

## Chapter 34

### VEGETATION\*

#### Article I. In General

Secs. 34-1--34-30. Reserved.

#### Article II. Trees

##### Division 1. Generally

Secs. 34-31--34-50. Reserved.

##### Division 2. Control of Diseased, Hazardous and Fallen Trees

- Sec. 34-51. Declaration of policy.
- Sec. 34-52. Public nuisance declared.
- Sec. 34-53. Inspection, investigation and testing.
- Sec. 34-54. Abatement of tree disease nuisances.
- Sec. 34-55. Procedure for removal of infected trees and wood.
- Sec. 34-56. Assessments.
- Sec. 34-57. Spraying and pruning trees.
- Sec. 34-58. Transporting certain types of wood.
- Sec. 34-59. Reporting discovery of tree disease.
- Sec. 34-60. Interference.
- Sec. 34-61. Oak and Elm trimming.
- Secs. 34-62 --34-80. Reserved.

##### Division 3. Planting of Trees on Public Property

- Sec. 34-81. Permission required.
- Sec. 34-82. Approved trees.
- Sec. 34-83. Planting requirements.
- Sec. 34-84. Tree size.
- Sec. 34-85. Protection of trees.
- Sec. 34-86. Removal or injury to trees.
- Sec. 34-87. Destruction of diseased trees.
- Sec. 34-88. Paving around trees.
- Secs. 34-89--34-110. Reserved.

#### Article III. Weed Elimination

- Sec. 34-111. Weeds declared a nuisance; duty of owner.
- Sec. 34-112. Notice; abatement and assessment.
- Sec. 34-113. Reserved.

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\***Cross reference(s)**--Buildings and building regulations, ch. 6; christmas trees, § 8-431 et seq.; tree maintenance, removal contractor, § 8-161 et seq.; environment and public health, ch. 12; parks and recreation, ch. 20; streets, sidewalks and other public places, ch. 24; abatement notices, § 24-344; abatement by city, § 24-345; subdivisions, ch. 26; design standards for tree preservation, § 26-159; zoning, ch. 36.

## VEGETATION

### **Article IV. Vegetation Maintenance**

- Sec. 34-114. Purpose.
- Sec. 34-115. Definitions.
- Sec. 34-116. Lawn Maintenance Requirements.
- Sec. 34-117. Exemptions.
- Sec. 34-118. Native Vegetation Permit.
- Sec. 34-119. Penalty.
- Secs. 34-120--34-209. Reserved.

### **Article V. Fertilizer Sales and Application**

- Sec. 34-210. Purpose.
- Sec. 34-211. Definitions.
- Sec. 34-212. Regulations for retail sale of commercial lawn fertilizers.
- Sec. 34-213. Regulations for lawn fertilizer applicators.

## ARTICLE I. IN GENERAL

**Secs. 34-1--34-30. Reserved.**

## ARTICLE II. TREES\*

### DIVISION 1. GENERALLY

**Secs. 34-31--34-50. Reserved.**

### DIVISION 2. CONTROL OF DISEASED, HAZARDOUS AND FALLEN TREES

#### **Sec. 34-51. Declaration of policy.**

The City Council has determined that the health of the trees within the municipal limits is threatened by tree diseases and pests. It is further determined that the loss of trees growing upon public and private property, the existence of hazardous trees, the failure to dispose of downed trees and the existence of limbs over streets and sidewalks substantially depreciate the value of property within the City and/or impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the Council to control and prevent these conditions, and this division is enacted for that purpose.

(Code 1976, § 6-201; Ord. No. 2257-03, § 1, 11-17-2003; Ord. No. 2355-08, 6-13-2008)

#### **Sec. 34-52. Public nuisance declared.**

The following are public nuisances wherever they may be found within the city:

- (1) Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus *Ceratocystis ulmi* (Buisman) Moreau or which harbors any of the elm bark beetles *Scolytus multistriatus* (Marsh) or *Hylurgopinus rufipes* (Eich.).
- (2) Any dead elm tree or part thereof including logs, branches, stumps, firewood or other elm material, the bark of which has not been removed, which is located within the city during the months of April through September of any year.
- (3) Any living or standing oak tree or part thereof infected to any degree with the oak wilt disease fungus *Ceratocystis fagacearum*.
- (4) Any fallen tree or tree limb located on a street, sidewalk or boulevard.
- (5) All limbs of trees which are less than twelve feet above the surface of any street or sidewalk.
- (6) Any tree or portion of a standing tree which is determined to be a hazardous tree by the City Forester because it endangers the public health, safety or welfare.
- (7) Any living or standing tree or part thereof infected to any degree with any injurious pest (disease or insect) which can infect, in potential epidemic proportions, other trees, compromising health and welfare of tree and if left untreated will cause tree failure and death.

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Cross reference – Nuisances, § 12-31 et seq.

\***State law reference(s)**--Shade tree disease control, M.S.A. § 18.023.

It is unlawful for any person to permit any public nuisance as defined in this section to remain on any premises owned by the person or upon any public boulevard or similar public property alongside the traveled portion of a street or alley abutting the private property owned by the person. Such nuisances shall be abated in the manner prescribed by this division.

(Code 1976, § 6-202, Ord. No. 2257-03, § 1, 11-17-2003; Ord. No. 2355-08, 6-13-2008)

**Sec. 34-53. Inspection, investigation and testing.**

The city manager shall cause all premises and places within the city to be inspected as often as practicable to determine whether any condition described in section 34-52 exists thereon, and to have investigated and tested all reported incidents of any infestation.

(Code 1976, § 6-203, Ord. No. 2257-03, § 1, 11-17-2003)

**Sec. 34-54. Abatement of tree nuisances.**

In abating the nuisances defined in section 34-52, any infected tree or wood shall be sprayed, removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of the disease. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans, and with the approval of appropriate city officials.

(Code 1976, § 6-204, Ord. No. 2257-03, § 1, 11-17-2003)

**Sec. 34-55. Procedure for removal of tree nuisances**

When it appears with reasonable certainty that any nuisance defined in section 34-52 exists, the owner shall be notified and ordered to remove the nuisance in a manner approved by the city manager. The owner has 20 days to advise staff of their course of action to remove the tree, along with an additional 20 days to actually remove the diseased tree. If the owner fails to comply with the order, the city manager may act to abate the nuisance. If the owner cannot be contacted, the city shall send notice by certified mail to the last known address of the owner of record and shall then proceed forthwith to abate the nuisance. Removal of any tree includes removal of the stump to eight (8) inches below grade and surface roots.

(Code 1976, § 6-205, Ord. No. 2257-03, § 1, 11-17-2003; Ord. No. 2290-05, 3-9-2005)

**Sec. 34-56. Assessments.**

Each year the clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this division. The council may then spread the charges or any portion of the charges against the property involved as a special assessment under M.S.A. ch. 429, and other pertinent statutes, for certification to the county auditor and collection the following year along with current taxes.

(Code 1976, § 6-206)

**Sec. 34-57. Spraying and pruning trees.**

Whenever it is determined that any tree or wood within the city is infested by any disease or insects, as described in section 34-52, the city may order the owners of all nearby high value trees to prune and to spray the trees with an effective preventive concentrate in a manner approved by the city manager. Upon failure to comply with such an order, the city may proceed forthwith to take appropriate action. Spraying activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the commissioner of agriculture, with the approval of appropriate city officials, and under the supervision of the commissioner and his agents whenever possible. Notice shall be given as provided in section 34-55.

(Code 1976, § 6-207)

**Sec. 34-58. Transporting certain types of wood.**

It is unlawful for any person to transport within the city any bark-bearing elm, wood or wood infested by disease or insects without having obtained a permit from the city, which shall grant such permits when the purposes of this division will be satisfied.

(Code 1976, § 6-208)

**Sec. 34-59. Reporting discovery of tree disease.**

Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of a tree disease or injurious pest as defined in Section 34-52, shall report the existence of such disease to the City.

(Code 1976, § 6-209; Ord. No. 2355-08, 6-13-2008)

**Sec. 34-60. Interference.**

City personnel may enter upon private premises at any reasonable time to carry out the purposes of this division. It is unlawful for any person to prevent, delay or interfere with city personnel while they are engaged in the performance of duties imposed by this division.

**Sec. 34-61. Oak and elm trimming.**

No person shall trim any oak or elm tree from May 1 to July 31 of each year, except for safety or in conjunction with building activity on the site.

(Ord. No. 2257-03, § 1, 11-17-2003)

**Sec. 34-62—34-80. Reserved**

## DIVISION 3. PLANTING OF TREES ON PUBLIC PROPERTY

**Sec. 34-81. Permission required.**

Application for permission to plant such trees shall be made to the director of parks and recreation, stating the variety and precise location proposed for each tree. After the receipt of such an application, the director shall investigate the locality where the trees are to be placed and shall grant a permit only if, in his judgment, the location is such as to permit the normal growth and development of each tree. The permission shall specify the location, variety and grade of each tree and method of planting, including, among other things, the supplying of suitable soil. The permission shall be good only for the season stated on it in the year issued, and no charge shall be made for such permission. No tree shall be planted except in accordance with its terms. The specifications of the permission shall be such as will secure the suitable location, planting and growth of each tree.

(Code 1976, § 6-221)

**Sec. 34-82. Approved trees.**

No trees shall be planted as street trees except by permission granted by the Director of Parks and Recreation.

(Code 1976, § 6-222; Ord. No. 2355-08, 6-13-2008)

**Sec. 34-83. Planting requirements.**

No permit for planting of such trees shall be given where the clear space between the curb and sidewalk is less than three feet. Neither shall a permit be given where the soil is too poor to ensure the growth of the trees unless the applicant or the owner agrees to excavate a suitable hole of not less than 54 cubic feet and to replace the material removed with suitable good loam.

(Code 1976, § 6-223)

**Sec. 34-84. Tree size.**

No such tree shall be planted measuring less than two inches in the diameter of its trunk one foot above the ground. The trunk of each tree shall be without branches eight feet from the ground, and the lowest branch shall not be over 9 1/2 feet from the ground.

(Code 1976, § 6-224)

**Sec. 34-85. Protection of trees.**

No building material, machines or equipment of any description shall be piled near any street tree unless such tree is first sufficiently protected by a proper guard and/or tree protection fencing as described in Section 36-364 to prevent possible injury, and all instructions issued for that purpose by the Director must be promptly complied with by the owner or contractor.

(Code 1976, § 6-225; Ord. No. 2355-08, 6-13-2008)

**Sec. 34-86. Removal or injury to trees.**

No person shall remove, destroy, cut, deface or in any way injure or interfere with any tree or shrub on any of the avenues, streets or public grounds, including parks and parkways of the city, without a permit from the director.

(Code 1976, § 6-226, Ord. No. 2257-03, § 2, 11-17-2003)

**Sec. 34-87. Destruction of diseased trees.**

With the approval of the city manager, the director shall have the power to destroy trees in streets if infected by disease, or infested by injurious insects, when such destruction is necessary to the protection of other trees.

(Code 1976, § 6-227)

**Sec. 34-88. Paving around trees.**

No paving of any description shall be laid or maintained by anyone between sidewalk and curb which will cut off the air and water from any tree. A space of not less than 50 square feet must be left open for each tree which space may be covered with suitable satisfactory iron grate upon a permit of the director, to whom the plan for such grate must be first submitted.

(Code 1976, § 6-228)

**Secs. 34-89--34-110. Reserved.**

**ARTICLE III. WEED ELIMINATION****Sec. 34-111. Weeds declared a nuisance; duty of owner.**

(a) Any weeds, whether noxious or not as defined by state law, or turf grass growing at a height greater than six inches upon any privately owned lot or tract of land in the city or upon any public boulevard or similar public property alongside the traveled portion of a street or alley abutting the private property are hereby declared to be a nuisance, except as authorized in Section 34-117. Turf grass is any type of vegetative grasses used for recreational or residential purposes.

(b) The owner or occupant of any such property or abutting property shall prevent the nuisance, and if the nuisance occurs, the owner or occupant shall cut and remove the weeds from the property or cut the turf grass to a height of less than six inches.

(Ord. No. 2258-03, 12-1-2003 Sec. 3; Ord. No. 2355-08, 6-13-2008)

**Sec. 34-112. Notice; abatement and assessment.**

(a) When an owner or occupant permits the nuisance to exist in violation of section 34-111, the city shall serve notice ordering abatement of the nuisance on the owner of the property. When no owner or agent of the owner can be found, notice shall be sent by certified mail to the person who is listed on the records of the county auditor or county treasurer as the owner. Services will be completed upon mailing.

(b) The notice shall order removal of the nuisance within two days after the service of the notice and shall also state that if the nuisance is not abated within the time allowed, the city will remove the nuisance at the owner's expense. If those expenses are not paid prior to the following September 1, the charge for the work will be made a special assessment against the property.

**Sec. 34-113. Reserved.****ARTICLE IV. VEGETATION MAINTENANCE**

**Sec. 34-114. Purpose.** The purpose of this Article is to establish minimum standards for lawn maintenance while recognizing that a variety of landscapes within a community adds diversity and richness to the quality of life for all residents. Turf grass lawns continue to be recognized as the dominant feature in the landscape; however, alternatives to this traditional type of lawn are recognized as important parts of a diverse and successful landscape. A parcel with proposed Native Vegetation that exceeds 800 square feet or exceeds 25% of parcel surface area will require a Native Vegetation Permit.

(Ord. No. 2355-08, 6-13-2008)

**Sec. 34-115. Definitions.** The following terms when used in this Article shall have the following meanings:

- (a) "Maintenance Plan" – a document submitted with an application for a Native Vegetation Permit demonstrating a precise course of maintenance for numerous individual plants in a landscape over months and seasons.
- (b) "Native Vegetation" – those indigenous trees, shrubs, wildflowers, grasses and other plants that have naturally adapted themselves to the climate and soils of the area but require cultivation and maintenance to remain viable.
- (c) "Native Vegetation Permit" – a permit issued by the City pursuant to this article allowing an owner or occupant to cultivate Native Vegetation upon his/her property. A Native Vegetation Permit exempts an owner or occupant from Section 34-116(c).

- (d) “Natural Habitat” – specially uncultivated, valued and sensitive habitat whereupon native vegetation exists in a pristine state and provides habitat for a variety of species native to the area. Such vegetation shall maintain itself in a stable condition with minimal human intervention.
- (e) “Noxious Weeds” – an annual, biennial, or perennial plant designated by state statute, the Minnesota Commissioner of Agriculture or the City Council as injurious to public health, the environment, public roads, crops, livestock, or other property.
- (f) “Rank Vegetation” – uncultivated vegetation growing at a rapid rate due to unplanned, unintentional, or accidental circumstances.
- (g) “Turf Grass” - cultivated vegetation consisting of a highly maintained surface of dense grass underlain by a thick root system.
- (h) “Weeds” – unsuitable, unwanted, or uncultivated vegetation, often causing injury to the desired vegetation type, excluding noxious weeds.

(Ord. No. 2355-08, 6-13-2008)

**Sec. 34-116. Lawn Maintenance Requirements.**

- (a) All lot areas not covered by buildings, designated parking areas, paths, driveways and impervious surface shall have planted Turf Grass, Native Vegetation, or combined ground cover of cultivated vegetation, garden, hedges, trees and shrubbery.
- (b) No owner or occupant of any lot shall allow any noxious weeds to grow on any part or portion of said lot.
- (c) No owner or occupant shall allow any Turf Grass, Weeds, or Rank Vegetation to grow to a height greater than six (6) inches on any lot or parcel of land.

(Ord. No. 2355-08, 6-13-2008; Ord. No. 2405-11, 10-28-11)

**Sec. 34-117. Exemptions.** The following land is exempt from the requirement of Section 34-116(c):

- (a) Vacant and unoccupied land consisting of a contiguous tract of one (1) acre, provided that Weeds, Turf Grass, Native Vegetation, and Rank Vegetation thereon are cut twice annually. The first cutting shall not be later than June 1, and the second cutting shall be made between July 15 and September 15.
- (b) Private lands designated by the City Council as Natural Habitat.
- (c) Public lands designated in the City’s Comprehensive Plan as Natural Habitat.
- (d) Native Vegetation, with a Native Vegetation Permit in accordance with Section 34-118.

(Ord. No. 2355-08, 6-13-2008)

**Sec. 34-118. Native Vegetation Permit.**

- (a) Permit. Upon satisfaction and completion of all the requirements of this section, the City Manager or designee shall issue a Native Vegetation Permit. A Native Vegetation Permit permits the permittee to cultivate Native Vegetation and exempts the property from Section 34-116(c). A Native Vegetation Permit shall be valid for five (5) years from the date of approval. The City Manager or designee shall not approve a Native Vegetation Permit for property with unresolved Code of Ordinance violations or administrative citations.
- (b) Application. The Application for a Native Vegetation Permit which shall be provided by the City Manager or designee shall contain the following:
  - (1) Statement of intent and purpose in cultivating Native Vegetation.
  - (2) Site plan showing lot lines, buildings, location of proposed Native Vegetation, the property's legal description, and corner visibility requirements as defined by Section 24-47 of the City Code.
  - (3) Latin and common names of the species the property owner or occupant plans to cultivate.
  - (4) Maintenance requirements for said species.
  - (5) Name and address of a professional landscaping company which has been hired to perform maintenance on the Native Vegetation; or the name, address, and qualifications of the person(s) who will be responsible for maintenance of the Native Vegetation.
  - (6) A Maintenance Plan, which shall contain the following:
    - a) Planting diagram showing the location and mature height of all specimens of Native Vegetation;
    - b) Detailed information on the upkeep of the plantings; and
    - c) Details of any long-term maintenance required for the Native Vegetation.
- (c) Revocation. The City Manager or designee may regularly inspect any property holding a Native Vegetation Permit for compliance with the Maintenance Plan on file with the City for the property. If any property is not in compliance with the Maintenance Plan, the permittee may be notified and ordered to bring the property into compliance with the approved permit within thirty (30) days. If the permittee falls to comply with the order, the City Manager or designee may:
  - (1) Revoke the Native Vegetation Permit;
  - (2) Remove all improperly maintained Native Vegetation;
  - (3) Declare the property ineligible for a Native Vegetation Permit, unless sold, for a period of two (2) years; and
  - (4) Assess the property for all costs associated with inspection of the property and any removal of improperly maintained Native Vegetation in accordance with Minnesota Statutes § 429.101.

(Ord. No. 2355-08, 6-13-2008)

**Sec. 34-119. Penalty.**

The violation of any provision of this Article is a misdemeanor and the violator shall be fined or penalized not more than the maximum levels established by the State of Minnesota for misdemeanor offenses. Each day on which the violation continues is a separate offense.

(Ord. No. 2355-08, 6-13-2008)

**Secs. 34-120--34-209. Reserved.**

**ARTICLE V. FERTILIZER SALES AND APPLICATION****Sec. 34-210. Purpose.**

Studies have determined that lake water quality is affected by the amount of lawn fertilizer and other chemicals entering the lakes as a result of storm water runoff or other causes. The purpose of this article is to define regulations which will aid the city in managing and protecting its water resources which are enjoyed by its residents and other users.

(Ord. No. 2227-02, § 1, 6-3-2002)

**Sec. 34-211. 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:]

*Commercial applicator* is a person who is engaged in the business of applying fertilizer for hire.

*Commercial retailer* is any person, firm, corporation, franchise or commercial establishment providing goods and services for sale to the general public.

*Fertilizer* "means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth. Fertilizer does not include animal and vegetable manures that are not manipulated, marl, lime, limestone, and other products exempted by rule by the state commissioner of agriculture.

*Noncommercial applicator* is a person who applies fertilizer during the course of employment, but who is not a commercial lawn fertilizer applicator.

(Ord. No. 2227-02, § 1, 6-3-2002)

**Sec. 34-212. Regulations for retail sale of commercial lawn fertilizers.**

Commercial retailers providing lawn fertilizers for sale to the general public are subject to the following regulations:

- (1) Phosphorous-free fertilizers shall be made available for sale in adequate amounts at all locations in the city.
- (2) Phosphorous-free fertilizer and fertilizer with phosphorous must be separately displayed and clearly marked as to whether or not the fertilizer contains phosphorous.
- (3) A sign or brochure containing regulations and information about use of fertilizers containing phosphorous will be provided by the city and shall be prominently posted next to any fertilizer display.

(Ord. No. 2227-02, § 1, 6-3-2002)

**Sec. 34-213. Regulations for lawn fertilizer applicators. \***

Commercial and noncommercial lawn fertilizer applicators are subject to the following regulations:

- (1) Lawn fertilizer applicators shall permit the city to sample any commercial lawn fertilizer applications to be applied within the city at any time.
- (2) All commercial or noncommercial lawn fertilizer applicators shall, upon request of the city, produce a copy of the product material data safety sheet of the lawn fertilizer used for any fertilizer application.
- (3) Commercial and noncommercial lawn fertilizer applicators shall comply with the provisions of the state fertilizer and soil conditioner law as contained in M.S.A. §§ 17.711--17.729 and amendments thereto; and with pesticide control provisions as contained in the M.S.A. ch. 18B.
- (4) All commercial and noncommercial lawn fertilizer applicators who apply fertilizers to turf areas must post or affix signs on the property where the fertilizer is applied. The signs shall comply with the following criteria and contain the following information:
  - a. The signs must project at least 18 inches above the top of the grass line. The signs must be of a material that is rain resistant for at least a 24-hour period and must remain in place up to 24 hours from the time of initial application.
  - b. The following information must be legibly printed on the signs in letters no less than one-half inch high:
    1. The name of the business, entity, or person applying the fertilizer; and
    2. The following language: "This area was fertilized on (date of fertilizer application). For questions please call (phone number of business, entity or person applying the fertilizer)". The signs may include the name of the fertilizer used and indicate phosphorous content of the fertilizer.
    3. The sign must be posted on a lawn or yard between two feet and five feet from the sidewalk or street. For parks, golf courses, athletic fields, playgrounds, or other similar recreational property, the signs must be posted immediately adjacent to areas within the property where fertilizer has been applied and at or near the entrance to the property.

(Ord. No. 2227-02, § 1, 6-3-2002)

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**\*Editor's note--**Section 3 of Ord. No. 2227-02, adopted June 3, 2002, provided that § 34-213 of the Code shall take effect January 1, 2004.