

Village of Elk Rapids, MI – Tree Ordinance (1985)

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## ARTICLE II. TREES\*

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**\*State law references:** Planting of trees along highways, MCL 247.231 et seq.; care of trees and shrubs along highways, MCL 247.241 et seq.; obnoxious plants and trees, MCL 124.151 et seq.

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### Sec. 66-21. 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:

*Department* means the department of public works.

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

*Prohibited species* means any tree specified by village beautification commission (current list on file at village hall).

*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 the land lying between property lines on either side of all streets, highways and boulevards in the village.

*Supervisor* means the public works supervisor.

*Tree* means, unless the context clearly indicates otherwise, trees, shrubs, bushes and all other woody vegetation.

(Code 1985, ch. 3030, § 35.101(a)--(f))

**Cross references:** Definitions generally, § 1-2.

### Sec. 66-22. Application of **article** provisions.

The provisions of this **article**, except as otherwise specifically stated in this **article**, shall apply only to public streets, parkways, parks and other land publicly owned or controlled by the village.

(Code 1985, ch. 3030, § 35.101(g))

### Sec. 66-23. Responsibility for enforcement of **article** provisions.

The supervisor shall be charged with the duty of enforcing the provisions of this **article**.

(Code 1985, ch. 3030, § 35.102)

### Sec. 66-24. Rules and regulations.

The supervisor shall make such rules and regulations supplementary to this **article** and not in conflict herewith, as he may 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 under this **article**. (Code 1985, ch. 3030, § 35.119)

Sec. 66-25. Appeal.

In case the owner, agent or occupant of the property shall feel himself aggrieved at an order of the supervisor requiring the treatment or destruction of any tree, he may, within 48 hours, make an appeal to the village council by communication filed with the village clerk. The village 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 1985, ch. 3030, § 35.114)

Sec. 66-26. Permits for tree planting, care and removal.

(a) The supervisor shall have control over all trees located within the street rights-of-way and parks in the village and the planting, care and removal of such trees, subject to the regulations contained in this **article**.

(b) The owner of land abutting on any street may upon prior written permission of the supervisor, 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 supervisor 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 department and assume all or any part of the costs of removing such tree.

(Code 1985, ch. 3030, § 35.103)

Sec. 66-27. Public tree removal.

The department shall have the right to plant, trim, spray, preserve and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure safety or to preserve the symmetry and beauty of such public grounds. The supervisor may remove, or cause or order to be removed, any tree or part of a tree which is in an unsafe condition, or which is of a prohibited species, or is affected with any injurious disease, fungus, insect or other pest. Whenever the department shall remove any tree, plant or shrub, solely for the purpose of constructing any public work, the supervisor shall, if practicable, replace the same at public expense, at some nearby location by planting another tree, plant or shrub, not necessarily of the same type.

(Code 1985, ch. 3030, § 35.104)

Sec. 66-28. Spacing of shade trees.

(a) Future plantings of shade and ornamental trees in the streets, parks and public places of the village may be done by the department upon payment of certain fees and charges and in accordance with such rules and regulations as may be established by the village

council insofar as such rules and regulations do not conflict with any other provisions of this article.

(b) No future planting of shade and ornamental trees or shrubs in the highways, parks and public places by owners of private property adjacent to such public property or anyone employed by them shall be permitted without the approval of the supervisor and in compliance with the following rules as to spacing:

(1) Spaced no less than width of tree's crown when mature; provided, however, that any 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 department to plant a shade or ornamental tree within a less distance from an existing tree located in the street or other public place.

(2) No tree shall be planted in parkways between the curb and sidewalk less than 3 1/2 feet from the curbline, nor less than three feet from the sidewalk; provided, however, that where the parkways are less than six feet, six inches in width, any trees planted therein shall be located not less than two feet, six inches from the curb and as near midway between the curb and sidewalk as possible.

(3) No tree shall be planted nearer to the intersection of any streets than 20 feet from the corner of such intersection.

(Code 1985, ch. 3030, § 35.105)

#### Sec. 66-29. Tree protection.

(a) No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire within ten feet of any tree, or permit any fire, or the heat of such fire, to injure any portion of any tree.

(b) No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree.

(c) 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.

(d) No person shall use any tree as an anchor except by special written permit from the supervisor, and no material shall be fastened to or hung on any tree.

(e) All persons having under their care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall after notice by the department, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the department.

(Code 1985, ch. 3030, § 35.106)

#### Sec. 66-30. Excavations near trees.

Excavations and driveways shall not be placed within five feet of any tree without written permit from the supervisor. Any person making such excavation or construction shall guard any tree within six feet of an excavation 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 feet from any tree.

(Code 1985, ch. 3030, § 35.107)

#### Sec. 66-31. 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 1985, ch. 3030, § 35.108)

Sec. 66-32. Gas main leakage.

Gas pipes or mains within any public rights-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. If a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within 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 1985, ch. 3030, § 35.109)

Sec. 66-33. Private trees; clearance.

(a) Every owner of any tree or shrub or bush on private property overhanging any street or right-of-way within the village shall trim the branches of the tree so that there shall be a clear space of eight feet above the surface of the street or right-of-way and a minimum of 14 feet above the traveled portion of the road or street right-of-way.

(b) The village shall have the right to trim any tree or shrub or bush on private property when, in the opinion of the supervisor of the department of public works, it interferes with the proper spread of light along the street from the streetlight, or interferes with the visibility of any traffic control device or sign, with such trimming to be confined to the area within the right-of-way.

(Code 1985, ch. 3030, § 35.110)

Sec. 66-34. Corner clearance.

(a) All shrubs and bushes located on the triangle formed by two right-of-way lines at the intersection of two streets, and extending for a distance of 25 feet each way from the intersection of the right-of-way lines on any corner lot within the village, shall not be permitted to grow to a height of more than 24 inches from the top of curb at street level, in order that the view of the driver of a vehicle approaching a street intersection shall not be obstructed.

(b) Trees may be planted and maintained on private property in this area, provided that all branches are trimmed to maintain a clear vision for a vertical height of eight feet above the roadway surface.

(c) Any owner of any property failing to trim any trees, shrubs or bushes in conformity with this section, or section 66-33, shall be notified by the supervisor in the manner provided in section 1-15 of this Code to do so, and such notice shall require trimming in conformity with this section within ten days after the date of such notice. Upon the expiration of such period, the supervisor may cause the trimming to be done, and the cost of such trimming may be collected from the owner of such property as a single lot assessment in accordance with the village Charter.

(Code 1985, ch. 3030, § 35.111)

Sec. 66-35. Diseases and infestations.

When the supervisor shall discover that any tree growing on private property within the village 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, in the manner specified in section 1-15 of this Code, 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 its spreading, 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 ten days after service of the notice 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 1985, ch. 3030, § 35.112)

Sec. 66-36. Dutch elm disease.

Every elm tree, regardless of species or variety, infected with the fungus *ceratostomella ulmi*, popularly called Dutch elm disease, shall be cut and burned; if on public property, within ten days after the supervisor shall learn of the condition and, if on private property, within ten days after notice as specified in section 1-15 of this Code. No person shall possess, sell, give away or transport any elm tree afflicted with the fungus *ceratostomella ulmi* nor any wood from, or parts of any tree so afflicted, except that wood, branches and roots of any tree so afflicted may be transported for burning if first sprayed thoroughly with approved sprays by Michigan State University and released annually by Cooperative Extension Service in Bellaire.

(Code 1985, ch. 3030, § 35.113)

Sec. 66-37. Owner's failure to comply with **article** provisions.

In case the owner, agent or occupant of the property refuses to carry out the order of the supervisor within the time limited, or in case of an appeal, within five days after the council shall have affirmed such order, the supervisor 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 of such actions. In case the owner of such property shall fail to pay such bill within 60 days after the bill has been rendered, the supervisor shall report the failure to the village council for collection as a single lot assessment against such property in accordance with the Charter. The supervisor may, without serving such 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 of such infestation or disease.

(Code 1985, ch. 3030, § 35.115)

Sec. 66-38. Inspection.

The supervisor 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 supervisor or under his direction, in accordance with this [article](#).

(Code 1985, ch. 3030, § 35.116)

Sec. 66-39. Lawn extensions.

On residence streets, the abutting owner or occupant may maintain a planting strip on the lawn extension between the sidewalk and curb and may plant flowers, trees and shrubbery therein in conformity with this [article](#). No person shall wilfully injure or destroy any grass, flower, tree or shrub upon any such 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 1985, ch. 3030, § 35.117)

Sec. 66-40. Overhead lines; trimming permits.

The supervisor shall grant permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the village, 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 department. Such permission, as provided for in this section, shall require reasonable prior notice to the village before any work is commenced thereunder; provided, however, that in the event of an emergency requiring 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 1985, ch. 3030, § 35.118)

Secs. 66-41--66-60. Reserved.