

TOWN OF LAFAYETTE
ORDINANCE NO. 99-06-JC

THE TOWN BOARD OF THE TOWN OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

An Ordinance entitled “ORDINANCE, DECLARING APPLE TREES INFECTED WITH PLUM CURCULIO, CODLING MOTH, APPLE MAGGOTS OR APPLE FUNGUS A NUISANCE” is hereby created as follows:

1. **PUBLIC NUISANCE DECLARED.**

A. The Town Board of the Town of LaFayette having determined that the health of the apple trees within the Town of LaFayette is threatened by the infestation of pests known as plum curculio, codling moth, apple maggots or apple fungus hereby declares the following to be a public nuisance:

- (1) Any unattended or uncared for living or standing apple tree or part thereof harboring plum curculio, codling moths or apple maggots or apple fungus.
- (2) Any unattended or uncared for dead apple tree or part thereof, including logs, branches, stumps, firewood or other apple material harboring plum curculio, codling moth, apple maggots or apple fungus from which the bark has not been removed and burned or sprayed with an effective pest destroying insecticide.

2. **NUISANCES PROHIBITED.** No person, firm or corporation shall permit any public nuisances as defined in subsection 1. of this Ordinance to remain on any premises owned or controlled by him within the Town of LaFayette.

3. **INSPECTION.**

A. The Town Board, acting on its own motion or upon a request by any apple grower, shall inspect or cause to be inspected all premises and places within the Town to determine whether any public nuisance as defined in subsection 1. of this Ordinance exists thereon and shall also inspect or cause to be inspected any apple tree reported or suspected to be infected with the pests defined in subsection 1. of this Ordinance.

B. A request by an apple grower shall be filed with the Town Clerk, who shall then Submit the request to the Town Board.

4. **ABATEMENT OF NUISANCE.**

A. If the Town Board upon inspection or examination by some qualified person acting on its behalf, shall determine that any public nuisance as herein defined exists in or upon any public property, and that the danger to other trees is imminent, shall;

- (1) immediately cause it to be removed and the wood to be debarked, covered or chipped, or
- (2) Otherwise abate the nuisance in such a manner as to destroy or prevent as fully possible the spread of plum curculio, codling moths or apple maggots.

B. If the Town Board’s designee shall determine within reasonably certainty that any public nuisance as herein defined exists in or upon private premises and that the danger to other apple trees is imminent, he or she shall immediately report the existence of such a nuisance to the Town Board and the Town Board shall, if it determines that such

nuisance exists, cause notice to be served that the Town Board proposes the removal and destruction of such trees as nuisances under this ordinance specifying the location and number of such trees, and that a hearing will be held before the Town Board for the purpose of ordering the removal and destruction of such trees. Such notice shall be served at least 10 days prior to the date of the hearing before the Town Board and shall be served on the owner of the lot or parcel of land on which such trees stand of the time and place at which said contemplated place of work and removal will be considered by the Town Board. After such hearing the Town Board's designee, subject to the direction of the Town Board shall abandon the work or proceed with it as he or she believes the best interest of the public require. In lieu of such removal by the Town, the Town Board's designee may serve or cause to be served upon the owner of the property if he or she can be found, or upon the occupant thereof, a written notice to abate such nuisance within 10 days of the service of said notice. If such owner or occupant does not abate said nuisance within the time limited the Town shall cause the same to be abated. No damage shall be awarded to the owner for the destruction of any apple trees or any part thereof pursuant to this section.

C. Imminent danger to other trees shall be defined as that concentration of pests equaling or exceeding the following thresholds:

| | |
|----------------|------------------------------------------------------------|
| Apple Maggot:: | 5 adults per week caught on a baited red ball trap. |
| Codling Moth: | 10 males caught in a pheromone trap in a seven day period. |
| Plum Curculio: | One oviposition scar per 600 fruit per sampled block. |
| Apple Fungus: | At least 5% of a tree is infected. |

5. **SPRAYING OF APPLE TREES.** Whenever it is determined by the Town Board of the Town of LaFayette that because of the prevalence or threatened danger of plum curculio, codling moths, apple maggots or apple fungus to the apple trees in or near the Town of LaFayette that it is necessary to embark upon a program of tree care and protection of apple trees in the Town, by a system of spraying, the cost of which spraying shall be chargeable to and assessed upon the owners of lots or parcels of land upon which are located any apple trees, the Town Board shall cause notice of a public hearing on the proposed tree care program and of the proposed assessment therefore, to be published in the official newspaper once a week at least 10 days before the date of such hearing and by posting of such notices in at least three conspicuous places within the Town and mailing a copy therefore to each property owner, of the proposed assessment to be made against property owners for said spraying. Such notice shall specify that on a certain date a hearing will be held by the Town Board to determine whether the spraying shall be performed at the cost of the respective property owners at which hearing anyone interested will be heard.

5. **ASSESSMENT OF COSTS OF ABATEMENT.**

A. The entire cost of abating any public nuisance as defined in subsection 1. of this ordinance, or of spraying any apple tree or part thereof as required by subsection 5. hereof, may be chargeable to and assessed against the parcel or lot upon which such tree stands. The cost of abating any such nuisance or spraying any apple tree, or part thereof, which is located in or upon any part or public grounds, boulevards or public way shall be borne by the Town.

B. The Town Treasurer shall keep strict account of the cost of work done under this ordinance for which assessments are to be made, stating and certifying the description of land, lots, parts of lots or parcels of land and the amount chargeable to each. The Town Clerk shall include in his or her report to the Town Board the aggregate amounts chargeable to each lot or parcel, as recorded by him and such amounts shall be levied and assessed against such parcels in the same manner as other special taxes. Before such assessments are entered on the tax roll, the Town Board shall hold a public hearing on the proposed assessments and shall give advance notice thereof not less than fourteen days before the time set for such hearing by publication in the official newspaper or posting in at least three conspicuous places.

7. **PENALTY.** Whoever violates any provision of this ordinance is subject to a fine of not less than Twenty-five and 00/100 (\$ 25.00) nor more than Two Hundred and 00/100 (\$ 200.00), together with costs of prosecution. Each violation and each day of violation continues shall constitute a separate offense. Each violation upon a separate description of land, lots, parts of lots or parcels of land shall constitute a separate offense.

8. **SEPARABILITY.** If any section, subsection, paragraph, sub-paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

9. **EFFECTIVE DATE.** This Ordinance shall take effect from and after its passage and posting as provided by law.

This forgoing Ordinance was adopted at a regular meeting of the Town Board of the Town of LaFayette on August 2nd, 1999.

David Staber, Town Chairman

Susann, M. Lane, Town Supervisor

Bruno F. Rahn, Jr., Town Supervisor

David W. Hunt, Town Supervisor

Howard M. Gibbs, Town Supervisor

I HEREBY CERTIFY THAT THE ABOVE ORDINANCE WAS ADOPTED BY THE TOWN BOARD OF THE TOWN OF LAFAYETTE ON THE 2ND DAY OF AUGUST, 1999, AND WAS POSTED BY ME IN THREE OF THE MOST PUBLIC PLACES IN THE TOWN OF LAFAYETTE ON THE 4TH DAY OF AUGUST, 1999.

Dated and signed this 4th day of August, 1999.

Sandra Harvey, Town Clerk
Town of LaFayette
Chippewa County, Wisconsin