

1-20 10/11/10

AMENDED & TABLED

10/25/10

AMENDED BY 1ST RDG

11/8/10

COMMITTEE OF THE WHOLE

10-053-0

AS AMENDED

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE PLANTING, MAINTAINING AND REMOVAL OF VEGETATION ON PUBLIC AND PRIVATE PROPERTY; ADDING A NEW DIVISION 6 TO ARTICLE 2 OF CHAPTER 20 AND AMENDING ARTICLE IV OF CHAPTER 35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

BY PRESIDENT ANDERSON:

The city of Duluth does ordain:

Section 1. That Chapter 20 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Division 6 to Article II of Chapter 20 which reads as follows:

Division 6. Tree Fund.

Sec. 20-23. Tree fund created.

There is hereby established in the treasury of the city of Duluth a special fund designated as the tree fund for the purpose of funding costs related to the planting, maintenance and care of trees and vegetation located on public property, all as defined in Section 35-26 of this Code. Into such fund shall be paid all monies appropriated by the city and the proceeds of all civil or criminal fines, civil penalties and all judgments or settlement of legal proceedings arising under Article IV of Chapter 35 of this Code and payments from developers made pursuant to Section 50-25.9B2(g) of the Code.

Sec. 20-23.1. Limitations on the expenditure of funds.

Monies in the tree fund shall be expended only for payment of costs incurred in planting, maintaining and caring for the trees and other vegetation on public property, all as defined in Section 35-26 of this Code and payment of expenses incurred in the administration thereof.

Section 2. That Section 35-26 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-26. Definitions.

For the purpose of this Article the following terms shall have the meanings hereinafter ascribed to them: term "public property" shall include all property owned by the city of Duluth and all property located within the improved portion of any street or highway easement under the jurisdiction of the city of Duluth.

(a) Boulevard. That portion of a public right-of-way lying between an improved public street and a public sidewalk;

(a)(b) Construction. The construction or maintenance of any structure, roadway, driveway, sidewalk, other facility or any other land disturbing activity occurring within the perimeter of the critical root radius of any tree located on public property and which disturbs vegetation located on public property;

(b)(c) Critical root radius. The radius of a circle around any tree equal to its DBH multiplied by 12 inches;

(c)(d) DBH (diameter at breast height). The diameter of a tree trunk measured in inches 54 inches above the ground or if the tree splits into more than one stem below 54 inches but above the ground, the diameter of the trunk at its highest point beneath the split;

(d)(e) Director. The director of the department in charge of maintaining and operating the city's forestry operations or his or her designee;

(e)(f) Heritage tree. Any tree or group of trees with unique and intrinsic value to the general public because of size, form, age, rarity or historic association designated as a heritage tree pursuant to Section 35-30.1 below;

(f)(g) Public property. All property owned by the city and all property located within the improved portion of any street or highway easement under the jurisdiction of the city ~~but not~~

including areas between public streets and public sidewalks
boulevards;

~~(g)~~(h) Preserved tree. A tree whose critical root radius
lies within an area of soil-disturbing activities and which is not
to be removed or damaged by said activity;

~~(h)~~(i) Special tree species. White pines, red or Norway
pines, white cedars, white spruces, eastern hemlocks, sugar maples,
American basswoods, American elms, yellow birches and all oak
species;

~~(i)~~(j) Tree. A perennial plant having a permanent woody,
self-supporting main stem or trunk, ordinarily growing to a
considerable height and usually developing branches at some distance
from the ground;

~~(j)~~(k) Vegetation. Trees, shrubs, bushes and other
perennial plant life with woody, above-ground stems.

Section 3. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-26.1 which reads as follows:

Sec. 35-26.1. Findings and purposes.

(a) The city council hereby finds that trees and other vegetation provide many benefits to the city, including:

- (1) Increased property values;
- (2) Reduced stormwater runoff and soil erosion;
- (3) Noise buffering;
- (4) Aesthetic value;
- (5) Reduced energy costs from shade in summer and windbreaks in winter;

(6) Removal of greenhouse gases (CO2) and other pollutants from the air.

(b) The purposes of this Article are to:

- (1) Promote appreciation for the city's trees and

other vegetation;

(2) Protect consumers of commercial tree services;

(3) Encourage the planting and maintenance of trees and other vegetation in the city;

(4) Reduce damage to trees and other vegetation from construction activities;

(5) Establish a mechanism for removing some public trees for maintaining views;

(6) Protect trees from pests.

Section 4. That Section 35-27 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-27. Tree inspector.

(a) It shall be the duty of the director ~~of public works~~ to coordinate all activities of the city related to this Article. The director shall designate the city relating to the planting, trimming, treatment and removal of trees on public and private property. The staff forester, or the successor to the responsibilities of that position, and such other city employees as the director shall deem appropriate as tree inspectors is hereby designated as the official tree inspector for the city of Duluth for the purposes of enforcing the provisions of this Article and for complying with the provisions of Minnesota Statutes, Section 89.63, as amended from time to time relating to shade tree disease control;

(b) A tree inspector may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to him under this Article; provided that, prior to commencing performance of any other of such duties, a tree inspector shall endeavor to provide verbal notice to an occupant of the subject premises of his identity and the purpose of his entry onto the premises;

(c) It is unlawful for any person to prevent, delay or interfere with a tree inspector while they are engaged in the performance of duties imposed by this Article.

Section 5. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-27.1 which reads as follows:

Sec. 35-27.1. Tree service contractor's licensing.

(a) No person shall engage in the business of maintaining, removing or treating trees, including stump removal, within the city unless such person shall have applied for and received a tree service contractor's license under this Section. The fee for such license shall be established pursuant to Section 31-6 of this Code;

(b) Applications for a tree service contractor's license shall be made on forms provided by the city clerk. The application for a tree service contractor's license shall include at least the following:

(1) Name, business address and telephone number of applicant or applicants;

(2) Name, address and telephone number of the principal or principals of applicant, if different from subparagraph (1) above;

(3) Proof that applicant is currently registered with the Minnesota State Commissioner of Agriculture in accordance with the requirements of Minnesota Statutes Section 18G.07;

(4) Proof that the applicant is a member of the International Society of Arboriculture or the Tree Care Industry Association;

(5) Proof that the applicant is insured by a company or companies licensed to do business in the state of Minnesota of the types and in at least the amounts set forth below, which policies of insurance shall be subject to approval by the city

attorney:

(A) Public liability insurance in the amount of \$1,500,000 for injury to or death of one or more persons or damage to or destruction of property;

(B) Automobile liability insurance in the amount of \$1,500,000 for injury to or death of one or more persons or damage to or destruction of property;

(C) Worker's compensation insurance as required by Minnesota law;

(c) The city clerk shall issue a license to any applicant whose application satisfies the above requirements. Any applicant denied a license may appeal such denial within ten days of such denial by submitting a written notice of appeal to the city clerk. All such appeals shall be heard by the city's chief administrative officer in the same manner as an appeal under subsection (h) below;

(d) In addition to the tree service contractor's license provided for above, all vehicles used by a licensed tree service contractor to provide such services shall secure from the city and display on said vehicle a sticker or decal issued by the city clerk. The fee for such sticker or decal shall be established pursuant to Section 31-6 of this Code;

(e) All licenses issued pursuant to the provisions of this Section shall be for a period of one year, except as expressly set forth in this Section, commencing January 1 in each year and expiring on December 31 of that year. Licenses shall not be transferred. Those making application for licenses prior to July 1 in each license year shall pay the full license fee; those making application thereafter shall pay 75 percent of the license fee;

(f) All planting, maintaining, removing or treating of trees by a licensed tree service contractor shall comply with American

National Standard Institute Standard A300;

(g) Any license issued pursuant to this Section may be revoked by the chief administrative officer for good cause. If the tree inspector believes that good cause exists to revoke a license issued hereunder, said inspector shall prepare a notice of hearing which states the allegations against the licensee and the time and place of the hearing. The notice shall be mailed to the licensee at least 14 days before the hearing and a copy of the notice shall be served on the chief administrative officer. At the hearings, the chief administrative officer shall hear all relevant evidence and arguments concerning the matter before deciding the matter. Without excluding other sufficient grounds for revocation, the filing of an application containing any statement or information known to the applicant to be false, a violation of this Section or any state or federal law relating to tree care services, or the failure to substantially perform tree care services to customers shall each be sufficient cause for revocation. Any order of revocation shall be mailed by certified mail to the licensee at the licensee's place of business as recorded with the city clerk. The chief administrative officer shall make written findings of fact, conclusions of law and revocation order in any case where a license is revoked;

(h) Any licensee whose license is revoked by the chief administrative officer pursuant to this Section may appeal such revocation to the city council within ten days of the date of mailing of the order of such revocation. Such appeal shall be in writing, and failure to file such an appeal within the 10 day period shall make the order final and the tree inspector shall notify the city clerk of the revocation of such license. The appeal shall be limited to a review of the findings and conclusions of the chief administrative officer;

(i) No license required by this Section shall be granted or issued to any person or entity whose license has been revoked, pursuant to the provisions of this Section, for a period of one year from and after the date of such revocation or to an entity owned or controlled by a person in control of an entity whose license has been so revoked. No such license shall be granted or issued to any such person or entity or any combination of such person and entities which have been subject to two such license revocations;

(j) No licensed tree service contractor shall perform any chemical treatment services with regard to trees unless such contractor also has a commercial pesticide applicator license from the Minnesota state department of agriculture.

Section 6. That Section 35-28 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-28. Planting and damaging vegetation ~~Regulations on planting trees~~ on public property.

~~The tree inspector shall develop a master tree planting plan specifying where various species of trees may be planted on public property, and, after holding a public hearing on the matter, shall establish rules and regulations for the planting of trees on public property. Such rules and regulations shall be published in the official newspaper and shall be effective 30 days after such publication. A copy of such rules and regulations shall be kept on file in the office of the city clerk. No person shall plant a tree on public property except in conformance with such rules and regulations.~~

(a) Except as otherwise provided for in this Article, no person shall:

(1)(a) Plant any vegetation on public property without having received the prior written approval of a tree

inspector;

(2) (b) Damage, cut, carve, kill or injure any vegetation located on public property;

(3) (c) Attach any rope, wire or other contrivance or affix a sign to any tree, shrub or plant located on public property without the prior written approval of a tree inspector;

(4) (d) Dig in or otherwise disturb any vegetation located on public property; ignite, build or enlarge any fire which may damage vegetation located on public property; or in any other way injure or impair the natural beauty or usefulness of any vegetation located on public property;

(b) The provisions of this Section shall not apply to vegetation located on boulevards except for trees having a diameter in excess of three-quarters of an inch located on boulevards;

(c) Dig in or otherwise disturb any vegetation located on public property; ignite, build or enlarge any fire which may damage vegetation located on public property; or in any other way injure or impair the natural beauty or usefulness of any vegetation located on public property.

Section 7. That Section 35-29 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

~~Sec. 35-29. Regulations for the removal, trimming and treatment of trees on public property.~~ Construction activities affecting trees on public property.

~~The tree inspector shall establish rules and regulations for the trimming, removal and treatment of trees located on public property and for the making of excavations around or near such trees. Such rules and regulations shall be published in the official newspaper and shall be effective 30 days after such publication. A copy of such rules and regulations shall be kept on~~

~~file in the office of the city clerk. No person shall remove, trim or treat a tree located on public property or excavate around or near such a tree except in conformance with such rules and regulations.~~

(a) It is the intent of this Section that, whenever any construction, as defined herein, is to be undertaken affecting vegetation on public property, to the extent reasonably possible, vegetation on public property, and particularly heritage trees and special tree species, should be protected from damage or loss, unless such damage or loss or intentional removal is determined by the tree inspector to be not reasonably avoidable or is determined to be in the best interests of other vegetation located on public property or otherwise is determined to be in the best interests of the city;

(b) Whenever construction, as defined herein, is proposed, prior to the issuance of any permit for such construction, the letting of any city contract for such construction, or the performance of such construction by city personnel, the city staff responsible for issuing such permit or for designing the project to be contracted for shall consult with the tree inspector to determine the area and the vegetation to be impacted by the construction and to determine how best to implement the intent of this Article as described in paragraph (a) above. When said construction may require removing trees within city street rights-of-way, input shall be sought from the owners of property adjacent to the property where the construction activity is to take place. The initial decision on the design of the construction and the methods of work shall be that of the city staff responsible for issuing such permit or for designing the project to be contracted for in cooperation with the city forester. In the event that such staff and the city forester

cannot agree on said design as it impacts affected vegetation, the final decision shall be that of the director of public works and utilities. Provided, however, in the event that an emergency situation arises with regard to which the public safety or welfare requires that construction take place in a time frame which will not permit the process set forth in this paragraph to be followed, it shall be the responsibility of said city staff to design and construct the project in a manner which is as respectful as is reasonably possible of the objectives set forth in paragraph (a) above;

(c) Preserved vegetation shall be protected from damage and soil compaction in accordance with the state of Minnesota department of transportation's standard specifications for construction, 2572.3A "protecting and preserving";

(d) Protection requirements for all vegetation on public property to be protected, as determined pursuant to subsection (b) above, shall be included in all city contracts for construction;

(e) Notwithstanding the foregoing in this Section, in the event that due to requirements imposed by state, federal or county authorities arising out of entering into cooperative or coordinated agreements or to the use of funding from such authorities, the city cannot implement the provisions of this Article without jeopardizing the subject relationship or funding, the provisions of this Article shall not apply to such agreement.

Section 8. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-29.1 which reads as follows:

Sec. 35-29.1. Cutting trees for view.

(a) Not less than ten days prior to the removal of any trees from public property by the city for the purpose of improving views from public overlooks, all landowners owning property adjacent to

and within 200 feet of the trees to be removed, as determined from the records of the city assessor, shall be notified by mail of the intent to do so. Removal shall be performed under the supervision of the tree inspector, provided that removal of five or more trees shall occur only after consultation with the tree commission. The requirements of this subsection shall not apply to pruning which does not endanger the health or viability of the tree pruned;

(b) Property owners desiring to remove vegetation on public property for the purpose of improving the view from private property may apply for permission to remove such vegetation to the tree inspector. The applicant is required to demonstrate that the view obstruction did not exist at the time they acquired the property;

(c) The tree inspector shall meet with the applicant or applicants on site to review a request for removal and the condition and character of the site. Not less than ten days prior to said meeting, the tree inspector shall cause notice of the date, time and place of said meeting to be given to all landowners owning property adjacent to and within 200 feet of the trees proposed to be removed which shall invite them to attend such meeting;

(d) In the event that the tree inspector determines that more than 50 percent of the applicant's view of Lake Superior, the Duluth-Superior Harbor, the St. Louis River Estuary or the St. Louis River from any point within the above-grade portion of the applicant's dwelling is obstructed by vegetation located on public property, he or she may authorize the removal of a specified portion of such vegetation such that said view is not so obstructed. The tree inspector shall deny the request for removal if he or she finds that the proposed removal is likely to cause identifiable environmental damage to the site or to surrounding property or is likely to cause identifiable, material degradation to adjacent properties.

The tree inspector shall not approve the removal of trees identified as special tree species under the authority of this Section;

(e) The applicant or applicants shall hire at their own expense a properly licensed tree service or other qualified contractor to remove the vegetation authorized to be removed by the tree inspector. Before starting work, such tree service or contractor shall meet with the tree inspector on site to insure the work is done as agreed upon. The tree inspector shall be given notice at least two business days before the work begins and may terminate the project at any time. The tree inspector shall not allow work to be done by the property owner.

Section 9. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-30.1 which reads as follows:

Sec. 35-30.1. Heritage trees.

(a) Any citizen or resident of the city may submit a nomination to the tree commission nominating any tree in the city for designation as a heritage tree. The commission shall decide on an annual basis whether to recommend such designation to the city council, which makes designations by resolution. Heritage trees may be on public or private property, but designation of privately owned trees must be approved by the owner of the land on which the nominated tree is located in writing as part of the nomination. For the tree commission to consider a nomination, a tree must meet at least one of the following criteria:

- (1) Size: Unusual trunk diameter or height for the species;
- (2) Form: A peculiar growth form for the species of the tree which gives it unique character;
- (3) Rarity: A locally rare species;
- (4) Age: At least 100 years old, estimated by

counting rings collected by increment borer;

(5) Historic significance: A tree associated with a noted person or persons, a historic structure or a significant event in Duluth's history;

(b) The tree inspector shall keep a record of all heritage trees so designated and their location;

(c) Designated heritage trees on public property may not be removed or harmed by such activities as trunk girdling, removing more than 30 percent of a healthy tree's limbs, or damaging tree roots, unless the tree is determined a hazard to persons or property by the tree inspector.

Section 10. That Section 35-31 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-31. Transporting or storing infectious plant materials ~~elm wood prohibited.~~

(a) It is unlawful for any person to transport within the city any bark-bearing elm or oak wood without having obtained written permission from the tree inspector. The tree inspector shall grant such permission only when the proposed transporting will be done in a manner that will not result in the spread of Dutch elm disease or oak wilt disease;

(b) It is unlawful for any person to store elm logs with bark intact within the city for more than 72 hours during the period from April 1 through September 15 in any year;

(c) It is unlawful for any person to transport or store any material or horticultural product contaminated with Asian long-horned beetle, emerald ash borer, or gypsy moth;

(d) Any material or product stored contrary to the provisions of this Section may be seized and destroyed by the tree inspector or his authorized agent.

Section 11. That Section 35-32 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-32. ~~Entry on private premises.~~ Appeals to director.

~~The tree inspector or his duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to him under this Article.~~

Any person aggrieved by any decision of a tree inspector can appeal that decision to the director by causing to be delivered to the director a written appeal, setting forth the decision of the tree inspector being appealed from, all relevant facts supporting such appeal and the relief requested, which written appeal shall have been delivered not less than 14 days after the decision of the tree inspector being appealed from. The director may grant the appeal or may affirm or affirm as modified the decision of the tree inspector. The decision of the director shall be final.

Section 12. That Section 35-33 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-33. ~~Interference prohibited.~~ Penalties and damages.

~~It is unlawful for any person to prevent, delay or interfere with the tree inspector or his duly authorized agents while they are engaged in the performance of duties imposed by this Article.~~

In the event that any person causes any damage to or destruction of any vegetation in violation of the terms of any permit or contract issued by the city or otherwise causes damage to or destruction of any vegetation on public property in violation of the provisions of this Article, such person shall be guilty of a misdemeanor, shall be subject to the imposition of a civil penalty as provided for in Chapter 12 and Section 31-6 of this Code and shall, in addition, be liable to the city for damages for the cost of repairing, restoring or replacing the vegetation so damaged or

destroyed.

Section 13. That Section 35-34 of the Duluth City Code, 1959, as amended, is hereby repealed.

Section 14. This ordinance shall take effect 30 days from and after its passage and publication or on January 1, 2011, whichever is later.

CCREQ/PW&U/ATTY REA:dma 9/28/2010

STATEMENT OF PURPOSE: The purpose of this ordinance is primarily to amend Article IV of Chapter 35 of the City Code pertaining to tree regulation to protect and enhance the city's arboreal resources, to encourage the planting and maintaining of trees and other vegetative materials in the city and to establish a licensing system for commercial tree services to enhance the quality of such services available to the public and to protect the public from unqualified service providers.

The ordinance requires that tree service contractors be licensed and, to obtain a license, the contractors must provide proof that they are registered with the state, proof that they have insurance available to protect the public and proof that they have membership in arboriculture associations that have competency requirements for membership. Upon a demonstration of good cause, their licenses can be revoked by the city.

The ordinance also places controls on the planting or cutting of trees and other vegetation on public property and provides for a review process with public input, particularly where boulevard trees are involved. In addition it provides a mechanism for review in the case of trees to be cut for view preservation or enhancement with the opportunity for comment by those affected by the proposed cutting.