

## Chapter 26

### VEGETATION

Art. I. Weeds, §§ 26-1--26-13

Art. II. Dutch Elm Disease, §§ 26-14--26-31

Art. III. Trees and Shrubs Generally, §§ 26-32--26-47

#### ARTICLE I.

##### WEEDS\*

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\* **Editors Note:** Section 1 of Ord. No. 1014, enacted Feb. 22, 1982, repealed former Art. I, §§ 26-1--26-3, and § 2 of said ordinance enacted, in lieu thereof, a new Art. I as herein set forth. Former Art. I contained provisions relative to weeds and harmful plants, which derived from the adoption of this Code and Ord. No. 885, § 1, enacted May 10, 1976.

Section 3 of Ord. No. 1014 provided that said ordinance shall take effect at 12:01 a.m. on March 1, 1982.

**Charter References:** Abatement of uncontrolled noxious weeds, § 14.2.

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#### **Sec. 26-1. Unlawful to permit growth of noxious, poisonous or injurious weeds.**

It shall be unlawful for the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city to permit or allow the presence thereon, or on any portion thereof, of noxious weeds of any kind, including Canada thistle (*Cirsium arvense*), mustards (charlock, black mustard and Indian mustard, species of *Brassica* or *Sinapis*), wild carrot (*Daucus carota*), bindweed (*Convolvulus arvensis*), hoary alyssum (*Berteroa incana*), ragweed (*Ambrosia elatior*) and poison ivy (*Rhus radicans*), poison sumac (*Rhus vernix*), sow thistle (*Sonchus* species), climbing nightshade or European bittersweet (*Solanum dulcamara*), garlic mustard (*Alliaria petiolata*), phragmites (*Phragmites australis*), crown vetch (*Coronilla varia*), purple loosestrife (*Lythrum salicaria*), giant hogweed (*Heracleum mantegazzianum*), wild parsnip (*Pastinaca sativa*), spotted knapweed (*Centaurea maculosa*), Japanese knotweed (*Fallopia japonica*), giant knotweed (*Fallopia sachalinesis*), autumn olive (*Elaeagnus umbellata*), glossy buckthorn (*Rhamnus frangula*), common buckthorn (*Rhamnus cathartica*) or any other varieties, species or plants designated by the city forester as poisonous or injurious. The presence of such weeds upon any lot or parcel of land within the city limits is hereby declared to be a public nuisance.

(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1791, § 1, 8-15-16)

#### **Sec. 26-2. Duty of owner, occupant, etc., to cut noxious, poisonous or injurious weeds; exceptions.**

(a) It is hereby made the duty of the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place, area or parcel of land within the city upon which noxious, poisonous or injurious weeds as described in section 26-1 hereof are found growing or standing, to destroy or cause the same to be destroyed in such manner as shall effectually prevent such weeds from perpetuating themselves. Control shall be at such times as may be necessary in order to prevent such noxious,

poisonous or injurious weed from going to seed. No owner or occupant or any person or persons, agent, firm or corporation having control or management of property in this city shall knowingly suffer any noxious, poisonous or injurious weeds as described in section 26-1 hereof to grow upon said land in noncompliance with this section or shall permit such weeds to ripen so as to cause or present a danger of the spreading of such weeds.

(b) Notwithstanding the foregoing, lands more than one hundred (100) feet from a lot line of occupied residential or commercial property shall be exempt from the provisions of this section. (Ord. No. 1014, § 2, 2-22-82)

### **Sec. 26-3. Other weeds, grass and brush.**

(a) Height limit. It shall be unlawful for the owner or occupant or any person or persons, agent, firm or corporation having control or management of any lot, place, area or parcel of land within the city to permit or allow the presence thereon of weeds, grass or brush exceeding a height of ten (10) inches above ground level when such growth is within one hundred (100) feet of a lot line of occupied residential or commercial property and the same are hereby declared to be a public nuisance. It shall be the duty of every owner or occupant, or every person or persons, agent, firm or corporation in charge of such property upon which any said above-mentioned weeds, grass or brush is permitted to remain to cause the same to be cut down, destroyed and/or removed.

(b) Exceptions. Notwithstanding the foregoing, the following lands shall be exempt from the provisions of this section, provided that the owner of the land petitions for exemption from the provisions of this section in writing to the department of parks and recreation of the City of Midland:

- (1) Undeveloped wooded areas where tree growth is in excess of ten (10) feet in height.
- (2) Undeveloped parcels of four and one-half (4 ½) acres or more in non-subdivision areas.
- (3) Lands where less than fifty (50) per cent of the lots are occupied.
- (4) Lands where occupied lots have been developed without removing the original natural cover.
- (5) Defined natural preserves.

(c) Appeals. In the event the department of parks and recreation shall deny a petition for exemption from the provisions of this section, the petitioner may appeal the decision in writing to the building board of appeals established under Chapter 5 of the Code of Ordinances of the City of Midland, and the board shall, after hearing the evidence on any such appeal, either affirm, modify or reverse the decision of the department of parks and recreation and its decision shall have the same effect as if it were the decision of the department of parks and recreation.

(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

### **Sec. 26-4. Abatement of nuisance by city.**

In addition to the penalties set out in this article that in the event the owner or occupant, or any person or

person, agent, firm or corporation having control or management of any lot, place or parcel of land within the city fails, refuses or neglects to comply with the provisions of this article, the city and its authorized representatives are hereby empowered, upon the giving of notice, to enter upon such land for the purpose of accomplishing abatement of the violation by spraying, cutting and/or other methods deemed acceptable by the department of parks and recreation of the city. The fee shall be a minimum of \$200.00 per abatement. If the cost of an abatement fee shall exceed the \$200.00 minimum, the actual cost of the abatement shall be applied. All expenses incurred by the city in the performance of this work shall be reimbursed by the owner or occupant, or person or persons, agent, firm or corporation having control or management of such land or lots, and in cases where not paid, the city shall have a lien for the same in the manner hereinafter provided or pursue other collection remedies.

(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

### **Sec. 26-5. General notice by publication.**

It is hereby made the duty of the department of parks and recreation of the city to give general notice to every owner or occupant, or any person or persons, agent, firm or corporation having control or management of any land wherein noxious, poisonous or injurious weeds or any weeds, grass or brush exceeding a height of ten (10) inches are growing, standing or present, to cut down, destroy and/or remove the same. Such general notice shall be made by publication in a newspaper of general circulation in the city at least twice in each calendar year, once during the first half of the month of May and again during the last half of the month of June of each calendar year, and shall read substantially as follows:

#### City of Midland Notice of the Weed Ordinance Provisions

TO: All owners or occupants, or persons, agents, firms or corporations having control or management of any lot, place or parcel of land within the City of Midland.

Notice is hereby given that in accordance with Article I of Chapter 26 of the Code of Ordinances of the City of Midland, all noxious, poisonous or injurious weeds, or other weeds, grass or brush exceeding a height of ten (10) inches upon any property in the City of Midland shall be cut down, destroyed and/or removed.

In the event the owner or occupant, or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the City of Midland shall fail, refuse or neglect to comply with the above-mentioned ordinance, a municipal civil infraction may be issued. Further, the City of Midland or its authorized representatives shall cause said noxious, poisonous or injurious weeds, grass or brush exceeding a height of ten (10) inches to be cut down, destroyed and/or removed. The expenses incurred by the City in the cutting, destruction or removal of the same will be levied and collected against such property in the manner provided by law and this article.

Certain exemptions from the requirements of the ordinance relating to area, distances, size of growth or lack of development are specifically set forth in the ordinance and may be applicable; but any owner or occupant or person or persons, agent, firm or corporation having control or management of property in the City of Midland who seeks such an exemption must petition the Department of Parks and Recreation of the City of Midland for this purpose in writing.

\_\_\_\_ Department of Parks and Recreation City of Midland  
(Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

**Sec. 26-6. Specific notice by certified mail.**

(a) In addition to the general notice requirements set forth in section 26-5, it is hereby made the duty of the department of parks and recreation to give a specific notice in writing, by first class mail to the owner or occupant, or any person or persons, agent, firm or corporation having control or management of any lot, place or parcel of land within the city wherein noxious, poisonous or injurious weeds or any weeds, grass or brush exceeding a height of ten (10) inches is growing, standing or present, to cut down or remove the same within a period of seven (7) consecutive calendar days, which notice shall read substantially as follows:

Name and Address

Description

Notice of the Weed Ordinance Provisions

According to the assessment records of this City, you appear to be the owner or occupant of the above-described property which is subject to the provisions of the aforementioned ordinance.

Notice is hereby given that in accordance with Article I of Chapter 26 of the Code of Ordinances of the City of Midland all noxious, poisonous or injurious weeds or other weeds, grass or brush exceeding a height of ten (10) inches growing, standing or living upon any property in the City of Midland shall be cut down, destroyed or removed, as the case may be, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

In the event of failure to comply with this notice on or before the date set forth above, in accordance with the provisions of this ordinance, a municipal civil infraction may be issued. Further, the City shall cause said noxious, poisonous or injurious weeds or other weeds, grass or brush exceeding a height of ten (10) inches to be cut down, destroyed and/or removed. The expense incurred by the City in the cutting, destruction or removal of same will be levied and collected against such property in the manner provided by law.

Certain exemptions from the requirements of the ordinance relating to area, distances, size of growth or lack of development are specifically set forth in the ordinance and may be applicable; but any owner or occupant or person or persons, agent, firm or corporation having control or management of property in the City of Midland who seeks such an exemption must petition the Department of Parks and Recreation of the City of Midland for this purpose in writing.

\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ Department of Parks and Recreation City of Midland  
(Ord. No. 1014, § 2, 2-2-82; Ord. No. 1697, § 1, 5-10-10)

**Sec. 26-7. Reimbursement to city; assessment of costs.**

Whenever the department of parks and recreation or its authorized representatives shall enter upon any parcel of land in order to accomplish abatement of an existing violation pursuant to provisions of this article, the director of the department of parks and recreation is hereby authorized and directed to keep an accurate account of all expenses incurred, and based upon the same to issue a certificate determining and certifying the costs involved

for such work with respect to each parcel of property. Within ten (10) days after receipt of said certificate, the city finance director will forward a statement of total charges assessed on each parcel of property to the owner as shown by the last current assessment or tax roll, and said assessment shall be payable to the city treasurer within thirty (30) days from the date said statement was forwarded. If not paid within the prescribed thirty-day period, such statement shall be filed by the city finance director with the city assessor and shall thereupon be assessed against the land in question and become a lien on such property in accordance with the City Charter of Midland or the City has the right to initiate other collection efforts as it deems appropriate. (Ord. No. 1014, § 2, 2-22-82; Ord. No. 1697, § 1, 5-10-10)

**Secs. 26-8. Penalty.**

(a) Any owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland who shall violate any of the provisions of this Code hereby adopted or fails to comply therewith, may be responsible for a municipal civil infraction. Upon being found responsible of such violation, such owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland shall be assessed a fine as provided in Chapter 34 of the Code of Ordinances. The imposition of one (1) municipal civil infraction fine for any violation shall not excuse the violation or permit it to continue and all such owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland shall be required to correct or remedy such violations or defects within a reasonable time.

(b) The imposition of the above fine shall not be held to prevent the enforced removal of prohibited conditions. Further violations subject the owner or occupant, or person or persons, agent, firm or corporation having control or management of any lot, place, or parcel of land within the City of Midland to subsequent civil infraction violations.

(Ord. No. 1697, § 1, 5-10-10)

**Secs. 26-9--26-13. Reserved.**

**ARTICLE II.**

**DUTCH ELM DISEASE**

**Sec. 26-14. Infected trees, or potential harborage declared nuisances.**

Any elm tree infected with the fungus *Ceratostomella ulmi*, Dutch elm disease, so-called, or any dead or dying elm tree, or stored elm logs, or elmwood, which could harbor or become a breeding place for the American or European bark beetle, the two known carriers of the Dutch elm disease, is hereby declared to be a public nuisance, and it shall be unlawful for any person to maintain such on their property after proper notification as provided in the State of Michigan Department of Agriculture, Regulation No. 613 as amended.

**Sec. 26-15. Removal of infected trees or harborages on public land.**

Any tree or elmwood as described in section 26-14 of this Code located on public lands within the limits of the city shall be removed at the expense of the city.

**Sec. 26-16. Entry on private property.**

The director of parks and recreation, his authorized employees or agents, may enter upon private property for the purpose of carrying out the terms of this article.

**Sec. 26-17. Treatment of infected trees, vegetation.**

When any aboveground parts of trees or vegetation on private land are found to be infected with Dutch elm disease after determination of Dutch elm infection by a designated laboratory, the director of parks and recreation shall, by written notice, give the owner of the property upon which such tree or vegetation exists a definite time, but not less than ten (10) days, to remove, treat, and dispose of all infected aboveground parts of such tree or vegetation. Disposal should be by fire or other methods approved by the parks and recreation department. If the work is not satisfactorily completed in the prescribed time, the director of parks and recreation, authorized city employees, or authorized agents may enter upon the property, and remove, treat, and destroy the infected tree or wood, by fire or other approved methods in an area so designated by the city for this purpose, at the total expense of the owner of such property.

**Sec. 26-18. Removal of dead branches, trees, harborages.**

After inspection of private property, the director of parks and recreation shall require, by written notice, the removal of dead or dying limbs of elm trees, or of dead elm trees or of elmwood stored on the property. When such notice is given, the owner will be given a reasonable and definite time to comply with the order, but not less than ten (10) days. If the work is not satisfactorily completed within that time, the director of parks and recreation, authorized city employees, or authorized agents may enter upon the property, make the necessary trimming or removals, property treat the wood and bark and make proper disposal of the same, at the total expense of the owner of such property.

**Sec. 26-19. Lawn repair; expense.**

If requested by the owner of property upon which work is done pursuant to sections 26-17 and 26-18 of this chapter, the city shall repair any damage that may occur to the lawn as a result of trimming, treating or tree removal. Such repair shall be at the expense of the owner of such property.

**Sec. 26-20. Collection of costs.**

The cost of trimming, treating, removal, and lawn repair pursuant to sections 26-17 and 26-18 of this Code, plus overhead shall be billed to the owner of such property. If the bill is not fully paid by April 1st of the following year, a ten per cent (10%) penalty may be added and it may be placed on the tax roll as a lien upon the property and collected in the same manner as other city taxes are collected.

**Sec. 26-21. Treatment in event of epidemic or insect invasion.**

In the event of an epidemic of tree disease or of insect invasion, any owner of any property within the city on which is growing any tree, plant or shrub, may be compelled to spray or treat such tree, plant or shrub upon the order of the director of parks and recreation, in accordance with the statutes of this state. In the event that such owner does not comply with such order, the city may cause such spraying or treating to be done at the

expense of such owner, and collected as set forth in section 26-20 of this Code.

**Secs. 26-22--26-31. Reserved.**

### **ARTICLE III.**

#### **TREES AND SHRUBS GENERALLY**

**Sec. 26-32. Definitions.**

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

*Director.* The word "Director" shall mean the Director of Parks and Recreation or his designated representative.

*Highway.* The word "highway" shall include all land lying between the property lines on either side of all public streets, boulevards and alleys.

*Park.* 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.

*Private trees.* The words "private trees" shall include all trees located on private property.

*Public trees.* The words "public trees" shall include all trees located on highways or in public parks.

*Roadway.* The word "roadway" shall mean that part of the highway located within the curb lines which is used for vehicular travel and, where there are no curbs, that part of the highway which is used for vehicular travel, but which also includes the shoulders.

(Ord. No. 1253, § 1, 11-23-92)

**Sec. 26-33. Enforcement of article.**

The department of parks and recreation, under the direction of the city manager, shall be responsible for enforcing the provisions of this article.

**Sec. 26-34. Promulgation of rules and regulations; obedience to same.**

The Director shall make such rules and regulations supplementary to this article and not in conflict herewith, as he may from time to time deem necessary. No person shall fail to obey any rule or regulation effective hereunder.

**Sec. 26-35. Control of public trees.**

The Director shall have control over all trees located within the highways and parks in the city and the planting, care and removal thereof, subject to the regulations contained in this article.

**Sec. 26-36. Tree or shrub protection, generally.**

No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire within ten (10) feet of any tree, or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials 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 except by special written permit from the Director, 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 Director, promptly abate such interference in such manner as shall permit the trimming or removal of such tree by the Director.

**Sec. 26-37. Protecting public trees on construction jobs.**

In the erection, alteration, repair, or removal of any building or structure, the owner or owners thereof shall place or cause to be placed such guards around all nearby public trees, as will effectively prevent injury to such trees.

**Sec. 26-38. Planting specifications--Highways and parks.**

In all planting of trees in the highways, such trees shall be spaced not less than forty (40) feet apart, except when an existing tree has been approved for removal within two (2) years from date of the planting of the new tree. In no case shall a tree be planted less than thirty (30) feet from an existing tree in the highway.

No tree shall be planted in highways between the curb and the sidewalk, less than three (3) feet from the sidewalk, except where outlaws are less than six (6) feet in width, trees may be located two (2) feet six (6) inches from the sidewalk. No trees shall be planted on outlaws which are less than four (4) feet in width from the curb to the sidewalk. No trees shall be planted nearer to an intersection than twenty-five (25) feet from the intersection of the curb lines.

**Sec. 26-39. Reserved.**

**Editors Note:** Ordinance No. 1252, § 1, adopted November 16, 1992, deleted § 26-39. Formerly, such section pertained to planting specifications on private property and derived from the original Code.

**Sec. 26-40. Cost of transplanting trees, planting trees necessitated by street construction.**

In all street construction, the city shall pay the entire cost of transplanting of trees and planting of new trees.

**Sec. 26-41. Removal of plantings which are a traffic hazard.**

Any plantings, either public or private, now standing, which are a hazard in the opinion of the police department, shall be removed.

**Sec. 26-42. Vision clearance for corner lots.**

On any corner lot, no plantings higher than thirty-six (36) inches above the elevation of the crown of the



roadway, except trees with a minimum clearance of eight (8) feet as measured from the elevation of the crown of the roadway to the lowest branch, shall be erected or maintained within an area determined by an imaginary line connecting points on the lot lines, between the highway and the corner lot, twenty (20) feet distant from the intersection of the corner property lines of the corner lot. These standards may be waived upon a determination by the director of parks and recreation, the city police chief, and the city engineer that the conditions present are not hazardous to pedestrian or vehicular traffic.

(Ord. No. 1252, § 2, 11-16-92)

### **Sec. 26-43. Trees to be kept trimmed; removal of public trees.**

(a) *Private trees.* Any tree, bush, or shrub growing on private property, but so located as to extend its branches over an adjoining highway, shall be so trimmed by the owner of the property (or his or her agent) on which the tree, bush, or shrub is located so that there shall be a clear height, located within the parameters of the highway, unobstructed by any branches, of eight (8) feet above the surface of any public sidewalk and fifteen (15) feet above the surface of the roadway, and such owner (or his or her agent) shall also remove all dead branches or stubs on such trees, bushes, or shrubs which, as determined by the director, have become a menace to any traveler on an adjoining highway. The director is authorized to have removed any part of any trees, bushes, or shrubs which encroach into the highway as directed above, and shall bill the property owner for the cost of said work. Failure to pay for said work on the part of any property owner shall cause said charge to become a lien on the property, and said amount shall be added to the tax bill for that property.

(b) *Public trees.* The director is hereby authorized to remove any trees or shrubs, or any portion thereof, growing on any highway, park or public place of the city, when such tree or shrub is interfering with fire hydrants, sewer and water mains, visibility along any portion of a public highway, traffic control devices, construction of highways and sidewalks, the free passage of vehicular traffic, and the free passage of pedestrian traffic wholly outside that portion of any highway used for vehicular traffic.

(Ord. No. 1252, § 2, 11-16-92)

### **Sec. 26-44. Removal of public trees and stumps.**

Public trees may be removed only by those having authority from the director. Public trees will be removed only upon written authorization of the director and will be removed only where, in the opinion of the director, trees are undesirable or noxious. Public trees and stumps will not be removed for the installation of new driveways unless a permit for such construction has been issued by the city engineer. When public trees and stumps are removed for improvement of commercial property, a charge for the cost of the removal shall be made to the person affected. There shall be no charge for the removal of public trees in residential areas if such is approved by the director. Public trees and stumps may be removed at the owner's request and expense, by persons other than employees of the city, but only if the person to do the removing has the specific approval of the director. Any trees so removed must be removed six (6) inches or more below grade and removed from the public right-of-way at once. The tree holes shall be filled with suitable fill to the surrounding grade. Public trees shall not be removed which lift concrete sidewalk or driveway. This defect may be remedied by lifting sidewalk, removing roots, and replacing walk. Public trees will not be removed for the sole reason that the tree roots are clogging sewers.

(Ord. No. 839, § 3, 7-29-74)

### **Sec. 26-45. Public utilities--General responsibilities for opening street, repairing leaks.**

The opening of any highway within six (6) feet of any public tree or shrub shall have the approval of the director.

If any leaks in gas lines or mains occur within forty (40) feet of a public tree, it shall be the duty of the owners of said lines to immediately repair such leaks in a manner which will give a minimum possibility of recurrence, and to replace any trees damaged by the leaks or removal of the lines.

**Sec. 26-46. Same--Erection of poles.**

Before any utility poles or other similar utility structures are erected on highways or park property, the director shall be consulted. The director reserves the right to regulate the height of those structures if they relate to the natural growth of existing or contemplated trees.

**Sec. 26-47. Same--Tree trimming.**

If the trimming of public trees necessary to accommodate utility wires is excessive in the opinion of the director, the public utility corporation doing such trimming will be required to re-locate the wires, increase the height of the pole, or employ other means not injurious to the trees.