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TITLE IV - STREETS AND SIDEWALKS

CHAPTER 40

NEWSRACKS, PLANTERS, TABLES, CHAIRS, ETC.*

(Ord. No. 515, 07-03-89)

***Editor's Note**—Chapter 40 derives from Ord. No. 515, adopted July 3, 1989. Section 4.12, Separability, of the ordinance was omitted as being covered by the provisions of §1.13.

4.1. Findings and purposes.

It is found and declared that:

- (1) The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic.
- (2) Reasonable regulation of streets and sidewalks is necessary to protect the public health, safety and welfare.
- (3) The uncontrolled placement of tables and chairs, merchandise and goods, newsracks, planters and other articles and objects present an inconvenience and danger to the safety and welfare of persons using such rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, and traffic control.
- (4) Tables and chairs, goods and merchandise, newsracks, planters and other articles and objects so located as to cause an inconvenience or danger to persons using public rights-of-way constitute public nuisances per se.
- (5) The provisions and prohibitions hereinafter contained are enacted in pursuance of and for the purpose of securing and promoting the public health, safety, and welfare.

4.2. Definitions.

For the purposes of this chapter, the following words and phrases shall be defined to include:

Articles and objects shall mean any thing or obstruction placed over or upon a street or sidewalk.

Goods and merchandise shall mean any items offered for sale to the general public.

Newsracks shall mean any self-service or coin-operated box, container, storage unit, or other dispenser installed, used, or maintained for the display and sale of newspapers or other news periodicals.

Planters shall mean any device used or intended to be used for display of nonartificial flowers.

Sidewalk shall mean any surface provided for the use of pedestrians.

Street shall mean all that area dedicated to the public use for public street purposes and shall include, but not be limited to, roadways, state trunk lines, and alleys.

Tables and chairs shall mean facilities provided to customers for food or beverages upon a public sidewalk.

4.3. License—required.

It shall be unlawful for any person, firm or corporation to erect, place, maintain, or operate, on any public street or sidewalk or in any other public way or place, within the city limits, except in the areas designated as the CBD, Central Business District, in Chapter 51, zoning and planning, any article, object, or any other obstruction except under the conditions and in the manner presented in this chapter. Provided, however, the city manager or his designee may grant, pursuant to the terms of this chapter, licenses for the erection, placement, maintenance or operation of newsracks, tables, chairs, and planters on sidewalks within the area mapped as CBD, Central Business District, in Chapter 51 of this Code.

(Ord. No. 597, §1, 05-04-92)

4.4. Same—application.

Applications for such permit [license] shall be made in writing to the city manager upon such form as shall be provided by the city and shall contain the name and address of the applicant; the proposed specific location of the tables and chairs, newsracks or planters; and shall be signed by the applicant.

4.5. Same—conditions.

- (a) *Indemnification, liability.* As an express condition of the acceptance of such license, the licensee thereby agrees to indemnify and save harmless the city, its officers, directors, and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use, or maintenance of tables and chairs, newsracks, planters, or goods and merchandise within the city.
- (b) *Issuance.* Licenses shall be issued for the installation of newsracks, planters, tables and chairs with prior inspection of the location but such newsracks, planters, tables and chairs, and the installation, use, or maintenance thereof shall be conditioned upon observance of the provisions of this chapter and upon such reasonable rules and regulations as may be established by the city council, from time to time, by resolution. Licenses shall be issued within two (2) working days after the application has been filed.
- (c) *Validity; renewal.* Such licenses shall be valid for one (1) year and shall be renewable pursuant to the procedure for the original applications referred to in section 4.4.
- (d) *Violations.* No license shall be issued to an applicant, or any license may be revoked in the event the applicant or licensee is in violation of any of the provisions of the City Code.

4.6. Standards for maintenance and installation.

Any tables, chairs, planters or newsracks which in whole or in part rest upon, in, or over any public sidewalk shall comply with the following standards: Shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, all tables, chairs, planters and newsracks shall be serviced and maintained so that:

- (1) They are reasonably free of dirt and grease.

- (2) They are reasonably free of chipped, faded, peeling and cracked paint in the visual painted areas thereof. The structural parts thereof are not broken or unduly misshapen.

4.7. Location and placement.

Any newsracks, planters, tables and chairs which rest in whole or in part upon, or in, or on any portion of a public sidewalk or right-of-way or which projects onto, into, or over any part of a public sidewalk or right-of-way shall be located in accordance with the provisions of this section:

- (1) No tables, chairs, planters, or newsracks shall be used or maintained which projects onto, into, or over any part of the roadway or public street, or which rests wholly or in part upon, along, or over any portion of the roadway or any public street.
- (2) No tables, chairs, planters, or newsracks shall be permitted to rest upon, in or over any public sidewalk, when such installation use, or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such use unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally marked or stopped vehicle, the ingress into or the egress from any residence or place of business, or the use of poles, posts, traffic signs, or signals, hydrants, mailboxes, or other objects permitted at or near such location.
- (3) No tables, chairs, planters, or newsracks shall be chained, bolted, or otherwise attached to any fixture located in the public right-of-way, except to another newsrack, planter, table or chair.
- (4) No tables, chairs, planters or newsracks shall be placed, installed, used or maintained:
 - a. Within three (3) feet of any crosswalk.
 - b. Within eight (8) feet of the back of the street curb. (Ord. No. 545, 05/20/91)
 - c. Within five (5) feet of any driveway.
 - d. At any location whereby the clear space for the passage way of pedestrians is reduced to less than six (6) feet.

- (5) The city manager may establish, by regulation, the number and location of areas within the city to be used for placement of newsracks.

4.8. Placement of goods and merchandise; exception for special events.

- (a) Notwithstanding anything herein contained to the contrary, the city manager may allow the placement of goods and merchandise for retail sales each year for what is commonly referred to as "sidewalk days."
- (b) Notwithstanding anything contained herein to the contrary, the city manager may allow the placement of goods for retail sales on a public sidewalk or public street by a nonprofit organization recognized by the Internal Revenue Service as a charitable organization. The organization shall obtain a permit from the city manager which shall specify the location(s) and time period covered by the permit. The permit shall be issued without charge and may not exceed seventy-two (72) hours. The city manager may deny the permit, if there is a reason to believe that the activity to be covered by the permit, its requested location(s) or time interval would interfere with the rights of others to use the public sidewalk or street, interfere with the ability of city employees to carry out their jobs or the right of the public to unobstructed travel along a public street or public sidewalk.

4.9. Violation of this Section is a municipal civil infraction.

Upon determination by the city manager that a newsrack, planter, table or chair, goods or merchandise, or other article or object has been installed, used, or maintained in violation of the provisions of this chapter, a notice to correct the offending condition will be issued to the owner or operator of such newsrack, planter, table or chair, goods or merchandise, or other article or object. The notice shall describe the offending condition, request the action necessary to correct the condition and specify the time within which the offending condition must be corrected. If an offending condition is not properly identified by the owner or operator of the business premises located immediately adjacent to such section of the public street or sidewalk, the offending condition shall be removed immediately and processed as unclaimed property. An offending condition which is located on a public street, sidewalk or other public property shall be deemed a hazardous condition and an interference with the public's right to use such public places and shall be removed. The city manager or his designee may institute such legal proceedings as are necessary to enforce this Chapter.

(Ord. No. 658, 03-06-00)

4.10. Revocation of license.

In addition to the enforcement procedures provided in section 4.9 of this chapter. It shall be within the power and discretion of the city manager to suspend or revoke the license of continued or repeated violations or infractions of any provisions of this chapter or any rule or regulation of the city. Suspension or revocation shall be mandatory for the third offense under section 4.9 of this chapter.

4.11. City manager's designated representative.

"City manager," as used in this chapter, shall include his or her designated representative.

CHAPTER 41

STREETS

(Ord. No. 515, 07-03-89, *renumbering*)

ARTICLE I. IN GENERAL

4.20. Definitions.

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation of this chapter:

- (1) *Street* shall mean all of the land lying between property lines on either side of all streets, alleys and boulevards in the city, and includes lawn extensions and sidewalks and the area reserved therefor where the same are not yet constructed.

(2) *Manager* shall mean the city manager or his duly authorized representative.

4.21. Damage and obstruction prohibited.

No person shall make any excavation in, or cause any damage to any street in the city, except under the conditions and in the manner permitted in this chapter. No person shall place any article, thing or obstruction in any street, except under the conditions and in the manner permitted in this chapter, but this provision shall not be deemed to prohibit such temporary obstructions as may be incidental to the expeditious movement of articles and things to and from abutting premises, nor to the lawful parking of vehicles within the part of the street reserved for vehicular traffic.

4.22. Permits and bonds.

Where permits are required in this chapter, they shall be obtained upon application to the manager, upon such forms as he shall prescribe, and there shall be a charge of five dollars (\$5.00) for each such permit, unless otherwise provided herein. Such permit shall be revocable by the manager for failure to comply with this chapter, rules and regulations adopted pursuant hereto, and the lawful orders of the manager, and shall be valid only for the period of time endorsed thereon. Application for a permit under the provisions of this chapter shall be deemed an agreement by the applicant to promptly complete the work permitted, observe all pertinent regulations of the city in connection therewith, repair all damage done to the street surface and installations on, over or within such street, including trees, and protect and save harmless the city from all damages or actions at law that may arise or may be brought on account of injury to persons or property resulting from the work done under the permit or in connection therewith. Where liability insurance policies are required to be filed in making application for a permit, they shall be in not less than the following amounts, except as otherwise specified in this Chapter:

- (1) On account of injury to, or death of, any person in any one occurrence \$100,000.00

- (2) On account of any one occurrence resulting in injury to, or death of, more than one
(1) person \$300,000.00

- (3) On account of damage to property in any one (1) occurrence \$10,000.00

A duplicate executed copy or photostatic copy of the original of such insurance policy shall be filed with the city clerk.

Where cash deposits are required with the application for any permit hereunder, such deposit shall be in the amount of one hundred dollars (\$100.00) and/or, in the discretion of the city manager, a performance bond may be required depending on the size of the project, except as otherwise specified in this chapter, and such deposit shall be used to defray all expenses to the city arising out of the granting of the permit and work done under the permit or in connection therewith. Three (3) months after completion of the work done under the permit, any balance of such cash deposit shall be refunded. In any case where the deposit does not cover all costs and expenses of the city, the deficit shall be paid by the applicant.

4.23. Street openings.

No person shall make any excavation or opening in or under any street without first obtaining a written permit from the city clerk. No permit shall be granted until the applicant shall post a cash deposit and file a liability insurance policy as required by section 4.22, nor shall a permit be issued until the contractor's name, address and state license number is furnished on the permit.

4.24. Emergency openings.

The manager may, if the public safety requires immediate action, grant permission to make a necessary street opening in an emergency, provided that a permit shall be obtained on the following business day and the provisions of this chapter shall be complied with.

4.25. Backfilling.

All trenches in a public street or other public place, except by special permission, shall be backfilled with sand and compacted and at least six (6) inches shall be air-entrained concrete of three thousand five hundred (3,500) psi bearing capacity after twenty eight (28) days.

4.26. Utility poles.

Utility poles may be placed in such streets as the manager shall prescribe and shall be located thereon in accordance with the directions of the manager. Such poles shall be removed or relocated as the manager shall, from time to time, direct.

4.27. Maintenance of installations in streets.

Every owner of, and every person in control of, any estate hereafter maintaining a sidewalk vault, coal hole, manhole, or any other excavation, or any post, pole, sign awning, wire, pipe, conduit or other structure in, under, over or upon, any street which is adjacent to or a part of his estate, shall do so only on condition that such maintenance shall be considered as an agreement on his part with the city to keep the same and the covers thereof, and any gas and electric boxes and tubes thereon, in good repair and condition at all times during his ownership or control thereof, and to indemnify and save harmless the city against all damages or actions at law that may arise or be brought by reason of such excavation or structure being under, over, in or upon the street, or being unfastened, out of repair or defective during such ownership or control.

ARTICLE II, CURB CUTS

4.35. Curb cuts.

No opening in or through any curb of any street shall be made without first obtaining a written permit from the manager. The manager shall have the authority, at his discretion, to have the cuts made by city personnel, with the applicant charged therefor at current rates, or to allow the applicant to make the cuts. Curb cuts and sidewalk driveway crossings to provide access to private property shall comply with the following:

- (1) No single curb cut shall exceed twenty-five (25) feet nor be less than ten (10) feet.
- (2) The minimum distance between any curb cut and a public cross-walk shall be five (5) feet.
- (3) The minimum distance between curb cuts, except those serving residential property, shall be twenty-five (25) feet.
- (4) The maximum number of lineal feet of sidewalk driveway crossings permitted for any lot, parcel of land, business or enterprise, shall be forty-five (45) percent of the total abutting street frontage up to and including two hundred (200) lineal feet of street frontage plus twenty (20) percent of the lineal feet of street frontage in excess of two hundred (200) feet.
- (5) The necessary adjustments to utility poles, light standards, fire hydrants, catch basins, street or railway signs, signals, or other public improvements or installations shall be accomplished without cost to the city.

(6) All construction shall be in accordance with plans and specifications approved by the manager.

ARTICLE III. SIDEWALK OBSTRUCTIONS

4.40. Sidewalk obstructions.

No person shall occupy any street with any materials or machinery incidental to the construction, demolition or repair of any building adjacent to said street, or for any other purpose, without first obtaining a permit from the manager. No permit shall be granted until the applicant shall post a cash deposit and file a liability insurance policy as required by section 4.22 of this chapter.

4.41. Pedestrian passage.

At least six (6) feet of sidewalk space shall be kept clean and clear for the free passage of pedestrians and if the building operations are such that such free passageway is impracticable, a temporary plank sidewalk with substantial railings or sidewalk shelter shall be provided around such obstruction.

4.42. Safeguards.

All openings, excavations and obstructions, shall be properly and substantially barricaded and railed off, and at night shall be provided with approved warning lights. Warning lights perpendicular to the flow of traffic shall not be more than three (3) feet apart, and parallel to the flow of traffic not over fifteen (15) feet apart.

4.43. Shoring excavations.

All openings and excavations shall be properly and substantially sheeted and braced as a safeguard to workmen and to prevent cave-ins or washouts which would tend to injure the thoroughfare or subsurface structure of the street.

ARTICLE IV. HOUSEMOVING

4.50. Housemoving.

No person shall move, transport, or convey any building or other similar bulky or heavy object, including machinery, trucks and trailers, larger in width than eight (8) feet eight (8) inches or higher than thirteen (13) feet six (6) inches above the surface of the roadway, into, across or along any street, alley or other public place in the city without first obtaining a building permit from the manager. Such permit shall specify the route to be used in such movement and no person shall engage in such movement along a route other than that specified in the permit. No housemoving permit shall be granted until the applicant shall post a cash deposit in the amount of one hundred dollars (\$100.00) and file a liability insurance policy as required by section 4.22 of this chapter. The deposit shall be used to pay for any damage to public or private property up to the amount thereof. Any balance shall be returned to the applicant on completion of the move.

ARTICLE V. ENCROACHMENTS AND STREET CLOSINGS

4.55. Removal of encroachment.

Encroachments and obstructions in the street may be removed and excavations refilled and the expense of such removal or refilling charged to the abutting land owner when made or permitted by him or suffered to remain by him, otherwise than in accordance with the terms and conditions of this chapter. The procedure for collection of such expenses shall be as prescribed in chapter 8 of this Code. The city council may by resolution permit the continuance of an existing encroachment. No such resolution shall vest any permanent rights in the person owning or occupying the structure which encroaches upon the street.

4.56. Temporary street closings.

The manager shall have authority to temporarily close any street, or portion thereof, when he shall deem such street to be unsafe or temporarily unsuitable for use for any reason. He shall cause suitable barriers and signs to be erected on said street, indicating that the same is closed to public travel. When any street or portion thereof shall have been closed to public travel, no person shall drive any vehicle upon or over said street except as the same may be necessary incidentally to any street repair or construction work being done in the area closed to public travel. No person shall move or interfere with any sign or barrier erected pursuant to this section without authority from the manager.

ARTICLE VI. STREET ABANDONMENT*

(Ord. No. 555, 08-05-91)

***Editor's Note**—Ordinance No. 555, adopted Aug. 5, 1991, did not specifically amend the Code; hence inclusion of §§ 1-11 as Art. VI was at the discretion of the editor.

4.58. Title.

This article shall be known as the City of Charlevoix Street Abandonment Ordinance.

4.59. Definitions.

As used in this article, the following words shall have the meaning prescribed herein.

- (a) *Clerk* shall mean the city clerk for the City of Charlevoix, a duly appointed deputy, or other person designated by the clerk to perform the clerk's function under this article.
- (b) *Council* shall mean the city council of the City of Charlevoix.
- (c) *Person* shall mean an individual, association, corporation, or partnership.

- (d) *Street, alley or public way* shall mean that portion of land within the city dedicated to the use of the public for the purposes of pedestrian or vehicular travel.

4.60. Resolution.

When the council deems it advisable to vacate, discontinue, or abolish any street, alley, or public way, or a portion thereof, it shall, by resolution, declare such intention and in the same resolution shall schedule a public hearing, not less than ten (10) days thereafter, when it will meet to hear public comment on such proposed action.

4.60.1. Notice.

The clerk shall cause a copy of the public hearing notice and a copy of the resolution to be published at least once in an official newspaper prior to the scheduled public hearing. Prior to the scheduled public hearing, the clerk shall also send by first class mail a copy of the public hearing notice and a copy of the resolution to all property owners and all persons claiming under those owners located within three hundred (300) feet of the street, alley, or public way described in the resolution, based on the city's current tax assessment records.

4.60.2. Public hearing.

At a time scheduled for the public hearing, the council shall hear public comment on the proposed action to vacate, discontinue, or abolish any street, alley, or public way, or a portion thereof. Comments regarding such proposed action of the council may be stated at the public hearing or comments may be filed in writing with the clerk at or prior to the public hearing.

4.60.3. Council action.

After considering the comments at a public hearing and any written comments filed with the clerk, the council by resolution shall be empowered to vacate, discontinue, or abolish any street, alley, or public way, or a portion thereof, but may not take action regarding any street, alley, or public way beyond that described in the original resolution of proposed action.

4.60.4. Public utility easements.

When the council determines that it is necessary for the health, welfare, comfort, and safety of the public to vacate, discontinue or abolish any street, alley, or public way, or a portion thereof, the council may reserve an easement in the street, alley or public way for public utility purposes and/or other public purposes by including such reservation in the final resolution vacating, discontinuing, or abolishing the street, alley, or public way.

4.60.5. Recording of resolution.

Within thirty (30) days after the council adopts a resolution vacating, discontinuing, or abolishing a street, alley, or public way, or a portion thereof, the clerk shall record a certified copy of such resolution in the office of the Charlevoix County Register of Deeds. This resolution shall not be effective until recorded.

4.60.6. Extension of zoning districts.

Whenever any street, alley, or public way, or a portion thereof, is vacated, discontinued, or abolished under this article, the zoning district(s) adjoining each side of the street, alley, or public way shall be automatically extended to the center of such vacation. All areas included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts(s).

4.60.7 Fee.

Before any action is taken as provided in this article, the person proposing, recommending, or petitioning for the vacation, discontinuance, or abolition of a street, alley, or public way, or a portion thereof, shall pay to the clerk a fee as fixed from time to time by resolution of the council. Under no condition shall such fee or any part thereof be refunded for failure of such action to be approved by the council.

4.60.8, Exception.

The council may not vacate, discontinue or abolish that portion of any street, alley, or public way under its jurisdiction which is within twenty-five (25) meters of the lake or the general course of a stream and which is also located within a platted subdivision as long as such action is prohibited by state law.

CHAPTER 42
SIDEWALKS

4.61. Definitions.

The following definitions shall apply in the interpretation of this chapter:

- (1) *Sidewalk* shall mean the portion of the street right-of-way designed for pedestrian travel.
- (2) *Manager* shall mean the city manager or his duly authorized representative.

4.62. Specifications and permits.

No person shall construct, rebuild or repair any sidewalk except in accordance with the line, grade, slope and specifications established for such sidewalk, nor without first obtaining a written permit from the manager. The fee for such permit shall be one cent (\$0.01) per square foot and a minimum of one dollar (\$1.00) per stake shall be paid.

4.64. Sidewalk specifications.

Sidewalks shall not be less than four (4) inches in thickness and expansion paper shall be placed in the joints. Sidewalks at driveway crossings shall be not less than six (6) inches in thickness. All concrete used in sidewalk construction shall, twenty-eight (28) days after placement, be capable of resisting a pressure of thirty-five hundred (3,500) pounds per square inch without failure. The city manager may establish additional detailed specifications in addition hereto and not inconsistent herewith.

4.65. Permit revocation.

The manager may issue a stop order to any permittee holding a permit issued under the terms of this chapter for failure to comply with this chapter, or the rules, regulations, plans and specifications established for the construction, rebuilding or repair of any sidewalk, and the issuance of such stop order shall be deemed a suspension of such permit. Such stop order shall be effective until the next regular meeting of the city council, and if confirmed by the council, at its regular meeting, such stop order shall be permanent, and shall constitute a revocation of the permit.

4.66. Ordering construction.

The council may, by resolution, require the owners of lots and premises to build sidewalks in the public streets adjacent to and abutting upon such lots and premises. When such resolution shall be adopted, the Manager shall give notice thereof, in accordance with Chapter 1 of this Code, to the owner of such lot or premises requiring him to construct or rebuild such sidewalk within twenty (20) days from the date of such notice.

4.67. Construction by city.

If the owner of any lot or premises shall fail to build any particular sidewalk as described in said notice, and within the time and in the manner required thereby, the manager is hereby authorized and required, immediately after the expiration of the time limited for the construction or rebuilding by the owner, to cause such sidewalk to be constructed and sixty (60) percent of the expense thereof may be charged to such premises and the owner thereof, and collected as a single lot assessment as provided in Chapter 8 of this Code, and forty (40) percent of the costs of any such new construction shall be borne by the City of Charlevoix.

(Ord. No. 489, 04-04-88)

4.68. Sidewalk maintenance.

No person shall permit any sidewalk within the city which adjoins property owned by him, to fall into a state of disrepair or to be unsafe.

4.69. Sidewalk repair.

Whenever the manager shall determine that a sidewalk is unsafe or in a state of disrepair, the City of Charlevoix may cause the repair or restoration of said sidewalk and the cost thereof to be borne by the City of Charlevoix.

(Ord. No. 489, 04-04-88)

4.70. Snow and ice clearance districts.

- (a) *Establishment of Snow and Ice Clearance Districts.* The Council shall, from time to time, establish by resolution snow and ice clearance districts the boundaries of which shall be drawn so as to include the substantial pedestrian traffic areas within the city.

- (b) *Sidewalks to be cleared within Clearance Districts.* The occupant of every lot or premises, or the owner of such lot or premises located within any snow or ice Clearance District, shall clear all ice and snow from sidewalks adjoining such lot or premises within the time herein required. When any snow or ice shall cease to fall during the daylight hours, such snow or ice shall be cleared from the sidewalks within eighteen (18) hours after such cessation. When a fall of snow or ice shall have ceased during the nighttime, it shall be cleared from the sidewalks by 6:00 p.m. of the day following.
- (c) *Failure to Clear.* If any occupant or owner of a lot or premises located within a snow or ice Clearance District shall neglect or fail to clear ice or snow from the sidewalk adjoining his premises within the time limited, or shall otherwise permit ice or snow to accumulate on such sidewalk, he shall be guilty of a violation of this chapter and in addition, the city manager may cause the same to be cleared and the expense of removal shall become a debt to the city from the owner of such premises, and shall be collected as a single lot assessment pursuant to Chapter 8 of this Code.

(Ord. No. 413, 10-04-82)

CHAPTER 43
TREE REGULATIONS

4.91. Definitions.

As used in this Chapter the following words shall have the meanings set forth in this section:

- (1) The word "Street" shall mean all of the land lying between property lines on either side of all streets, highways and boulevards in the City.
- (2) The word "Park" shall include all public parks having individual names, and all areas owned by the City, or to which the public has free access as a park.
- (3) The word "Tree" unless the context clearly indicates otherwise, means trees, shrubs, bushes and all other woody vegetation.
- (4) The words "Public Utility" shall mean 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.
- (5) The words "Prohibited Species" shall mean any tree of the species of poplar (*Populus Sp.*) willow (*Salix Sp.*) and box elder (*Acer Negundo*).
- (6) The word "Department" shall mean that department of the City responsible for tree care.
- (7) The terms of this Chapter, unless otherwise specifically stated herein, shall apply only to public streets, parkways, parks and other land publicly owned or controlled by the City.

4.92. Permits for Tree Planting, Care, Removal.

The City Manager shall have control over all trees located within the streets right-of-way and parks in the City and the planting, care and removal thereof, subject to the regulations contained in this Chapter. The owner of land abutting on any street may, upon obtaining prior written permission of the City Manager, 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 Manager 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, assume all or any part of the costs of removing such tree, and also to require that the tree removed be replaced at some other nearby location by planting another tree, not necessarily of the same type.

4.93. Tree Planting Orders.

Upon recommendation of the Department for the planting of trees within any street right-of-way, the City Manager shall investigate the desirability of the project and if he shall approve thereof, he shall report the same to the City Council. Upon approval by the Council, such planting shall be undertaken as a public improvement and the cost assessed to the property benefited thereby in accordance with the provisions of Chapter 8 of this Code. Removal of undesirable varieties, may be undertaken and the cost assessed in the same way. Upon petition of the owners of more than fifty percent (50%) of the frontage along one or more blocks in any street, or upon its own initiative, the City Council may, by resolution, provide for the planting or removal of trees without any report by the Department or recommendation of the City Manager. The petition provided for herein shall be advisory only and shall not be binding upon or a condition to any such resolution of the Council.

4.94. Removal of Dead, Diseased and Prohibited Trees.

All dead trees and trees afflicted with any fatal or communicable disease, shall be removed by the Department or private contractor with the approval of the Manager. The City Manager is hereby authorized to direct the Department to remove any tree of a prohibited species, but the cost of such removal shall not be assessed against the property benefited unless the Council shall have approved the removal under the provisions of section 4.93.

4.95. Removal of Other Trees.

Trees may be removed which are not dead or infected with any disease when such trees are of an undesirable (though not prohibited) species, but only upon notice to the owner of the abutting property, and if such owner shall file written objection with the City Clerk within seven (7) days after service of such notice, a public hearing on such removal shall be had before the City Council, and the abutting owner shall be notified of the time and place of such hearing. The cost of any such removal shall not be assessed to the property benefited thereby unless Council shall order such removal originally under the provisions of section 4.93. The City Manager is hereby authorized to direct the Department to remove any tree growing within any street, park or public place, when such tree interferes with fire hydrants, sewer and water mains, visibility of street intersections, traffic control devices or construction within street right-of-ways or otherwise hinders municipal operations.

4.96. Tree Planting Regulations.

No tree of any prohibited species shall be planted in any street or park, nor shall any such tree be planted on any private property within fifty (50) feet of any street, sidewalk, or sewer right-of-way. Shade trees planted in street right-of-way shall be spaced as required by the City Manager or authorized representative in conformance with the recommendations of the Michigan State Agricultural Department or other recognized authorities. In no event shall any tree be placed closer than six (6) feet to any water, sewer or gas service.

4.97. Tree Protection.

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire, or permit any fire, or the heat thereof, to injure any portion of any tree. No harmful chemicals or other materials injurious to a tree shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor, and no material shall be fastened to or hung on any tree. All persons having under their care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall after notice thereof by the Department, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the Department.

4.98. Excavation Near Trees.

Excavations and driveways shall not be placed within six (6) feet of any tree without written permit from the City Manager. Any person making such excavation or construction shall guard any tree within six (6) feet thereof with a good, substantial frame box to be approved by the Department, and all building material or other debris shall be kept at least four (4) feet from any tree. All persons desiring to make such excavation or construction shall deposit with the City a sum sufficient to cover the cost of inspection and any damage which may result therefrom, provided that such charge shall not be less than two (\$2.00) dollars in any case.

4.99. 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.

4.100. Gas Main or 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. In the event a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within twenty-four (24) hours. Any damage to trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired, and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.

4.101. Trees on Private Property—Removal—Trimming.

Every owner of any dead or diseased and dying tree upon the private property of such owner shall, upon notice, remove such dead or diseased and dying tree from such private property within thirty (30) days of receipt of such notice, or in such additional time as the City may in writing authorize. The owner shall be responsible for the cost of said removal.

Every owner of any tree overhanging any street or right-of-way within the City shall trim the branches so that such branches shall not obstruct the light from any street lamp, obstruct the view of any street intersection, obstruct City maintenance equipment, obstruct a portion of any sidewalk, or touch or interfere with any public utility line. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The City shall have the right to trim any tree or shrub on private property which violates this section.

(Ord. No. 658, 03-06-00)

4.102. Overhead Lines—Trimming Permits.

The City Manager shall annually issue permits granting permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the City, in such a manner as shall keep the overhead lines of such public utilities safe and accessible. Such trimming shall be done in accordance with approved practices and under the general direction of the Department. Said permit, as provided for in this section, shall require reasonable prior notice to the City before any work is commenced thereunder. Provided, however, that in the event of an emergency requiring immediate maintenance work on the overhead lines of said public utilities, prior notice of commencing work under said 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.