 26-26--26-65

Art. III. Grass and Noxious Weeds, §§ 26-66--26-70

ARTICLE I. IN GENERAL

Secs. 26-1--26-25. Reserved.

ARTICLE II. TREE REGULATIONS

Sec. 26-26. Definitions.

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

Park means all public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Public utility means any person owning or operating any pole, line, pipe or conduit located in any public street or over or along any public easement or right-of-way for the transmission of electricity, gas, telephone service or telegraph service.

Street means all of the land lying between property lines on either side of all streets, highways and boulevards in the city.

Tree means trees, shrubs, bushes and all other woody vegetation.

(Code 1977, § 3.21)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 26-27. Application of article.

The terms of this article, unless otherwise specifically stated herein, shall apply only to public streets, parkways, parks and other land publicly owned or controlled by the city.

(Code 1977, § 3.21(5))

Sec. 26-28. City forester's responsibility.

The city forester shall be charged with the duty of enforcing the provisions of this article, except in Sharp Park which shall be under supervision of the superintendent of Sharp Park.

(Code 1977, § 3.22)

Sec. 26-29. Permits for tree planting, care, removal.

The city forester shall have control over all trees located within the street rights-of-way and parks in the city and the planting, care and removal thereof, subject to the regulations contained in this article. The owner of land abutting on any street may, upon obtaining prior written permission of the city forester, prune, spray, plant or remove trees in that part of the street abutting his land not used for public travel, but no person shall otherwise prune, spray, plant or remove any tree in any street or park. Every such permit

shall specify the extent of the authorization and the conditions to which it is subject. Where an owner of abutting property requests the removal of a tree, the forester is authorized, in his discretion, to require as a condition to granting of approval for such removal, that such property owner make the removal in accordance with regulations established by the city forester, assume all or any part of the costs of removing such tree, and also to require that the tree removed be replaced at some other nearby location by planting another tree, not necessarily of the same type.
(Code 1977, § 3.23)

Sec. 26-30. Removal of dead or diseased trees.

All dead or dangerous trees and trees afflicted with any fatal or communicable disease may be removed by the city forester.
(Code 1977, § 3.24)

Sec. 26-31. Removal of other trees.

Trees may be removed which are not dead or infected with any disease when such trees are of an undesirable species, but only upon notice to the owner of the abutting property, and if such owner shall file written objection with the city clerk within forty-eight (48) hours after service of such notice, a public hearing on such removal shall be had before the city council and the abutting owner shall be notified of the time and place of such hearing. The city manager is hereby authorized to direct the removal of any tree growing within any street, park or public place, when such tree interferes with fire hydrants, sewer and water mains, visibility of street intersections, traffic-control devices or construction within street rights-of-way.
(Code 1977, § 3.25)

Sec. 26-32. Tree planting regulations.

No tree of any prohibited species shall be planted in any street or park, nor shall any such tree be planted on any private property within fifty (50) feet of any street or sidewalk right-of-way or any sewer or sewer extension. Shade trees planted in any street right-of-way shall be spaced not less than forty (40) feet apart. The owner of a single lot may, in order to provide a shade or ornamental tree in front of his lot, secure special permission from the city forester to have a tree planted closer than forty (40) feet from an existing tree, but in no case shall such planting be within thirty (30) feet of any existing tree, within the right-of-way. No tree shall be planted in any street right-of-way, less than two and one-half (2 1/2) feet from the sidewalk; trees on private property adjacent to the sidewalk shall be planted not less than three (3) feet therefrom. No tree shall be planted nearer to the intersection of any streets than twenty-five (25) feet from the corner of such intersection.
(Code 1977, § 3.26)

Sec. 26-33. Tree protection.

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire, or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor, and no material shall be fastened to or hung on any tree, except utility pole guy wires by special permission of the city forester. All persons having under their

care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall after notice thereof by the city forester, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the city forester.
(Code 1977, § 3.27)

Sec. 26-34. Excavations near trees.

Excavations and driveways shall not be placed within six (6) feet of any tree without written permit from the city forester. Any person making such excavation or construction shall guard any tree within six (6) feet thereof with a good substantial frame box to be approved by the department, and all building material or other debris shall be kept at least four (4) feet from any tree.
(Code 1977, § 3.28)

Sec. 26-35. Covering surface near trees.

No person shall place within the street right-of-way, any stone, brick, sand, concrete or other material which will in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, except a sidewalk of authorized width and location.
(Code 1977, § 3.29)

Sec. 26-36. Gas main leakage.

Gas pipes and mains within any public rights-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. In the event a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within twenty-four (24) hours. Any damage to trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired, and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.
(Code 1977, § 3.30)

Sec. 26-37. Private trees--Clearance.

Every owner of any tree overhanging any street or right-of-way within the city shall trim the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of at least sixteen (16) feet above the surface of the street, and at least eight (8) feet above the surface of the remainder of the right-of-way. Such owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. Where the city engineer or the engineer's designee determines that any tree or shrub located on private property interferes with the proper spread of light along the street from a street light, interferes with visibility of any traffic control device, or otherwise poses a threat to the safe use of the right-of-way by the public, the city shall have the right to enter upon said private property to trim same as needed. Where practicable, the city shall give written notice by first-class letter, mailed at least five (5) days prior to any trimming activities, to the property owner's last known address as shown by the records of the city assessor.

All shrubs and bushes located in the sight clearance triangle shall not be permitted to grow to a height of more than three (3) feet above the surface of the roadway. Trees may be planted and maintained in this area provided that all branches are trimmed to maintain clear visibility for a vertical height of eight (8) feet above the road surface. For purposes of this section, the term "sight clearance triangle" shall mean

that area beginning at the corner of the property where the edge of pavement lines, or in the case of a gravel road, the edge of the gravel surface lines, intersect, a distance of thirty (30) feet shall be measured along each edge of pavement line. From the end of those lines, another line shall be made connecting the two (2) ends.

In the event the city finds it necessary to act under this section, the city forester shall cause an invoice to be directed to the owner of the property which shall be due and payable within thirty (30) days. In the event the owner does not pay same within thirty (30) days, the city forester shall report same to the city clerk, who shall cause the same to be collected as a single lot special assessment in accordance with the Charter.

(Code 1977, § 3.31; Ord. No. 90-26, § 1, 12-11-90; Ord. No. 92-3, § 1, 2-4-92; Ord. No. 94-12, § 1, 9-20-94)

Sec. 26-38. Same--Diseases and infestations.

When the city forester shall discover that any tree growing on private property within the city is afflicted with any dangerous and infectious insect infestation or tree disease, he shall forthwith serve a written notice upon the owner or his agent, or the occupant of the property, describing the tree, its location and the nature of the infestation or tree disease and ordering the owner, agent and occupant to take such measures as may be reasonably necessary to cure such infestation or disease and to prevent the spreading thereof, specifying the measures required to be taken. Such order may require the pruning, spraying or destruction of trees as may be reasonably necessary. Every such notice shall be complied with within five (5) days after service thereof, upon the owner, agent or occupant of the property on which the afflicted tree is located, or within such additional time as may be stipulated in such notice.

(Code 1977, § 3.32)

Sec. 26-39. Same--Owner's failure to comply.

In case the owner, agent and occupant of the property refuses to carry out the order of the city forester within the time limited, or in case of an appeal, within five (5) days after the commission shall have affirmed such order, the city forester shall carry out the pruning, spraying or destruction of the trees as deemed necessary by him and shall bill the owner, agent or occupant of the property for the cost thereof. In case the owner of such property shall fail to pay such bill within thirty (30) days after the same has been rendered, the city forester shall report the same to the city council for collection as a single lot assessment against such property in accordance with the Charter. The city forester may, without serving the above notice, when the owner or occupant of any private property shall consent thereto and pay the reasonable cost thereof, cause trees growing on private property to be sprayed when he deems the same necessary on account of any infestation or disease or threat thereof.

(Code 1977, § 3.34)

Sec. 26-40. Same--Inspection.

The city forester and his assistants and employees shall have authority to enter upon private premises for the purpose of examining any trees, shrubs, plants or vines for the presence of destructive insects or plant diseases. No damages shall be awarded for the destruction of any tree, shrub or plant or fruit or injury to the same, if done by the city forester or under his direction, in accordance with this article.

(Code 1977, § 3.35)

Sec. 26-41. Female boxelder trees.

Any female boxelder tree which is or could be the breeding place for boxelder bugs (*Leptocoris trivittas*) is hereby declared to be a public nuisance and it shall be unlawful for any person to maintain the same on his property after notification as herein provided. Upon receipt of a written complaint, the city forester shall forthwith serve a written notice of the same nature, form and manner, and with the same effect, as prescribed in section 26-38, upon the owner or his agent or the occupant of the property upon which such tree or trees are located. After service of such notice, the owner, agent, or occupant of such property shall be subject to the provisions of section 26-45, section 26-39, and section 26-40. Any such trees located on public lands within the limits of the city shall likewise be removed upon the receipt of such written complaint.

(Code 1977, § 3.32(a))

Sec. 26-42. Planting strips.

No person shall willfully injure or destroy any grass or tree upon any planting strip or throw any papers, refuse or other thing thereon. No person shall drive an automobile, bicycle or other vehicle upon or over any such planting strip.

(Code 1977, § 3.36)

Sec. 26-43. Overhead lines; trimming permits.

The city manager shall annually issue permits granting permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the city, in such a manner as shall keep the overhead lines of such public utilities safe and accessible. Such trimming shall be done in accordance with approved practices and under the general direction of the city forester. Such permit shall require reasonable prior notice to the city before any work is commenced thereunder. If an emergency requires immediate maintenance work on the overhead lines of such public utilities, prior notice of commencing work under such permit shall not be required. The word "emergency," as used in this section, shall be defined to mean the occurrence or happening of an event which could not be foreseen by the exercise of reasonable care and foresight, which might cause damage to the overhead lines of the public utilities.

(Code 1977, § 3.37)

Sec. 26-44. Rules and regulations.

The city manager, subject to the approval of the city council, shall make such rules and regulations supplementary to this article and not in conflict herewith, as he may from time to time deem necessary. Until changed pursuant to this section, the rules and regulations in effect at the adoption of this Code shall continue in effect. No person shall fail to obey any rule or regulation effective hereunder.

(Code 1977, § 3.38)

Sec. 26-45. Appeal.

In case the owner, agent or occupant of the property shall feel himself aggrieved at an order of the city forester requiring the treatment or destruction of any tree, he may within forty-eight (48) hours make an appeal to the city council by communication filed with the city clerk. The city council shall hear such appeal at its next regular meeting, unless another time shall be set, and shall determine the matter under such expert advice as may be necessary.

(Code 1977, § 3.33)

Secs. 26-46--26-65. Reserved.

ARTICLE III. GRASS AND NOXIOUS WEEDS*

*State law references: Control and eradication of noxious weeds, MCL 247.61 et seq.

Sec. 26-66. Cutting and removing grass, noxious weeds, rank vegetation, and fallen trees.

(a) It is unlawful to permit, allow, or otherwise cause any of the following activities upon property so owned or occupied:

(1) Growth of any noxious weed, grass, or other rank vegetation of a height greater than eight (8) inches on average.

(2) Accumulate dead weeds, grass, or brush on the property.

(3) Growth of noxious weeds, grass, or other rank vegetation detrimental to the public health on any property in such manner that any part of the noxious weeds, grass, or other rank vegetation extends upon, overhangs or borders any public place or adjoining properties, or allows seed, pollen, or other particles or emanations therefrom to be carried through the air into any public place or upon adjoining properties.

(4) Fallen trees to lie upon public or private property.

(b) For purposes of this article, "*noxious weeds*" includes, but is not necessarily limited to, Canada thistle (*Cirsium arvense*), dodders (any species of *Cuscuta*), mustards (charlock, black mustard and Indian mustard, species of *Brassica* or *Sinapis*), wild carrot (*Daucus carota*), bindweed (*Convolvulus arvensis*), perennial sowthistle (*Sonchus arvensis*), hoary alyssum (*Berteroa icana*), ragweed (*Ambrosia elatior* L.) and poison ivy (*Rhus toxicodendron*), poison sumac (*Toxicodendron vernix*) or other plant which in the opinion of the city forester, or his or her designee, is regarded as a common nuisance.

(c) For purposes of this article, "*rank vegetation*" includes, but is not necessarily limited to, non-cultivated, unmaintained, or non-ornamental woody plants.

(d) For purposes of this article, "*fallen trees*" includes, but is not necessarily limited to, those trees or portions of trees that hang low, lean, or otherwise cause hazardous conditions whether on public or private property.

(Code 1977, § 9.20; Ord. No. 99-10, § 1, 6-15-99; Ord. No. 2006.10, § 1, 4-11-06; Ord. No. 2008.11, § 1, 8-12-08)

Sec. 26-67. Duty of occupant or owner of unoccupied premises.

Every occupant or owner of every property within the city must cut and remove or destroy by lawful means all weeds, grass, or other rank, noxious, or harmful vegetation, and fallen trees as often as may be necessary to comply with the provisions of section 26-66.

(Code 1977, § 9.21; Ord. No. 2006.10, § 1, 4-11-06)

Sec. 26-68. Notice; when city to do work; penalties.

(a) Except as to fallen trees, if the provisions of sections 26-66 and 26-67 are not complied with, the director of public works, or his or her designee, must notify the occupant or owner of the property to comply with this article, such notice to:

(1) Be given each owner or occupant in accordance with section 1-15 of this Code; and

(2) Require compliance with this article within ten (10) days after the mailing of such notice. In lieu of the above notice, the city may publish notice during the month of March of each year, in a newspaper of general circulation within the county, advising the general public that the provisions of city ordinances adopted under the authority of Act No. 359 of the Public Acts of Michigan of 1941 (MCL 247.61 et seq.), as amended, will be enforced within the city.

(b) Except as to fallen trees, if the occupant or owner of the premises does not then remove all noxious weeds, grass, and other rank vegetation in a manner consistent with section 21-67, the director of public works, or his or her designee, will cause the weeds, grass or other rank, noxious or harmful vegetation to be cut, removed, or destroyed, and any expense incurred will be collected as a special assessment as provided in the Charter of the city. The levy or collection of the special assessment will not relieve any person offending against this article from the penalties prescribed in section 26-70.

(c) As to fallen trees prohibited under section 26-66(a)(4), the city must notify the occupant and owner of the property of the violation of this article, and the notice must:

(1) Be given to each owner or occupant in accordance with section 1-15 of this Code; and

(2) Require compliance with this article within ten (10) days after the mailing of such notice. Failure of the occupant or owner to comply with this article will result in penalties provided for in section 26-70.

(Code 1977, § 9.22; Ord. No. 99-10, § 1, 6-15-99; Ord. No. 2006.10, § 1, 4-11-06)

Sec. 26-69. Exemptions.

Exempted from the provisions of this article are flower gardens, plots of shrubbery, vegetable gardens and small grain plots. An exemption under the terms of this section cannot be claimed unless the land has been cultivated and cared for in a manner appropriate to such exempt categories.

(Code 1977, § 9.23)

Sec. 26-70. Penalties.

Any occupant or owner of unoccupied premises who fails to comply with this article is subject, upon adjudication, to the penalty provided for under Chapter 2.5 of this Code.

(Code 1977, § 9.22(A); Ord. No. 2004.27, § 1, 11-9-04)

Editor's note: Section 2 of Ord. No. 2004.27 states: This amendment does not effect any existing litigation and does not abate any action or proceeding pending under or by virtue of this ordinance as it existed before this amendment if such litigation or proceeding was filed before December 31, 2004.