

Chapter 54 - VEGETATION

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ARTICLE I - IN GENERAL

Secs. 54-1 – 54-33 - Reserved

ARTICLE II - PLANTING, MAINTENANCE AND REMOVAL

Sec. 54-34 - Purpose

- (a) Purpose. It is the purpose of this article to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants within the city.
- (b) Plant protection. It is the intent of the council to conduct a plant protection and export program pursuant to the authority granted by Minn. Stats. § 18G.
- (c) The provisions of this section are adopted as an effort to control and prevent the spread of shade tree pests and to maintain a healthy urban forest, in addition to and in accordance with Minn. Stats. §§ 89.001, 89.01 and 89.51-64.

(Code 1993, § 8-4.01; Ord. No. 18-09, § 1, 9-26-2018)

Sec. 54-35 - Applicability

This Code provides full power and authority over all trees, plants and shrubs located within street rights-of-way, parks and public places within the city; and to trees, plants and shrubs located on private property that constitute a hazard as described herein.

(Code 1993, § 8-4.02)

Sec. 54-36 - City forester

The city forester shall be under the direction of the city administrator at all times. The authority and duties of the city forester are as follows:

- (1) The forester shall have jurisdiction and supervision over all trees, shrubs, and other plants growing within the city.
- (2) The forester may order the trimming, treatment or removal of any trees or plants on public or private property that constitute a nuisance or hazard, or whenever necessary to prevent the spread of disease or harmful insects.
- (3) The forester shall act as the city tree inspector and shall coordinate all activities between the state department of agriculture and the council.

(Code 1993, § 8-4.03; Ord. No. 18-09, § 2, 9-26-2018)

Sec. 54-37 - Regulations for public property

(a) *Planting.*

- (1) No trees, shrubs or herbaceous plant materials, including annual or perennial flowers, may be planted in a public right-of-way except by authorized city personnel.
- (2) No tree shall be planted on a public right-of-way, except to replace a tree that has been removed or that has been identified as a new location for a tree by the city administrator.
- (3) The city administrator shall determine the specific location of any tree to be planted on a public right-of-way.
- (4) Any tree to be planted on a public right-of-way must be of cultivated nursery stock, and must be at least 1½ inches in diameter, measured at a point two feet above the ground.
- (5) Any tree to be planted on a public right-of-way must be planted in soil adequate to insure growth, in accordance with standards set by the forester.

(b) *Maintenance of trees.*

- (1) Public trees will be trimmed according to a schedule established by the forester and approved by the city administrator.
- (2) Only persons authorized by the city administrator may trim boulevard trees.
- (3) The forester may chemically vaccinate boulevard trees against disease whenever necessary.

(c) *Removal of trees.*

- (1) The city administrator has sole authority to order removal of any tree on a public right-of-way.

- (2) Trees will be removed by city staff or contracted firms.
- (d) *Miscellaneous.* No person shall:
- (1) Damage, cut, trim, carve, kill or injure any tree or plant on public property;
 - (2) Attach any rope, wire or other contrivance to any tree or plant on public property unless authorized by the forester;
 - (3) In any way injure or impair the natural beauty or usefulness of any area of public property; nor
 - (4) Cause or permit any wire charged with electricity or any harmful gaseous, liquid or solid substances to come into contact with any tree or plant on public property.
- (e) *Care and maintenance of boulevards and adjacent property.* Owners of property abutting the right-of-way of a public street or alley shall properly maintain the grass on the property and on the public right-of-way to the curblineline or traveled portion of the street or alley. Proper maintenance shall include sodding, planting, mowing or weed abatement whenever necessary.

(Code 1993, § 8-4.04; Ord. No. 0-95-03, § 1, 1-25-1995; Ord. No. 20-02, § 1, 2-12-2020)

Sec. 54-38 - Regulations for private property

- (a) *Purpose and application.* It is the purpose of this section to prohibit the uncontrolled growth of vegetation, while permitting the planting and maintenance of landscaping which promotes resiliency, diversity and a richness to the quality of life. There are reasonable expectations regarding the proper maintenance of vegetation on any lot or parcel of land. It is in the public's interests to provide standards regarding the maintenance of vegetation because vegetation which is not maintained may threaten public health, safety, order, and may decrease adjacent property values. It is also in the public's interests to encourage diverse landscaping, particularly that which restores native vegetation. Native vegetation requires fewer inputs of water, fertilizers, and herbicides. It also supports pollinators and birds. The city enacts this section to balance these competing interests.
- (b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Edible landscaping means the intentional planting, caring for, or otherwise cultivating plants that could produce food that is consumed by people. These plants include fruit and nut trees, berry bushes, vegetables, herbs, or edible flowers.

Native plants are those grasses (including prairie grasses), sedges (solid, triangular-stemmed plants resembling grasses), rushes, forbs (flowering broadleaf plants), vines, trees and shrubs that are plant species native to the state of Minnesota prior to European settlement.

Noxious weeds are annual, biennial, or perennial plants that the Commissioner of

Agriculture designated to be injurious to public health, the environment, public roads, crops, livestock, or other property (Minnesota Noxious Weed Law, Minn. Stat. Sec. 18.75-18.91).

Ornamental plants means grasses, flowering annual, biennial, and perennial plants, shrubs, trees, and vines that may not be native to Minnesota, but are adapted. Ornamental grasses do not include turfgrasses.

Turf grass means commercially available cultured turf grass varieties, including bluegrass, fescue and ryegrass blends, commonly used in regularly cut lawn areas.

Planned landscape area means an area where ornamental plants, or native plants are planted pursuant to a plan.

Rain garden means a shallow excavated depression (typically no more than 18 inches deep) with loosened sub-soils in which ornamental or native plants that are adapted to moist conditions and have deep roots are planted for the purpose of infiltrating and filtering rain water and reducing storm water runoff. Temporary ponding of water in rain gardens typically occurs for no more than 48 hours after rainfall assuming no subsequent rainfall.

Residential garden means an area of edible landscaping on a lot that is conducted by the property owners or residents of that lot.

Restoration area means an area where native plants are being, or have been, intentionally re-established

Weeds are (i) prohibited noxious weeds or (ii) any volunteer plant, except trees and other woody vegetation, which is not customarily or intentionally planted. For the purposes of this definition, weeds do not include dandelions or clover.

(c) *Location of restoration areas, planned landscape areas, and edible landscaping areas.*

(1) *Setback.* A restoration area, planned landscape area, or residential garden must provide the following minimum setbacks:

a. Front lot line, corner side lot line, or rear lot line abutting a street or alley: two feet, and two feet from publicly maintained pavement or sidewalk

b. Interior side lot line or rear lot line not abutting a street or alley: two feet;

provided, however, for the exception in the required side yard or rear yard setback, as described in [section 54-38\(c\)\(2\)](#).

(2) *Mitigations for reductions in side or rear yard setback.* A required interior side yard or rear yard (not abutting a street or alley) setback may be reduced to zero feet for a restoration area, planned landscape area, or residential garden if:

a. A fence at least three feet in height is installed on the lot line adjoining the

restoration area, planned landscape area, or residential garden; or

- b. The restoration area, planned landscape area, or residential garden abuts:
 1. A restoration area, planned landscape area, or residential garden on any adjoining lot;
 2. A public park or open space;
 3. A wetland, pond, lake or stream;
 4. Natural area; or
- c. The restoration area or planned landscape area is located on slopes equal to, or greater than, three feet horizontal to one foot vertical (3:1).
- (d) *Maintenance Standards.* Every owner of property shall maintain the vegetation growing thereon according to the minimum standards set forth in this subsection:
 - (1) The setback area required by [section 54-38\(c\)](#) shall be composed of a soil retention cover such as mulch, regularly mowed turf grasses or groundcovers maintained at six inches or less, native or ornamental plants maintained at ten inches or less, trees or shrubs, or as may be required by the city administrator to protect the soil and aesthetic values on the lot and adjacent property.
 - (2) Non-woody vegetation in a planned landscape area shall be cut at least once annually between April 15 and July 15 to a height no greater than 10 inches.
 - (3) It is unlawful to plant any tree or shrub within five feet of a property lot line abutting a right-of-way of a public street or alley.
 - (4) Property owners shall prune trees and shrubs located on private property so they will not obstruct pedestrian sidewalk traffic, nor obstruct the view of any traffic sign, street, alley, or intersection. Overhanging portions of trees and shrubs must be pruned to maintain a minimum clearance of eight feet over all sidewalks, and 16 feet over all streets.
 - (5) Properties shall be free of blight and blighting factors, as described in [section 22-19](#).
 - (6) Properties shall be free of public nuisances, as described in [section 22-47](#).
 - (7) The city may require the owner or occupant who has planted, or has allowed to be planted, native plants or other vegetation within a drainage or utility easement to remove the native plants or other vegetation from the drainage and utility easement at no expense to the city if the city determines the native plants or vegetation interferes with the utility easement. The city will not be responsible for damage to turfgrass and/or any landscaped areas resulting from public works improvements or snow removal activities within drainage and utility easements.
 - (8) Retail sales of produce from edible landscaping activities shall not occur on the property.

(e) *Trees.* Persons responsible for growing any trees, shrubs or other plants on private property must comply with the following regulations:

(1) *Planting.*

a. It is unlawful to plant any of the following trees:

1. Box elder, *Acer negundo*;
2. Silver maple, *Acer saccharinum*;
3. Female ginkgo, *Ginkgo biloba*;
4. Eastern cottonwood, *Populus deltoides*;
5. Lombardy poplar, *Populus nigra italica*; or
6. Chinese elm, *Ulmus pumila*.

b. It is unlawful to plant any tree within five feet of a property lot line abutting a right-of-way of a public street.

(2) *Inspection and investigation of hazards and nuisances.*

a. The city administrator or duly authorized agents shall inspect all premises as often as practicable, to determine whether any declared hazards or public nuisances exists. The city administrator or duly authorized agents shall investigate all reported incidents of infection.

b. The city administrator or duly authorized agents may enter private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this section.

c. It is unlawful for any person to prevent, delay, or interfere with the city administrator, forester, or duly authorized agents while in the performance of official duties related to this chapter.

(3) *Abatement of hazards and nuisances on private property.*

a. *Order procedure.* If the city administrator determines that trimming, treatment, or removal of a tree or plant on private property is necessary to abate a public hazard or nuisance, the city shall serve a written order upon the responsible property owner or occupant to correct the condition.

b. *Abatement of disease.* The city administrator shall order the treatment or removal of any infected tree or wood constituting a nuisance as described in [section 54-39](#). Removal and abatement shall be in accordance with the technical opinion of the forester or the department of agriculture. Trees impacted by a shade tree pest shall be removed or effectively treated so as to destroy and prevent as fully possible the spread of the shade tree pest.

c. *Time limit.* The order or notification shall set a time limit for compliance, depending on the urgency of the hazard or nuisance.

d. *Authority to abate.* If, after notification, the responsible person fails to correct the condition within the time prescribed, the city administrator may order city staff or

a contracted firm to abate the hazardous or nuisance condition.

- e. *Cost of abatement.* The responsible person shall be billed for the full cost of the abatement plus any additional administrative costs. If the bill is unpaid, the cost shall be certified to the county auditor as a special assessment against the property.

(Code 1993, § 8-4.05; Ord. No. 18-09, § 3, 9-26-2018; Ord. No. 20-02, § 2, 2-12-2020; Ord. No. 20-04, § 3, 5-13-2020; Ord. No. 20-07, § 1, 12-09-2020)

Sec. 54-39 - Declared shade tree pests, control measures, and control areas

Declaration of a shade tree pest. The council may by ordinance declare any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community tree, as defined by Minn. Stats. § 89.001, to be a shade tree pest and prescribe control measures to effectively eradicate, control, or manage the shade tree pest, including necessary timelines for action. The following are considered public nuisances whenever they may be found within the city:

(1) Oak wilt disease

- a. Oak wilt disease is a shade tree pest and is defined as any living or dead tree, log, firewood, limb, branch, stump, or other portion of a tree from any species of the genus *Quercus* existing within the control area defined that has bark attached and that exceeds three inches in diameter or ten inches in circumference and contains to any degree any spore or reproductive structures of the fungus *Ceratocystis fagacearum*.

- b. *Control measures.*

Installation of a root graft barrier. A root graft barrier can be ordered installed to prevent the underground spread of oak wilt disease. The city will mark the location of the root graft barrier. The barrier disrupts transmission of the fungus within the shared vascular systems of root drafted trees. The barrier is created by excavating or vibratory plowing a line at least 42 inches deep between any oak tree infected with oak wilt disease and each nearby and apparently healthy oak tree within 50 feet of the infected tree.

- c. *Removal and disposal of trees.*

- 1. *On property zoned for residential and commercial use.* On property that is zoned residential and commercial the city may mark for removal of trees that have the potential to produce spores of the fungus *Ceratocystis fagacearum*. After, and in no case before, the installation of the root graft barrier and no later than May 1 of the year following infection, all marked trees must be felled. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

If, however, after the city prescribes the location for a root graft barrier, the

city determines that installation of the barrier is impossible because of the presence of pavement or obstructions such as a septic system or utility line, the city may mark for removal all oak trees whether living or dead, infected or not and located between an infected tree and marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

2. *On all other property.* On all other property, the city may mark for removal all oak trees whether living or infected or not and located between and infected tree and marked barrier location. These marked trees must be felled and disposed of no later than May 1 of the year following infection. The stump from such felled trees must not extend more than three inches above the ground or, if taller, must be completely debarked.

All wood more than three inches in diameter or ten inches in circumference from such felled trees must be disposed of by burying, debarking, chipping or sawing into wane-free lumber, or by splitting into firewood, stacking the firewood, and immediately covering the woodpile with unbroken four-mill or thicker plastic sheeting that is sealed into the ground until October 1 of the calendar year following the calendar year in which the tree was felled, or by burning before May 1 of the year following infection. Wood chips from infected trees may be stockpiled or immediately used in the landscape.

- d. *Control area.* The control area for oak wilt disease is defined as all lands within the boundaries of the city.

(2) Emerald ash borer.

- a. Emerald ash borer is a shade tree pest and is defined as an insect that attacks and kills ash trees. The adults are small, iridescent green beetles that live outside of trees during the summer months. The larvae are grub- or worm-like and live underneath the bark of ash trees.
- b. Control measures that may be taken to abate emerald ash borer are those state statute.
- c. *Control area.* The control area for emerald ash borer is defined as all lands within the boundaries of the city.

(3) Dutch elm disease.

- a. Dutch elm disease is a shade tree pest and is defined as a disease of elm trees caused by the fungus *Ophiostoma ulmi* or *Ophiostoma nova-ulmi*, and includes any living dead tree, log, firewood, limb branch, stump, or other portion of a tree from any species of the genus *Ulmus* existing within the control area defined that has bark attached and that exceeds three inches in diameter or ten inches in circumference and could contain bark beetles or any spore or reproductive structures of the fungus *Ophiostoma ulmi* or *Ophiostoma novo-*

ulmi. Any tree infected with the Dutch elm disease fungus or which harbors any of the elm bark beetles (*Scolytus multistratus*, *S. schevyrewi*, or *Hylurgopinus rufipes*) or any other pest capable of producing an epidemic, and any dead elm tree or part, including logs, branches, stumps, firewood or other material that contains elm bark are considered nuisances.

- b. Control measures that may be taken to abate Dutch elm disease are:
 - 1. *Use of fungicide.* Fungicides may be effective in prevent Dutch elm disease when injected into living trees that do not already show symptoms of Dutch elm disease. Fungicide injections on private lands are optional and, if performed, are at the landowner's expense. Treating with fungicide on public lands requires the approval of the city administrator or their designee.
 - 2. *Removal and disposal of trees.* Prompt removal of diseased trees or branches reduces breeding sites for elm bark beetles and eliminates the source of Dutch elm disease fungus. Trees that wilt before July 15 must be moved by April 1 of the following year. Diseased trees not promptly removed will be removed by the city at the landowner's expense. Wood may be retained for use as firewood or saw logs if it is debarked or covered from April 15 to October 15 with four mill plastic. The edges of the cover must be buried and sealed to the ground.
- c. *Control area.* The control area for oak wilt disease is defined as all lands within the boundaries of the city.
- d. *Unlawful storage, transporting and disposing of elm wood.* It is unlawful for any person other than licensed tree services to transport, store or dispose of any bark-bearing elm wood between April 15 and September 1 of each year.

(Ord. No. 18-09, § 4, 9-26-2018; Ord. No. 20-02, § 5, 2-12-2020)