

Section 1405 – Trees, Turf Grass, Weeds, Ornamental Grass, Evergreens, Shrubs, Native or Non-Native Plants and Natural Areas in the Right-of-Way

1405.01 Purpose. The purpose of this Section is to prevent the indiscriminate pruning and removal of trees and to establish standards for the preservation, planting, and replacement of trees on the right-of-way. The importance of trees is recognized for their shade, cooling, noise and wind reduction, soil erosion prevention, oxygen production, dust filtration, carbon dioxide absorption, carbon storage, water storage, evapotranspiration, aesthetic and economic enhancement of all real property, and their contribution to the general being of the residents of Brainerd.

The purpose of this Section is to establish standards for turf grass in the public right-of-way and also to permit alternative to turf grass in the public right-of-way. Turf grass is recognized as the preferred feature in a property's landscape. However, permitting turf grass alternatives helps the environment, adds visual diversity, and enriches the quality of life for residents. While permitting turf grass alternatives is beneficial, it is recognized to protect the public health, safety, and welfare, limitations on turf grass alternatives are necessary.

1405.03 Coniferous and Deciduous Trees, Turf Grass, Weeds, Ornamental Grass, Sedges, Evergreens, Shrubs, Native or Non-Native Plants and Natural Areas in the Right-of-Way. The following Sections regulate planting, care, preservation, and removal of trees, shrubs, and other vegetation on the City of Brainerd's rights-of-way as follows:

1405.05 Definitions.

- A. "Right-of-Way" means the entire width between boundary lines when any part thereof is open to the use of the public as a matter of right for the purpose of vehicular or pedestrian traffic.
- B. "Natural Area" means an area that was purposely left to grow in a natural state and can maintain itself in a stable condition without human intervention and can contain trees, shrubs, evergreens, and/or native plants.
- C. "Native Plant Landscape Area" means an area where native plants are being or have been planted in a designated area. A native plant landscape area does not include gardens.
- D. "Organic Material Mulch" means shredded wood mulch, needles, or natural leaf litter preferably from a sustainable source.
- E. "Ornamental Grass" means grasses that are not indigenous to the State of Minnesota that are intended to add beauty to a garden and are not invasive. Ornamental grasses do not include turf grasses or weeds.
- F. "Native Plants" means those grasses (including prairie grasses), sedges (solid, triangular-stemmed plants resembling grasses), forbs (flowering broadleaf plants), trees, and shrubs that are plant species native to the State of Minnesota prior to European contact, excluding prohibited noxious weeds, as defined by Minnesota Statutes Chapter 84D. Native plants do not include weeds.

- G. “Non-Native Plants” means those grasses (including prairie grasses), sedges (solid, triangular-stemmed plants resembling grasses), forbs (flowering broadleaf plants), trees and shrubs that are plant species not native to or naturalized to the State of Minnesota, excluding prohibited exotic species, as defined by Minnesota Statutes Chapter 84D. Non-Native plants do not include weeds
- H. “Turf Grass” means commercially available cultured turf grass varieties including bluegrass, rescue, and rye grass blends commonly used in regularly cut lawn areas.
- I. “Weeds” means (I) noxious weeds as defined and designated pursuant to the “Minnesota Noxious Weed Law”, Minnesota Statutes Sections 18.76-18.88 as amended from time to time, or (II) any volunteer plants, such as but not limited to garlic mustard (*alliaria petiolata*), spotted knapweed (*centaurea maculosa*), or burdock (*arctium minus*). For the purposes of this definition, weeds do not include dandelions or clover. The City of Brainerd shall maintain a current list of volunteer plants that are prohibited.

1405.07 Removal. No person, City of Brainerd, Brainerd Public Utilities, ISD #181, or other entity, shall remove or cause to remove any healthy tree or trees that are located within the limits of any right-of-way in the City of Brainerd without prior approval of the City Tree Inspector provided for herein.

The City of Brainerd at its sole discretion may remove any improvement by the owner or occupant who has planted, or has allowed to be planted, ornamental grasses, native plants, flowers, shrubs, or other vegetation within the right-of-way. The City of Brainerd will not be responsible for damage to turf grass and/or any landscaped areas resulting from public works improvements or snow removal activities. The City will not be responsible for the replacement of any removed private improvement.

1405.09 Varieties. No tree shall be planted within the limits of any right-of-way except for the following species: Mancana Ash (*Fraxinus mandshurica*), Korean Mountain Ash (*Sorbus alnifolia*), Kentucky Coffeetree (*Gymnocladus dioica* – male only), Accolade Elm (*Ulmus x Accolade*), Cathedral Elm (*Ulmus x Cathedral*), Discovery Elm (*Ulmus davidiana* var. *japonica*), Jacan Elm (*Ulmus davidiana* var. *japonica* Jacan), Princeton Elm (*Ulmus americana* Princeton), Butternut Hickory (*Carya cordiformis*), Red Maple (*Acer rubrum*), Sugar Maple (*Acer saccharum*), Hackberry (*Celtis occidentalis*), Thornless Honeylocust (*Gleditsia triacanthos* var. *inermis* – male only), Iron Wood (*Ostrya virginiana*), American Linden (*Tilia Americana*), Little Leaf Linden (*Tilia cordata*), Redmond Linden (*Tilia x euchlora* Redmond), Glenleven Linden (*Tilia cordata* Glenleven), Glenleven Linden (*Tilia x flavescens* Glenleven), River Birch (*Betula nigra*), (Bicolor Oak (*Quercus bicolor*), Bur Oak (*Quercus macrocarpa*), White Oak (*Quercus alba*), Northern Pin Oak (*Quercus ellipsoidalis*), Northern Red Oak (*Quercus Rubra*)) – must be resistant oak varieties, Ohio Buckeye (*Aesculus glabra*), Greenspire Linden (*Tilia cordata* Greenspire).

Species not listed above shall be considered if the City of Brainerd determines that the planting would enhance the beauty of the area in question or would be appropriate under the circumstances.

1405.11 Tree Requirements. Subdivision 1. Rights-of-Way. No tree shall be planted within the limits of any right-of-way where the space available between the sidewalk and the curb is less than six (6) feet.

No tree shall be planted within the limits of any right-of-way which has a right-of-way of less than sixty (60) feet in width.

Subd. 2. Size. No tree shall be planted which measures less than six (6) feet in height above the ground.

Subd. 3. Spacing. There shall be a distance of not less than thirty (30) feet between trees without prior approval of the City of Brainerd.

Subd. 4. Location. Where curb and sidewalk now exist, all trees should be planted in the center line between the curb and the sidewalk edge.

Subd. 5. Sidewalks. Where no sidewalk exists, trees shall be planted to accommodate the possible construction of sidewalk. Tree locations shall be approved by the tree inspector prior to installation.

Subd. 6. Trimming. The City Tree Inspector shall have the authority to require trees within a street right-of-way or overhanging any street or right-of-way to be pruned so that the branches shall not obstruct the light from any street lamp, traffic sign, or traffic control device, interfere with any utility line or obstruct the view of any street intersection and so that there shall be a clear space of ten (10) feet above the surface of the sidewalk or fourteen (14) feet above the surface of the street. All tree pruning shall be done in a manner consistent with approved practices; specifically branches should be cut flush to the stem or point of intersection with another branch with the stub being left. Severe tree topping which destroys the normal shape of the tree shall not be practiced except in instances where required such as emergency cleanup following a storm or when utility or other obstruction prevents normal pruning practice. The City Tree Inspector may require the trimming of such trees within the City of Brainerd and may cause the abutting property owner to pay the expense of such work.

The City of Brainerd shall have the authority to direct and require the trimming of such trees and may cause the same to be trimmed by employees of the City of Brainerd without cost to the abutting property owner.

1405.13 Diseased Trees. The City Tree Inspector shall have the authority to require the destruction or cause to be destroyed any tree or trees within the limits of City of Brainerd right-of-way or private real property that have been found to be infected by disease or infected by injurious insects when destruction is necessary for the protection of other trees. No action to

remove diseased or infested trees shall be taken until positive diagnosis of the disease has been made and the notification procedure identified in Section 1400.15 is followed.

1405.15 Planting in Right-of-Way. Planting non-invasive ornamental grasses, shrubs, evergreens, flowers, native or non-native plants or natural areas other than the variety of trees listed in this Section (1405.07) of this Ordinance or trees otherwise approved by the City of Brainerd within the limits of any right-of-way in the City of Brainerd is permitted subject to the following:

- A) Ornamental grass, evergreens, shrubs, native or non-native plants and natural areas are permitted in planting beds as follows:
  - 1) A maximum of fifty (50) percent of a boulevard contiguous to private property is permitted as a planting bed and/or natural area.
  - 2) Planting beds and/or natural areas shall not be allowed to grow over the curb.
  - 3) Boulevards where curb is not in place, planting beds and/or natural areas must be setback a minimum of five (5) feet from the edge of the street pavement. The setback area must be planted in turf grass or low growing native sedge.
  - 4) Turf grass and weeds must not exceed a height of six (6) inches measured from the base at ground level to the tip of each stalk, stem, blade, or leaf.
  
- B) Soil Erosion and Mulch. Preventing soil erosion is the property owner's responsibility. It is required that exposed earth in planting beds must be protected with organic material mulch. The mulch of shredded sustainable wood, needles, or leaf liter must not float/wash or blow in the street or gutter. Rock mulch is not permitted.
  
- C) Rain Gardens. (Permit required or fee waived with SWCD sign off)
  - 1) Application must include a dimensioned site plan, construction specifications, and planting details for the proposed rain garden installation.
  - 2) The species of the plants to be used in the rain garden are subject to the approval of the City of Brainerd.
  - 3) Rain garden permits will not be issued in situations where, in the opinion of the City Engineer, the rain garden is not designed in accordance with best management practices, will create a nuisance, will have the potential to damage the environment, or has the potential to cause damage to public or private property.
  
- D) Slopes equal to or greater than two (2) feet horizontal to one (1) foot vertical, 2:1, are not subject to these requirements.

1405.17 Visibility and Safety. To ensure the safe and efficient circulation of vehicles and pedestrians on streets, intersections, trail, pathways, and sidewalks the City of Brainerd may require the cutting of native plant landscape areas and/or natural areas and any other vegetation that might exist. Cutting will be required when it has been determined such areas obscure, block, or impede visual sight lines; regulatory, warning or street identification signs; street light illumination; or when such areas create a general safety problem.

The City of Brainerd shall follow the procedure for removal spelled out in Section 1400.15.

1405.19 Material on Street. No building material or materials of any kind shall be piled upon any right-of-way which may interfere with or injure any tree growing thereon. Until said tree or trees has been sufficiently protected by a proper guard to prevent possible injury, all restrictions issued for this purpose by the City Tree Inspector shall promptly be complied with.

1405.21 Attachments. No person shall attach any material to a tree within the limits of any City right-of-way by nailing or any other method detrimental to said tree. Person or persons responsible for such acts whether or not intentional shall be responsible for the repair or replacement of the said tree.

1405.23 Violation. Any person or persons violating any provisions of this Ordinance shall be guilty of a petty misdemeanor.

1405.25 Enforcement. It shall be the duty of the City of Brainerd to enforce the provisions of this Ordinance.

1405.27 Validity. The intention of the City Council is hereby expressed that the provisions of this Ordinance are severable and a determination by a court that any section or portion hereof is invalid shall not invalidate or affect any other section or portion of this Ordinance.

1405.29 City Council Review. The City Council shall review a decision made by the Tree Inspector or his designee under this Ordinance when such review is requested, in writing, by an affected person within seven days of notice of the decision. For this purpose notice shall be deemed to have been received immediately if the notice was served personally, or three days after publication if service was obtained in this manner. If review is properly requested, the City Council shall consider the decision and shall have the power to affirm, modify or reverse the decision.

Any affected or interested party may also request the City Council to consider the granting of a variance from the provisions of Sections 1400, 1405 and 1410 of this Ordinance. In no event shall the City Council have any power or authority to determine, waive or modify any special assessments which may be levied pursuant to the provisions of this Ordinance.

(Added Ord. 950 – 1993, Amended 1381 - 2011)