

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF MARSHALLTOWN, IOWA, REPEALING CHAPTER 58: VEGETATION AND ENACTING AND ADOPTING A NEW CHAPTER 58: VEGETATION

WHEREAS, the City Council of the City of Marshalltown, Iowa, adopted ordinance 14429 Providing for the Management and Preservation of Trees, Shrubs, and Other Greenery within the City of Marshalltown, Iowa; and

WHEREAS, recommendations have been presented to the City Council to re-write the current Chapter 58 Vegetation to better define permits for right-of-way trees, add the responsibility of trimming right-of-way trees to the City and create the mechanism for the City Council to impose a fee for public trees and composting activities; and

WHEREAS, the City Council of the City of Marshalltown finds it is in the best interest of the City to amend Chapter 58 Vegetation of the City Code of Ordinances.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARSHALLTOWN, IOWA:

Section 1. The Code of Ordinances, City of Marshalltown, Iowa is hereby amended by repealing Chapter 58 Vegetation and enacting and adopting the following in its place:

58.001 PURPOSE.

(A) It is the policy of the city to regulate and control the planting, removal, pruning and protection of trees and other vegetation within streets, highways and alley rights-of-way and public park areas within the boundaries of the city; to eliminate and guard against dangerous conditions which may result in injury to persons using the public areas of the city; to prevent damage to any public sewer or water main, street, sidewalk or other public property; to protect trees located in public areas from undesirable and unsafe planting, removal, pruning and protection practices; and to guard all trees within the public areas of the city against the spread of disease or pests. The provisions of this chapter shall apply to all trees, shrubs, weeds, vines and brush planted in or upon any public area and in certain instances on private property within the city and any existing trees that violate other sections of this chapter.

(B) It is also the intent of this chapter to maintain all public and private areas in the city in such a manner that they are free of weeds, vines and brush; to eliminate and guard against dangerous conditions which may cause injury or illness to persons using the public areas; to promote and enhance the beauty of the city; and to guard against pestilence and widespread weed invasion of any area of the city. State legislation or State Department of Transportation rules take precedence over this chapter if along a state-designated highway.

58.002 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALLEY. A thoroughfare through the middle of a block giving access to the rear of a building.

PARK. Any property owned in whole or in part by the city used in whole or in part for recreational purposes, wildlife purposes or other municipally-owned public purpose related to recreation or wildlife, but does not include parking or terraces or municipal parking lots.

PROPERTY OWNER. The contract purchaser if there is one of record, otherwise the record holder of legal title.

PUBLIC AREA. Parks and other lands owned or leased by the city and all terraces along all streets, highways, boulevards and alleys.

PUBLIC RIGHT-OF-WAY. Dedicated public property containing or proposed to contain publicly owned street surfaces, curb and gutter, sidewalks and planted strips.

SHRUB. A woody plant with several stems and usually with a low mature height of eight feet or less.

STREET INTERSECTION. The intersection of the public street right-of-way lines of the two intersecting streets. On streets that have sidewalks, this would be the intersection of the inside edges on the private property side of the sidewalks.

TREE. Any woody perennial plant of any age with a main trunk and many branches, and includes living or dead trees and standing or fallen trees.

58.003 REMOVAL OF WEEDS, VINES AND BRUSH.

All areas of the city are to be kept free of any noxious weeds and shall also be kept free of any other weeds, vines or brush for health and safety reasons.

TREES

58.004 INJURING OR DAMAGING.

(A) No person shall in any public area of the city break, injure, mutilate, kill or destroy any tree or shrub; permit any animal under his or her control to do so; permit any fire to injure any portion of any tree or shrub; or permit any toxic chemicals or materials to seep, drain, be emptied on or otherwise enter into any tree or shrub.

(B) It shall be unlawful for any person to cut, damage, carve, transplant or remove any tree, or injure the bark of any tree located in a park, except for authorized city personnel in the performance of his, her or their duties.

(C) During building operations, commercial promotions or public promotions, the builder or sponsor shall erect suitable protective barriers around public trees and shrubs that may be injured.

58.005 FASTENING MATERIALS.

No person shall fasten any sign, rope, wire or other materials to or around or through any trees or shrubs in any public area, except in emergencies such as storms or accidents.

58.006 PLANTING IN PUBLIC RIGHT-OF-WAY EASEMENTS.

It shall be unlawful to plant any tree or other woody plant material within any dedicated utility easement area within the city. Any tree or other wood plant material planted within public right of way requires a planting permit.

58.007 PLANTING PERMIT.

(A) No person shall plant a tree in a public right-of-way unless the individual has completed a planting permit application at the Parks and Recreation Office and has been issued a permit by the Parks and Recreation Director or their designee.

(B) (1) Trees shall be subject to conditions of the permit. Conditions of the permit shall include a requirement for diversity of species withal, the planting area, as well as other conditions as may be provided elsewhere in this subchapter.

(2) Whenever a tree is planted in conflict with the provisions of the permit or without obtaining a permit, it shall be lawful for city staff to remove or cause removal of the tree.

(3) The cost of the removal of such tree may be charged to the property owner responsible for the planting.

(C) The City may consider the following review criteria in permit approvals but not limited to:

- Visibility triangles at streets, alleys and driveways
- Sign visibility
- Proximity to other trees
- Proximity to utilities
- Proximity to pavement
- Area of space available

§ 58.008 CERTAIN SPECIES PROHIBITED.

(A) It shall be unlawful to plant any tree species on or within 25 feet of public right-of-way in the city that has been identified on a list of prohibited species compiled by city staff. The list shall be kept on file at the Parks and Recreation Office and on the city website.

(B) (1) The Parks & Recreation Department may issue a planting permit for planting evergreen and deciduous shrubs with a mature height greater than 12 inches within the public right-of-way for decorative purposes.

(2) Each request will be reviewed upon its own merits, and the proposed plantings at mature height shall not interfere with pedestrian and vehicular safety or the free use of the street or sidewalk.

(C) It shall also be unlawful to plant any tree species that bears fruit, except for male sterile varieties, on a public right-of-way or on private property in a location where the tree will overhang the public right-of-way.

(D) Any plant species prohibited by this section, but in place on the effective date of this ordinance, need not be removed by virtue of its mere existence unless interference with other sections of this chapter so requires.

58.009 SPACING AND PLACEMENT IN PUBLIC RIGHT-OF-WAY AREAS.

(A) No tree shall be planted nearer than three feet to the curb. No tree shall be planted within three feet of sidewalk in residential areas.

(B) (1) Trees planted on or adjacent to Highway 14 right-of-way shall be planted ten feet back from the back of the curb line.

(2) Other special considerations do exist and a special permit must be secured from the state's Department of Transportation; contact the local state's Department of Transportation Engineer.

(C) Trees shall be planted no closer than the sum of half of the mature spread of each tree from one another.

(D) Trees shall be planted no closer to a utility pole than a distance equal to half of the mature spread of the tree species being planted.

58.010 REMOVAL AND TRIMMING ON PUBLIC PROPERTY.

(A) The City shall be responsible for the removal of all dead and diseased trees from the public right-of-way and other public areas.

(B) The adjacent property owner shall be responsible for the trimming of all trees in the public right-of-way. The City shall be responsible for the trimming of trees in other public areas.

(1) Trees shall be so trimmed that the overhanging branches shall be at least fifteen feet above the surface of the street and at least eight feet above the surface of the sidewalk so as not to interfere with the street lighting or the free and safe use of the street and sidewalk by the public, taking into consideration tree maturity and size.

(2) Property owners, agents or occupants may trim limbs or branches not exceeding six inches in diameter from trees on public right-of-way areas adjacent to their property. Such cutting or trimming shall conform to the arboricultural specifications and standards of practice adopted by the city staff.

(3) Only City staff, tree trimming or removal contractor, or public service company can trim branches exceeding six inches in diameter from the public right-of-way area. Adjacent property owners, agents or occupants must obtain a contractor at their expense to have branches exceeding six inches removed from trees in the public right-of-way.

(C) The City shall have the authority to trim or remove any tree, shrub or other plant material planted on any public right-of-way for non-compliance of this subchapter. This work shall be done at City expense if notice is not given to the adjacent property owner.

58.011 REMOVAL AND TRIMMING ON PRIVATE PROPERTY.

(A) The property owner, agent or occupant of any lot or parcel of land shall keep the trees on their property so trimmed that the overhanging branches shall be at least 15 feet above the surface of the street and at least eight feet above the surface of the sidewalk so as not to interfere with the street lighting or the free and safe use of the street and sidewalk by the public and shall be kept free of dead limbs and branches, taking into consideration the tree maturity and size.

(B) The city shall have the right to trim or prune any tree or shrub on private property without notice when it overhangs public property and interferes with the proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign. The city may serve notice on the abutting property owner as per § 58.024 of this chapter to remedy the situation and assess the cost to the property.

§ 58.012 NOTICE AND ASSESSMENT OF COSTS TO PROPERTY OWNERS.

(A) If the property owner does not perform an action required under this subchapter within a reasonable time after written notice, the City may perform the required action and assess the costs against the property for collection in the same manner as a property tax. Notice shall be by certified mail or other personal service to the address of the property owner as well as the occupant of the premises as shown by the records of the County Auditor. The notice shall describe the violation and location of the violation, state the act(s) necessary to cure the violation, state the time within which action is required, and state that if the violation is not cured and no request of hearing is made within a set period of time, the City will assess costs as set forth above.

(B) In an emergency, the city may perform any action which may be required under this subchapter without prior notice if it is deemed an imminent hazard to the safety and well-being of the public and assess the costs as provided in this section after notice to the property owner and hearing. All action taken by the City without notice to the property owner is done at the City's expense and shall not be assessed to the property owner.

§ 58.013 BARRICADES AND OTHER PROTECTIVE DEVICES REQUIRED.

When necessary for the protection of the public, guards, barricades or other protective devices or warnings shall be maintained on any sidewalk, street or other public places where trees are being trimmed or removed. Barricades and other protective devices shall meet the standards set forth by the Public Works Department. Traffic on any street shall not be barricaded without first obtaining permission therefor from the Public Works Department and notifying the Fire Department, Police Department and the ambulance service of the closing and again when the street is reopened.

§ 58.014 ESTABLISHMENT OF A COMPOST UTILITY.

A compost utility is hereby established to provide for the operations of the Marshalltown Compost Facility, which includes the breaking down, processing and re-use of vegetative and tree materials.

§ 58.015 COMPOST FEE.

The City Council shall, by resolution, set the fee for the operation of the Marshalltown Compost Facility. This includes the initial establishment of fees and subsequent changes to the fees as deemed necessary by the City Council.

§ 58.016 PENALTY.

Violation of any section of this chapter shall be deemed to be a municipal infraction and be punished by a penalty as provided in § 10.999(A) of this code of ordinances.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. That this ordinance shall be in full force and effect after its passage and publication as by law.

Passed this ____ day of _____, 2022, and signed this ____ day of _____, 2022.

CITY OF MARSHALLTOWN, IOWA

Joel Greer, Mayor

ATTEST:

Alicia Hunter, City Clerk

I, Alicia Hunter, City Clerk of the City of Marshalltown, Iowa, do hereby certify that the foregoing ORDINANCE was passed and approved by the City Council of the City of Marshalltown, Iowa, on the ____ day of _____, 2022, and was published in the Marshalltown Times-Republican, a newspaper of general circulation in the City of Marshalltown, Iowa, on the ____ day of _____, 2022.

Alicia Hunter, City Clerk