



Environmental Commission Memorandum

TO: Environmental Commission

THROUGH: Deanna Kuennen, Community & Economic Development Director

FROM: David Wanberg, City Planner

MEETING DATE: August 24, 2020

SUBJECT: Potential Amendments to Chapter 31 Tall Grass and Weed Regulation

Background:

At its July 27 meeting, the Environmental Commission reviewed draft ordinance amendments that eliminated the need for property owners to obtain a natural landscape permit (see attached). While the Commission expressed a desire to remove barriers in the ordinance that hinder property owners from installing pollinator plantings and natural landscaping, the Commission also expressed concern that some "natural landscapes" in Faribault are not appropriately maintained.

As a means to discuss "final" proposed amendments to the natural landscape ordinance, the City Planner is asking the Environmental Commission to review the following case study as a means to understand how potential ordinance amendments may affect properties in Faribault.

Case Study:

Shortly after the July Environmental Commission meeting, the Faribault Police Department (in response to a complaint) issued a citation to a property owner for "rank growth" growth of vegetation. However, the property owner reports that she intentionally planted native plants many years ago as a means to promote pollinators and as means to treat her property in an aesthetically pleasing and environmentally friendly manner. She acknowledges that some native plants have naturalized on her property. However, she welcomes the naturalized native plants as beautiful and valuable pollinator plants. She also reports that she regularly maintains her yard. While this situation is a matter between the Police Department and property owner (not the Environmental Commission), it illustrates the challenge the City has in applying and enforcing the City's weed ordinance, natural landscape ordinance, and landscaping

ordinance. Nevertheless, the Environmental Commission can use this situation (and others throughout the city) as a case study for how the City should regulate “natural” landscapes. The following lists questions for Environmental Commission discussion:

1. Should the City continue to require a natural landscape permit?

The City’s Ordinance requires a natural landscape permit for “natural” landscapes over 8-10 inches in height. There are no active natural landscape permits in the city. However, City Staff knows of one property owner who did have a natural landscape permit several years ago, but that property owner died, and the permit has expired.

In this case study, if the property owner applied for a natural landscape permit (which is willing to do), it appears that with some minor modifications, the City could issue the permit, depending on what plants the City determines to be weeds. Consequently, the property could look much as it does today. Nevertheless, the permit would legitimize the landscape.

To date, the Environmental Commission has indicated a desire to eliminate the need for a permit, but to also enforce existing ordinance provisions that require weed maintenance.

2. If the City Council ultimately chooses to continue to require a natural landscape permit, how should the City handle common native landscape plants (like cultivars of native Black-eyed Susan and Purple Coneflower) purchased at a landscape nursery? How should the City handle non-native plants, like Hosta, Daylilies, annual flowers, and the like? Many property owners have planted native plant cultivars and non-native plants adjacent to sidewalks, roads, and property lines. Should these plants be treated differently than native plants?

3. If the City continues to require a natural landscape permit, should the City continue to require a \$150 permit fee and an annual renewal fee of \$25? To date, the Commission has indicated a desire to eliminate the permit and permit fees, but if the Council were to maintain the permit requirement, does the Commission believe a permit fee is in order (similar to a fence permit fee and other fees)? The City does not require a permit or a permit fee for non-native plantings. In a related manner, the current ordinance requires a detailed plan and listing of all the native plants on a site, and it requires a maintenance plan for each plant species. The ordinance does not require this level of detail for non-native plantings.

- 4. If the City continues to require a natural landscape permit, who should administer the permit?** The current ordinance requires the Police Chief to approve or deny a natural landscape permit. It also gives the City Administrator the authority to revoke the permit. The City does not have a specialist on staff to address natural landscape and weed management. The Police Department has indicated that the department would welcome shifting landscape maintenance enforcement to the City Planner.
- 5. Regardless of whether the natural landscape permit ordinance remains, should the City maintain the provision that requires plants over 8 inches in height to be setback from the sidewalk and the road by at least 18 inches? Likewise, should the City continue to require that plantings be setback at least four feet from neighboring property (unless approved in writing by the neighboring property owner)?** In this case study, the property owner has stated that she will mow within 18 inches of the road and sidewalk. However, how should the City deal with other property owners who have Hostas, Daylilies, and other non-native plants over eight inches in height directly adjacent to walks and roads?
- 6. How should the City enforce the weed ordinance when the weeds are not on the official noxious weed list? Also, how should the City enforce the weed ordinance when the "weed" is native to Minnesota?** For example, Canada Goldenrod is native to Minnesota. It is widespread throughout Minnesota, and it often establishes itself as "volunteer" growth in areas that are not regularly mowed. Some people consider Canada Goldenrod a weed because it aggressively spreads or naturalizes in areas that the property owner did not intentionally intend for them. Yet, other people welcome Canada Goldenrod into their yard because it is a valuable pollinator plant that they believe is aesthetically pleasing.

The City defines a weed as any undesirable or troublesome plant that is horticulturally out of place, especially plants that grow profusely where they are not wanted. A property owner may strongly believe that Canada Goldenrod (which again is a native plant) is a welcome plant in their yard. A neighbor, on the other hand, may view Canada Goldenrod as a weed that should be removed. How should the City enforce the weed ordinance when the plant is not a noxious weed, and the property owner believes that the plant is a welcome plant on their property?

In addition to Canada Goldenrod, there are many other species of native plants that some people view as weeds. Still, other people appreciate having them in their landscape for a variety of reasons. Common Blue

Violets, Annual Fleabane, Butterfly Weed, and Common Milkweed are native plants that some people view as weeds, while other people view them as valuable plants in the landscape. To complicate matters, many plants are not on the state's noxious weed list, but that everyone would agree are weeds that should not be allowed to grow in a yard (for example, Ragweed). There are also plants like Crown Vetch that the state routinely planted, but that the state now indicates that these plants should no longer be planted. Yet, these plants are not listed as noxious weeds that must be eradicated.

7. How should the City address the need for annual maintenance?

For example, some property owners will cutback herbaceous native plants in the fall as a means to "tidy" the appearance of the yard. Other property owners wait until spring to cutback the plants so that the plants can provide birds and other animals with food and habitat throughout the winter. Does the City care how and when plants are maintained?

Recommendation:

Based on previous input from the Environmental Commission, the City Planner recommends that the Environmental Commission consider the merits of the attached proposed ordinance amendments. Like previous draft amendments, the attached draft amendment eliminates the need for a natural landscape permit. It allows an authorized agent of the City (which may or may not be a police officer) to determine if a plant is a weed as defined in the ordinance. It also allows a property owner to appeal a decision of the authorized agent to the City Council for final determination and action. Finally, the proposed amendment requires a property owner to abate all plants that overhang a public right-of-way that creates a nuisance or a hazard. It "recommends" that plants over eight (8) inches in height be setback at least eighteen (18) inches from the public right-of-way and four (4) feet from a neighboring property.

Requested Action:

Provide the City Planner with "final" feedback regarding potential ordinance amendments related to natural landscapes (and pollinator gardens). The City Planner will present to the Commission pictures of the case study described above.

Attachments:

- Draft Ordinance Amendments to Chapter 31

Chapter 31 - TALL GRASS AND WEED REGULATION

Sec. 31-1. - Legislative intent.

It is declared to be the purpose and intent of this chapter to protect and preserve the city's neighborhoods and the public health, safety and welfare of those who live there. The city council determines that keeping the city free of noxious weeds and tall turf grass and weeds over eight inches in height and noxious weeds improves the quality of life of all residents by improving aesthetics, by eliminating harbor for rodents and insects, and by eliminating fire hazards. ~~At the same time, the city council recognizes that requiring the mowing of grasses and noxious weeds is sometimes unreasonable or impractical under certain circumstances.~~

The city council also determines that a variety of properly maintained landscaping treatments adds diversity and richness to the quality of life, and does not want to discourage the preservation, restoration and maintenance of diverse biologically stable ~~natural~~ plant communities or environmentally sound practices. The city council finds that the establishment of prairie, naturalistic and meadow plant communities are acceptable landscape treatments. However, as a protection for the larger community, these types of landscaping treatments must be properly planned, managed and maintained, ~~and the length of transition period must be minimized~~ or they are likely to cause a public nuisance.

(Ord. No. 2009-21, § 2, 12-22-09)

Sec. 31-2. - Definitions.

For purposes of this chapter, the following words, terms and phrases shall have the following meanings respectively ascribed to them in this section:

Buffer or buffer strip. A management area used to separate differing landscapes and land uses in order to minimize the impact from adjacent land uses.

Landscaping. The encouragement of selected plants to grow on a site.

Meadow vegetation. Grasses and flowering broad-leaf plants that are native to, or adapted to, the State of Minnesota, and that are commonly found in meadow and prairie plant communities, with the exception of weeds.

Native grasses. Grasses that existed in the area prior to European settlement (Beach Grass, Wood Chess Grass, Sand Reed Grass, Wheat Grass, Bluestem Grass, Grama Grass, Brome Grass, Buffalo Grass, Switch Grass, Indian Grass, Wild Rye).

Native plants. Plants that existed in the area prior to European settlement.

Natural landscaping. The use of groups of native plants.

Naturalistic landscaping. The use of native and non-native plants.

Natural preserve. A natural undisturbed area designated by the city council where the land and vegetation appears to not have been graded, landscaped or otherwise disturbed by human or mechanical means in recent time.

Noxious weeds. Plants designated by the commissioner of agriculture as "noxious weeds" pursuant to Minnesota Statutes Section 18.77, subdivision 8.

Prairie. A plant community dominated by a diversity of native perennial herbaceous plants and grasses.

Temporary erosion control grasses. Grasses (winter wheat, oats, annual rye or regreen) that are used as single growing season cover or nurse crops to assist in the establishment of permanent vegetation.

Transitional period. The amount of time needed to change from one type of landscaping to another. A transitional period must not extend beyond three (3) growing seasons for any specific area.

Turf grass. Grass commonly used in regularly cut and maintained lawns or play areas (including, but not limited to, bluegrass, fescue, and ryegrass blends) intended to be maintained at a height of no more than eight (8) inches.

Weeds. All noxious weeds and any undesirable or troublesome plant that is horticulturally out of place, especially plants that grow profusely where they are not wanted. For the purposes of this chapter, Taraxacum spp (common dandelion) is not considered to be a weed. An authorized agent of the city shall determine if a plant on a property is defined as a weed. A property owner can appeal the determination of the authorized agent of the city to the city council as per Sec. 31-5 (b) or this ordinance.

Wetlands. Lands that are transitional between terrestrial and aquatic systems where the water table is near the surface. The boundary of wetlands, for purposes of this chapter, shall be determined according to the U.S. Army Corps of Engineers Wetland Delineation Manual (1987).

(Ord. No. 2009-21, § 2, 12-22-09)

Sec. 31-3. - Nuisance declared.

It shall be unlawful and a public nuisance for any person having control over any property in the city to permit or maintain on such property any:

- (1) Noxious weeds; or
- (2) Growth of turf grass or weeds in excess of eight (8) inches in height.

No property owner shall permit such weeds and turf grass to be a public nuisance. Any such public nuisance must be immediately abated by the property owner by removing the weeds, cutting the turf grass and removing the clippings. In general, plants exceeding eight (8) inches in height should not be located within eighteen (18) inches of a public sidewalk, trail, road, or alley. In no case shall plants hang over the public right-of-way in a manner that creates a hazard or a public nuisance. In general, plants over eight (8) inches in height should not be located within four (4) feet of a neighboring property without the written consent of the neighboring property owner. , if the growth of grass or weeds occupies an area of at least one hundred forty-four (144) square feet and is located within two hundred (200) feet of a residence or developed property.

(Ord. No. 2009-21, § 2, 12-22-09)

Sec. 31-4. - Exemptions.

The following are not considered to be public nuisances:

- (1) Non-noxious weeds and grass vegetation in wetland areas;
- (2) Non-noxious weeds, grasses and herbaceous vegetation that are within fifty (50) feet of designated stormwater ponds, natural or altered creeks, rivers and stream corridors, including riparian buffer strips that convey water; ~~provided that they are annually cut to less than eight (8) inches if the area is located within two hundred (200) feet of an occupied residence or developed property;~~
- (3) Non-noxious weeds and grass vegetation growing on property located in any zoning district that is being actively farmed;
- (4) Temporary erosion control grasses;

- (5) Prairie, meadow or natural landscape vegetation that is maintained and includes the cultivation of native grasses and does not contain any noxious weed growth, ~~provided that a natural landscape permit is obtained from the city;~~
- (6) Grass and non-noxious weed vegetation growing in areas designated by the city council as a natural preserve; and
- (7) Grass, non-noxious weed vegetation and ornamental grasses growing on natural or altered slopes that are steeper than 2:1.

(Ord. No. 2009-21, § 2, 12-22-09)

~~Sec. 31-5. – Natural landscape permits.~~

- ~~(a) – *Permit required.* A natural landscape permit must be obtained from the city by a property owner desiring to use prairie, meadow or natural landscape vegetation which is not otherwise exempted by this chapter and is expected to exceed ten (10) inches in overall height.~~
- ~~(b) – *Permit application contents.* The natural landscape permit application must contain the following information:

 - ~~(1) – The name and address of the applicant;~~
 - ~~(2) – The legal description of the property;~~
 - ~~(3) – A site plan showing lot lines, public right-of-way, buildings and the location of the proposed landscaping;~~
 - ~~(4) – A general description of the vegetation and plant types to be used, including the Latin and common names of all of the species; and~~
 - ~~(5) – A specific management and maintenance plan that includes the following information:

 - ~~a. – A planting diagram showing the location and mature height of all species of vegetation;~~
 - ~~b. – Detailed information on the upkeep of each species;~~
 - ~~c. – The estimated transitional period, if applicable; and~~
 - ~~d. – The plan for elimination of any non-native vegetation.~~~~
 - ~~(6) – The name, address, phone number and qualifications of the person or company that will be responsible for the management and maintenance of the vegetation.~~~~
- ~~(c) – *Permit issuance.* The chief of police or his/her designee shall review the application and issue the natural landscape permit unless:

 - ~~(1) – The application is incomplete;~~
 - ~~(2) – The management and maintenance plan is incomplete or inconsistent with the requirements of this chapter;~~
 - ~~(3) – The plan proposes use of non-native grasses; or~~
 - ~~(4) – The transitional period for the area to be landscaped is longer than three (3) growing seasons.~~

~~A natural landscape permit shall be valid for five (5) years from the date of approval.~~~~
- ~~(d) – *Permit denial; appeal.* If the chief of police or his/her designee denies an application for a natural landscape permit, he or she shall send written notice of the denial to the applicant. The applicant may appeal the decision to the city council by filing notice of such appeal with the city administrator within twenty (20) days of the date of the notice. Upon receipt of the notice of appeal, the city council shall set a public hearing date at which the applicant and any other party wishing to be heard may have an opportunity to present evidence as to the applicant's compliance with this chapter. If the city council determines that the applicant has complied with the provisions of this chapter, it shall direct~~

~~the chief of police to issue the permit. The city council must affirm the city administrator's denial of the permit if it determines that the applicant has not complied with the provisions of this chapter.~~

~~(e) Permit revocation. The city administrator may regularly inspect any property holding a natural landscape permit.~~

~~(1) A natural landscape permit may be revoked by the city administrator for any of the following reasons:~~

~~a. Weeds are not removed;~~

~~b. The vegetation is not being maintained to a height of ten (10) inches or less in areas located within eighteen (18) inches of a public street, sidewalk, trail or alley;~~

~~c. The vegetation is not being maintained to a height of ten (10) inches or less in areas located within four (4) feet of a side or rear lot line, unless the adjacent property owner has consented in writing;~~

~~d. The property owner fails to maintain the natural landscape area in a manner consistent with the management and maintenance plan that was submitted with the permit application.~~

~~(2) For any property that is not in compliance, the chief of police or his/her designee shall give notice to the holder of the permit by U.S. mail stating that the property must be in compliance within thirty (30) days. Should that period pass without action by the holder of the permit, the city administrator or his or her designee shall:~~

~~a. Revoke the natural landscape permit;~~

~~b. Remove all improperly maintained vegetation;~~

~~c. Declare the property ineligible for a natural landscape permit unless sold for a period of two (2) years; and~~

~~d. Assess the property for all fees associated with inspection of the property and any removal of improperly maintained vegetation in accordance with assessment provisions of this chapter.~~

(Ord. No. 2009-21, § 2, 12-22-09)

Sec. 31-65. - Violations.

~~(a) Inspection and notice. The city weed inspector~~ An authorized agent of the city shall make such inspections as are necessary to determine whether weeds and grass constitute a public nuisance as defined in this chapter and is hereby authorized to enter onto private property for the purpose of conducting such inspection. Upon finding such public nuisance, the ~~weed inspector~~ authorized agent of the city shall send a notice to the record owner of the property by certified mail, U.S. mail or by personal service ordering the owner to abate the nuisance within ten (10) days of the date of the notice. The property owner shall have the option to appeal the determination of the authorized agent as outline in Sec. 31-5 (b). The notice shall also state that if the owner fails to abate the nuisance, the city will abate the nuisance and the expense thereof, if unpaid by the owner, to be levied against the benefited property as a special assessment. Refusal to accept such notice by the owner of the property shall not constitute a defense that the notice was not received.

~~(b) Process to appeal the determination of an authorized agent of the city. Within ten days of the date of a notice to abate weeds and grass that constitute a public nuisance, a property owner may appeal the abatement notice to the city council. The city council shall make the final determination as to the existence of a public nuisance that requires abatement by the property owner.~~

~~(c) Abatement by the city. If such nuisance is not abated within the time required, the city may abate the nuisance. The city weed inspector~~ An authorized agent of the city shall keep a record of the total cost

of the abatement attributable to each property and report such information to an authorized agent of the city. ~~the city clerk.~~

- (d) *Owner liability for cost.* As soon as the abatement has been completed and the cost determined, the city shall prepare a bill and mail it to the owner and thereupon the amount shall be immediately due and payable. If the owner fails to pay the bill, the total charges may be levied as an assessment against the property. This shall be an additional remedy and not in lieu of any other penalty provided for in the City Code or state law.

(Ord. No. 2009-21, § 2, 12-22-09)

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