

CHAPTER 20

PARKS

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20.01 DEFINITIONS. (Am. Ord. #2344 - 8/16/99). In this chapter, unless the context clearly requires otherwise, the following words and phrases shall have the meaning given herein:

(1) **VEHICLE.** Any motor vehicle, bicycle, trailer, or snowmobile, motorcycle, wagon or other means of conveyance.

(2) **PARK.** All public lands owned or operated by the City and under the jurisdiction of the Park and Recreation Commission.

(3) **COMMISSION.** The City Park and Recreation Commission.

(4) **BICYCLE.** See Section 7.16 of this Code.

(5) **MOTOR VEHICLE.** As defined in ch. 340, Stats.

(6) **DIRECTOR.** City of West Bend Director of Parks, Recreation and Forestry.

20.02 PARK REGULATIONS. (Am. Ord. #2344 - 8/16/99). Except as provided otherwise in this chapter the following are prohibited in parks:

(1) **MOTOR VEHICLE.**

(a) To operate any motor vehicle except on clearly marked roadways, drives and parking areas designated by the Commission for such purpose.

(b) To park any motor vehicle outside the limits of clearly marked parking areas designated by the Commission for such purpose.

(2) **OTHER VEHICLES.**

(a) Except as provided in par. (b), to park any vehicle other than a motor vehicle outside of clearly marked parking areas designated by the Commission or to operate any vehicle other than a motor vehicle outside of clearly marked roadways, drives and parking areas designated by the Commission.

(b) The restrictions in (a) do not apply to:

1. Bicycles operated on walks unless otherwise posted.
2. Vehicles utilized for disability access operated on walks.
3. (Cr. Ord. #2438 – 6/10/02). Skateboards, non-motorized scooters, and inline skates operated on all concrete and asphalt surfaces unless otherwise posted.

(3) Speed Limits: To operate any vehicle in excess of posted speed limit or in excess of 15 miles per hour where no limit is posted.

(4) Motorized Vehicles. To operate any snowmobile, all-terrain vehicle, minibike, go-cart or similar motorized vehicle.

(5) Closed Hours. (Am. Ord. #2805 – 2/24/2018) (Am. Ord. #2482 – 5/19/03). Except as provided otherwise in this chapter, it is prohibited for any person or vehicle to be in a play lot or special historical area, as designated by the Commission, between 9:00 P.M. and 6:00 A.M. the next day or to be in any other park between 11:00 P.M. and 6:00 A.M. the next day. The Closed Hours described herein shall not apply to the following parks: Old Settlers Park and Vest Pocket Park.

(6) Fires. To build a fire except in fireplaces or grills designed for such purpose, or to dispose of embers or charcoal, except in the containers specifically provided for such disposal.

(7) Animals.

(a) (Am. Ord. # 2776 – 12/16/15) (Am. Ord. #2645 – 3/16/09). To take, have, keep or permit to run any dog, cat, fowl or other domesticate animal within a park.

(b) To take, catch, hunt, trap, kill, pursue or disturb any wild animals or birds other than by fishing as permitted by state law.

(c) To bring, carry, possess, set or use any snare, trap, seine, net or similar device capable of capturing or harming any living creature.

(8) Games. To engage in any athletic contest, event or activity such as baseball, softball, football, golf, volleyball, soccer, Frisbee throwing, horseshoe pitching whereby an area is usurped by participants to the exclusion, or at the peril of injury to, others or their property, except in areas specifically designated for such activity.

(9) Noise. To operate any radio, television, record player, public address system or other sound amplification device, create any noise or play music or any instrument in any park where the sound created is audible at a distance of 50 feet or more from the source without a written permit from the Commission.

(10) Vandalism.

(a) To soil, deface, injure, damage, upset or destroy any building, fence, fountain, bench, table, tree, shrub, turf or other property.

(b) To litter, dump, deposit, leave, throw or break any bottle, paper, box, can or other item in any body of water or upon the ground or any other place within a park, except in clearly identified refuse receptacles provided for that purpose.

(c) To remove, or appropriate for one's own personal or private use, any dirt, sand, log, flower, tree, shrub, table, bench or any other item.

(11) Alcohol Beverages.

(a) To sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any alcohol beverage as defined by Section 125.02, Stats., without a written permit from the Commission or its designee.

(b) To bring, possess, consume, dispense, convey or give away any "keg" or "tap" fermented malt beverage as defined by Section 125.02, Stats., without a written permit from the Commission or its designee in any park, without first obtaining a written permit from the Commission or its designee.

(c) (Am. Ord. #2559 – 4/18/05). To possess or consume any alcohol beverage as defined in Section 125.02, Stats., in any park except in picnic areas, in park buildings or shelters, or in spectator areas of athletic events scheduled through the Park, Recreation and Forestry Department.

(12) Amusements. To erect or fabricate any tent, booth, stand, pavilion or to operate any ride or similar device without a written permit from the Commission.

(13) Fireworks. (Am. Ord. #2660 – 8/3/09). See Section 5.217 of this Code. In addition, no sparklers shall be permitted at any time.

(14) Swimming.

(a) To swim or bathe in any area not designated for such purpose.

(b) To enter or remain within the boundaries of any established swimming area without process of the established admittance procedure.

(15) Alterations to Park Property. To alter, construct, erect or remove any public or utility line, sidewalk, roadway, structure, curb or any other object without written permit from the Commission.

(16) Commercial Advertising. To hawk, peddle, solicit, distribute handbills, advertise, post signs, or otherwise offer for sale any commercial item within any park without a written permit from the Commission.

(17) Assembly. To block or obstruct the lawful use by any other person of an area, building, structure, access or exit.

(18) Washing. To wash any car, pet, person, clothing, dishes or other object in any river, stream, pond or lake.

(19) Interference. To interfere with any contractor, police officer, City employee or permit holder while in the performance of his duty or performing any legal activity.

(20) Gambling (Am. Ord. #2574 - 9/26/05). To operate any gaming device, participate in any game of chance, place or accept bets, or otherwise gamble for money, products or services.

(21) Weapons (Am. Ord. #2698 – 10/11/11). To discharge any firearm or to bring, carry, possess or use any air gun, bow and arrow, sling shot or other weapon in any park except in areas specifically designated by the Commission, except as specified in Section 66.0409(3)(b), Wis. Stats.

(22) Exclusive Use. To appropriate for use to the exclusion of others, any structure, picnic area, recreational facility or other convenience without a written permit from the Commission.

(23) Fees. To charge or collect any fee, admission or payment for any activity, event, service, or for the use of any land or facility in any park without a written permit from the Commission.

20.03 TREES AND VEGETATION.

(1) INTENT. It is the intent of this section to exercise jurisdiction in regard to the planting, maintenance and removal of trees and shrubs growing in public places in the City and to define public nuisances and provide for their abatement.

(2) DEFINITIONS. In this section, unless the context clearly requires otherwise, the following words and terms shall have the meaning given herein:

(a) City Forester. The designated City official assigned to carry out the enforcement of this section.

(b) Public Place. That part of every street, highway, roadway or alley between the lot line and curb and from property line to property line, and any other land owned or controlled by the City including tree planting easements.

(c) Planting Strip. The public place lying between the curb or proposed curb and the lot line.

(d) Public Nuisance. Any tree or shrub which is specifically designated a public nuisance in this section or part of which is on public or private property which, by reason of its condition, interferes with the use of any public place; is infected with an injurious plant disease; is infested with an injurious insect or other pest; is detrimental to the construction of public improvements; or endangers the life, health, safety or welfare of the

public or its property.

(e) Dutch Elm Disease. A public nuisance more particularly defined as:

1. Any living or standing elm tree or part thereof infected with the Dutch Elm disease fungus, *Ceratocystis ulmi*, (Buisman) or which harbors any Elm Bark beetle, *Scolytus multistriatus* (Eichh) or *Hylurgopinus rufipes* (Marsh).

2. Any dead elm tree or part thereof, standing or fallen, to include logs, branches, stumps, firewood or other elm material not buried, burned or from which the bark has not been removed.

(f) (Am. Ord. #2617 - 8/20/07). Vision Clearance Triangle. As defined in Section 17.44 (157.5) of this Code.

(3) **CITY FORESTER; POWERS AND DUTIES**. It shall be the duty of the City Forester, or in his absence the Deputy City Forester, under the supervision of the Park and Recreation Director, to enforce the provisions of this section. The powers and duties of the City Forester are as follows:

(a) The Forester shall have the jurisdiction, authority, control and supervision over all trees and shrubs growing in public places, to include, but not be limited to, planting, removal, maintenance and protection.

(b) The Forester shall have the authority to enter upon private property at reasonable times to inspect trees or shrubs, or parts thereof, upon request of the property owner, upon complaint, or if he has reason to believe necessary or advisable tree care or removal may be required at the property owner's expense. The cost of inspection shall be borne by the City.

(c) The Forester shall have the authority to grant a permit under the provisions of this section and rules and work standards adopted hereunder. He shall supervise all work done under any permit issued under the provision of this section and may void any permit if the provisions of this section are not complied with.

(d) The Forester shall have the authority to cause a public nuisance to be abated in accordance with the provisions of this section, as further described in this section.

(e) The Forester shall have the authority to formulate a master street tree plan as approved by the Park and Recreation Commission and, in regard thereto:

1. Shall consider all existing and future utility and environmental factors when recommending a specific plant species for public places within the City.

2. Shall, with the approval of the Park and Recreation Commission, have the authority to amend and make additions to the master street tree plan at any time that

circumstances make it advisable.

(f) The Forester shall perform such other duties as are provided by the laws, rules or regulations of the State, particularly Section 27.09, Stats.

(g) The Forester may establish arboricultural specifications, setting standards for the care, maintenance and protection of trees and shrubs.

(4) TREE PLANTING REQUIREMENTS. (Am. Ord. #2391 - 3/12/01).

(a) Permit Required. No person shall plant, cut, prune, remove, disturb, apply pesticides, spray, alter or root prune any tree or shrub in a public place without the written permission of the City Forester.

(b) Repealed Ord. #2391 - 3/12/01.

(c) Repealed Ord. #2391 - 3/12/01.

(d) Repealed Ord. #2391 - 3/12/01.

(e) Improper Planting a Public Nuisance. Any tree planted in violation of this section shall be deemed a public nuisance.

(5) TREE AND SHRUB MAINTENANCE.

(a) (Rep. Ord. #2391 - 3/12/01).

(b) Private Property. All trees and shrubs on private property shall be kept pruned by the owner to permit safe and unobstructed passage of pedestrians and vehicular traffic in, on and through public places and provide a minimum clearance of 8 feet over sidewalks and 12 feet over streets and alleys, except those streets and alleys that are subject to truck traffic which shall have a minimum clearance of 16 feet. Trees shall not obstruct street lighting, street signs, or traffic signs or signals. Any tree or shrub or part thereof found to be in violation of this section shall be deemed a public nuisance.

(c) (Repealed Ord. #2391 - 3/12/01).

(d) Liability of Tree Trimmers. Any person performing work on a tree in a public place, by permit, contract or otherwise, shall assume full responsibility for damage to property and to any person, and shall save the City harmless from any liability therefor.

(6) PROTECTION OF TREES. Except as authorized by written permission from the Forester, it shall be a violation of this section to perform or cause to be performed the following acts in any public place within the City.

(a) To attach any sign, poster, handbill, electrical installation wire or other

device or material to, around or through a tree.

(b) To permit or cause fire to burn where it may kill or injure any tree.

(c) To allow any wire charged with electricity to come in contact with any tree or to allow any toxic chemical, smoke, oil, gas or other substance that may kill or damage any tree to come in contact with its leaves or roots.

(d) To use tree spurs or climbers when working healthy trees.

(e) To remove any guard, stake, pole or other device intended for the protection or stabilization of a public tree, or close or obstruct any open space around the base of a public tree designed to permit access to air, water and fertilizer.

(f) To erect, alter, repair, raze or move any building, structure or other large object without placing suitable guards around public trees which may be injured by such operations. It shall be the responsibility of the owner thereof to repair or replace any tree injured or killed by such operations. If it is found that the moving of any tree is necessary to allow for such operations, the cost of the moving shall be borne by the owner of the project.

(g) To excavate any ditch, tunnel, hole, trench or place any drive within a radius of 5 feet from any tree in a public place except by written permit from the City Forester or when an emergency situation exists. The Forester may require the posting of an adequate surety bond or other sufficient security by any person proposing to make any such excavation to cover the cost of replacement of any tree destroyed as the direct result of the excavation, as reasonably determined by the Forester.

(h) To damage, injure, remove or appropriate for one's own personal or private use any tree or shrub procured in whole or in part with public funds, or planted or growing in a public place.

(7) **OBSTRUCTION OF VIEW AT INTERSECTIONS.** In accordance with Section 17.38(1) of this Code, no person shall plant, grow or maintain any tree, shrub or other vegetation on any City street corner lot within the vision clearance triangle which may obstruct the vision of the operator of any motor vehicle or pedestrian approaching such intersection. Any tree, shrub or other vegetation which exceeds three feet in height above street grade within the vision clearance triangle shall be deemed a public nuisance.

(8) **PUBLIC NUISANCES.** No person shall permit any public nuisance enumerated in this section to remain on any property owned or controlled by him, including public places.

(a) **Notice of Public Nuisance.** Whenever the City Forester shall find and declare any tree or shrub a public nuisance, he shall notify the property owner or his agent in writing that the nuisance must be abated and the procedure required for the abatement.

(b) **Abatement Procedure and Cost.** See Section 10.06 of this Code.

(9) **MAINTENANCE OF PLANTING STRIP IN BUSINESS IMPROVEMENT DISTRICT** (Cr. Ord. #2791- 4/11/17). The Planting Strip appurtenant to any property located within the boundaries of the Business Improvement District shall be cared for and maintained by the property owner in a manner consistent with the provisions of this code.

20.04 PENALTY. Any person who shall violate any provision of this chapter shall be subject to a forfeiture as provided in Section 25.04 of this Code.

20.05 PARK FEES (Cr. Ord. #2041; Am. Ord. #2203 – 4/24/95; Am. Ord. #2341 - 6/28/99). Park fees shall be paid to the City as provided in this section prior to any construction of a residential building, expansion of a residential building, increase in number of dwelling units or capacity, conversion to residential use or other addition of dwelling units or expansion of residential capacity.

(1) Fee. The amount of the park fee shall be:

(a) (Am. Ord. #2341 - 6/28/99) For Community Living Arrangements, boarding houses, lodging houses, dormitories and other residential uses not consisting of dwelling units as defined in §17.44(54), \$166.00 per person for the number of persons the facility is designed to serve or accommodate.

(b) (Am. Ord. #2272 - 1/20/97; Am. Ord. #2341 - 6/28/99; Am. Ord. #2448 – 9/9/02). For other dwellings or residential uses, \$1,979.00 per dwelling unit.

(2) Exceptions. This section shall not apply to hotels, motels, hospitals, prisons or jails.

(3) Complement to Chapter 18. This section shall complement Chapter 18 of this Code and shall not be interpreted to supersede any portion thereof except to the extent that it is inconsistent.

(4) Annexation. Upon the annexation to the City of any building used for residential purposes, park fees shall be collected as provided in this section.

(5) Segregation and Use. All fees collected under this section shall be placed in a segregated, interest-bearing account and shall be accounted for separately from other funds of the City. The fees and any interest on the fees may be expended only for the acquisition and development of parks, parkways and open spaces.

(6) Refund. (Am. Ord. #2593 - 5/22/06). Fees collected under this section and not expended within 7 years thereafter shall be refunded to the current owner of the property

with respect to which the fees were imposed except that the 7 year time limit may be extended as permitted by Section 66.0617(9) (b), Wis. Stats. The collection and expenditure of fees shall be accounted for on a first-in, first-out basis.

(7) Administration and Appeal. The amount and collection of fees under this section shall be determined by the Department of Economic and Community Development. The use of fees collected under this section shall be determined by the Department of Parks, Recreation and Forestry. Any property owner aggrieved by the amount, collection or use of fees collected for that property may appeal the determination to the Common Council by making a written request to the City Clerk for review of the determination by the Council. The request shall detail the owner's complaint about the amount, collection or use of the fees and provide the name and address of the owner complaining. The Clerk shall give the owner written notice by mail at the address provided of when the matter will be taken up by the Council. The owner shall be given a reasonable opportunity to address the Council following which the Clerk shall give the owner written notification by mail addressed to the address provided of the Council's decision on the appeal.

20.06 WILDLIFE POPULATION CONTROL (Cr. Ord. #2048 - 10/7/91). Notwithstanding other provisions of this Municipal Code, the Director of Parks, Recreation and Forestry may permit killing or trapping of animals in any park subject to such conditions as he shall impose if he finds that such killing or trapping is necessary for wildlife population control or otherwise benefits the public health, safety or welfare.

20.07 EXCEPTIONS TO REGULATIONS. (Cr. Ord. # 2344 - 8/16/99). Notwithstanding the provisions of Section 20.02:

(1) ADA Compliance. The Director may permit such accommodations as are necessary to comply with the Americans with Disabilities Act and other state and federal laws.

(2) City Work. To the extent that their duties require the same, City officers, agents, employees and contractors may be in such locations, at such times and with such vehicles and equipment as necessary to accomplish City business.

(3) Closing Hours. The Commission may permit variations from the park closing hours for events for which other permits or licenses have been obtained.

(4) Snowmobiles. Snowmobiles may be operated on snowmobile trails designated as such by the Commission subject to such conditions as the Commission may impose for the preservation of peace, safety and welfare.

(5) Alcohol. Alcohol beverages may be possessed and consumed without a permit in areas designated for such use by the Commission.

(6) Animals. (Cr. Ord. #2776 – 12/16/2015)

(a) Service Animals. Service animals for individuals with disabilities, engaged in such serves, shall be allowed in any park.

(b) Designated Dog Parks. Dogs shall be allowed within a park designated by the City as a dog park.

(c) (Rep. & Recr. Ord# 2832 – 5/14/2019; Rep. & Recr. Ord# 2867 – 09/28/2020) Designated On-Leash Dog Areas. Dogs shall be allowed in all City parks on a six foot or less leash except for the following locations:

1. Regner Park,
2. Lac Lawrann Conservancy,
3. Any park building,
4. Areas posted as No Dogs Allowed by the Parks Department,
5. At designated Special Events that are posted as No Dogs Allowed by the Parks Department or event organizer.