

DRAFT

..Number

081570

..Version

SUBSTITUTE 1

..Reference

..Sponsor

ALD. KOVAC, COGGS AND HAMILTON

..Title

A substitute ordinance relating to tree protection in the Milwaukee River greenway overlay zone.

..Sections

252-80 cr

..Analysis

This ordinance prohibits, with limited exceptions, any person from removing, damaging, disturbing or otherwise destroying any living and structurally sound tree located within the primary environmental corridor in the Milwaukee River greenway overlay zone unless the person has obtained a tree maintenance and conservation permit from the commissioner of public works. This ordinance also establishes various requirements that apply to all tree maintenance and conservation permits issued by the commissioner, including a requirement for the replacement of removed trees and the prohibition of any tree removal or disturbance that would result in soil erosion or slope destabilization.

The commissioner may revoke any tree maintenance and conservation permit for violation of any permit conditions. The commissioner also has the authority to enforce the provisions of this tree protection ordinance and may issue orders to correct violations, stop-work orders and citations. If the commissioner takes actions necessary to correct an uncorrected violation, the costs incurred by the commissioner shall be billed to the property owner.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 252-80 of the code is created to read:

252-80. Tree Protection in Milwaukee River Greenway Overlay Zone. 1.

PURPOSE AND FINDINGS. The common council finds that the Milwaukee River greenway overlay zone, as shown on the city zoning map and established by common council file number 081568, supports a fragile riparian ecosystem that is rare in Milwaukee, providing up to 100% urban tree canopy, native floodplain grasses, a rich diversity of flora and fauna, and critical habitat. The purpose of this section is to promote the public health, safety and general welfare by regulating the planting, maintenance, restoration and removal of desirable trees within the Milwaukee River greenway overlay zone in order to promote the benefits derived therefrom, including

management of storm water runoff, stabilization of shoreline and slopes adjacent to the river, protection of bluffs and floodplains from soil erosion, enhancement of air and water quality, creation and promotion of wildlife habitat, and preservation of aesthetics.

2. DEFINITIONS. In this section:

a. "Commissioner" means the commissioner of public works or the commissioner's designee.

b. "Critical root zone" means the portion of the root system of a tree that is the minimum necessary to maintain the continued health, vitality or stability of the tree, defined by a concentric circle around a tree with a radius that is equal to 1.5 feet for every inch in trunk diameter at breast height.

c. "Damage" means any action that in the sole opinion of the commissioner adversely impacts the health, vitality or stability of trees located within the primary environmental corridor. Damage may include direct injury to a tree, injury to or loss of roots within the critical root zone, changes to existing grade within the critical root zone, soil compaction within the critical root zone, chemical injury, removal of bark, injury to trunk, branch breakage or removal, crown reduction pruning, improper pruning, removal of more than 25% of a tree's live branches, alteration of the natural shape of a tree or any action contrary to generally accepted arboricultural or horticultural practices which cause tree infection, infestation or decay. Damage also includes the indiscriminate cutting of tree branches to stubs, buds or lateral branches that are less than 1/3 the diameter of the stem removed, or removal of more than 25% of the crown wood from a tree.

d. "Diameter at breast height" means the diameter of a tree measure at 4.5 feet above the ground.

e. "Diseased tree" means any tree with one or more significant structural defects or an infection, infestation or decay, as determined by a professional arborist certified by the International Society of Arboriculture, which makes it subject to a high probability of failure or decline.

f. "Disturb" means any alteration to the branches, trunk or root system of a tree, including excavation within the critical root zone. The term does not include crown cleaning, which is the selective removal of one or more of the following items from a tree: dead, dying or diseased branches, weak branches and water sprouts. Nor does it include crown raising, which is the removal of the lower branches of a tree to provide additional clearance underneath a tree.

g. "Primary environmental corridor" means the primary environmental corridor within the Milwaukee River greenway overlay zone, as mapped by the southeastern Wisconsin regional planning commission.

h. "Removal" means the actual cutting down or removal of a tree, or the effective removal of a tree through damage, abuse, poisoning or other actions resulting in the death of a tree.

i. "Tree" means any self-supporting woody plant, greater than 15 feet in height, together with its root system, having one trunk of at least 3 inches in diameter at breast height or having a multi-stemmed trunk system with a definitely formed crown.

3. APPLICABILITY. The provisions of this section shall be applicable to all property located within the Milwaukee River greenway overlay zone, as shown on the city zoning map and established by common council file number 081568.

4. PROHIBITED ACTS. a. No person shall remove, damage, break, top, disturb or otherwise destroy any living and structurally sound tree located within the primary environmental corridor except as permitted under par. b or by a tree maintenance and conservation permit issued pursuant to sub. 5.

b. The following may be removed from the primary environmental corridor without a permit:

b-1. Dead or diseased trees.

b-2. Common or European Buckthorn (*Rhamnus catharticus*) or Glossy or Smooth Buckthorn (*Rhamnus frangula*).

b-3. Trees less than 3 inches in diameter at breast height, other than Common or European Buckthorn, that are also classified as invasive species by the Wisconsin department of natural resources or are plants or weeds identified as noxious by the city or by the state of Wisconsin under s. 66.0407, Wis. Stats.

b-4. Trees less than 6 inches in diameter at breast height if removal is necessary to provide pedestrian access to the river, subject to all of the following conditions:

b-4-a. The pedestrian path does not exceed 6 feet in width.

b-4-b. The pedestrian path has a permeable surface.

b-4-c. The pedestrian path is located and constructed to effectively control erosion and to minimize removal and disruption of trees within the primary environmental corridor.

5. TREE MAINTENANCE AND CONSERVATION PERMIT. a. Application. Any person desiring a permit to remove or disturb a tree within the primary environmental corridor shall file with the commissioner an application in writing on a form furnished for this purpose. Every application shall:

a-1. State the name and address of the property owner.

a-2. Describe the location, species and diameter at breast height of each tree proposed to be removed or disturbed.

a-3. Describe any construction plans associated with the requested tree removal.

a-4. If the application proposes removal of a tree in excess of 3 inches in diameter at breast height, describe the proposed replacement tree or trees pursuant to par. c-1.

a-5. If the application involves construction of a pathway, describe the width, length, depth of excavation and surface material of the pathway.

a-6. If the proposed tree removal or disturbance is part of a construction or site development project, include a site plan containing the following additional information:

a-6-a. Primary contact for the project, including name, business affiliation, address, phone, email and fax.

a-6-b. Name of the project, if any.

a-6-c. A plat of survey prepared by a registered land surveyor or engineer showing all proposed improvements or site alterations to a recognized engineer or architect scale.

a-6-d. Date of site plan submittal, along with any and all dates of revision.

a-6-e. Existing and proposed grade for any grade change within the primary environmental corridor.

a-6-f. North arrow.

a-6-g. Location to scale, including critical root zone, of all trees 3 inches or larger in diameter at breast height proposed to be removed or located within the limits of construction in the primary environmental corridor.

a-6-h. Approved tree protection fencing installed at the critical root zone of all trees or groups of trees 3 inches or larger in diameter, not shown to be removed, located within the limits of construction or site disturbance.

a-6-i. The location of all existing and proposed easements on the site.

a-6-j. Slopes greater than or equal to 12% located within the limits of soil disturbance.

a-6-k. Defined points of temporary and permanent ingress and egress in the primary environmental corridor.

a-6-L. Existing and proposed utilities, including sanitary sewers, storm sewers and water mains and service laterals, underground utility laterals and clean-out and surface valves, electrical and telecommunication cables, and gas mains and service laterals. All locations for the proposed connections to utilities and the proposed elevations of these connections shall be indicated on the site plan.

a-6-m. A scale landscape plan showing the location and quantity of all landscape plantings proposed for the site, including a listing of the proposed species, cultivar and common name, including notation of Wisconsin native species, as well as the size and quantity of the plantings, whether they are balled-and-burlapped or container-grown, and installation notes and details.

a-7. Any other information that may be required by the commissioner.

b. Issuance of Permit. The application for permit shall be examined by the commissioner and, if found to be in conformity with the requirements of this subsection, shall be approved and a permit issued by the commissioner. The commissioner may impose any conditions necessary to ensure the permitted activities are executed professionally, safely and in accordance with the requirements of this section.

c. Requirements. The following requirements shall apply to all permits issued under this subsection:

c-1. Replacement of Trees Removed. Trees in excess of 3 inches in diameter in breast height which are removed shall be replaced on a diameter-equivalent basis during the designated planting season with indigenous nursery-grown trees conforming to ANSI Z60.1 American Standards for Nursery Stock, most current edition.

c-2. Planting Season. c-2-a. Balled-and-Burlapped Trees. The planting season for balled-and-burlapped trees shall be between October 15 and December 1 and between March 15 and May 15.

c-2-b. Container-Grown Trees. The planting season for container-grown trees shall be between September 1 and December 1 and between March 15 and June 15.

c-3. Plant Installation, Inspection and Warranty. c-3-a. Installation. All trees shall be planted in accordance with accepted horticultural practices and any other specific planting instructions provided by the commissioner.

c-3-b. Inspection. Inspection of work to determine its completion and establish the beginning of the warranty period shall be performed by the commissioner upon request of the property owner submitted to the commissioner at least 10 days prior to the inspection date. After inspection, the commissioner shall notify the property owner of the date of the beginning of the warranty period by issuing a notice of acceptance. In the event of any deficiencies, the commissioner shall notify the property owner of the requirements for beginning the warranty period.

c-3-c. Warranty Period. All plants shall be guaranteed to be alive and healthy, as determined by the commissioner at the end of the warranty period. The warranty period shall extend for a period of one year from the date of notice of acceptance. During the warranty period, the property owner shall replace any trees that die or, in the opinion of the commissioner, are in an unhealthy condition or have lost their shape due to dead branches, excessive pruning, inadequate, improper maintenance or any other causes. Replacement trees shall be planted immediately, if the time of rejection occurs during the planting season, or during the next planting season, if the time of rejection falls outside the planting season.

c-4. Soil Erosion or Slope Destabilization. No tree removal or disturbance shall be permitted under this section whenever the commissioner determines that the tree removal or disturbance would result in soil erosion or slope destabilization due to soil conditions or the existing degree of slope. In evaluating whether this requirement is satisfied, the commissioner shall consider such factors as existing grade, available soil surveys, maps, representative soil borings or classifications, existing vegetation in the immediate vicinity of the tree or trees proposed for removal, degree of site disturbance caused by the tree removal and any associated risks to public health and safety. If an applicant proposes removal or disturbance of a tree located in an area where the slope is at least 12%, the applicant shall provide a report prepared by a professional engineer that certifies the proposed tree removal or disturbance, when considered with any proposed mitigation measures, will not result in soil erosion or slope destabilization.

d. Permit Revocation. The commissioner may revoke any permit issued under this subsection for violation of any permit conditions. Violation of any conditions of a permit issued under this subsection shall constitute a violation of this section. The notice revoking a permit shall be served on the permittee and posted upon the premises to which the permit applies. After the notice is served and posted, the permit which has been revoked shall be void and no person may proceed with any further tree removal or site disturbance activities within the primary environmental corridor on the premises. Before any tree removal or site disturbance activities are resumed, a new permit shall be procured.

6. ENFORCEMENT. a. Violations. When the commissioner determines that a willful violation of the provisions of this section exists, or has reasonable grounds to believe that a violation exists, the commissioner may order the person to correct the violation by issuing a notice of violation or a stop-work order. If the person to whom the notice or order was issued fails to take corrective action after receiving the notice or order, the commissioner shall take whatever steps are necessary to correct the violation, including but not limited to using city forces or private contractors. When trees are removed, destroyed or damaged beyond recovery in violation of this section, the commissioner may require that the trees be replaced on an equivalent-diameter basis. Failure to replace trees as required by the commissioner shall constitute a violation of this section.

b. Recovery of Costs. Any costs incurred by the commissioner in correcting violations of this section shall be billed to the owner of the premises and payable within 30 days. If the owner fails to pay within 30 days, the bill shall become a lien on the real property and collectible in accordance with s. 66.0627, Wis. Stats.

c. Citations. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the commissioner may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person who violates any provision of this section.

d. Penalties. Any person who violates any provision of this section shall, upon conviction, forfeit not less than \$150 per violation per day nor more than \$5,000 for each premises found to be in violation, together with the cost of the action.

..LRB
APPROVED AS TO FORM

Legislative Reference Bureau
Date:_____

..Attorney
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date:_____

..Requestor

..Drafter
LRB09087-3
JDO
3/29/2010