

# CITY OF BATAVIA

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**DATE:** December 20, 2012  
**TO:** City Services Committee  
**FROM:** Bill McGrath, City Administrator  
**SUBJECT:** Municipal Code Review- Section Title 7-2: Forestry

As part of our efforts to find areas where we can gain efficiencies, our attention turned to Title 7 Section 2 of the Municipal Code, which relates to Forestry. Certainly the urban forest has become increasingly more important over the last 20 years to the extent that all annexation agreements for residential developments require payment of monies to the City in order to pay for the planting of trees in the development. That was after years of seeing what developers and/or builders would do voluntarily, which consisted of a lot of trees being planted around the model area but few, if any on the parkways where the neighborhoods were finally built. We then went to a requirement of tree planing by the developer. There were problems with the sizes, condition, species, origin and guarantees related to many of those trees. Finally, the City found it necessary to take control of the issue because the urban forest had risen in value to the community, and the fact that staff had begun to acquire expertise aside from that furnished by long-time City Arborist Frank Saupp. John Dillon became an arborist early on, and Scott Haines is currently certified in that area. Both have been working with the Tree Commission since its establishment in 2008.

We have reviewed the relevant section as a staff for the last few months after discussions about what has changed since 2008, and how forestry issues impact the City in terms of time and expense. The attached documents are the result of those discussions.

There were so many changes that we believe that it is best to start with reading the clean version to see if it makes sense and flows for you. Later you can review the redlined version, which can be difficult, though it does contain highlighted comments about many of the changes. The easiest way may be to print the clean version and have it handy as you read through the redlined version.

As you read through it there are 3 basic areas of change:

1. The current Code is written as if the Tree Commission is about to come into existence. Many tasks are forward-looking. We have changed those terms to reflect the current reality of where we are in the development of the Commission.
2. Process: we have cleaned up the appeal section as we now have local adjudication as a tool. We recommend that City Services be the last step at the City so that a citizen can thereafter go immediately to court to question the decision if desired, unless a large amount is in involved.
3. Most importantly, we have taken a step and are recommending that we clearly draw the line between public and private nuisances. At the current time, the City inserts itself into private matters so that if a neighbor has a tree issue with another neighbor, the City can be called and spends considerable time and expense to try to resolve issues, when they do not impact anyone else in the community. Scott Haines estimates that he was involved in approximately **50** such incidents last year. He will be at the meeting to talk about his experiences. He estimates that these issues may have taken up to 1/5 of his regular time which we feel is inappropriate.

We have redefined “public nuisance” to be just that: situations where a tree on private property may impact the public in general, either by potential damage to adjacent public

property such as light poles, transformers, street trees, wires, etc. or where injury to the public rightfully using City streets walks, or other property, such as City parking lots may occur unless the situation is abated. We simply do not have the time to attend to the private matters and the cost of working out private grievances should not be socialized throughout the community by being included as public nuisances. We have found no other nearby municipality that takes on a role in these private matters.

Now, you may also have noted that there is a current section that relates to diseases, and that the presence of a disease on private property was also formerly covered by the concept of a public nuisance. We discussed this matter thoroughly. The simple facts it that once a disease is to the point where it in fact can be observed, it is too late to do anything about it, including isolating the disease to that tree on the property. The State retains great powers in terms of working with tree diseases and we do not believe that eliminating this from our Code lessens the protections our citizens receive.

This matter will be on the January 8, 2012 City Services Committee agenda for discussion only. We did not go ahead and draft an ordinance because of the depth of conversation that may take place on the issue. Additionally, we wanted to give the Tree Commission the opportunity to discuss it during January as well. Staff recommends that the Committee discuss these changes, continue the matter to its February 5<sup>th</sup> meeting if the Tree Commission raises no objections, or to its March 5<sup>th</sup> meeting if the Commission request further discussion. Hopefully, staff would then be directed to draft the appropriate ordinance to effect the change in the Municipal Code.

Please call with any questions. Thank you.

Attachments: Clean and redlined versions of Title 7 Section 2: Forestry

C: City Council  
Department Heads  
Scott Haines  
Batavia Tree Commission

## **CHAPTER 2 FORESTRY**

### **7-2-1: PURPOSE AND INTENT:**

- A. Purpose: It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs and other plants within the city.
- B. Intent: It is the intent of the City that the terms of this chapter shall be construed so as to promote:
  - 1. The planting, maintenance, restoration, and survival of desirable trees, shrubs and other plants within the city; and
  - 2. The protection of community residents from personal injury and property damage, and the protection of Batavia from property damage, caused or threatened by the improper planting, maintenance, or removal of trees, shrubs, or other plants located within the community. (Ord. 08-11, 8-4-2008)

### **7-2-2: DEFINITIONS:**

As used within this chapter, the following terms shall have the meanings set forth in this section:

**ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR BATAVIA** (Arboricultural Specifications Manual<sup>1</sup>): A manual prepared pursuant to this chapter containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and other plants upon City Property.

**ARBORIST:** The City arborist of Batavia, Illinois. A volunteer position requiring expertise in the field of arboriculture who acts as an outside consultant to City staff and the Tree Commission.

**CITY PROPERTY:** Property owned, controlled by or dedicated to the City of Batavia within the City limits of Batavia, Illinois, including rights of way and those areas commonly known as parkways.

**PROPERTY OWNER/POSSESSOR:** The record owner, contract purchaser lessee or occupant of any parcel of land.

**TREES, SHRUBS, AND OTHER PLANTS:** All vegetation, woody or otherwise, except lawn grass and flowers less than twenty four inches (24") in height.

Urban Forest: The trees and woody vegetation on City Property within the City of Batavia. Woody vegetation shall include bushes and shrubs.

URBAN FORESTRY PROGRAM: A written forestry policy and program approved by the City from time to time, containing the long and short term forestry activities to be undertaken by the City. (Ord. 08-11, 8-4-2008)

**7-2-3: BATAVIA TREE COMMISSION:**

- A. Establishment: The Batavia Tree Commission (hereinafter "Tree Commission") is hereby established. Its functions and duties are limited to those set forth in this chapter.
- B. Composition: The Batavia Tree Commission shall be composed of seven (7) commissioners. The Mayor with the approval of the City Council shall appoint four (4) commissioners. These four (4) commissioners shall serve without pay and shall reside within the City and shall not be City employees. The remaining three (3) commissioners shall be the Director of Public Works, the Street Superintendent and the Water/Sewer superintendent. Subject to the exceptions in subsection C of this section, each commissioner shall serve for a term of four (4) years.
- C. Appointment of Members: Two (2) of the four (4) commissioners initially appointed to the Tree Commission shall serve for a term of two (2) years; two (2) of the four (4) commissioners initially appointed shall serve for a term of four (4) years. The term shall start on a common date. Determination of the length of terms of the four (4) commissioners initially appointed shall be by lot. The chairperson of the commission shall be the Public Works Director or his designee.
- D. Expiration or Vacation of Terms: Within thirty (30) days following the expiration of the term of any appointed commissioner, a successor shall be appointed by the Mayor with the approval of the City Council, and the successor shall serve for a term of four (4) years. Should any commissioner resign or be removed from the Tree Commission, a successor shall be appointed by the Mayor and shall serve for the unexpired period of the vacated term. A member of the Tree Commission may be removed by the Mayor with the approval of a majority of the City Council.
- E. Duties: The Tree Commission shall perform the following duties:
  - 1. The Tree Commission shall adopt and maintain rules of procedure for regular and special meetings to fulfill the duties imposed upon it by this chapter.
  - 2. The Tree Commission shall advise and consult the City on any matter pertaining to the matters covered in this chapter and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:

- a. Amendment to this chapter, and alterations or revisions to the arboricultural specifications manual, and alteration or revisions of the Urban Forestry Plan;
- b. Policies concerning selection, planting, maintenance, and removal of trees, shrubs, and other plants within the City;
- c. Allocation of funds and expenditures of funds by the City;
- d. Establishment of educational and informational programs including, but not limited to, a yearly Arbor Day celebration.

**7-2-4: Protection for the Urban Forest**

- A. No person or contractor, except the City, its contractors or entities operating under a franchise or other written agreement may perform any of the following acts on City Property:
  - 1. Plant, remove or otherwise disturb any tree, shrub, stump, or other plant located on City Property, except that this provision shall not be construed to prohibit owners or possessors of property adjacent to City Property from watering, minor pruning, or fertilizing without a permit any tree, shrub, or other plant located on such City Property;
  - 2. Trim, prune, or remove any tree or portions thereof if such tree or portions thereof reasonably may be expected to fall on City Property and thereby to cause damage to persons or property without giving City seven (7) days notice thereof;
  - 3. Place on City Property, either above or below ground level, a container for trees, shrubs, or other plants, subject to Section C below;
  - 4. Damage, cut, tap, carve, or transplant any tree, shrub, or other plant located on City Property;
  - 5. Attach any rope, wire, nail, sign, poster, or any other manmade object to any tree, shrub, or other plant located on City Property;
  - 6. Dig a tunnel or trench on City property related to trees or other plantings.
- B. Nothing in this section shall preclude the establishment and maintenance of a rain garden in City parkways, under the terms and conditions contained in a right of way permit issued by the City under Title 7.
- C. Public Utility Companies, Franchise holders, etc.: Nothing in this section shall be construed to exempt public utility companies, their agents, or any entity with a franchise or other

written agreement with the City from any of the requirements of this chapter, except as specifically described by statute or the agreement.

#### **7-2-5: PUBLIC NUISANCES:**

- A. The following are hereby declared "public nuisances" under this chapter:
1. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes a reasonable likelihood of danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public sign on City Property.
  2. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes imminent danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public sign on City Property.
- B. Right To Inspect: The officers, agents, servants and employees of the City have the authority to enter onto private property following a reasonable attempt to give notice to the property owner in the event there is located a tree, shrub, plant or portion thereof which is reasonably suspected to be a public nuisance. If entry to the property is refused, but there is reasonable believe that the suspected nuisance poses imminent danger to City Property or people thereon, officers, agents, servants and employees of the City may enter on the property to inspect, but only to the extent necessary to confirm whether imminent danger exists.
- C. Abatement: The following are the prescribed means of abating public nuisances under this chapter:
1. Any public nuisance under this chapter which is located on privately owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. Except as provided below, no property owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:
    - a. The City shall cause a written notice to be personally served or sent by certified mail to the person to whom was sent the tax bill for the general taxes for the last preceding year, or an adult resident or operator of the premises.

- b. Such notice shall describe the kind of tree, shrub, or other plant or plant part, which has been declared to be a public nuisance; its location on the property; the reason for declaring it a nuisance;
  - c. Such notice shall describe the premises by legal description or by common description;
  - d. Such notice shall state the actions that the property owner or occupant may undertake to abate the nuisance;
  - e. Such notice shall require the elimination of the nuisance within thirty (30) days of the date of service of the notice, or such shorter period of time as is deemed necessary for public safety and welfare by the City;
  - f. Such notice shall state that, if the nuisance is not adequately and properly abated as required in the notice, the City shall enter on the property, abate the nuisance, and the owner shall be liable for the costs of the City to abate the nuisance. It shall also contain the right to appeal described in section 7-2-8.
2. In instances in which it is determined that an imminent danger exists that poses an immediate threat to the safety of the public such that thirty (30) days to abate the nuisance would pose an unreasonable risk to the public, the notice shall state, in addition to what is required above, such shorter time period in which the nuisance must be abated to eliminate the immediate risk to the public, and the right to appeal the determination of imminent danger, which may be after the required abatement, in which case the appeal shall only address the issue of imminent danger and whether the owner shall be responsible for the cost of abatement if the abatement is undertaken by the City.

#### D. Removal and Expense:

1. In the event any person owning the land upon which such a nuisance described in section A (1) of this section exists refuses to cure the condition within the time frame contained in the notice after given, and no appeal is sought in writing, then the City, its agents or contractors, may take any steps necessary to remove the tree, or otherwise take those actions necessary to abate the nuisance and such removal or abatement shall be at the expense of the property owner.
2. In the event any person owning the land upon which such a nuisance described in section A (2) of this section exists refuses to cure the condition after notice, or the City is unable to successfully give reasonable notice, then the City, its agents or contractors, may take any steps necessary to remove the tree, or otherwise take only those actions necessary to abate the imminent danger, unless further authorized by the property owner. Such removal or abatement shall be at the expense of the property owner.

- E. Lien For Unpaid Charges: In the event that any tree removal or nuisance abatement expense incurred by the City remains unpaid for more than ten (10) days after said service is performed by the City, said unpaid charge shall constitute a lien upon the real estate, and the City is hereby authorized, in accordance with law, to file notice of lien in the office of the Recorder of Deeds or Registrar of Titles of Kane County and to foreclose this lien against the property in a civil action to recover the money due and such costs and expenses and fees as allowed by statute. Any such judgment shall be enforced in accordance with law. Upon payment of all costs, expenses, charges and penalties, the lien created under this subsection shall be released by the City, which release shall be filed of record in the same manner as filing notice of the lien, pursuant to law, the expense of said filing to be paid by the violator aforesaid.

**7-2-6: INTERFERENCE WITH FORESTRY OPERATIONS OR NUISANCE ABATEMENT:**

No person shall unreasonably hinder, prevent, delay, or interfere with the City or its agents while engaged in the execution or enforcement of this chapter. (Ord. 08-11, 8-4-2008)

**7-2-7: VIOLATION AND PENALTY:**

- A. Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to the provisions of this chapter, upon being found guilty of violation, shall be subject to a fine not to exceed seven hundred fifty dollars (\$750.00) for each separate offense, each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense.
- B. If, as the result of the violation of any provision of this chapter, the injury, mutilation, or death of a tree, shrub, or other plant located on City Property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens", as published by the International Society of Arboriculture. (Ord. 08-11, 8-4-2008) and shall take into account, but not be limited by, the expenses associated with removal and planting, and time and maintenance necessary for a replacement tree to reach parity with the damaged tree

**7-2-8: APPEAL:**

Review of any decision rendered by the City relating to the subject matter of this chapter, other than an issue determined by Administrative Adjudication under this Code or court order may be had when requested in writing by a person claiming to have been aggrieved by such a decision. The appeal must be filed with the City within thirty (30) days from the date of the decision. This review may include interpretation and/or enforcement of the Arboricultural Specifications Manual, the City of Batavia Urban Forestry Plan, a decision that a public nuisance (other than one posing imminent danger) does or does not exist, or other matters. A decision of imminent danger may be appealed only for the purpose of determining whether the City should seek

reimbursement for any costs expended to abate such imminent danger. Such a review shall be conducted by the City Services Committee if requested. The determination of the City Services Committee shall be final, unless the issue involves expenditure by a property owner or possessor in excess of \$10,000 in which case the issue may be appealed to the City Council, if requested. Nothing in this section shall be construed to limit the jurisdiction of any court of law with regard to such disputes.

## CHAPTER 2 FORESTRY

### 7-2-1: PURPOSE AND INTENT:

A. Purpose: It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs and other plants within the city.

B. Intent: It is the intent of the City that the terms of this chapter shall be construed so as to promote:

1. The planting, maintenance, restoration, and survival of desirable trees, shrubs and other plants within the city; and
2. The protection of community residents from personal injury and property damage, and the protection of Batavia from property damage, caused or threatened by the improper planting, maintenance, or removal of trees, shrubs, or other plants located within the community. (Ord. 08-11, 8-4-2008)

### 7-2-2: DEFINITIONS:

As used within this chapter, the following terms shall have the meanings set forth in this section:

ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR BATAVIA (Arboricultural Specifications Manual<sup>1</sup>): A manual prepared pursuant to this chapter containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and other plants upon City ~~owned~~ Property. **(Comment: Changed to be consistent with change to City Property definition)**

ARBORIST: The City arborist of Batavia, Illinois. A volunteer position requiring expertise in the field of arboriculture -who acts as an outside consultant to City staff and the Tree Commission.

CITY PROPERTY: Property owned, controlled by or dedicated to the City of Batavia within the City limits of Batavia, Illinois, including rights of way and those areas commonly known as parkways.

~~City in fee simple absolute, or~~

~~B. Implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, including those areas commonly known as parkways.~~ **(Comment: Changing the definition by broadening it expanding helps reduce the number of words required later on. The change has already been made in the balance of this draft)**

PROPERTY OWNER/POSSESSOR: The record owner, ~~or~~ contract purchaser lessee or occupant of any parcel of land.

TREES, SHRUBS, AND OTHER PLANTS: All vegetation, woody or otherwise, except lawn grass and flowers less than twenty four inches (24") in height.

Urban Forest: The trees and woody vegetation on City Property within the City of Batavia. Woody vegetation shall include bushes and shrubs. Comment: We will have to treat grasses in the weed section of the Code.

URBAN FORESTRY PROGRAM: A written forestry policy and program approved by the City from time to time, containing the long and short term forestry activities to be undertaken by the City. (Ord. 08-11, 8-4-2008) Comment: Changed "annually" to "from time to time" as the program is not reviewed annually and is actually pretty consistent. There are regular reviews.

#### **7-2-3: BATAVIA TREE COMMISSION:**

A. Establishment: The Batavia Tree Commission (hereinafter "Tree Commission") is hereby established. Its functions and duties are limited to those set forth in this chapter.

B. Composition: The Batavia Tree Commission shall be composed of seven (7) commissioners. The Mayor with the approval of the City Council shall appoint four (4) commissioners. These four (4) commissioners shall serve without pay and shall reside within the City and shall not be ~~employed by the eCity employees~~. The remaining three (3) commissioners shall be the Director of Public Works, the Street Superintendent and the Water/Sewer superintendent. Subject to the exceptions in subsection C of this section, each commissioner ~~appointed by the mayor~~ Comment: redundant shall serve for a term of four (4) years.

C. Appointment Of Members: Two (2) of the four (4) commissioners initially appointed to the Tree Commission shall serve for a term of two (2) years; two (2) of the four (4) commissioners initially appointed shall serve for a term of four (4) years. The term shall start on a common date. Determination of the length of terms of the four (4) commissioners initially appointed shall be by lot. The chairperson of the commission shall be the Public Works Director or his designee. Mayor shall designate the chairperson of the Tree Commission. Comment: For consistency and a City employee can more easily do the administrative work. Check w Mayor.

D. Expiration or Vacation of Terms: Within thirty (30) days following the expiration of the term of any appointed commissioner, a successor shall be appointed by the Mayor with the approval of the City Council, and the successor shall serve for a term of four (4) years. Should any commissioner resign or be removed from the Tree Commission, a successor shall be appointed by the Mayor and shall serve for the unexpired period of the vacated term. A member of the Tree Commission may be removed by the Mayor with the approval of a majority of the City Council.

E. Duties: The Tree Commission shall perform the following duties:

1. ~~Within a reasonable time after the appointment of the tree commission, upon call of the chairperson of the tree commission, the tree commission~~ Tree Commission shall meet and adopt and maintain rules of procedure for regular and special meetings to fulfill the duties imposed upon it by this chapter. (Comment: This section was drafted at the initiation of the Commission and before there were rules)
2. ~~The Tree Commission shall advise and consult the City Services Committee~~ (Comment: expanded to acknowledge that Tree Commission can advise all parts of the City government, including staff) on any matter pertaining to the matters covered in this chapter and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:
  - a. Amendment to this chapter, and alterations or revisions to the arboricultural specifications manual, and alteration or revisions of the Urban Forestry Plan;
  - b. Policies concerning selection, planting, maintenance, and removal of trees, shrubs, and other plants within the City;
  - c. Allocation of funds and expenditures of funds by the City department of public works;
  - d. Establishment of educational and informational programs including, but not limited to, a yearly Arbor Day celebration.
  - e. ~~Issuance of permits required by this chapter.~~ Comment: They shouldn't issue permits but we are recommending no permits anyway.
  3. ~~Review of any decision rendered by the department of public works relating to the subject matter of this chapter may be had when requested by a person claiming to have been aggrieved by such a decision. This review may relate to interpretation and/or enforcement of the arboricultural specifications manual, the urban forestry plan, the issuance of permits, or the abatement of nuisances. The results of any such review shall be reviewed by the city services committee if requested. The determination of the city services committee may be appealed to~~

the City Council, if requested. Nothing in this section shall be construed to limit the jurisdiction of any court of law with regard to such disputes. (Ord. 08-11, 8-4-2008) Comment: This entire section was redone . See following comment. A volunteer commission shouldn't be making code enforcement decisions. The Commission should be helping staff to make the tough decisions when necessary but in the end staff, representing the City, are decision makers. Including being part of a judicial process over fellow citizens may have an impact on getting volunteers for the commission. If it's an issue for adjudication then it should go there, and then to court. If not an adjudication matter, then staff decision should be appealed to City Services directly. If the Council wants it to go to CS then that should be the last step before court. More discussion of this below.

#### **~~7-2-4: PUBLIC WORKS DEPARTMENT DUTIES:~~**

Comment: Staff recommends that this section be removed from the Code It was in this model ordinance the City adopted, but now that the notion of the urban forest is common and integrated into our operation it is no longer necessary. Many of the points are internal matters and aren't policies, and don't impact the residents. Some of the duties could result in setting the City up for liability in certain situations.

A. Duties: The Public Works Department shall perform the following duties:

- ~~1. The Public Works Department with the assistance of the Tree Commission and City arborist shall develop, and each subsequent year, update the Urban Forestry Plan. The plan shall outline urban forestry program activities for a minimum of the next five (5) years. This plan shall describe the urban forestry activities to be undertaken by the city, the reasons for those activities, the possible funding source(s), the means of accomplishing the activities, the alternatives available to the City to fund or accomplish the activity, the projected date of completion, and the consequences if the activity is not completed. Activities may include, but are not limited to, street tree inventory, planting, tree removal, beautification projects, and educational projects.~~
- ~~2. The Public Works Department, with the assistance of the Tree Commission and City arborist shall develop and periodically review and revise, as necessary, the Arboricultural Specifications Manual. This manual shall contain regulations and standards for the planting, maintenance and removal of trees, shrubs and other plants upon City owned property.~~
- ~~3. The public works department shall cause the urban forestry plan and the arboricultural specifications manual, and all revisions and amendments to it, to be published and promulgated; and shall cause their copies of the manual, and all revisions and amendments to it, to be available for public inspection at the office of the City Clerk. The Arboricultural Specifications manual, and any revisions and additions thereto shall become effective upon the effective date of any ordinance approving the manual or revision or amendments thereto.~~

4. ~~The Public Works Department shall make available to any interested person copies of this chapter, information about the activities of the Tree Commission, copies of the arboricultural specifications manual and copies of the Urban Forestry Plan.~~
5. ~~The Public Works Department shall administer the Urban Forestry Plan, this chapter and the provisions of the arboricultural specifications manual.~~
6. ~~The Public Works Department shall perform those acts deemed necessary, including the planting and maintenance of trees, the removal of undesirable trees, shrubs, and other plants, and the issuance of permits to others for work on City Property to ensure that all trees, shrubs, and other plants located on City Property conform with the Urban Forestry Plan, the Arboricultural Specifications Manual, and this chapter.~~
7. ~~The Public Works Department shall issue such permits as are required by this chapter and shall obtain as a condition precedent to the issuance of such permits the written agreement of each person who applies for such permits that he or she will comply with the requirements of this chapter, the Urban Forestry Plan, and with the regulations and standards of the Arboricultural Specifications Manual. The Public Works Department shall have the right to inspect all work performed pursuant to such permits. If the Public Works Department finds that the work performed is not in compliance with the requirements of this chapter, the Urban Forestry Plan, or with the regulations or standards of the Arboricultural Specifications Manual, the Public Works Department shall provide written notice of his/her finding to the permit applicant. The notice shall contain a copy of subsection 7-2-3E3 of this chapter; and~~
  - a. ~~The permit shall be nullified and shall be void; and~~
  - b. ~~The public works department may issue a written order that the permit applicant cease and desist all work for which the permit was required; and~~
  - c. ~~The permit applicant shall be subject to penalty under the terms of this chapter; and~~
  - d. ~~the City may take steps to correct the results of the noncomplying work and the reasonable costs of such steps shall be charged to the permit applicant.~~
8. ~~The Public Works Department shall establish a program of public information and education that will encourage the planting, maintenance, or removal of trees, shrubs, and other plants on private property in furtherance of the goals of the Urban Forestry Plan. (Ord. 08-11, 8-4-2008)~~

**7-2-5: PERMITS:** ~~remove~~ Comment: The current Code allows for permits to be issued allowing people to work on City owned property. After discussing and discussing the facts that we would want insurance, and that we still feel we would have some liability in the case of an accident, either legally or in the public's eye, we recommend ~~believe~~ that no one we should be allowed to work on City property unless they are a City contractor, except for minor pruning, and under very unusual circumstances which PW would handle individually. There might be

some limited work as part of right of way permits, and utilities have franchise agreements which allow some pruning.

**7-2-54: Protection for the Urban Forest** **Comment: My term. Be glad to have suggestions.**  
**Should it be defined?**

A. ~~Scope Of Requirements:~~ No person or contractor, except the City, its contractors or entities operating under a franchise or other written agreement, ~~Public Works Department or a contractor hired by the City~~ Public Works Department may perform any of the following acts on City Property; ~~without first obtaining from the public works department, a permit for which no fee shall be charged. Nothing in this section shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law.~~

1. Plant ~~on city owned property~~, remove or otherwise disturb any tree, shrub, stump, or other plant located on City Property, except that this provision shall not be construed to prohibit owners or possessors of property adjacent to City Property from watering, minor pruning, or fertilizing without a permit any tree, shrub, or other plant located on such City Property;
2. Trim, prune, or remove any tree or portions thereof if such tree or portions thereof reasonably may be expected to fall on City Property and thereby to cause damage to persons or property without giving City seven (7) days notice thereof;
3. Place on City Property, either above or below ground level, a container for trees, shrubs, or other ~~plants~~; subject to Section C below;
4. Damage, cut, tap, carve, or transplant any tree, bush or shrub, or other plant located on City Property;
5. Attach any rope, wire, nail, sign, poster, or any other manmade object to any tree, shrub, or other plant located on City Property;
6. ~~5.~~ Dig a tunnel or trench on City property related to trees or other plantings.

**Comment [Y1]:** What about people wanting to do rain gardens which I think we will need to allow and support under certain conditions?

- ~~B. Issuance: Within seven (7) days of receipt of the application, the Public Works Department shall issue a permit to perform within thirty (30) days of the day of issuance any of the acts specified in subsection A of this section, and this subsection B, for which a permit is requested whenever:~~  
**Comment: permit language removed**
1. Such acts would result in the abatement of a public nuisance; or
  2. Such acts are not inconsistent with the development and implementation of the Urban Forestry Plan or with any regulations or standards of the arboricultural specifications manual; and whenever

3. An application has been signed by the applicant and submitted to the Public Works Department detailing the location, number, size, and species of trees, shrubs, or other plants that will be affected by such acts, setting forth the purpose of such acts and the methods to be used, and presenting any additional information that the Public Works Department may find reasonably necessary; **No permits**
4. The applicant agrees to perform the work for which the permit is sought in accordance with the provisions of this chapter, the Urban Forestry Plan and with the regulations and standards set forth in the arboricultural specifications manual; **Comment: redundant**
5. The applicant certifies that he or she has read and understands those provisions of the Urban Forestry Plan, this chapter and of the arboricultural specifications manual which are pertinent to the work for which the permit is sought; and **Comment: Redundant**
6. If the work for which a permit is issued entails the felling of any tree or part thereof, located on private property, which, as a result of such felling reasonably may be expected to fall upon City Property, and if such felling is done by one other than the owner of the property on which such felling is done, the applicant agrees to indemnify and to hold the City harmless for all damages resulting from work conducted pursuant to the permit and deposits with the City a liability insurance policy in the amount of one hundred thousand dollars (\$100,000.00) per person/three hundred thousand dollars (\$300,000.00) per accident for bodily injury liability and fifty thousand dollars (\$50,000.00) aggregate for property damage liability, which policy shall name Batavia as an additional insured.

**B. Comment is this where we would allow for limited activity? Rain gardens flower beds, we want people to adopt and take stewardship of the UF don't we?** Nothing in this section shall preclude the establishment and maintenance of a rain garden in City parkways, under the terms and conditions contained in a right of way permit issued by the City under Title 7 **(Comment: I'm thinking that Title 7 may be changed from Streets and Sidewalks to Streets Sidewalks and Parkways, and then have a section under parkways for permits relating to parkway work, i.e. thinking of rain gardens, concrete mailboxes and the like. At the moment however, the definition of Streets in the code covers parkways, so we still have control. I see some changes in Title 7 perhaps, if we really address rain gardens some day.)**

C. Public Utility Companies, ~~Franchise holders, etc.:~~ Nothing in this section shall be construed to exempt public utility companies, ~~or their agents, or any entity with a franchise or other written agreement with the City~~ from any of the requirements of this chapter, ~~except as specifically described by statute or the agreement.~~ (Ord. 08-11, 8-4-2008) **Comment: ComCast, for example, isn't a public utility per se.**

**7-2-65: DISEASES AND PUBLIC NUISANCES:**

**(Comment: This is where the discussion regarding 2 major issues takes place: 1. "public" vs "private" nuisance arises and our recommendation to deal with public nuisances only, being those that can impact the public or public property and 2) deleting disease except where it has**

resulted in a dangerous condition. Scott Haines will discuss the fact that once the disease is discovered, it is generally too late to do anything about it, and if it gets to the point of being dangerous to City property, we would require removal. This is also subject to state law on particular diseases. These 2 areas are where Streets and Scott Haines in particular is spending an inordinate amount of time.)

A. ~~Definitions:~~ The following are hereby declared "public nuisances" under this chapter:

- ~~1. Any dead or dying tree, shrub, or other plant, whether located on city City owned property or on private property;~~
- ~~2.1. Any otherwise healthy tree, shrub, or other plant, whether located on city owned property or on private property, which harbors insects or diseases which reasonably may be expected to injure or harm any tree, shrub, or other plant Said trees, shrubs or plants must be removed or treated in accordance with the requirements set by the State of Illinois.~~
- ~~;~~
- ~~3. 2.1. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public street sign on City Property. include utilities?; (Comment: Combined with below provisions Combined with comditions described below, and added reference to sidewalks, paths and trails. Note the term "reasonable likelihood" as opposed to "imminent" in the following paragraph. This differentiates our rights and processes regarding our ultimate right to enter on property and abate.~~
2. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes imminent danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public sign on City Property.
- ~~4. Any tree, shrub or other plant or portion thereof whether located on city City owned property or on private property, which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street sign on city City property;~~
- ~~5. Any diseased or infested tree, shrub or other plant declared a nuisance by the state of Illinois, including, without limitation, elm trees infected with Dutch elm disease (Ceratocystis ulmi) or ash trees infected with the emerald ash borer (Agrilus planipennis Fairmaire) whether located~~

on city-Cityowned property or on private property must be removed in accordance with the requirements set by the state of Illinois. **Comment: just relocated**

a. Preventive chemical treatments of nondiseased or noninfested trees, shrubs, and other plants are acceptable. The chemicals used for treatments must be acceptable products for use on trees, shrubs, and other plants. The chemical must be used in accordance with manufacturer specifications by a licensed applicator. **Comment: just relocated**

b. It is the duty of the private landowner to provide documentation of the annual preventive treatments to the city-City of Batavia street department Department. **Comment: just relocated**

65. Any tree, shrub or other plant or portion thereof whether located on city-Cityowned property or on private property which dangerously obstructs the view as such may be determined by the director of public works pursuant to this chapter. **(Comment: combined into above provision)**

B. Citizen's Duty To Report: It is made the duty of any person in the City to report to the City of Batavia the existence of any diseased or infested tree of which such person has knowledge. **Comment: Don't believe we have the right to impose the duty.**

C. Right To Inspect: The officers, agents, servants and employees of the City have the authority to enter onto private property following a reasonable attempt to give notice to the property owner in the event whereon there is located a tree, shrub, plant or portion thereof plant part which is reasonably suspected to be a public nuisance. If entry to the property is refused, but there is reasonable believe that the suspected nuisance poses imminent danger to City Property or people thereon, officers, agents, servants and employees of the City may enter on the property to inspect, but only to the extent necessary to confirm whether imminent danger exists.

D. Abatement: The following are the prescribed means of abating public nuisances under this chapter:

1. Any public nuisance under this chapter which is located on City roperty shall be pruned, removed, or otherwise treated by the public works department in whatever fashion is required to cause the abatement of the nuisance within a reasonable time after its discovery. **Comment: This sets us up for liability and just shouldn't be in here.**

2. Any public nuisance under this chapter which is located on privately owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. No property owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:

a- ~~a.~~ The ~~City public works department~~ shall cause a written notice to be personally served or sent by certified mail to the person to whom was sent the tax bill for the general taxes for the last preceding year, or an adult resident or operator of the premises.

b. Such notice shall describe the kind of tree, shrub, or other plant or plant part, which has been declared to be a public nuisance; its location on the property; the reason for declaring it a nuisance;

c. Such notice shall describe ~~the premises,~~ by legal description or by common description, ~~the premises;~~

d. Such notice shall state the actions that the property owner or occupant may undertake to abate the nuisance;

e. Such notice shall require the elimination of the nuisance within thirty (30) days of the date of service of the notice, or such shorter period of time as is deemed necessary for public safety and welfare by the ~~City public works department.~~

f. Such notice shall state that, if the nuisance is not adequately and properly abated as required in the notice, the City shall enter on the property, abate the nuisance, and the owner shall be liable for the costs of the City to abate the nuisance. It shall also contain the right to appeal described in section 7-2-8, except in instances of a determination of imminent danger.

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D. Removal And Expense: (Comment: In this section we have differentiated in our response depending upon whether the nuisance creates an imminent danger or not.)

1. In the event any person owning the land upon which such a nuisance described in section A(1) of this section exists refuses to cure the condition ~~remove the diseased or infested tree as described in Section 7-6-2-A(1), or removed a tree or that portion thereof that creates a public nuisance as described in Section 7-6-2-A(2)~~ (Comment: there are occasions where pruning only will abate the nuisance) within the time frame contained in the notice after given, and no appeal is sought in writing, then the City, its agents or contractors, shall the City may take any steps necessary to remove the tree, or otherwise take those actions necessary to abate the nuisance, ~~in accordance with State of Illinois guidelines- within thirty (30) days after notice by the City (Comment: We will determine time depending on our availability. what we think is an appropriate time to do so~~ and such removal or abatement shall be at the expense of the property owner.

2. In the event any person owning the land upon which such a nuisance described in section A (2) of this section exists refuses to cure the condition after notice, or the City is unable to successfully give reasonable notice, then the City, its agents or contractors, may take any steps necessary to remove the tree, or otherwise take only those actions necessary to abate the imminent danger, unless further authorized by the property owner. Such removal or abatement shall be at the expense of the property owner.

E. Lien For Unpaid Charges: In the event that said tree removal or nuisance abatement expense remains unpaid for more than ten (10) days after said service is performed and expense incurred by the City, said unpaid charge shall constitute a lien upon the real estate, and the City is hereby authorized, in accordance with law, to file notice of lien in the office of the recorder of deeds or registrar of titles of Kane County, and to foreclose this lien, against the and to sue the owner, or lessee or occupant of the real estate, or their agents, in a civil action to recover the money due and such costs and expenses and fees as allowed by statute for services rendered, costs recording, plus all expenses and reasonable attorney fees (Kevin, can we recover fees?) to be fixed by the court. Any such judgment shall be enforced in accordance with law. In addition to the charges due, the City is entitled to collect the costs of filing notice of lien, foreclosing said lien and litigation costs, together with all office and legal expense incurred in connection with the collection of the amount due. Kevin: duplicative of earlier sentence?

Upon payment of all costs, expenses, charges and penalties, the lien created under this subsection supra shall be released by the City, which release shall be filed of record in the same manner as filing notice of the lien, pursuant to law, the expense of said filing to be paid by the violator aforesaid.

~~3. The public works department is empowered to cause the immediate abatement of any public nuisance provided that In the event the nuisance is determined by the City public works department to be an immediate threat to any person, or property, then the City shall have the right to cause the immediate abatement of the nuisance following reasonable notice. (Ord. 08-11, 8-4-2008)~~

**7-2-76: INTERFERENCE WITH FORESTRY OPERATIONS OR NUISANCE ABATEMENT PUBLIC WORKS DEPARTMENT:**

No person shall unreasonably hinder, prevent, delay, or interfere with the City public works department or its agents while engaged in the execution or enforcement of this chapter. (Ord. 08-11, 8-4-2008)

**7-2-87: VIOLATION AND PENALTY:**

A. Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to the provisions of this chapter, upon being found guilty of violation, shall be subject to a fine not to exceed seven hundred fifty dollars (\$750.00) for each separate offense, each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense.

B. If, as the result of the violation of any provision of this chapter, the injury, mutilation, or death of a tree, shrub, or other plant located on City Property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of "A Guide To The Professional Evaluation Of Landscape Trees, Specimen Shrubs, And Evergreens", as published by the International Society of Arboriculture. (Ord. 08-11, 8-4-2008) and shall take into account, but not be limited by, the expenses associated with removal and planting, and time and maintenance necessary for a replacement tree to reach parity with the damaged tree

**7-2-98: APPEAL:** Comment: reworked due to removal of Tree Commission from the process

Review of any decision rendered by the City relating to the subject matter of this chapter, other than an issue determined by Administrative Adjudication under this Code, ~~or court order~~ may be had when requested by a person claiming to have been aggrieved by such a decision. The appeal must be filed with the City within thirty (30) days from the date of the decision. This review may include interpretation and/or enforcement of the Arboricultural Specifications Manual, the City of Batavia Urban Forestry Plan, a decision that a public nuisance (other than one posing imminent danger) does or does not exist, or other matters. A decision of imminent danger may be appealed only for the purpose of determining whether the City should seek reimbursement for any costs expended to abate such imminent danger. Such a review shall be conducted by the City Services Committee if requested. The determination of the City Services Committee shall be final, unless the issue involves expenditure by a property owner or possessor in excess of \$10,000 in which case the issue may be appealed to the City Council, if requested. Nothing in this section shall be construed to limit the jurisdiction of any court of law with regard to such disputes. ~~include (other than one posing imminent danger)-~~ (Comment: If we determine a public nuisance exists then Administrative Adjudication process would handle it. If we determined that a public nuisance does NOT exist, a resident could ask for a review under this language If so, it should go to City Services and let the Commission make a recommendation if it wants, but not have a formal due process hearing before it.? Kevin, can we get away with that?) ~~conducted of law with regard to such disputes. (Ord. 08-11, 8-4-2008)~~ Comment to comment- we are trying to make the process a bit more palatable for the citizen and ~~R~~regardless the person could go to court for administrative review.

~~Any party who elects to dispute any action or decision by the public works~~Public Works  
~~department~~Department, ~~tree commission~~Tree Commission or city ~~City~~services committee shall  
be entitled to appeal to the City ~~City~~Council for a final determination. Any appeal of the City  
City

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