CHAPTER 35.

PARKS AND RECREATION.[1]

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Article I. In General.

Sec. 35-1. Injury, defacing, etc., of structures, etc., prohibited.

(a) No person shall cut, break or in any way injure or deface any of the buildings, fences, structures, improvements, or any other city property or any trees or shrubbery upon or within any of the parks of the city or any of the roads or road ways constructed upon or across such parks;

(b) No person shall dig, excavate, or disturb any earth or turf without written permission of the director of parks and recreation;

(c) No person shall damage or cause to be damaged, either directly or through the use of a vehicle, any turf, sod, grass or shrubbery in any park;

(d) Any person convicted of a violation of this Section shall make restitution to the city for damage done and any judge sentencing such person may order restitution as a part of the sentence. (Ord. No. 2, 10-5-1891, § 1; Ord. No. 3, 8-26-1892, § 1; Ord. No. 8545, 11-10-1980, § 1.)

Sec. 35-2. Animals running at large, animal control.

(a) No dogs, cats or other domestic pets, or cattle, horses, mules, swine, sheep, goats or fowl shall be turned into or allowed to run at large upon any park. Dogs, cats and other domestic pets shall be considered to be at large if they are not under control of the owner or other responsible person by means of a leash of suitable strength not exceeding six feet in length;

(b) The director of parks and recreation may designate any park or area in a park as prohibited to pets or other animals. Any area so designated shall be clearly marked by signs indicating such prohibition. No person owning, controlling or caring for any animal shall allow such animal to enter any park area where such animal is prohibited. (Ord. No. 3, 8-26-1892, § 6; Ord. No. 8545, 11-10-1980, § 2.)

Sec. 35-3. Fastening animals to fences, trees, etc., prohibited.

No person shall tie or fasten any animal to any fence, building, railing, tree, shrub or plant in or upon any park in the city. (Ord. No. 3, 8-26-1892, § 2.)

Sec. 35-4. Bills--posting prohibited without permission.

No person shall post, paste, paint or affix any placard, bill, notice or sign upon any structure or thing within any park or upon any of the fences or enclosures thereof unless he has received written permission to do so from the director of parks and recreation. (Ord. No. 3, 8-26-1892, § 3; Ord. No. 8545, 11-10-1980, § 3.)

Sec. 35-5. Advertising material--distribution prohibited without permit.

No person shall distribute any circulars, cards or other printed or written matter which contains a commercial message or advertising in any park within the city without first receiving written permission from the director of parks and recreation. The director may withhold such permission or require a cleanup deposit as a condition of such permission if he finds the distribution of such materials would cause a substantial litter problem or otherwise adversely affect public enjoyment of the park in a significant manner. (Ord. No. 3, 8-26-1892, § 4; Ord. No. 8545, 11-10-1980, § 4.)

Sec. 35-6. Vehicles, parking and recreational trails and paths.

(a) For the purpose of this Section, words used herein shall have the meanings respectively ascribed to them in sections 33-1 and 33-224 of this Code;

(b) No person shall operate any motor vehicle or bicycle or ride a horse in any area of any park except on the roadway portion of streets, or highways, or parking areas in such park. Notwithstanding the above, the city council may establish special trails or paths for use by snowmobiles, bicycles, hikers, horseback riders, cross-country skiers or snowshoers. As authorized by M.S.A. Sec. 85.018, or M.S.A. Sec. 84.92 - Sec. 84.929, or its successor, (where applicable), the city council may regulate traffic on these trails including, but not limited to, designating direction of traffic flow and speed limits on the trail and prohibiting certain vehicles or modes of travel on the trail. These trails or paths shall be clearly marked with signs which specify what type of vehicle is permitted and set forth other traffic restrictions. No person shall operate any nonpermitted vehicle on any specially designated path or trail or violate any of the traffic regulations (see Section 45-6.3);

(c) When any motor vehicle is found parked and unattended off of the roadways or parking areas in any park, the director of parks and recreation or his designee or any police officer may remove such vehicle by having it towed away, as authorized by M.S.A. Sec. 169.041, et. seq., or its successor;

(d) When any park is closed to the public pursuant to the provisions of this Chapter or by order of the director of parks and recreation, no person shall park a motor vehicle or allow a motor vehicle to remain parked in such park after such closing hour except in an after-hours parking area established by the director of parks and recreation. The director of parks and recreation or any police officer may tow any vehicle found parked and unattended in such park in any area other than an after-hours parking area. No person other than a fisherman, boater or person with a special permit to use the park after-hours shall park in any after-hours parking area after the park is closed. For the purposes of this Section, the record owner of a motor vehicle shall be prima facie responsible for parking violations. (Ord. No. 3, 8-26-1892, § 5; Ord. No. 8545, 11-10-1980, § 5; Ord. No. 8895, 5-31-1988, § 1; Ord. No. 8943, 5-22-1989, § 1; Ord. No. 9357, 12-15-1997, § 1; Ord. No. 9644, 2-2-2004, § 1.)

Secs. 35-6.1 to 35-6.3. Repealed by Ordinance No. 8545, 11-10-1980, § 10.

Sec. 35-7. Setting fires, prohibited.

(a) Except as provided in this Section, no person shall start or maintain any fire or hot coals in any park other than in designated park grills or privately owned grills suitable for the purpose for which they are used;

(b) The director of parks and recreation may allow, by written permit, other fires in parks provided that he finds:

(1) That the fire will not endanger persons or property and will be adequately tended;

(2) That the fire will not be a nuisance or inconsistent with public enjoyment of the park;

(3) That the applicant for the permit has received all necessary permits from the Duluth fire chief;

(c) The director of parks and recreation or the fire chief may ban all burning, including burning in grills, in parks at times of high fire danger. (Ord. No. 2, 10-5-1891, § 4; Ord. No. 3, 8-26-1892, § 7; Ord. No. 8545, 11-10-1980, § 6.)

Sec. 35-8. Prohibited activities.

Within any public park, no person shall:

(a) Discharge any firearm, air gun, crossbow, bow and arrow, slingshot or other missile firing device, provided that the director of parks may, by written permit, authorize archery exhibitions and contests;

(b) Do any hunting or trapping or in any other manner disturb or injure or attempt to disturb or injure any animal, including birds;

(c) Urinate or defecate anywhere but in a proper toilet facility;

(d) Throw, deposit or place or cause to be thrown, deposited or placed any papers, bottles, cans or any other garbage or waste at any place except into a trash container;

(e) Tip over any trash container or otherwise cause the contents of a trash container to be deposited on the ground;

(f) Carry any garbage or solid waste into any park for the purpose of disposing of the same in trash containers in the park;

(g) Place any garbage or solid waste in trash containers in the park if such garbage or solid waste was generated by activities occurring outside the park;

(h) Dump any garbage, solid waste or earth in any stream, lake or pond in or adjacent to any park;

(i) Possess any glass beverage container while outside of a motor vehicle;

(j) Consume alcoholic beverages or possess opened or unopened alcoholic beverages unless:

(1) An alcohol consumption permit has been issued for the area pursuant to Section 35-9(a)(4); or

(2) An on sale license has been issued for the area pursuant to Chapter 8 of this Code; or

(3) An unopened container of alcoholic beverages is being transported through the park on a thoroughfare that runs through the park; or

(4) An unopened container of alcoholic beverages is being transported through the park to a boat launch in the park on a road that leads directly to the boat launch. (Ord. No. 2, 10-5-1891, §§ 1, 2; Ord. No. 3, 8-26-1892, §§ 8, 9; Ord. No. 8545, 11-10-1980, § 7; Ord. 8805, 9-22-1986, § 1; Ord. No. 8942, 5-22-1989, § 1.)

Sec. 35-9. Regulatory authority of the director of parks and recreation; permits and fees.

(a) The director of parks and recreation may issue permits authorizing the following activities in public parks. No person shall engage in the activities mentioned below without first securing a permit to do so from the director of parks and recreation;

(1) Large picnics. Any picnic where it is reasonably anticipated that 40 or more persons will be in attendance shall require a permit. Such permit shall grant the permittee nonexclusive use of the park facilities named in the permit during the time for which the permit is effective. The director of parks and recreation may require a clean-up deposit to insure the affected area is properly policed after the picnic;

(2) Commercial operations. No commercial enterprise of any kind, including those involving the sale or leasing of any personal property or service, shall be allowed in any public park without a permit. The director of parks and recreation may impose reasonable restrictions on hours of operation, types of goods or services sold or leased, stands and other physical apparatus used, and any other aspect of the operation he deems necessary to restrict. A clean-up deposit and/or insurance may also be required in appropriate cases. Such permits shall grant only nonexclusive use of park space;

(3) Special events and performances. Theatrical and musical performances, displays, exhibits, shows, parades, use of any sound amplification device, fairs, meetings attended by over 40 persons, and other special events of a similar nature shall require a permit. The director of parks and recreation may impose restrictions on time and place of such events, may require a clean-up deposit and/or insurance, additional sanitary facilities, security personnel, and any other conditions or restrictions he deems necessary. Permits shall be nonexclusive;

(4) Alcoholic beverages. Notwithstanding the provisions of Chapter 8 of the Code, the director of parks and recreation may grant persons or groups the right to consume alcoholic beverages in a public park in conjunction with a stated activity that is taking place in the park. The director of parks and recreation may impose any restrictions or conditions he deems necessary to secure public safety and order;

(5) Use of buildings. The director of parks and recreation may authorize, by written permit, exclusive or nonexclusive use of all or part of any structure under his control. In such permit, the director of parks and recreation may require a clean-up deposit and/or insurance, security personnel and any other conditions or restrictions he deems necessary;

(b) Applications for permits required by this Article shall be made in writing to the director of parks and recreation on forms provided by him and shall be made at least one week before the activity which is the subject of the permit is to occur. All permits issued shall be in writing, shall state the dates and times for which the permit is effective, and shall state any restrictions or conditions of the permit. A schedule of permit fees for each type of permit shall be established by city council resolution to cover costs in issuing permits and any extraordinary expenses incurred by the city because of the activity. Permit fees shall be submitted with the permit application;

(c) The director of parks and recreation shall issue a permit only if he finds that the permitted activity:

(1) Is consistent with public use and enjoyment of the park; and

(2) Will not endanger persons using the park or any property in the park; and

(3) Will not be a nuisance or an unreasonable disturbance to the neighborhood surrounding the park;

(d) Any person denied a permit by the director of parks and recreation may appeal such decision to the city council by giving written notice of such appeal to the director of parks and recreation within ten days after receiving notice of the permit denial. The city council shall promptly hear the appeal and grant or deny the permit. The city council shall apply the standards set forth in Subsection (c) of this Section in deciding the appeal. (Ord. No. 8545, 11-10-1980, § 8.)

Sec. 35-9.1. User fees for parks and recreation operations and programs.

The parks and recreation department may charge user fees, rental fees and penalties in conjunction with all of its programs and operations. The types and amounts of fees charged shall be set by council resolution. (Ord. No. 8845, 11-10-1980, § 10; Ord. No. 8926, 2-6-1989, § 1.)

Sec. 35-9.2. Establishment of camping areas and governing rules, regulations and fees.

The city council may, by resolution, designate certain areas within the public parks of the city as permitted camping areas and may establish rules, regulations and a schedule of user fees governing the use of such areas for camping purposes. Such rules, regulations and fee schedule shall be posted by the director of parks and recreation at conspicuous places at each of the areas designated for camping during the periods when such rules, regulations and fee schedules are in effect.

No person shall park any vehicle, set up any tent or make use of any sleeping equipment for camping or sleeping purposes within any of the public parks of the city except within those areas designated for camping as provided in this Section, and then only after paying required camping fees and complying with the rules and regulations for use of such areas established as provided in this Section. (Ord. No. 7863, 8-9-1971, § 1; Ord. No. 8545, 11-10-1980, § 9.)

Sec. 35-9.3. Use of parks between certain hours prohibited without prior registration, exceptions.

Except as provided herein, no persons shall enter or remain in any public park or public recreation area, except Canal Park, between the hours of 12:00 midnight and 6:00 a.m. on any day. No event at Bayfront Festival Park shall terminate later than 11:00 p.m. on Sunday through Thursday of any week, and no later than 11:59 p.m. on Friday and Saturday of any week.

The director of parks and recreation of the city is hereby authorized to close any public park or public recreation area between the hours of 10:00 p.m. and midnight, or any part of such time period, by posting appropriate signs to such effect at such park or recreation area, and in such case, no person shall enter or remain in such park or recreation area during such hours.

Provided, however, that before exercising his authority pursuant to this paragraph, the director of parks and recreation shall file notice with the city council of his intention to do so at least three days prior to a council meeting and, if the council does not disapprove such action by resolution adopted no later than the second council meeting after such notice is filed, the director may then proceed to implement the closing of the park.

Except for Bayfront Festival Park, the director of parks and recreation of the city is hereby authorized to suspend the provisions of the first and second paragraphs of this Section with respect to any park or recreation area for special events or occasions.

The provisions of this Section shall not be applicable to law enforcement personnel, nor to employees of the city while carrying out duties within the scope of their employment with the city.

The provisions of this Section shall not be applicable to any person if such person or a group of which such person is a member or guest has received a permit to be in such park or recreation area during such time from the director of parks and recreation of the city. The director of parks and recreation shall issue permits authorizing use of public parks or public recreation areas during the hours such parks or recreation areas are closed pursuant to this Section to all persons or groups requesting such permits; provided, however, that any person or any group including any person who has been convicted of violating any law while in a public park or public recreation area during such hours, shall not be issued such a permit for a period of one year after such conviction.

The provisions of this Section shall not be applicable to any person while he is making use of any park or recreation area for fishing or boating purposes, or to any person while driving a vehicle on a park road for purposes of passing through such park, or to any person while a passenger in or on such a vehicle.

Any permit holder exceeding the termination time for Bayfront Festival Park shall be subject to additional fees which shall be set by resolution in accordance with Section 31-6(a) of the Code. (Ord. No. 8049, 2-25-1974, § 1; Ord. No. 8054, 3-18-1974, § 1; Ord. No. 8069, 5-20-1974, § 1; Ord. No. 9924, 7-28-2008, § 1.)

Sec. 35-9.4. Park patrol.

The chief of police shall have the power to appoint persons to a park patrol. Members of said park patrol shall serve at no expense to the city and shall be vested with the power to patrol city parks to guard against vandalism and insure that the provisions of this Chapter, park rules and regulations, and other provisions of the Duluth City Code are not violated in said parks. Members of the park patrol may wear a park patrol badge while engaging in actual patrol duties. (Ord. No. 8213, 3-22-1976, § 1.)

35-9.5 Memorial Program.

(a) The Parks and Recreation Department may establish, maintain, and enforce a memorial program applicable to City-owned parks and green spaces. Such memorial elements may include, but not be limited to, benches, bricks, picnic tables, and trees placed within parks and green spaces.
(b) The Parks and Recreation Manager will authorize the final selection, design, location, installation, and maintenance of memorial elements.
(c) Fees associated with memorial elements shall be established in accordance with Section 31-8. Fees are intended to cover costs to be incurred by the City in purchasing, installing, and maintaining the memorial elements during their useful life. Fees are not intended to and do not cover replacement costs for memorial elements.
(d) All memorial elements become City property. Memorial elements will be reasonably maintained for their useful life.
(e) The City is not responsible for damage or theft. The City may not repair or replace damaged or stolen memorial elements.
(f) The City may temporarily or permanently remove or relocate memorial elements when it determines they interfere with site safety, maintenance standards, parks planning, master planning, or construction activities.
(g) Parks and green spaces are not collectively memorial parks. Floral tributes or any other memorabilia are not permitted within a park or green space and/or on or near a memorial element without prior approval from the Parks and Recreation Manager. The City may, at its own discretion, remove and discard any such items. (Ord. No. 10721, 11-23-2020, § 1.)

Article II. Fairmount Park Zoo.[2]

Sec. 35-10. Established.

A zoological garden and amusement park is hereby created and established at Fairmount Park in the city, to be known as the Fairmount Park Zoo, for the amusement, convenience and accommodation of the public. (Ord. No. 4558, 12-16-1929, § 1.)

Sec. 35-11. Fees for admission.

(a) Repealed by Ord. No. 9017, 1-22-1991, § 1, and Resolution 95-0034, 1-17-1995;

(b) Repealed by Ord. No. 9017, 1-22-1991, § 1, and Resolution 95-0034, 1-17-1995;

(c) The rates set forth in this Section shall be in effect until they are modified by city council resolution. A city council resolution modifying said rates shall have the effect of repealing subsections (a) and (b) above and subsections (a) and (b) shall be deleted from the City Code after the passage of any such rate amending resolution. (Ord. No. 7198, 4-6-1959, § 1; Ord. No. 7385, 3-9-1964, § 1; Ord. No. 7460, 5-10-1965, § 1; Ord. No. 7554, 11-21-1966, § 1; Ord. No. 7972, 2-12-1973, § 1; Ord. No. 8551, 11-24-1980, § 17; Ord. No. 8630, 5-3-1982, § 1; Ord. No. 8657, 4-11-1983, § 1; Ord. No. 8820, 12-29-1986, § 1; Ord. No. 8929, 2-27-1989, § 1; Ord. No. 9017, 1-22-1991, § 1.)

Sec. 35-11.1. Repealed by Ordinance No. 9017, 1-22-1991, § 2.

Article III. Public Golf Courses.

Sec. 35-12. Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Clubhouse. A building on the golf course used as the operational headquarters, golf shop, food/beverage space, locker rooms and lavatories and the grounds and benches immediately adjacent thereto.

Golf course. Any golf links owned and operated by the city for the playing of the game of golf, the practice thereof and for golf exhibitions.

Vehicle. Every device in, upon or by which any person or property is or may be transported or drawn, whether said device is propelled on wheels, skids, skis, or is animal drawn or self-propelled. Exception is made herein for golf carts and vehicles owned or in the service of the city of Duluth.

Golf course supervisor. Individual(s) responsible for the grounds, maintenance, and use of the golf course under the direction of the parks and recreation director or appointee. The supervisor may be either a City employee or employed or contracted by a third-party service provider.

(Ord. No. 6991, 2-14-1955, § 2; Ord. No. 7487, 9-27-1965, § 2; Ord. No. 9330, 5-12-1997, § 1.Ord. No 10764, 9-13-2021, §2)

Sec. 35-13. Official opening and closing of courses.

The official opening and closing of the city golf courses shall be declared by the director of parks and recreation. (Ord. No. 6991, 2-14-1955, § 3.)

Sec. 35-14. Registration with starter; payment of fees.

No person shall play golf upon any municipal golf course or enter upon any such golf course as a spectator, for the purpose of accompanying any player about the course or for any other purpose

[2]As to zoological gardens administered by zoological society, see Laws 1961, Chapter 91.

whatever, other than to perform work ordered by the department of parks and recreation, without first registering with the starter and paying the green fee or exhibiting his season ticket or all other fees that may be required to be paid for the use of the course, such as special fees for tournaments, exhibitions or special events.

The golf course supervisor may authorize the admission of spectators upon the golf courses when tournaments, exhibitions or special events are being conducted, upon such terms and conditions as the golf course supervisor may prescribe.

In addition to all other penalties provided by law, any person who goes upon any golf course in violation of the terms of this Section and who persists in remaining thereon after being requested to leave may be ejected therefrom forthwith. (Ord. No. 6991, 2-14-1955, § 3. Ord. No. 10764, 9-13-2021, §1)

Sec. 35-15. Council to establish oversight green fees, season ticket fees, etc.

The green fees, season ticket fees and other special fees to be paid for the use of the golf course in the city shall be set by the golf course supervisor under the direction of the parks and recreation director as described in an applicable Council-approved service agreement. Fees shall represent a reasonable price point for financially accessible and sustainable public golf (Ord. No. 6991, 2-14-1955, § 3. Ord. No. 10764, 9-13-2021, §1)

Sec. 35-16. Repealed by Ordnance 10764, 9-13-2021

Sec. 35-17. Repealed by Ordnance 10764, 9-13-2021

Sec. 35-18. Repealed by Ordnance 10764, 9-13-2021

Sec. 35-19. Repealed by Ordnance 10764, 9-13-2021

Sec. 35-20. Same--Conditions.

The conditions for selling, issuing, using or revoking golf tickets shall be set and enforced by the golf course supervisor under the directions of the parks and recreation director. Any applicable City Ordinance or golf policy shall apply. (Ord. No. 6991, 2-14-1955, § 3.Ord. No. 10764, 9-13-2021, §1)

Sec. 35-21. Repealed by Ordnance 10764, 9-13-2021

Sec. 35-22. Practice on golf course, practice greens, etc.

Practice time on the golf courses, practice greens or practice areas shall be allowed only at the discretion of the golf course supervisor under the direction of the parks and recreation director. No person shall practice on such golf course, practice green or practice area until such permission has been granted via the appropriate authorizing person(s). (Ord. No. 6991, 2-14-1955, § 3. Ord. No. 10764, 9-13-2021 §1)

Sec. 35-23. Repealed by Ordnance 10764, 9-13-2021

Sec. 35-24. Control and supervision of golf courses.

The control and supervision of the golf courses shall be under the parks and recreation director or designee. The director is hereby authorized to establish reasonable rules and regulations governing the use of the golf courses and the buildings thereon and to appoint golf course supervisors and others to manage and maintain the golf courses. The parks and recreation director may authorize alternate uses of all or portions of the golf course when doing so will not interfere with play, conditions, or maintenance of the course. Any rules and regulations established by the director shall be binding only when not inconsistent with the provisions of this Article (Ord. No. 6991, 2-14-1955, § 4. Ord. No. 10764, 9-13-2021 §1)

Sec. 35-25. Restrictions as to use of golf course.

In addition to all other sections of this Chapter and other applicable law; No person on a golf course shall:

(a) Post or display any sign, banner or advertisement, write upon, cut, mutilate, deface or otherwise, disturb any building, bench, ornament, flowers, trees or other property upon such golf course. No person shall commit any depredation in or upon any golf course;

(b) Sell or beg upon such golf course without the authority of the city council

(c) Permit or allow any dog or other domestic animal in or upon any golf course except during the Winter season, when the course is fully covered in snow. No domestic pets or animals may be allowed to run at large on any area of the golf course at any time as described in Sec. 35-2;

(d) Hunt for, take or carry away from any such golf course or from any public place adjacent to such golf course any golf ball without the permission of the golf course supervisor or other authorized employee, exception is hereby provided for the owner of a lost golf ball;

(e) Attempt to sell any golf ball or other golf or recreational supplies or accessories relevant to the recreational amenities offered in, on or about any such golf course, or public property adjacent thereto except those persons duly licensed to do so by the department of parks and recreation under the authority of the city council;

(f) Remain or stand nearer than 100 feet to the fairway of any such golf course during the progress of any golf game upon such golf course. This Section shall not apply to persons actually taking part in any golf game, nor to official caddies acting under the authority of the golf course supervisor or other person in charge of the course, nor to persons attending any exhibition or other special event or tournament under authority of the golf course supervisor or the municipal golf division;

(g) Hunt, molest, harm, frighten, kill, trap, chase, tease, shoot or throw missiles at any wild animal, reptile or bird on or adjacent to any golf course;

(h) Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream or other body of water in or adjacent to any golf course in the city any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters. Nor shall any person bathe, swim or wade in such waters, other than to retrieve ~~his~~ their golf ball;

(i) Ride, drive or operate any vehicle on the golf courses of the city, including the service roads on such golf courses, except to perform work ordered by the department of ~~public~~ parks and recreation or in the course of use by individual players. Exception is hereby made when the director of parks and recreation or designee designates areas for temporary or seasonal operation of vehicles;

(j) Park any vehicle in other than established or designated parking area. Such use shall be in accordance with the posted directions thereat and with the instructions of the golf course supervisor or other authorized recreation department employee. Failure to obey the regulations of this paragraph shall subject the violator or the owner of the vehicle wrongfully parked to the expense of removing such vehicle in addition to any other penalty provided in this Code;

(k) Enter upon or use the golf course or the facilities thereon during times other than the regular golf season as a place of recreation or other use, except when approval from the parks and recreation director is thereby given;

(l) Expose or offer for sale any article or thing or station or place any stand, cart or vehicle for the transportation, sale or display of any article or thing on such golf course. Exception is hereby made to those persons duly licensed to do so by the department of parks and recreation under the authority of the city council; In addition to any other penalties provided in this Code, a person violating any of the provisions of this Section shall pay the cost of repairs or replacement resulting from such violation. (Ord. No. 6991, 2-14-1955, § 5; Ord. No. 7487, 9-27-1965, § 3; Ord. No. 9330, 5-12-1997, § 2; Ord. No. 9735, 7-11-2005, § 1. Ord. No. 10764, 9-13-2021, §1)

Article IV. Tree Regulations.

Sec. 35-26. Definitions.

For the purpose of this Article the following terms shall have the meanings hereinafter ascribed to them:

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

(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;

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

(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;

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

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

(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 including boulevards;

(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;

(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;

(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;

(k) Vegetation. Trees, shrubs, bushes and other perennial plant life with woody, above-ground stems. (Ord. No. 8164, 7-14-1975, § 1; Ord. No. 10062, 11-22-2010, § 2.)

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. (Added by Ord. No. 10062, 11-22-2010, § 3.)

Sec. 35-27. Tree inspector.

(a) It shall be the duty of the director to coordinate all activities of the city related to this Article. The director shall designate the city forester, or the successor to the responsibilities of that position, and such other city employees as the director shall deem appropriate as tree inspectors for the city 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. (Ord. No. 8164, 7-14-1975, § 1; Ord. No. 8396, 5-1-1978, § 1; Ord. No. 8891, 5-16-1988, § 1; Ord. No. 10062, 11-22-2010; § 4.)

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

(a) Except as provided for in Section 35 – 27.2 below, 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. (Ord. No. 10062, 11-22-2010, § 5. Ord. No. 10516, 7-17-2017, §1)

Sec. 35-27.2 License – exception

The provisions of section 35-27.1, except the provisions of subsection (b)(3) and (5), shall not apply to a contractor performing maintenance or removal of trees including fallen trees, tree branches or stumps pursuant to a contract with the city when the chief administrative officer shall have certified to the city council that the amount of work to be done or the time frame within which the public interest requires such work to be done requires the contract to be made available to contractors other than those licensed under this Article. (Ord. No. 10516, 7-17-2017, §2)

Sec. 35-28. Planting and damaging vegetation on public property.

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

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

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

(3) 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) 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. (Ord. No. 8164, 7-14-1975, § 1; Ord. No. 8396, 5-1-1978, § 2; Ord. No. 8891, 5-16-1988, § 2; Ord. No. 10062, 11-22-2010, § 6.)

Sec. 35-29. Construction activities affecting trees on public property.

(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. (Ord. No. 8164, 7-14-1975, § 1; Ord. No. 8396, 5-1-1978, § 3; Ord. No. 8891, 5-16-1988, § 3; Ord. No. 10062, 11-22-2010, § 7.)

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. (Ord. No. 10062, 11-22-2010, § 8.)

Sec. 35-30. Regulations relating to trees, shrubs and plants on private property.

(a) The tree inspector shall have the authority, and it shall be his duty to order the trimming, treatment or removal of trees, shrubs or plants upon private property when he shall find such action necessary to public safety or to prevent the spread of disease or insects to trees, shrubs or plants located on public property;

(b) Any tree or shrub situated upon private property, but so situated as to extend its branches over the improved portion of a public street or highway easement, shall be so trimmed by the owner of the real property upon which the same is located that there is a clear height of 14 feet over that portion of such easement that is used for vehicular traffic, and a clear height of ten feet over that portion of such easement used for pedestrian travel, unobstructed by branches, and such persons shall remove the dead or diseased branches or stubs of such trees which are or may become a hazard to the public use of such easement;

(c) All orders to trim, remove or treat trees, shrubs or plants given pursuant to this Section shall be in writing and shall be served personally or by mail upon the owner of the property where such trees, shrubs or plants are located. Such orders shall give the owner of the property not less than ten days from the date of delivery or mailing of such notice to comply with such order. It shall be unlawful for an owner of property receiving such an order to fail to comply with such order within the specified time;

(d) If the required action is not taken by the property owner within the specified time, the tree inspector may cause the trees, shrubs or plants concerned to be trimmed, removed or treated, with the costs being borne by the property owner. If not voluntarily paid to the city by such owner, the costs of such trimming, removal or treatment may be recovered by the city by special assessment upon the property of said owner. On or before July 1 of each year, the tree inspector shall send to the city assessor a list of all unpaid charges under this Section and the assessor shall prepare and transmit to the city council an assessment roll spreading such charges against the appropriate properties. The council, after a public hearing upon at least ten days' notice by certified mail to all affected property owners, and after making whatever corrections in such assessment roll that are deemed appropriate, may confirm such assessment roll by resolution. Immediately thereafter, notice of the confirmed assessment and its amounts shall be sent by the city clerk by certified mail to the owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date will render the assessment delinquent. On or before the tenth of October of each year, the city assessor shall file with the county auditor a certified statement of all assessments delinquent under this Article, describing the land affected and giving the amount of the assessment, with a penalty added, which penalty shall be set in accordance with Section 31-8 of this Code, after which the assessment shall follow the provisions of Section 70 of the City Charter. The provisions of sections 64 through 67 of the City Charter shall apply to assessments made under this Article. (Ord. No. 8164, 7-14-1975, § 1; Ord. No. 8396, 5-1-1978, § 4; Ord. No. 8891, 5-16-1988, § 4; Ord. No. 10155, 5-29-2012, § 16.)

Sec. 35-30.1. Heritage trees.

(a) Any citizen or resident of the city may submit a nomination to the natural resources 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. (Ord. No. 10062, 11-22-2010, § 9. Ord. No. 10612, 2-25-2019, §5)

Sec. 35-31. Transporting or storing infectious plant materials.

(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. (Ord. No. 8164, 7-14-1975, § 1; Ord. No. 8396, 5-1-1978, § 5; Ord. No. 8891, 5-16-1988, § 5; Ord. No. 10062, 11-22-2010, § 10.)

Sec. 35-32. Appeals to director.

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. (Ord. No. 8164, 7-14-1975, § 1; Ord. No. 8396, 5-1-1978, § 6; Ord. No. 8891, 5-16-1988, § 6; Ord. No. 10062, 11-22-2010, § 11.)

Sec. 35-33. Penalties and damages.

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. (Ord. No. 8164, 7-14-1975, §1; Ord. No. 8396, 5-1-1978, §7; Ord. No. 8891, 5-16-1988, § 7; Ord. No. 10062, 11-22-2010, § 12.)

Sec. 35-34. Repealed by Ordinance No. 10062, 11-22-2010, § 13.