

ARTICLE IV. VEGETATION IN PUBLIC RIGHT-OF-WAY*

***Cross references:** Environment, ch. 34; vegetation, ch. 78.

Sec. 62-101. Authority and control.

The city shall have exclusive jurisdiction, authority, control, supervision and direction over all trees, plants, shrubs and grassy areas planted or growing in or upon the public right-of-way of the city and the planting, removal, care, maintenance and protection thereof, and it may promulgate and adopt rules and regulations to effectuate the provisions of this article.

(Ord. No. 360, § 5, 7-15-85) .

Sec. 62-102. 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:

Public rights-of-way means all the land lying between private property lines on either side of all public streets, boulevards and alleys.

Trees shall not be construed to include shrubs which do not grow higher than 15 feet.

(Ord. No. 360, § 5, 7-15-85)

Cross references: Definitions generally, § 1-2.

Sec. 62-103. Penalty for violation.

Any person violating any of the provisions of this article, upon conviction thereof, shall be fined the sum of not less than \$50.00, and not exceeding \$500.00, plus costs, and in the imposition of such fine and costs, the court may make a further sentence that in the default of the payment of fine and costs imposed, the offender be confined in the county jail for any period not exceeding 90 days, or both such fine and imprisonment in the discretion of the court.

(Ord. No. 360, § 5, 7-15-85)

Sec. 62-104. Deposit for removal of tree from public rights-of-way.

Any person desiring to remove a live tree for the construction of walks, drives, buildings or any other structures for his own gain shall deposit with the city a sum equal to the value of the tree or trees, as determined by the city.

(Ord. No. 360, § 5, 7-15-85)

Sec. 62-105. Trimming trees by utilities.

No person owning or operating any busline or other motor transportation over the city streets, or any public utility lines upon, above or below the surface, shall trim, cut or cause to be trimmed or cut any tree, shrub or plant in any public right-of-way, without first having submitted to the city a plan of the work to be done and having procured a

permit for such work. Nothing in this article shall be construed to apply to the removal, under the direction of the city, of any stump, roots, tree, shrub, vine, plant or part thereof, wherever such removal shall be found necessary in the construction or repair of any street, sidewalk, sewer, pavement or other public improvement.
(Ord. No. 360, § 5, 7-15-85)

Sec. 62-106. Trimming of trees, shrubs, vines or plants near public rights-of-way. The owner or person in charge or control of any lot or parcel of land within the city upon which any tree, shrub, vine or plant may be standing adjacent to any public right-of-way shall trim or cause to be trimmed, either at the property line or to a clear height of at least eight feet above the surface of such public way, all branches thereof which overhang any portion of such public way, or which obstruct or interfere with the passage of light from any streetlighting system, and shall not plant or maintain any thereof so close to any property line as to obstruct thereby the vision of travelers along the streets. The city may enter upon any such private premises to do such trimming as it determines necessary, or to remove such obstructions prohibited in this article upon the failure of the owner so to do after notice to him in writing. The owner shall, or the city may, remove from such tree, shrub, plant or vine all dead, decayed, unsightly, broken or dangerous limbs and branches that overhang or are close to the public way; and when any such tree, shrub, plant or vine is dead, the owner shall remove the same, or after such notice of such intention to the owner, the city may do so and charge the cost thereof to such owner.
(Ord. No. 360, § 5, 7-15-85)

Sec. 62-107. Attachments. No person shall attach, tack or in any manner fasten to any tree in a public way any wire, rope, chain, cable, sign, card, board, poster or other article, or hitch any animal thereto.
(Ord. No. 360, § 5, 7-15-85)

Sec. 62-108. Specific regulations. The following regulations are hereby established for the planting, trimming and care of the trees in or upon the public rights-of-way of the city:

- (1) Trees must not be less than one inch in diameter of trunk one foot above the ground.
- (2) All trees from one to three inches in diameter of trunk one foot above the ground must be protected and supported by three guards. When guarded with one stake only, the stake must be toward the prevailing wind.
- (3) No tree shall hereafter be planted at the intersection of two or more streets or within 20 feet of such intersection, measured from the property line.
- (4) In cutting down trees, the same must be removed with the root stump grubbed out, when so required by the city.
- (5) All cuts above one inch in diameter must be waterproofed.
- (6) Trees shall hereafter be planted at least 30 feet apart, except when a special permit is obtained from the city.
- (7) No tree shall be planted where the clear space between the curb and the sidewalk is less than four feet.

(8) No tree shall be planted where the soil is too poor to ensure the growth of such tree, unless the owner excavates a suitable hole of not less than 36 cubic feet and replaces the material removed with suitable loam.

(9) No tree shall be planted nearer than two feet from the curblineline or outer line of the sidewalk.

(Ord. No. 360, § 5, 7-15-85)

Sec. 62-109. Protection during construction.

In any excavation or the erection, alteration, or repair of any building or structure, or other work, the owner thereof or someone for him shall place or cause to be placed such guards around all nearby trees, shrubs and plants in the public way as will effectually prevent injury to them.

(Ord. No. 360, § 5, 7-15-85)

Sec. 62-110. Free passage of nutrients.

No person shall place or maintain upon the ground in any public way of the city any stone, brick, sand, concrete or other material or article which may injure or which may in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, shrub, vine or plant, without leaving an open space of ground not less than four feet in diameter surrounding same.

(Ord. No. 360, § 5, 7-15-85)

Sec. 62-111. Failure of compliance.

If the owner or occupant of any premises fails to perform any duty required of him by this article, the city may serve notice upon such owner or occupant, directing him to cause such work to be done within 30 days, and upon his failure to comply with the notice, the city may enter upon the premises and perform the work required and charge the cost thereof to the owner or occupant. The cost shall be charged in accordance with the provisions of the Charter relative to special assessments and pursuant to the provisions of chapter 58.

(Ord. No. 360, § 5, 7-15-85)

Sec. 62-112. Interference with city personnel; compliance.

It shall be unlawful for any person to prevent, delay or interfere or cause or authorize or procure any interference or delay with the city of any of its employees, agents or servants, while they are engaged in and about the planting, cultivating, mulching, pruning, spraying or removing of any trees, plants or shrubs in or upon any public right-of-way or upon any private grounds as authorized in this article or in removing any device attached to such tree, plant or shrub as may be necessary for the protection and care of any such tree, plant or shrub, in accordance with the requirements of this article.

(Ord. No. 360, § 5, 7-15-85)

Sec. 62-113. Certain trees prohibited.

It shall be unlawful for any person to plant or have or keep growing a poplar, box elder, soft maple, elm, willow, horse chestnut, tree of heaven or catalpa tree within any public right-of-way within the limits of the city; provided, however, that existing trees shall be

allowed unless and until the city council shall declare them to be detrimental to the health, safety and welfare of the city.
(Ord. No. 360, § 5, 7-15-85)

ARTICLE II. NOXIOUS WEEDS*

***Editor's note:** Ord. No. 769, § 1, adopted March 20, 2006, amended Art. II in its entirety to read as herein set out. Former Art. II, §§ 78-26--78-34, pertained to similar subject matter, and derived from Ord. No. 417, §§ 1, 3--5, adopted March 16, 1987; Ord. No. 510, §§ 1, 2, adopted Dec. 2, 1991.

Sec. 78-26. Purpose.

The purpose of this article is to preserve and promote the health, safety, and general welfare of residents, motorists, and pedestrians alike through the regulation of the growth of noxious weeds, rank vegetation, and grasses which are deemed to detract from the appearance and character of a neighborhood, negatively affect the value and marketability of surrounding property, constitute a traffic hazard or fire hazard, and cause additional health problems for persons with respiratory ailments. Failure to comply with the provisions of this article is hereby declared to be a nuisance per se.
(Ord. No. 769, § 1, 3-20-06)

Sec. 78-27. 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:

Enforcement officer means person or persons authorized and empowered by the Auburn Hills City Council and/or the Auburn Hills City Code to issue and serve municipal civil infraction citations for alleged violations to this article.

Eradicate means to get rid of, to wipe out, to destroy entirely, whether by the working of natural processes or human interaction.

Grass means any plant of the family Gramineae (or Poaceae) characterized by jointed stems, sheathing leaves, flower spikelets, and fruit consisting of a seed-like grain or caryopsis.

Improved property means any real property that is or has been put to residential, commercial, office, warehouse, institutional, or industrial uses including for the purpose of this article the abutting street right-of-way lying between the curb and sidewalk or the drainage course paralleling the street where there is no curb abutting the property. In addition, any lot in any subdivision where buildings have been erected on 50 percent or more of the lots of such subdivision shall be defined as improved property.

Noxious weeds means Canada thistle (*Cirsium arvense*), dodders, (any species of *Cuscuta*), mustards (charlock, black mustard and Indian mustard, species of *Brassica* or *Sinapis*), wild carrot (*Daucus carota*), bindweed (*Convolvulus arvensis*), perennial sow-thistle (*Sonchus arvensis*), hoary alyssum (*Berteroa incana*), ragweed (*Ambrosia elatior*), poison ivy (*Rhus toxicodendron*), poison sumac (*Toxicodendron vermicum*), oxeyes, daisies, ragweed, goldenrod, or other plants which are recognized as deleterious to health, safety, or public welfare and recognized as common nuisance.

Rank vegetation means profuse or unmanageable communities of plants in a region.

Unimproved property means all vacant real property abutting public or private streets including, for the purpose of this article the abutting street right-of-way lying between the curb and sidewalk and the drainage course paralleling the street where there is no curb abutting such properties.

(Ord. No. 769, § 1, 3-20-06)

Cross references: Definitions generally, § 1-2.

Sec. 78-28. Growth of grass and weeds.

(a) *Declared nuisance.* The presence of such noxious weeds, rank vegetation or tall grass upon improved and/or unimproved properties, as prohibited below, is hereby deemed to be detrimental to the public health, safety, and welfare and shall constitute a public nuisance.

(b) *Growth on improved property.* A person owning any improved property, whether or not occupied, and any person occupying any property, where or not the owner, pursuant to any land contract, rental or leasehold agreement, shall not permit or maintain on the property any growth of noxious weeds, tall grass or rank vegetation to a height greater than eight inches any accumulation of dead weeds, grass or brush. An owner or occupant shall not cause, suffer or permit noxious weeds or other poisonous plants, or plants detrimental to health, to grow on any improved property.

(c) *Growth on unimproved property.* A person owning any unimproved property, in fee or pursuant to any land contract, rental or leasehold agreement, shall not permit or maintain on the property any growth of noxious weeds, tall grass, or rank vegetation to a height greater than 16 inches, or any accumulation of dead weeds, grass or brush, for a depth of ten rods (165 feet) or the depth of the property, whichever is lesser measured from the street right-of-way. An owner or occupant shall not cause, suffer or permit noxious weeds or other poisonous plants, or plants detrimental to health, to grow on any unimproved property.

(Ord. No. 769, § 1, 3-20-06)

Sec. 78-29. Duty of occupant or owner.

Between May 1 and October 15 of each year the occupant or owner of every premises or property, whether improved or unimproved, shall cut and remove or destroy by lawful means, all noxious weeds, tall grass or rank vegetation as often as may be necessary to comply with the provisions of this article.

(Ord. No. 769, § 1, 3-20-06; Ord. No. 807, § 1, 2-18-08)

Sec. 78-30. Cutting and destruction.

A published notice of the provisions of this article shall be provided by advertising the following notice or substantially similar notice, five days during the month of March in a newspaper with circulation in the city, and designated by the city council as the official, legal advertising media for the city.

Notice

To all property owners, agents, and occupants, notice is hereby given to all persons owning or occupying any property within the City of Auburn Hills that pursuant to Ordinance No. 769 of the city's Code of Ordinances, it shall be the duty of such owners or occupants to keep all grass cut below a height of eight inches on improved properties and all grass, rank vegetation, and noxious weeds below 16 inches on unimproved property, for a depth of ten rods (165 feet), or the depth of the property, whichever is the

lesser, between May 1 and October 15. All such properties shall include the abutting street right-of-way lying between the curb and sidewalk or the drainage course paralleling the street where there is no curb abutting such properties. Cutting the grass and weeds at least once every four weeks shall be determined in compliance with the provisions of the ordinance. If the provisions of this ordinance are not complied with, the city shall cause such grass and weeds to be cut or destroyed, and the actual costs of such cutting or destruction plus 25 percent for inspection and/or other additional costs in connection therewith shall be charged to the property owner and, if necessary, be collected as a tax lien as is provided by law against the property.
(Ord. No. 769, § 1, 3-20-06; Ord. No. 807, § 2, 2-18-08)

Sec. 78-31. Owners and occupants responsible for premises.

A person who owns, manages, leases, rents, or occupies a premises shall not create, maintain, operate, or permit to be created, maintained, or operated any nuisance as defined in this article. All persons who own, manage, lease, rent or occupy any premises shall be equally responsible for keeping the premises in a clean and habitable condition and shall take all necessary precautions to prevent any nuisance, as defined in this article, from existing on the premises. Each day a violation occurs or continues is deemed a separate offense.
(Ord. No. 769, § 1, 3-20-06)

Sec. 78-32. Notice to abate.

Upon observing a violation of the provisions of this article, an enforcement officer may issue a notice to abate to the occupant and property owner as shown on the records maintained by Oakland County. The notice to abate shall be served on the occupant and the property owner by first class mail and posted in a conspicuous location, where possible, upon the property at issue. Failure to receive such notice is not a defense to any action by the city to abate the violation, collect abatement costs, collect administrative costs, or impose penalties authorized by this Code.

The notice to abate shall inform the owner and occupant of the following:

- (1) The nature of the violation;
 - (2) The time frame within which the owner and/or occupant shall abate the violation, being not more than ten days from the date of the notice. The enforcement officer may grant additional time where bona fide efforts to abate the violation are in progress.
 - (3) If the owner or occupant fails to abate the violation, the enforcement officer may issue a municipal civil infraction citation.
 - (4) The city may act to abate the violation, if it is not abated by the owner or occupant;
 - (5) The cost of abatement by the city, plus an administrative fee, shall be a personal debt of the owner which may be assessed as a tax lien against the property until paid.
- (Ord. No. 769, § 1, 3-20-06)

Sec 78-33. Penalty for violation.

A person who violates the provisions of this article, as amended, may be fined for a municipal civil infraction, subject to the following penalties:

- (1) Civil fines shall apply in the event of a determination of responsibility for a municipal civil infraction. Fines shall be in an amount set forth for the offense in the Schedule of Fines adopted by the 52-3 District Court, plus costs and other sanctions, for each offense.

(2) In addition to ordering the defendant determined to be responsible for a municipal civil infraction to pay a civil fine, costs, damages and expenses, the judge or magistrate may issue any judgment, writ or order necessary to enforce, or enjoin said violation.

(3) Each act of violation, and on each day upon which any such violation shall occur, shall constitute a separate offense.

(4) In addition to any remedies provided for by this article, any equitable or other remedies available and/or permitted by law may be sought.

(5) The judge or magistrate may impose costs, damages, and expenses as provided by law.

(6) A municipal civil infraction shall not be a lesser included offense of a criminal offense or of an Auburn Hills City Code or other city ordinance violation which is not a civil infraction.

(Ord. No. 769, § 1, 3-20-06)

Sec. 78-34. Abatement procedures.

(a) *City to cut or destroy; expenses to be paid by owner; liens.* If the provisions of this article are not complied with after the legal notices have been published, then any officer, inspector or other agent authorized by the city council between May 1 and October 15 may enter upon a property as many times as necessary and cut or destroy such tall grass, noxious weeds, and rank vegetation, and the owner or occupant of the property shall pay all expenses incurred by the city. The city shall have a lien upon the property for the expenses, and a lien may be enforced in the manner prescribed by the general laws of the state providing for the enforcement of tax liens.

(b) *Means of abatement.* The officer, inspector, or other agent authorized by the city may use hand or mechanical means to abate the violation, and shall take reasonable care to avoid unnecessary damages to the property.

(c) *Owner liability.* Owner liability shall be as follows:

(1) *Lien upon property.* From the time of commencement of the cutting or destruction of such prohibited grasses, rank vegetation and noxious weeds, the city shall have a lien upon the property.

(2) *Costs.* The owners of property shall be liable for all costs incurred by the city in connection with the cutting or destruction. The city council will by resolution from time to time set the minimum cost for the cutting or destruction of the prohibited grasses, rank vegetation and noxious weeds. In addition, an administrative fee in the amount of 25 percent of the actual cost of the cutting or destruction, will be included in the total costs.

(3) *Municipal civil infraction citation.* The enforcement officer may issue a civil infraction citation to a property owner or occupant for failure to adhere to the provisions of this article, which may result in a citation for each offense as described in this article with the penalties set forth in section 78-33.

(d) *Collection of costs.* Collection of costs shall be accomplished as follows:

(1) *Billing.* For purposes of determining the ownership of the property, it shall be presumed in evidence that the person to whom the property is assessed on the city's most recent tax roll is the owner of the property. Billing of costs will be mailed to owners of the property. Billing of costs will be mailed to owners by regular mail to the address shown on the city's tax rolls. If the charges involved are not paid by the owner within 30 days from the date of billing, payment shall be deemed delinquent.

(2) *Delinquent charges; tax lien.* In the event of delinquent charges, the city shall have a lien upon such property for such charges and such lien shall be enforceable as a tax lien in the manner prescribed by the general laws of the state against the property, and collected as in the case of general property tax.

(Ord. No. 769, § 1, 3-20-06; Ord. No. 807, § 3, 2-18-08)