



**CITY OF NEWPORT  
PLANNING COMMISSION MEETING  
NEWPORT CITY HALL**

**(May Be Held Electronically From Remote Locations)**

*Zoom Meeting Information* <https://us02web.zoom.us/j/85246335342> Meeting ID: 852 4633 5342 (PW: Newport)

**May 11, 2021 – 5:30 P.M.**

Commissioner:	Anthony Mahmood	City Administrator:	Deb Hill
Commissioner:	Maria Bonilla	Asst. to the City Admin:	Travis Brierley
Commissioner:	Brandon Leyde	City Planner:	Sherri Buss
Commissioner:	Tami Fuelling	Council Liaison:	Marvin Taylor
Commissioner:	Michael Kermes		

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. MEETING MINUTES
  - A. April 6, 2021 Special Meeting
4. PUBLIC HEARING- Tree Ordinance
5. PUBLIC HEARING- Sewer Service Ordinance
6. TREE REPLACEMENT REQUIREMENTS
7. COMMISSION REPORTS
8. ADJOURNMENT



**CITY OF NEWPORT  
SPECIAL PLANNING COMMISSION MEETING MINUTES  
NEWPORT CITY HALL  
April 6, 2021**

**1. CALL TO ORDER**

Commissioner Leyde called the Special Planning Commission Meeting to order at 5:31 p.m. on April 6, 2021.

**2. ROLL CALL**

Present (4): Commissioner Brandon Leyde, Commissioner Maria Bonilla, Commissioner Tami Fuelling, and Commissioner Michael Kermes.

Not Present (1): Chair Anthony Mahmood.

**3. MEETING MINUTES**

**A. March 9, 2021**

Commissioner Kermes motioned to approve the Planning Commission Meeting Minutes from March 9, 2021. Seconded by Commissioner Fuelling. Approved 3-0-1 (Bonilla).

**4. TREE ORDINANCE**

City Planner Sherri Buss stated there were several questions that arose during the initial discussion for updating our tree ordinance. Matt Yokiell, Assistant Superintendent of Public Works, and Susan Lindoo, a former Planning Commission member and active volunteer in Newport, are here to answer questions regarding diseased trees.

Ms. Lindoo stated that many City ordinances were written prior to the emerald ash borer (EAB), which is an invasive insect pest in ash trees. One issue with EAB is that the ash trees within a year lose most of their strength, become very brittle, and therefore you want to get these trees down quickly. Some bigger cities are going through and cutting down ash trees before they are dead. When emerald ash borer hits, it can go fast. Thankfully, it is not moving as fast in Minnesota because we are a colder climate. In Newport, our ash trees are scattered throughout the City. Susan and her husband volunteered their time to take inventory and found approximately 100 ash trees on the east side of Hwy 61 on rights-of-way and private areas. This does not include the public land such as the parks or the Bailey School Forest.

Planner Buss inquired if the City forester is actively looking for EAB on public or private properties. Assistant Yokiell stated they surveyed a couple years ago and found EAB is present in Newport. They have done some removals but have mainly focused on planting new trees of different varieties in the parks and at the library.

Planner Buss inquired if the City actively goes onto private properties to look for EAB. Assistant Yokiell stated they have not gone onto private properties. To identify EAB you can see big white or light-colored patches where there should be dark bark. Assistant Yokiell stated he feels it would be best to work with the homeowner to confirm EAB or leave a door hanger asking them to call if the City forester suspects EAB.

Planner Buss stated the definitions can be updated to make it clear we are most concerned about severe tree diseases. Assistant Yokiell stated for most of these trees, it would not be an emergency, so we could identify severe diseased trees once or twice a year.

Commissioner Leyde stated that trees are very expensive to take down. Ideally the process would be a face-to-face meeting with the homeowner and make sure we are very transparent. If the forester makes an honest and earnest effort to contact an unresponsive homeowner then there should be a timeline for getting the Council involved.

Ms. Lindoo stated we should be educating the public about EAB. Another option is to inject your ash tree with a chemical pesticide which would cost a lot less than having to cut the tree down. Ms. Lindoo stated she is a tree advocate and having trees near your home saves you money in terms of heating and cooling.

Commissioner Bonilla inquired if the City would help subsidize the cost for taking down a diseased tree? City Administrator Deb Hill stated the City has tried to get grants, but so far been denied. Assistant Yokiell stated if the tree is in the right-of-way, then it is the City's responsibility.

Planner Buss stated she will make some changes to the draft ordinance based on this discussion and bring it back to the next meeting. Commissioner Leyde inquired if we can get educational information about EAB on our Facebook page or City Website. Ms. Lindoo will look for some educational materials and stated you should always plant a variety of trees.

Commissioner Leyde stated he is turning this meeting over to Commissioner Bonilla as he needs to leave soon.

## **5. SEWER SERVICE ORDINANCE IN THE RE DISTRICT**

Planner Buss stated there are inconsistencies in our City ordinances related to when sewer service is required to be provided. Particularly in new subdivisions in the Residential Estates (RE) district. The Council would like the Planning Commission to investigate and see if this can be clarified. Planner Buss stated we have a set of ordinances that say if a new house is within 100 feet of a City sewer line, they must connect. One reason for this is so the City can pay for extending the sewer lines. Another reason is environmental due to older septic systems. When the Bailey Meadows development came, the properties on Catherine Drive had to connect. In the subdivision ordinance and the zoning ordinance we say that if the parcel is adjacent, then the whole parcel or subdivision must connect. In some areas a lift station would be required because the system would not operate by gravity. A public lift station would be very expensive, but an alternative would be a smaller/private lift station on each property.

Planner Buss inquired if the Commission wants to require connections for the immediate buildings within 100 feet or if they feel the entire subdivision should connect. Administrator Hill stated the City invested a large amount of money for the water and sewer lines.

The Commission discussed and felt it would be more reasonable for the smaller/private lift stations. Commissioner Bonilla inquired what is required for this area based on our current ordinance. Planner Buss stated that staff has told them the two units within 100 feet must connect.

The Special Planning Commission Meeting experienced technical difficulties at 6:29 p.m. on April 6, 2021.

The Special Planning Commission Meeting resumed at 6:32 p.m. on April 6, 2021.

Roll Call:

Present (3): Commissioner Maria Bonilla, Commissioner Tami Fuelling, and Commissioner Michael Kermes.

Not Present (2): Chair Anthony Mahmood, and Commissioner Brandon Leyde.

The Commission agreed that due to environmental concerns, it makes sense to have units connect and give them the option for private lift stations. Planner Buss will amend the ordinances and bring back to the next meeting.

**6. MEETING DATES**

No action was taken.

**7. COMMISSION REPORTS**

None.

**8. ADJOURNMENT**

Commissioner Fuelling motioned to adjourn the Planning Commission Meeting. Seconded by Commissioner Kermes. Approved 3-0.

The Planning Commission Meeting was adjourned at 6:38 p.m. on April 6, 2021.

Respectfully Submitted:  
Jill Thiesfeld,  
Administrative Assistant II

Signed: \_\_\_\_\_  
Anthony Mahmood, Chairman

# Planning Memorandum

<b>To:</b>	Newport Planning Commission	<b>Reference:</b>	May PC Meeting Agenda Items
<b>Copies To:</b>	Deb Hill, City Administrator		
	Travis Brierley, Assistant to the Administrator		
	Matt, Yokiell, Public Works	<b>Project No.:</b>	N2019-0002
	Susan Lindoo		
<b>From:</b>	Sherri Buss, City Planner	<b>Routing:</b>	
<b>Date:</b>	May 4, 2021		

## 1. Tree Ordinance—Public Hearing

The Planning Commission will hold a public hearing on the proposed amended tree ordinance at its meeting on May 11. The draft ordinance, with updates as recommended by the Commission at the April 6 meeting, is attached. The version with changes shown and the version with changes accepted are both attached because the version showing the changes is difficult to read.

The Commission continued its discussion of the Tree Ordinance at the April meeting and considered comments and recommendations from Sue Lindoo, an active volunteer involved in tree inventory and protection efforts in Newport, and Matt Yokiell, City Public Works staff who currently serves as the city forester.

The Commission recommended the following updates to the tree ordinance on April 6:

- Update the definitions sections to focus mitigation activities on “serious” tree diseases.
- When a serious tree disease is identified on a private property requiring mitigation, the report about the property should go from the Forester directly to the Council and should not wait for an annual report.
- The Forester should notify the homeowner directly about the identification of a serious tree disease through personal contact if possible and/or by leaving printed information.
- The Forester should provide information to identify possible treatment options to homeowners, such as potential treatments for Emerald Ash Borer that are an alternative to removing the tree.

Staff have incorporated language for the Commission’s recommendations into the proposed ordinance amendment. The proposed amendment includes the most recent updates to the definitions to be consistent with guidance from the Minnesota Department of Agriculture and Minnesota DNR.

After the April meeting, Susan provided information to city staff for posting on the city website and in the city newsletter about tree diseases and options for landowners.

## 2. Ordinance Requirements for Sewer Service in the RE District within 100 Feet of Existing Municipal Services—Public Hearing

The City Council requested that the Planning Commission review the Code requirements for properties and subdivisions in the RE district that are treated as R-1 properties and required to connect to City sewer when it becomes available. The Council noted that there are inconsistencies among the utilities, zoning, and subdivision sections of the Code related to requirements for municipal sewer and water services for properties located near municipal sewer lines.

The Planning Commission discussed the sections of the City Code that address required connections to city sewer and water services in parts of the RE district. The Commission heard the recommendations of the City Engineer and Public Works Director on this issue and discussed environmental concerns related to private wells. The Commission recommended amendments to the Utilities Section of the Code and to the Zoning Ordinance to clarify when the city will require connections to municipal services and to make the sections of the Code consistent. The Commission will hold a public hearing on the proposed amendments on May 11. Copies of the proposed amendments are attached.

The Commission's recommendations included the following items:

#### Utilities Section of the City Code

- Section 34-13 should be updated to require that all lots in new subdivisions should be connected to both city sewer and water services when the property is subdivided.
- Connections to city water services should be required due to groundwater contamination affecting wells in Washington County.
- The requirement should include an option to use private sewer pump systems to connect the home to city services in some locations. This option could be approved on a case-by-case basis by the City in areas where steep topography or other issues require a lift station or pumping.

The City Engineer recommended adding a requirement to Section 34-13:

- If the City permits private pump connections to the municipal sewer system, the private systems must be owned and operated by the homeowner, and the systems must include a curb stop and backflow prevention device.

#### Zoning Ordinance

- The ordinance should be updated to be consistent with the Utilities Section and Subdivision Ordinance so that it requires that all lots in new subdivisions in the R-1 district be connected to both city sewer and water services.

The Planning Commission will hold a public hearing on the proposed ordinance amendments at the May 11 meeting.

### **3. New Item for Discussion about Tree Replacement Requirements**

As the Planner reviewed the tree ordinances of other communities for the updates to the section on tree diseases, she noted that other city tree ordinances differ from the Newport ordinance in that each ordinance (Cottage Grove, Maplewood, and Woodbury) included a section that required specific mitigation for a proportion of the trees or woodlands that are lost when development occurs. Some ordinances also require mitigation when vacant parcels are clear-cut prior to proposing development. Newport has a minimum mitigation/replacement

requirement in its Bluff Area Overlay Ordinance but does not have specific requirements for mitigation in its Subdivision Ordinance or Tree Ordinance that would apply in areas outside the Bluff Overlay Area. The City may wish to consider having a specific requirement in its Tree Ordinance for mitigation when a significant number of trees would be removed for development.

The tree ordinances of other communities include the following general sections related to standards for tree replacement:

1. A list of actions that require a tree replacement plan and mitigation, and a list of the actions that are exempt from the requirements.
2. A requirement for a tree replacement plan and what the plan should include. (Newport's Subdivision and Bluff Overlay ordinances require a similar tree replacement plan, but do not include specific standards for mitigation of trees or woodlands that are removed for development.)
3. Specific standards for mitigation of trees that are removed, including a formula to determine the replacement requirements and options for tree replacement.

These items are discussed below:

1. *Actions that require tree inventories and replacement plans*

Other communities' ordinances generally prohibit clear-cutting and significant tree removal without an approved tree replacement and mitigation for tree losses when:

- Development of a vacant parcel(s) is proposed through a subdivision or other planning application.
- When a landowner or developer proposes an expansion of the impervious area of a commercial, industrial, or multifamily development.
- When a landowner proposes the removal of more than an identified percent (such as 30%) of the trees or tree canopy on a vacant parcel
- When a city grading permit is required

Tree inventories and replacement plans are usually not required for:

- Minor improvements or additions on single family properties or removal of individual trees and shrubs on private properties
- Public improvements
- Removal of dead or diseased trees
- Removal of invasive tree species or other projects to restore native woodlands.
- Removal of some or all trees for agricultural activities or by a landscape business

*Requirements for tree preservation plans*

Other cities require that tree preservation plans include many of the same items that Newport's Subdivision and Bluff Overlay District ordinances require for tree preservation plans, including a tree inventory completed by an arborist or similar professional. (See section E in the Cottage Grove ordinance as an example.)

However, in addition to the inventory, most cities also require that the developer or landowner also calculate the size of the healthy trees that are proposed for removal and complete a calculation of the required replacement trees, based on a formula included in the ordinance.

Newport's Subdivision Ordinance does not include any specific standards for tree replacement. The Bluff Ordinance includes a minimum replacement requirement of 10 trees per acre when woodlands are removed.

The other cities' ordinances include definitions of tree types (coniferous, hardwood deciduous softwood deciduous) and "woodlands" to be used for the replacement calculation, and tree species that do not need to be replaced.

*Required mitigation when trees are removed.*

The ordinances typically permit clearing of a portion of the site without mitigation. (For example, Cottage Grove allows clearing of 35% of the site for single-family residential development at low densities; 50% for residential development at higher densities, and 60% for commercial or industrial development without requiring replacement for those areas. Woodbury permits clearing up to 30% of the site without replacement regardless of the proposed land use.) These provisions acknowledge that new development often necessitates some tree removal.

Each of the ordinances includes a schedule for tree replacement that requires a calculation of replacement trees required based on the type and size of trees or woodland areas removed. (See Item #6 under section E in the Cottage Grove ordinance, item 3 in the Maplewood Ordinance, or items g and h in the Woodbury ordinance.)

The ordinances also include options for tree mitigation. The Woodbury ordinance includes the following options--the required option for each development would be approved by the city for its tree replacement plan:

- a. Planting replacement trees in appropriate areas within the development in accordance with the tree replacement schedule; or
- b. Planting replacement trees on city property under the direction of the parks and recreation director or a designee; or
- c. Paying to the city a cash mitigation, based on the diameter inches of required replacement in accordance with the tree replacement schedule. The fee per diameter inch of required replacement is set forth in the city's fee schedule. The payment shall be deposited into an account designated specifically for tree planting.

*Planning Commission Discussion*

The Planning Commission should discuss whether the city should add requirements to its tree ordinance or subdivision ordinance for tree replacement when development or other clearing would result in a significant loss of trees or woodland area.

ARTICLE II. - ~~TREE DISEASES TREES~~

Sec. 18-31. - Policy ~~findings~~ Diseased and Hazardous Trees.

The council has determined that the health of the trees within the municipal limits is threatened by ~~fatal tree diseases~~ serious epidemic shade tree diseases and pests. It is further determined that the loss of trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare, and convenience of the public. ~~It shall be declared to be the intention of the council to control and prevent the spread of tree diseases, and this section shall be enacted for that purpose.~~

It is the intention of the City of Newport to conduct a program of epidemic tree disease and pest control pursuant to the authority granted by M.S. Statutes. 89.001, 89.01, and 89.54-64, as amended. This program is directed specifically at the control and elimination of serious shade tree disease and serious shade tree pests as defined in this article and is undertaken at the recommendation of the commissioners of agriculture and natural resources. The city's forester shall act as coordinator between the commissioners of agriculture and natural resources and the city in the conduct of this program.

(Code 1997, § 810.01)

Sec. 18-32. — Definitions

Unless specifically defined below, words or phrases used in this division shall be interpreted to give them the same meaning as they have in common usage and to give this chapter its most reasonable application. The words "must" and "shall" are mandatory and not permissive.

City is the City of Newport.

Forester is a qualified person designated by the city council to perform the duties of the city forester. The powers and duties of the forester may be assigned to other qualified persons in the absence of the forester.

Nuisance tree is:

- (1) Any living or standing tree or part thereof infected to any degree with a serious shade tree disease or shade tree pest.
- (2) Any logs, stumps, branches, firewood, or other part of dead or dying tree(s) infected with a serious shade tree disease or shade tree pest unless properly treated under the direction of the city forester.

Serious shade tree disease is an epidemic disease that results in significant decline or death of a tree. These include Dutch elm disease (Ophiostoma ulmi or Ophiostoma novo-ulmi), oak wilt (Ceratocystis fagacearum), or any other tree disease with the potential to cause widespread damage.

Serious shade tree pest is a pest that results in significant decline or death of a tree. These include Emerald Ash Borer (Agrilus plannipennis), European elm bark beetle (Scolytus multistriatus), Native elm bark beetle (Hylurgopinus rufipes) or any other shade tree pest with potential to cause widespread damage.

Sec. 18-33. -Forester.

- (a) *Position created.* The powers and duties of the city forester as provided by this article shall be conferred on the public works supervisor.
- ~~(b) *Duties.* It shall be the duty of the forester to coordinate, under the direction and control of the council, all activities of the city relating to the control and prevention of tree diseases. The forester shall~~

~~recommend to the council the details of a program for the control of tree diseases, and perform the duties incident to such a program adopted by the council.~~

(Code 1997, § 810.02)

Sec. 18-3~~3~~4. - Program.

- (a) It is the duty of the city forester to coordinate all activities of the city relating to the control and prevention of serious shade tree diseases and pests. The forester shall recommend the details of a program for the control of serious shade tree diseases and pests and perform the duties of such a program.
- (b) It is unlawful for any person to prevent, delay or interfere with the forester while the forester is engaged in the performance of duties under this division.
- (c) It is unlawful for any person to permit any nuisance tree as defined in section 18-32 to remain on any premises owned or controlled by the person within the city. Such nuisance trees may be abated in the manner prescribed by this division.
- (d) Inspection and investigation.
  - (1) The forester may enter upon private premises at any reasonable time for the purpose of carrying out of any of the duties assigned under this division. The forester shall provide prior notification to the landowner before entering a private property unless the forester determines that there is imminent danger. In situations of imminent danger to human life and safety, notification is not necessary.
  - (2) The forester has the authority to inspect properties within the city to determine whether any nuisance tree exists thereon. The forester has the authority to investigate all reported incidents of shade tree disease or shade tree pests.
  - (3) The forester has the authority to, upon finding conditions indicating serious shade tree disease or shade tree pest(s), remove samples or specimens for further diagnosis, or take such other steps for diagnosis as may be recommended by the commissioner of agriculture. No action to remove nuisance trees or wood shall be ordered until the forester finds with reasonable certainty a serious shade tree disease or shade tree pest is present and has notified the property owner.
- (e) Abatement of a nuisance tree shall be by removing, burning, spraying, or otherwise effectively treating the nuisance tree or wood to prevent the spread of serious shade tree disease and shade tree pests. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as designated by the commissioner of agriculture.
- (f) Whenever the forester finds with reasonable certainty that a serious shade tree disease or shade tree pest infestation exists on any public or private property in the city, the forester has the authority to follow the procedures below:
  - (1) If the serious shade tree disease or shade tree pest infestation exists on a private property, the forester shall notify the property owner in person if possible and through a printed notice delivered to the property. The contact and notice shall include information about potential alternatives for treatment of the disease or pest that are approved or recommended by the Minnesota department of agriculture or department of natural resources.
  - (2) If the danger of infestation of other trees is not imminent because of shade tree disease or shade tree pest dormancy, the forester may choose to reinspect either later in the same growing season or at the beginning of the following growing season before the active period. If at that time the tree has not recovered, the forester shall proceed by notifying the property owner as describe in item (1) and shall also notify the city council that the nuisance tree must be abated. The city council shall follow the procedure identified in section 18-35. The forester shall notify the owner and city council that the city may proceed by abating the nuisance as a public improvement under M.S. Ch. 429.

(3) If danger of infestation of other trees by a serious shade tree disease or shade tree pest is imminent, the forester shall proceed by notifying the property owner by certified mail that the nuisance tree must be abated within a specified time. When the forester notifies the property owner about the nuisance and requirement for abatement, the forester shall also submit a report to the City Council about the nuisance and requirements for abatement in order to protect the safety of the public and the health of trees in the community.

(4) If the property owner fails to abate the nuisance tree by said period of time specified in (3) or as ordered by the city council, the forester may order the work done either by city employees or by contractor. The cost of this work shall be billed to the owner. If the bill is not paid within 30 days, the city shall assess the costs to the property.

~~(b) *Immediate action.* If the forester finds with reasonable certainty that immediate action is required to prevent the spread of the disease, he shall proceed to abate the nuisance forthwith. He shall report the action immediately to the council and to the owner of the property where the nuisance is located.~~

(g) *Emergency abatement.* Nothing in this division shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

(Code 1997, § 810.03)

~~Sec. 18-34. – Nuisance declared.~~

~~The following are declared to be public nuisances whenever they may be found within the city:~~

~~(1) Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus, *Ceratocystis ulmi* (Buisman) Moreau, or which harbors any of the elm bark beetles, *Scolytus multistriatus* (eich.) or *Hylurgopinus rufipes* (March).~~

~~(2) Any elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle insecticide.~~

~~(3) Any living or standing oak tree or part thereof infected to any degree with the oak wilt disease fungus *Ceraloiystis fagacearum*.~~

~~(4) Any dead oak trees or part thereof which in the opinion of the forester constitutes a hazard, including, but not limited to, logs, branches, stumps, firewood, or other oak material, which has not been stripped of its bark and burned or sprayed with an effective fungicide.~~

~~(5) Any other shade trees with an epidemic disease.~~

(Code 1997, § 810.04)

~~Sec. 18-35. – Abatement.~~

~~It is unlawful for any person to permit any public nuisance as defined in section 18-34 to remain on any premises owned or controlled by him within the city. The nuisance may be abated in the manner prescribed by sections 18-38 to 18-43.~~

(Code 1997, § 810.05)

~~Sec. 18-36.— Inspection and investigation.~~

~~The forester shall inspect all premises and places within the city as often as practicable to determine whether any condition described in sections 18-34 and 18-35 exists thereon. He shall investigate all reported incidents of diseased trees.~~

(Code 1997, § 810.06)

~~Sec. 18-37.— Entry on private premises.~~

~~The forester or his duly authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him under this article.~~

(Code 1997, § 810.07)

~~Sec. 18-38.— Diagnosis.~~

~~The forester shall, upon finding conditions indicating disease infestation, immediately send appropriate specimens or samples to the commissioner of agriculture for analysis, or take such other steps for diagnosis as may be recommended by the commissioner of agriculture. Except as provided in sections 18-40 through 18-42, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.~~

(Code 1997, § 810.08)

~~Sec. 18-39.— Abatement of tree disease nuisances.~~

~~In abating the nuisances defined in sections 18-34 and 18-35, the forester shall cause the infected tree or wood to be sprayed, removed, burned, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of tree diseases. The abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the commissioner of agriculture.~~

(Code 1997, § 810.09)

~~Sec. 18-40.— Procedures for removal of infected trees and wood.~~

~~(a) — Ordinary procedure. Whenever the forester finds with reasonable certainty that the infestation defined in sections 18-34 and 18-35 exists in any tree or wood in any public or private place in the city, he shall proceed as follows: If the forester finds that the danger of infestation of the trees is not imminent because of dormancy, he will determine a specified time as to when the nuisance shall be abated according to the infestation and dormant season. The abutting property owner or the owner of the property upon which the tree is located will be notified of the specified time by certified mail. The forester shall immediately report the action to the council, and after the expiration of the time limited by the notice he may abate the nuisance by:~~

~~(1) — Abating the nuisance as a public improvement under M.S.A. § 429.101; or~~

~~(2) — Abating the nuisance as provided in section 18-41.~~

~~(b) — Immediate action. If the forester finds with reasonable certainty that immediate action is required to prevent the spread of the disease, he shall proceed to abate the nuisance forthwith. He shall report the action immediately to the council and to the owner of the property where the nuisance is located.~~

(Code 1997, § 810.10)

Sec. 18-~~4135~~. - Council action.

Upon receipt of the forester's report required by section 18-~~4034 (f)(2) or (3)(a)~~, the council shall by resolution order the nuisance abated. Before action shall be taken on such resolution, the council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owner(s) and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the property affected, action proposed, the estimated cost of the abatement, and the proposed bases of assessment, if any, of costs. At the hearing or adjournment thereof, the council shall hear property owners with reference to the scope and desirability of the proposed ~~project~~abatement. The council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work of day labor or by contract.

(Code 1997, § 810.11)

Sec. 18-~~4236~~. - Records.

The forester shall keep a record of the costs of abatements done under this section and shall report ~~monthly~~annually to the clerk-administrator. All work done for each assessment shall be made stating and certifying the description of land, lots, parcels involved and the amount chargeable to each.

(Code 1997, § 810.12)

Sec. 18-~~4337~~. - Assessments.

On or before November 30 of each year, the clerk-administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The council may then spread the charges or any portion thereof against the property involved as a special assessment under M.S.A. § 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

(Code 1997, § 810.13)

Sec. 18-~~4438~~. - Treatment.

Whenever the forester determines that any tree or wood within the city is infected with disease, he/she may spray or otherwise treat all nearby high value trees with an effective disease destroying agent. Spraying and other treatment activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the commissioner of agriculture and under the supervision of the commissioner and his agents whenever possible. The notice provisions of section 18-~~41-35~~ apply to spraying and treatment operations conducted under this section.

(Code 1997, § 810.14)

Sec. 18-~~4539~~. - Transporting wood prohibited.

It is unlawful for any person to transport within the city any diseased wood or any bark-bearing elm or oak wood without having first obtained permission from the forester. The forester shall grant such permission only when the purpose of this section shall be served by minimizing the risk of spread of the disease.

(Code 1997, § 810.15)

Sec. 18-~~46~~40. - Interference prohibited.

It is unlawful for any person to prevent, delay or interfere with the forester or his agents while they are engaged in the performance of duties imposed by sections 18-314 through ~~18-45~~.

(Code 1997, § 810.16)

Sec. 18-41. - Enforcement.

The city shall be responsible for the enforcement of this division. Any person who fails to comply with or violates any section of this division shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to punishment in accordance with this Code. All land use, building, and grading permits shall be suspended until the applicant has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

The city reserves the right to inspect the site or property at any reasonable time for compliance with tree preservation requirements. If the city finds the site in violation, the city may issue a stop work order until conditions are corrected.

Secs. 18-472—18-65. - Reserved.

## ARTICLE II. - TREES

### Sec. 18-31. - Policy -Diseased and Hazardous Trees.

The council has determined that the health of the trees within the municipal limits is threatened by serious epidemic shade tree diseases and pests. It is further determined that the loss of trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare, and convenience of the public.

It is the intention of the City of Newport to conduct a program of epidemic tree disease and pest control pursuant to the authority granted by M.S. Statutes. 89.001, 89.01, and 89.54-64, as amended. This program is directed specifically at the control and elimination of serious shade tree disease and serious shade tree pests as defined in this article and is undertaken at the recommendation of the commissioners of agriculture and natural resources. The city's forester shall act as coordinator between the commissioners of agriculture and natural resources and the city in the conduct of this program.

(Code 1997, § 810.01)

### Sec. 18-32. – Definitions

Unless specifically defined below, words or phrases used in this division shall be interpreted to give them the same meaning as they have in common usage and to give this chapter its most reasonable application. The words "must" and "shall" are mandatory and not permissive.

*City* is the City of Newport.

*Forester* is a qualified person designated by the city council to perform the duties of the city forester. The powers and duties of the forester may be assigned to other qualified persons in the absence of the forester.

*Nuisance tree* is:

- (1) Any living or standing tree or part thereof infected to any degree with a serious shade tree disease or shade tree pest.
- (2) Any logs, stumps, branches, firewood, or other part of dead or dying tree(s) infected with a serious shade tree disease or shade tree pest unless properly treated under the direction of the city forester.

*Serious shade tree disease* is an epidemic disease that results in significant decline or death of a tree. These include Dutch elm disease (*Ophiostoma ulmi* or *Ophiostoma novo-ulmi*), oak wilt (*Ceratocystis fagacearum*), or any other tree disease with the potential to cause widespread damage.

*Serious shade tree pest* is a pest that results in significant decline or death of a tree. These include Emerald Ash Borer (*Agilus plannipenis*), European elm bark beetle (*Scolytus multistriatus*), Native elm bark beetle (*Hylurgopinus rufipes*) or any other shade tree pest with potential to cause widespread damage.

### Sec. 18-33. -Forester.

- (a) *Position created.* The powers and duties of the city forester as provided by this article shall be conferred on the public works supervisor.

(Code 1997, § 810.02)

### Sec. 18-34. - Program.

- (a) It is the duty of the city forester to coordinate all activities of the city relating to the control and prevention of serious shade tree diseases and pests. The forester shall recommend the details of a program for the control of serious shade tree diseases and pests and perform the duties of such a program.
- (b) It is unlawful for any person to prevent, delay or interfere with the forester while the forester is engaged in the performance of duties under this division.
- (c) It is unlawful for any person to permit any nuisance tree as defined in section 18-32 to remain on any premises owned or controlled by the person within the city. Such nuisance trees may be abated in the manner prescribed by this division.
- (d) Inspection and investigation.
  - (1) The forester may enter upon private premises at any reasonable time for the purpose of carrying out of any of the duties assigned under this division. The forester shall provide prior notification to the landowner before entering a private property unless the forester determines that there is imminent danger. In situations of imminent danger to human life and safety, notification is not necessary.
  - (2) The forester has the authority to inspect properties within the city to determine whether any nuisance tree exists thereon. The forester has the authority to investigate all reported incidents of shade tree disease or shade tree pests.
  - (3) The forester has the authority to, upon finding conditions indicating serious shade tree disease or shade tree pest(s), remove samples or specimens for further diagnosis, or take such other steps for diagnosis as may be recommended by the commissioner of agriculture. No action to remove nuisance trees or wood shall be ordered until the forester finds with reasonable certainty a serious shade tree disease or shade tree pest is present and has notified the property owner.
- (e) Abatement of a nuisance tree shall be by removing, burning, spraying, or otherwise effectively treating the nuisance tree or wood to prevent the spread of serious shade tree disease and shade tree pests. Such abatement procedures shall be carried out in accordance with current technical and expert opinions and plans as designated by the commissioner of agriculture.
- (f) Whenever the forester finds with reasonable certainty that a serious shade tree disease or shade tree pest infestation exists on any public or private property in the city, the forester has the authority to follow the procedures below:
  - (1) If the serious shade tree disease or shade tree pest infestation exists on a private property, the forester shall notify the property owner in person if possible and through a printed notice delivered to the property. The contact and notice shall include information about potential alternatives for treatment of the disease or pest that are approved or recommended by the Minnesota department of agriculture or department of natural resources.
  - (2) If the danger of infestation of other trees is not imminent because of shade tree disease or shade tree pest dormancy, the forester may choose to reinspect either later in the same growing season or at the beginning of the following growing season before the active period. If at that time the tree has not recovered, the forester shall proceed by notifying the property owner as describe in item (1) and shall also notify the city council that the nuisance tree must be abated. The city council shall follow the procedure identified in section 18-35. The forester shall notify the owner and city council that the city may proceed by abating the nuisance as a public improvement under M.S. Ch. 429.
  - (3) If danger of infestation of other trees by a serious shade tree disease or shade tree pest is imminent, the forester shall proceed by notifying the property owner by certified mail that the nuisance tree must be abated within a specified time. When the forester notifies the property owner about the nuisance and requirement for abatement, the forester shall also submit a report to the City Council about the nuisance and requirements for abatement in order to protect the safety of the public and the health of trees in the community.

(4) If the property owner fails to abate the nuisance tree by said period of time specified in (3) or as ordered by the city council, the forester may order the work done either by city employees or by contractor. The cost of this work shall be billed to the owner. If the bill is not paid within 30 days, the city shall assess the costs to the property.

(g) *Emergency abatement.* Nothing in this division shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

(Code 1997, § 810.03)

(Code 1997, § 810.04)

(Code 1997, § 810.06)

(Code 1997, § 810.07)

(Code 1997, § 810.08)

(Code 1997, § 810.09)

(Code 1997, § 810.10)

Sec. 18-35. - Council action.

Upon receipt of the forester's report required by section 18-34 (f)(2) or (3), the council shall by resolution order the nuisance abated. Before action shall be taken on such resolution, the council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owner(s) and published once no less than one week prior to the meeting. The notice shall state the time and place of the meeting, the property affected, action proposed, the estimated cost of the abatement, and the proposed bases of assessment, if any, of costs. At the hearing or adjournment thereof, the council shall hear property owners with reference to the scope and desirability of the proposed abatement. The council shall thereafter adopt a resolution confirming the original resolution with such modifications as it considers desirable and provide for the doing of the work of day labor or by contract.

(Code 1997, § 810.11)

Sec. 18-36. - Records.

The forester shall keep a record of the costs of abatements done under this section and shall report annually to the clerk-administrator. All work done for each assessment shall be made stating and certifying the description of land, lots, parcels involved and the amount chargeable to each.

(Code 1997, § 810.12)

Sec. 18-37. - Assessments.

On or before November 30 of each year, the clerk-administrator shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The

council may then spread the charges or any portion thereof against the property involved as a special assessment under M.S.A. § 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

(Code 1997, § 810.13)

Sec. 18-38. - Treatment.

Whenever the forester determines that any tree or wood within the city is infected with disease, he/she may spray or otherwise treat all nearby high value trees with an effective disease destroying agent. Spraying and other treatment activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the commissioner of agriculture and under the supervision of the commissioner and his agents whenever possible. The notice provisions of section 18-35 apply to spraying and treatment operations conducted under this section.

(Code 1997, § 810.14)

Sec. 18-39. - Transporting wood prohibited.

It is unlawful for any person to transport within the city any diseased wood or any bark-bearing elm or oak wood without having first obtained permission from the forester. The forester shall grant such permission only when the purpose of this section shall be served by minimizing the risk of spread of the disease.

(Code 1997, § 810.15)

Sec. 18-40. - Interference prohibited.

It is unlawful for any person to prevent, delay or interfere with the forester or his agents while they are engaged in the performance of duties imposed by sections 18-34.

(Code 1997, § 810.16)

Sec. 18-41. - Enforcement.

The city shall be responsible for the enforcement of this division. Any person who fails to comply with or violates any section of this division shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to punishment in accordance with this Code. All land use, building, and grading permits shall be suspended until the applicant has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

The city reserves the right to inspect the site or property at any reasonable time for compliance with tree preservation requirements. If the city finds the site in violation, the city may issue a stop work order until conditions are corrected.

Secs. 18-42—18-65. - Reserved.

Sec. 34-13. - Utility connection requirements.

- (a) *Valves required.* There shall be installed in every connection to the city water system one full-way valve which shall be installed at a point between the curb stop box and the meter so that the water may be turned off and the meter and house plumbing entirely drained. There shall be installed another full-way valve in the pipe on the house side of the meter.
- (b) *Backflow valves.* All water lines serving commercial, industrial, or multiple dwelling structures which are connected to the municipal water system shall contain an automatic backflow valve to prevent contamination of the municipal water in the event of low pressure. The valve shall be of a type approved and identified in the city public works design manual.
- (c) *Hydrant shutoff valves.* All fire hydrants installed in the city, except those in single-family residential districts, shall be equipped with a shutoff valve in the water supply line.
- (d) *Pipe specifications.* All service pipe connections shall be installed to meet the requirements of the adopted city public works design manual.
- (e) *Separate lines required.*
  - (1) The drainage and plumbing systems of each new building, and work installed in an existing building, shall be separate from and independent of that of any other building, and every building shall have an independent connection with the public sewer and water when such is available.
  - (2) Exception. Where one building stands to the rear of another building on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building roof drain from the front building may be extended to the rear building and the whole shall be considered as one building roof drain. Where the building roof drain is extended, a clean out shall be provided immediately inside the rear wall of the front building. This exemption shall be determined on a case by case basis by the public works superintendent.
- (f) *Replacement of existing utility services.* When new buildings are erected on existing sites served by existing services and it is necessary, as determined by the public works superintendent, to increase or change the existing services; the property owner is required to replace the old water or sewer service. New connections with the sewer or water main shall not be made until all the old services have been removed and the water or sewer main is plugged.
- (g) *Use of old house sewers.* Old house sewers or portions thereof may be approved for use by the public works superintendent. The public works superintendent may request that the old sewer be excavated and/or televised for the purpose of facilitating inspection. No cesspool or septic tank shall be connected to any portion of the house sewer. The existing cesspool or septic tank shall immediately be pumped, cleaned, and filled with earth to the surrounding ground level.
- (h) *Required connection to sewer.*
  - (1) *Existing buildings.* Any building used for human use or habitation and located on property adjacent to a sewer main, or in a block through which the system extends within 100 feet of the property line, shall be connected to the municipal sanitary sewer system within two (2) years from the time a connection is available to any such property.
  - (2) *New buildings.* All buildings hereafter constructed within the city on property adjacent to a sewer main, or in a block through which the system extends within one hundred (100) feet of the property line, shall be provided with a connection to the municipal sanitary sewer system for the disposal of human wastes. The connection shall be made by the owner of the building at no cost to the city.
  - (3) *New subdivisions.* All homes in subdivisions hereafter constructed within the city on a parcel(s) adjacent to a sewer main or where the municipal sewer system extends within one hundred (100) feet of a parcel boundary, shall be served by the municipal sanitary sewer and municipal water system. The connection shall be made by the subdivider at no cost to the city.

On parcels where topography or other physical conditions may require a lift station(s) to provide municipal sewer service to homes within the subdivision, private pump systems or another option approved by the city may be permitted to connect the homes to the municipal sewer system. This option may be permitted by the city on a case-by-case basis. If approved by the city, all private pump systems shall be owned and operated by the property at no expense to the city, All lateral piping connecting pump systems to city-owned collection system piping shall be equipped with a curb stop and backflow prevention device located on or near the property line.

(Code 1997, § 1000.13)

ARTICLE IV. - RESIDENTIAL AND OPEN SPACE DISTRICTS

Sec. 36-206. - Purpose.

(1) The residential and open space districts and district standards are established to carry out the intent and purposes of the Comprehensive Plan and to protect public health, safety, convenience, and public welfare.

(Code 1997, §1340.01)

Sec. 36-207. – Purpose of Zoning Districts.

- (1) *RE, Residential Estates District.* This district shall be intended for low-density single-family residential areas without public utilities and to preserve lands in their natural state or in agricultural uses pending the proper timing for the economical provision of utilities and orderly development. A lot or parcel of land located in a Residential Estates (RE) zone served by municipal sewer and water facilities shall be treated as an ~~urban low-density single~~ residential (R-1) district parcel and shall be required to meet all requirements of the R-1 district.
- (2) *R-1A, River Residential District.* This district shall be intended to provide areas for low-density single-family development along and near the Mississippi River where public utilities are available.
- (3) *R-1, Low Density Single-Family Residential District.* This district shall be intended to provide areas for low-density single-family dwelling development where public utilities are available.
- (4) *R-2, Urban Mixed Residential District.* This district shall be intended to provide areas for a variety of housing types at urban densities including single-family and multifamily residential uses in areas served by municipal sewer and water services.
- (5) *OS, Open Space District* This district is designed to provide areas for public parks, open spaces and public buildings and facilities. Public parks and open space may be owned or operated by the City of Newport or any other public body. All improvements within these districts must be consistent with the Newport Comprehensive Land Use Plan.

(Code 1997, § 1340.02; Ord. No. 2016-13, 12-15-2016)

Sec. 36-208. - Residential lot area, depth, width, coverage, setbacks and heights.

The following minimum requirements shall be required in all residential districts:

	RE †	R-1A	R-1	R-2	OS
<b>Minimum lot sizes per unit in square feet</b>					
Dwellings, single-family	Unsewered areas: 2 Acres (87,120 sq ft)  <u>Sewered areas:</u>	15,000 sq ft	7,800 sq ft	7,200 sq ft	NA

	Use R-1 District standards				
Dwellings, duplex	—	—	—	6,000 sq ft	NA
Dwellings, townhome or quadhome	—	—	—	3,650 sq ft	NA
Dwellings, Multifamily				2,200 (up to 20 units per developable acre)	NA
Other uses	2 Acres	1 Acre	1 Acre	1 Acre	1 Acre
<b>Minimum Lot Depth in Feet</b>	200	150	130	120	NA
<b>Minimum Lot Width in Feet</b> Interior lot/(corner lot)					
Dwellings, single-family	160 / (200)	100 / (120)	60 / (75)	50/(60)	NA
Dwellings, two family	—	—	—	60/(80)	NA
Dwellings, more than two family	—	—	—	NA	NA
Other permitted uses	160 / (200)	100/(120)	60/(75)	50/(60)	NA

<b>Minimum front yard in feet***</b>	40	30	30	20	20
<b>Minimum side yard in feet*</b>					
Dwellings, single-family or two family	20 / (40)	10 / (30)**	10 / (30)**	SF 5ft; 2-family or corner lot 10 ft	
Dwellings, more than two family	—	—	—	20 (40)	NA
Dwellings and garages, more than two-family if adjacent to RE, R-1A or R-1 District or an existing or future arterial or collector roadway	N/A	N/A	N/A	50	NA
Garages or accessory structures***, single and 2-family	20 / (40)	5 / (30)	5 / (30)	5/(20)	NA
Other permitted uses	20	30	30	20	10/(30)**
<b>Minimum rear yard in feet</b>					
Dwellings, single-family or two family	50	30	30	25	NA
Dwellings, more than two family	—	—	—	30	NA
Garages or accessory structures**	20	5	5	5 SF/ 30MF	NA

Other uses	50	40	40	25	25
Maximum lot coverage, impervious surfaces, single family dwelling units	20 percent	20 percent	35 percent (25 percent in Shoreland and MRCCA Districts ****)	50 percent	NA
Maximum lot coverage, impervious surfaces, dwellings, more than 2 family	N/A	N/A	N/A	60 percent	NA
Maximum building height in feet	35 feet	35 feet	35 feet	40 feet	40 feet
Public sewer <u>and water services</u> required	No	Yes	Yes	Yes	No

† A lot or parcel in the RE District ~~located that is located adjacent to a municipal sewer main or where a sewer main exists within one hundred (100) feet of one of the parcel boundaries by municipal sewer and water facilities~~ shall be treated as a low-density single-family residential (R-1) district parcel and shall meet the requirements of the R-1 district and the Subdivision Ordinance, including the requirement to serve all of the lots created by subdivision of the parcel with municipal sewer and water services.

\* Regardless of the setback standards noted in this table, the distance between a proposed foundation wall and an existing foundation wall on an adjacent lot may not be less than 15 feet.

\*\* Side setbacks for substandard lot widths in R-1A: Ten percent of lot width (25 percent for corner lot, street side). Side setbacks for substandard lot widths in R-1: 15 percent of lot width (33 percent for corner lot, street side).

\*\*\* Minimum front setback from the right-of-way of a collector or arterial roadway is 50 feet in all districts.

\*\*\*\* See Shoreland Management and MRCCA district regulations § 36-328 and 36-360.

(Code 1997, § 1340.03; Ord. No. 2016-13, 12-15-2016)

Sec. 36-209. - Uses in the residential districts.

Use *	RE	R-1A	R-1	R-2	OS
<b>Residential Uses</b>					
Single family detached, one dwelling per lot	P	P	P	P	N
Single family detached, more than one dwelling unit per lot	N	N	N	C	N
Two family residences	N	N	N	C	N
Multi-family residences (3 units or more per building)	N	N	N	PUD*	N
Homes for handicapped or infirm including group homes or halfway houses but not containing more than six (6) unrelated persons	P	P	P	P	N
Nursing homes	N	N	N	N	N
Assisted living, memory care and similar facilities	N	N	N	N	N
Planned unit developments (PUDs) – minimum 10-acre area required for PUDs)	PUD	PUD	PUD	PUD*	N
Manufactured single-family dwelling	P	P	P	P	N
Mobile homes	C	N	N	N	N

<b>Commercial and Mixed Uses</b>					
Agricultural operations and buildings, row crops, tree farming, and keeping of domestic farm animals in compliance with Code requirements	P	N	N	N	N
Churches, synagogues, temples, and associated facilities except schools	C	P	P	P	N
Commercial greenhouse operation	C	N	N	N	N
County club and golf course	C	C	C	C	N
Historic Site	P	P	P	P	P
Horseback riding, stables	I	N	N	N	N
Kennel for more than six animals	I	N	N	N	N
Live-work building	C	C	C	C	N
Medical clinics	N	N	N	C	N
Mixed-use (dwelling unit above ground floor commercial or other use)	N	N	N	C	N
Open space, public or private	C	C	C	C	P
Private athletic fields or courts	C	C	C	C	C
Public facilities including government offices, emergency facilities, public works facilities, schools, libraries, museums, art galleries, and other municipally owned or operated facilities.	C	C	C	C	P
Public utility	C	C	C	C	C
Short-term residential unit rental(s) not in owner-occupied unit(s)—further discussion)	N	N	N	N	N

<b>Accessory Uses</b>					
Accessory structures in accordance with §36-163	P	P	P	P	P
Accessory renewable energy system, including ground source heat pump, solar energy system, or wind-energy system in compliance with Article X.	P	P	P	P	P
<u>Agritourism</u>	I	N	N	N	N
Bed and Breakfast within a single-family residence	C	C	C	C	N
Common property to a multifamily complex or a PUD	N	N	N	C	N
Day care facilities in single-family homes with 14 or fewer children being attended to	P	P	P	P	N
Day care facilities in single-family homes with more than 14 children being attended to	C	C	C	C	N
Day care facilities in multi-family buildings	N	N	N	C	N
Gazebo, arbor and play equipment in public or private areas	P	P	P	P	P
Home occupation in accordance with §36-163(c)(2)	P	P	P	P	N
Parking lot, as an accessory use	N	N	N	P	P
Short-term home rental within single family residence	N	N	N	N	N
Swimming pool	P	P	P	P	P

P = Permitted use.

C = Permitted with a conditional use permit.

I=Permitted with an Interim Use Permit

N = Not permitted.

PUD = Permitted with a planned unit development.

\* Multifamily residential developments in the R-2 District shall require a PUD and a minimum 10-acre parcel area unless the proposed use is adjacent to an existing multifamily use.

(Ord. No. 2016-13, 12-15-2016)

Sec. 36-210. - Credits and allowances for multiple dwellings.

The following lot area credits and allowances shall be applied for multiple dwellings in the R-2 and Mixed-Use district but in no event shall the minimum lot area with allowances be less than three thousand (3,000) square feet per dwelling unit in the R-2 district based on the following schedule:

- (1) For each parking space provided within or beneath a principal structure, subtract three hundred (300) square feet; or if one-third ( $\frac{1}{3}$ ) or more of the required parking spaces is in a covered or underground parking structure the city may grant a density bonus of ten (10) percent;
- (2) If the site upon which the multiple dwelling is being constructed is adjacent to a site zoned for a commercial use, subtract three hundred (300) square feet;
- (3) If the adjacent site is zoned R-1 or R-1A, add three hundred (300) square feet per unit for that portion of the multiple dwelling site within one hundred and fifty (150) feet of the R-1 or R-1A district;
- (4) If the total lot coverage is less than twenty (20) percent, subtract one hundred and fifty (150) square feet per unit;
- (5) For each unit containing more than two (2) bedrooms, add three hundred (300) square feet.

(Code 1997, § 1340.05; Ord. No. 2016-13, 12-15-2016)

Sec. 36-211. - Additional requirements for residential development in the R-2 district.

- (a) All multi-family residential development in the R-2 district shall utilize the planned unit development (PUD) process in accordance with section 36-259, and planned unit developments (PUDs) shall be a minimum ten (10) acres in size, based on the gross developable area of the parcel(s), which is defined as the total area of the parcel(s) excluding existing public streets or highways).

(Ord. No. 2016-13, 12-15-2016)

Secs. 36-212—36-225. - Reserved.

## CITY OF COTTAGE GROVE CODE OF ORDINANCES

### 11-6-19: TREE PRESERVATION:

#### A. Purpose And Objective:

1. Purpose: Within the city of Cottage Grove, trees and woodlands are considered a valuable asset to the community composite. The city places a priority on protecting this asset and finds that it is in the best interest to regulate the development and alteration of wooded areas within the community. The city also finds that a certain amount of tree removal is an inevitable consequence of the development process and seeks to establish comprehensive standards related to reasonable tree removal and preservation.

2. Objective: In order to achieve a realistic balance between tree protection and development, the city has established standards that with compliance and enforcement will:

- a. Protect, preserve and enhance the integrity of the natural environment;
- b. Allow for orderly development within wooded areas;
- c. Minimize tree and wildlife habitat loss and maintain wildlife corridors;
- d. Protect privacy by maintaining buffers between land uses;
- e. Increase and maintain property values;
- f. Prevent and reduce soil erosion and sedimentation;
- g. Promote sound stormwater management practices;
- h. Improve air quality;
- i. Reduce noise pollution;
- j. Enhance energy conservation through natural insulation and shading.

#### B. Definitions:

**ACTIVELY DEVELOPING SUBDIVISION:** A residential subdivision that has an approved tree preservation plan, and vacant platted lots controlled by a development company that is actively promoting, selling, or building residential units.

**CONIFEROUS TREE:** A wood plant which, at maturity, is at least twelve feet (12') or more in height, and which retains its green color year-round and does not drop its fronds or needles in the winter.

**CRITICAL ROOT ZONE:** An imaginary circle surrounding the tree trunk with a radius of one foot (1') per one inch (1") of trunk diameter, such that, for example, a twenty-inch diameter tree has a critical root zone with a radius of twenty feet (20').

**dbh:** Diameter of a tree measured four and a half feet (4.5') above the ground.

**DRIP LINE:** The farthest distance away from the trunk of a tree that rain or dew will fall directly to the ground from the leaves or the branches of the tree.

**DYNAMIC DEVELOPMENT PROPERTY:** Any platted or unplatted property that has had an application before the city for zoning or land use review within the previous five (5) years.

**HARDWOOD DECIDUOUS TREE:** A tree of one of the following species: ironwood, oak, elm, maple (hard), walnut, ash, hickory, birch, black cherry, hackberry, or locust.

**HEALTHY TREE:** A healthy tree has:

1. A live top (live crown) that is greater than one-third (1/3) the total tree height,

2. Newly dead branches that make up less than fifteen percent (15%) of the total crown,
3. Less than fifteen percent (15%) of the tree crown with missing branches,
4. Foliage that is dense throughout the live portion of the crown,
5. A tree trunk with open wounds that are less than one-third (1/3) the diameter of the tree, no wounds in contact with the ground, and no wounds that have soft, punky wood or other indication of decay.

LARGE WOODLAND TRACT: A wooded area greater than or equal to seven thousand five hundred (7,500) square feet of contiguous or nearly contiguous canopy cover.

QUALIFYING TREE: A healthy tree excluding buckthorn meeting one of the following definitions: a hardwood deciduous tree at least six inches (6") dbh, a softwood deciduous tree at least eight inches (8") dbh, or a coniferous tree at least ten feet (10') in height.

SOFTWOOD DECIDUOUS TREE: A tree of one of the following species: cottonwood, catalpa, poplars, aspen, silver maple, basswood, box elder, or willow.

C. Prohibited Tree Removal: The removal of qualifying trees on any property by means of clear cutting or in a systematic removal method shall be prohibited, except in accordance with a city-approved tree preservation plan or agricultural management/harvest plan, or unless it is excepted pursuant to subsection D.

D. Exceptions: Tree removal is allowed without preservation plan in the following circumstances:

1. The removal of individual qualifying trees on a developed single-family residential lot that is not in a pending or actively developing subdivision.
2. The removal of shrubs, brush, buckthorn, and nonqualifying trees by a property owner.
3. The removal of trees seriously damaged by storms, other catastrophic events or disease, as verified by the city forester.
4. The removal of trees with potential to cause serious damage as determined by the city forester.
5. The removal of twenty five (25) or fewer qualifying trees associated with agricultural or commercial horticultural use. Properties in active agricultural production of trees/tree farms shall have an agricultural management/harvest plan filed with the city for planned tree removal in excess of twenty five (25) qualifying trees that shall include the following:

- a. Legal description of property.
- b. Crop/tree identification.
- c. Acres to be managed.
- d. Soil erosion control measures.
- e. Removal staging plan.

E. Tree preservation plan:

1. A tree preservation plan is required in the following circumstances:
  - a. The disturbance of qualifying trees within the metropolitan urban service area (MUSA) on a vacant residential lot.

- b. The disturbance of qualifying trees on a property in any zoning district within the Mississippi River critical area overlay district.
- c. The disturbance of qualifying trees on a dynamic development property.
- d. A project for which a city grading permit is required.
- e. Planning applications involving site plans, plats, subdivisions, minor subdivisions or lot splits where a qualifying tree will be disturbed.
- f. New construction of commercial, industrial or institutional buildings.
- g. Expansion of an existing commercial, industrial or institutional building or impervious surface by ten percent (10%) or greater square feet, where an approved tree preservation plan is not on file with the city.

2. The tree preservation plan shall include separate plan sheets with the following information:

- a. Contact information of applicants, property owners, developer/builder, and signature of the person preparing the plan, the certification, and employer or firm.
- b. Delineation of the existing buildings, structures, or impervious surfaces situated on the site.
- c. Delineation of the proposed buildings, structures, or impervious surfaces planned on the site.
- d. Delineation of all areas to be graded and limits of land disturbance.
- e. Graphic identification of all existing qualifying trees.
- f. Graphic identification of all qualifying trees proposed to be removed within the construction area.
- g. Measures designed to protect trees designated for preservation per the requirements of subsections E9 and E10 of this section.
- h. A listing of the total diameter inches of existing qualifying trees on the site calculated per subsection E3 of this section. Two feet (2') in height of a coniferous tree shall be counted as contributing one inch (1") to the total of existing qualifying inches.
- i. A listing of the total diameter inches of healthy qualifying trees proposed to be removed. Two feet (2') in height of a removed coniferous tree shall be counted as contributing one inch (1") to the total of removed qualifying inches.
- j. Calculation of replacement trees required per the mitigation requirements of subsections E6 and E7 of this section, if any.

3. The tree preservation plan shall include a tree inventory prepared by a certified arborist that meets the following requirements:

- a. Unless the site and project parameters meet the exception described in 3b., a tree inventory shall consist of a table listing each qualifying tree on the site and specifying its identification number (linked to a metal field tag placed on the tree's trunk five feet (5') from grade); species; size (dbh in inches for deciduous trees and height in feet for coniferous trees); classification as hardwood, softwood, or coniferous per the definitions of this section; and whether the tree is to be preserved or removed. To facilitate the calculation of total existing and removed qualifying inches, a proxy dbh value shall be included in entries for coniferous trees, equal to one inch (1") for each two feet (2') in height. A sample inventory table is depicted below:

TREE TAG	SPECIES	DBH (INCHES)	HEIGHT (FEET)	TYPE	STATUS
0001	Aspen	14	N/A	Softwood	Saved
0002	American Elm	16	N/A	Softwood	Removed
0003	Black Cherry	8	N/A	Hardwood	Saved
0004	Red Oak	19	N/A	Hardwood	Saved
0005	Red (Norway) Pine	11.5*	23	Coniferous	Saved
0006	Colorado Spruce	15.5*	31	Coniferous	Removed
		N/A			
		N/A			

1254\*\*

N/A

Large Woodland Tract

Undisturbed

Existing Inches :

Qualifying

1338

\*Proxy dbh value for coniferous trees: A number equal to one half the tree's height in feet (not the tree's true diameter).

\*\*Proxy dbh value for undisturbed large woodland tract: The number of inches contributed to the total existing qualifying inches by an undisturbed large woodland tract 75,240 square feet in area (75,240

60 = 1254).

b. For sites containing a large woodland tract within which no qualifying trees will be disturbed, an alternative inventory meeting the following requirements may be provided:

(1) Trees within undisturbed large woodland tracts are not required to be inventoried individually. Instead, the area of the undisturbed tract may be measured in square feet (on site or by means of an aerial photo) and divided by sixty (60) to produce a proxy that shall be counted as the number of inches the tract contributes to the total qualifying inches.

(2) All qualifying trees located on the site but outside of an undisturbed large woodland tract shall be inventoried as described in (a) above.

(3) The site's total existing qualifying inches shall be the sum of the inches contributed by undisturbed large woodland tracts and by qualifying trees outside the tract.

4. Modification Of Plan: The tree preservation plan shall be reviewed by the city to assess the best possible layout to preserve qualifying trees and to enhance the efforts to minimize damage to qualifying trees. The applicant shall meet with city staff prior to submission of the development application or prior to application for the grading permit, whichever is first, to determine the most feasible and practical placement of buildings, parking, driveways, streets, storage and other physical features, in order that the fewest qualifying trees are destroyed or damaged. During the modification process, the city has the following options:

a. The city may require modification to a tree preservation plan if the proposed tree removal is in excess of what is allowed by this section.

b. The city may declare an application requiring a tree preservation plan incomplete based on the lack of required submittal information. Such application will be rejected.

c. The city may deny an application requiring a tree preservation plan if it is incomplete, lacks sufficient detail, if the tree removal is in excess of what is allowed, or the applicant is unwilling to modify the plan to comply with this section.

d. The city may require a dedication of a deed restricted conservation easement designed to ensure that specific tree preservation areas are not negatively impacted or destroyed.

e. The city may require relocation of proposed private and public utilities, hard surface, and structures to increase preservation opportunities within the site.

5. Allowable Tree Removal: The following table establishes the maximum percentage of existing qualifying inches on a project site that may be removed without mitigation. Mitigation according to the tree replacement schedule is required when removal surpasses this threshold.

Land Use	Permitted removal threshold (percent of existing qualifying inches)
Residential <10 units/acre	35%
Residential >10 units/acre, Business/Commercial	50%
Industrial	60%

a. The following types of trees do not need to be included as part of the total computation of tree removals:

- (1) Trees determined by the city or the project arborist to be dead, dying, diseased, or seriously hazardous;
- (2) Trees that are being transplanted from the site to another appropriate site within the city;
- (3) Trees that were planted as part of a commercial business such as a tree farm or nursery. The applicant shall provide evidence to support the finding that the trees were planted as part of a commercial business.

6. Mitigation:

a. For any development or site in which the number of qualifying inches removed exceeds the permitted removal threshold, the applicant shall mitigate the tree loss in one of the following ways:

- (1) Planting replacement trees in appropriate areas within the development in accordance with the tree replacement schedule;
- (2) Planting replacement trees on city property under the direction of the parks and recreation director or a designee;
- (3) Paying to the city a cash mitigation fee, based on the diameter inches of required replacement in accordance with the tree replacement schedule. The cash fee in lieu of required replacement inches shall be in accordance with the city's fee schedule, and payment shall be deposited into the public landscaping initiative fund prior to tree removal activities.
- (4) Performance of vegetation or landscape management projects equal in value to the mitigation fee, with the approval of the city.

b. The form of mitigation to be provided by the applicant shall be determined by the city.

c. Replacement trees planted in mitigation of excessive tree removal shall be required in addition to any other city landscaping requirements.

7. Tree Replacement Schedule:

a. Quantity: Qualifying tree inches removed beyond the permitted thresholds shall be replaced at a rate of fifty percent (50%), or one (1) replacement caliper inch for two (2) removed diameter inches.

b. Size: Deciduous trees planted in mitigation of excessive tree loss shall have a minimum caliper of two and a half inches (2.5") and coniferous trees shall be a minimum of six feet (6') tall.

c. Species: Coniferous trees or hardwood deciduous trees shall be used as replacement trees. One new conifer six feet (6') in height shall be credited as contributing two (2) caliper inches to the total of required replacement inches. Ornamental trees are not acceptable for use as replacement trees. Where ten or more replacement trees are required, not more than thirty-three percent (33%) of the replacement trees shall be of the same species of tree. Applicants are encouraged to plant trees indigenous to the area. In no case shall a tree of a species listed on the DNR invasive species list be planted as a replacement tree.

d. Example calculation:

Total existing qualifying inches	Permitted removal threshold	Inches permitted to be removed	Inches removed	Excess inches removed	Replacement rate	Replacement inches required	Replacement credits	Replacement trees (one possible combination)
1500	50%	750	1000	250	50%	125	Hardwood deciduous : 2.5" Coniferous : 2"	30 hardwood deciduous and 25 coniferous

8. Implementation Of The Plan: The applicant shall implement the tree preservation plan prior to and during any grading or construction activity. The tree protection measures shall remain in place until all land disturbance and construction activity is terminated or until a request to remove the tree protection measures is made to, and approved by, the city.

a. The applicant will hire a project arborist that is a certified arborist or forester approved by the city to assist with all facets of tree preservation on the site.

b. The applicant shall arrange for the city and project arborist to inspect the construction site prior to the beginning of grading to ensure that protective fencing and other protective measures are in place and installed correctly. Minor encroachment, grading, trenching, filling, compaction, or change in soil chemistry may occur within the fenced areas protecting the critical root zone of the trees to be saved under the direct supervision of the project arborist.

c. Qualifying trees designated for preservation which are found to be diseased, or dying, or are not suited for location into the project may be removed without penalty based upon the recommendation of the project arborist and in agreement between the city and the applicant.

d. If a qualifying tree that was intended to be preserved is removed without permission of the city, or damaged so that it is in a state of decline within one year from the date of project closure, the applicant shall mitigate the unplanned tree removal through replacement at a rate of one hundred percent (100%), that is, one (1) replacement caliper inch will be required for each one (1) diameter inch of a removed deciduous tree, and one (1) replacement foot shall be required for each one foot (1') of height of a removed coniferous tree. Alternatively, unplanned tree removal shall be mitigated by payment of a cash fee equivalent to the cost of the number of new trees this replacement rate would require, in accordance with the city forester's annual determination of the costs of new trees.

e. The city shall have the right to inspect the development and/or building site in order to determine compliance with the approved tree preservation plan. The city shall determine whether compliance with the tree preservation plan has been met.

9. Required Protective Measures: The applicant shall complete all recommendations made by the project arborist, and shall implement the following measures to be utilized to protect qualifying trees:

a. No grade change, construction activity, or storage of materials shall occur within the drip line or critical root area of qualifying trees to be preserved.

b. Identification of any oak trees requiring pruning between April 15 and July 1. Any oak trees so pruned shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.

c. Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.

10. Additional Protective Measures: The following tree protection measures are suggested to protect significant trees that are intended to be preserved according to the submitted tree preservation plan, and may be required by the city:

a. Installation of retaining walls or tree wells to preserve trees.

b. Placement of utilities in common trenches outside of the drip line of significant trees, or use of tunneled installation.

c. Use of tree root aeration, fertilization, and/or irrigation systems.

d. Therapeutic pruning.

11. Warranty: Any replacement tree which is not alive or healthy, as determined by the city, or which subsequently dies, other than those damaged by storms or other acts of God, or diseased, unless caused by construction activity, within one (1) year after the date of

project closure, shall be removed by the applicant and replaced with a new, healthy tree meeting the same minimum size requirements immediately after removal.

12. Maintenance:

a. The applicant or property owner is responsible for maintenance of trees to be preserved and recommended mitigation until such time as the property is sold to the homeowner, or turned over to a homeowners' association. Prior to closing on a house, the applicant will review the status of the trees on the site and remove and replace trees designated for preservation if found dead or dying.

b. On public property, the applicant will be responsible for tree preservation and recommended mitigation until such time as the area included in the tree preservation plan is no longer in an actively developing subdivision. Review of the public property land will occur before final development build out and any tree removal and replacement will be the responsibility of the applicant.

c. Individual private property owners shall be responsible for the maintenance of vegetation on the property owner's property. Qualifying trees preserved as a part of the tree preservation plan are prohibited from being removed until such time as the entire plat is no longer an actively developing subdivision, or written approval is obtained from the city.

d. Homeowners' associations shall be responsible for the maintenance of vegetation in common areas after title to the common areas has been transferred to the homeowners' association.

(Ord. 1008, 8-21-2019)

## CITY OF MAPLEWOOD CODE OF ORDINANCES

### DIVISION 3. - TREES

#### Sec. 18-241. - Findings and purpose.

The city desires to protect the trees and woodlands in the City of Maplewood. Trees and woodlands provide numerous environmental, economic, and scenic benefits. They help filter air pollutants, absorb stormwater runoff, provide wildlife habitat, moderate temperatures, reduce cooling costs, increase property values, provide scenic beauty, provide sound and visual buffers, and provide screening for privacy. It is therefore the city's intent to protect, preserve, and enhance the trees and woodlands of Maplewood and to encourage a resourceful and prudent approach to development in the city thereby promoting and protecting public health, safety, and welfare of the citizens of Maplewood. The purpose of this division is to establish tree preservation and protection regulations to assure the continuance of significant and specimen trees and woodlands for present and future generations which:

- (1) Preserve the natural character of neighborhoods (in developed and undeveloped areas).
- (2) Ensure the health and wellbeing of Maplewood's urban forest.
- (3) Protect the health and safety of residents.
- (4) Protect water quality and minimize stormwater runoff.
- (5) Help prevent erosion or flooding.
- (6) Assure orderly development within wooded areas to minimize tree loss and environmental degradation.
- (7) Establish a minimum standard for tree preservation and mitigation of environmental impacts resulting from tree removal.
- (8) Ensure the city's urban forest has a good age distribution, from young trees through large old specimen trees.
- (9) Promote the planting of trees as outlined in the city's Living Streets Policy.

(Ord. No. 962, § 4, 12-21-2015)

#### Sec. 18-242. - Definitions.

The following words, terms and phrases, as used in this division, shall have the meanings ascribed to them in this section:

*Applicant* means developer, builder, contractor, or owner who applies for a woodlot alteration, land use, grading, or building permit.

*Caliper inch* means a measurement used for nursery stock and in this division refers to replacement trees. It is the unit of measurement for defining the diameter of the tree trunk measured six inches above the soil surface for tree trunks four diameter inches or less and measured 12 inches above the soil surface for tree trunks greater than four diameter inches.

*Certified arborist* means an arborist with up-to-date certification by the International Society of Arborists.

*City forester* means a forester who is employed by the city or appropriate agent or independent contractor designated by the city manager.

*Conifer tree* means a woody plant that is a member of the division Pinophyta and at maturity is at least 12 feet or more in height. Conifers are cone bearing and most in our climate keep their leaves (also

called needles) year-round. Tamarack (also called larch) is the one conifer in our climate that drops its needles in the fall.

*Control* includes measures to prevent, slow the spread, suppress, eradicate, or destroy a shade tree disease or pests.

*Deciduous tree* means a woody plant, which sheds leaves annually, having a defined crown and at maturity is at least 15 feet or more in height.

*Diameter* is a measurement used for trees in the landscape. It is the diameter of a tree trunk as measured at a height of four and one-half feet above ground. To determine diameter, measure the circumference of the tree trunk at four and one-half feet above ground and divide by 3.14.

*Environmental and economic development department (EEDD) director* means the EEDD director or an employee of the city who manages city-wide environmental programs, or appropriate agent designated by the city manager.

*Hardwood deciduous tree* means all deciduous tree species except those listed as softwood deciduous trees below.

*Hazard tree* means a tree that has structural defects that may cause the tree or tree part to fail, and the city forester determines that such failure could cause property damage or personal injury.

*Invasive species* means species that are not native to Minnesota and cause economic or environmental harm or harm to human health.

*Major home addition* means an addition on a single- or double-dwelling lot of which the addition or accessory building is more than a 60-percent increase in the footprint of the single- or double-dwelling structure on said lot.

*Minor home addition* means an addition on a single- or double-dwelling lot of which the addition or accessory building is less than a 60-percent increase in the footprint of the single- or double-dwelling structure on said lot.

*Native prairie* means a landscape or planting that consists predominantly of grasses, flowers, and sedges that are native to Minnesota prairie ecosystems.

*Shade tree* means a woody perennial that at maturity is at least 15 feet in height and grown primarily for aesthetic or environmental purposes.

*Shade tree pest* means any vertebrate or invertebrate animal, plant pathogen, or plant that is determined by the city council to be harmful, injurious, or destructive to shade trees or community forests.

*Significant tree* means a healthy tree measuring a minimum of six inches in diameter for hardwood deciduous trees, eight inches in diameter for conifer trees, 12 inches in diameter for softwood deciduous trees, and specimen tree. Buckthorn or other noxious woody plants or trees as determined by the EEDD director are not considered a significant tree species at any diameter.

*Softwood deciduous tree* means the following tree species: box elder, cottonwood, elm, poplar/aspens, silver maple, and willow.

*Specimen tree* means a tree of any species that is 28 inches in diameter or greater, except invasive species. Specimen trees must have a life expectancy of greater than ten years, have a relatively sound and solid trunk with no extensive decay or hollow, and have no major insects, pathological problem, or defects. Specimen trees are valued for their size and their legacy.

*Structure* means anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures.

*Tree preservation plan* is a plan that shows all trees in the area to be developed or within the property. The plan shall include all significant and specimen trees to be preserved and measures taken to preserve them. The plan will also include calculations to determine the number of replacement trees as required by the tree removal, mitigation, and replacement section of this division and a proposed

reforestation landscape plan. The plan shall be developed by a forestry or horticultural professional whose qualifications are approved by the EEDD director.

*Tree standards* mean a separate document authorized through this division to help achieve the goals of the city's tree ordinance and living streets policy. The standards highlight important aspects of the requirements for tree preservation, removal, replacement, and shade tree pest management. The standards do not replace or supersede city ordinances.

*Utility* means electric, telephone, cable television, water, sanitary or storm sewer, solid waste, gas or similar service operations.

*Wetland* as defined in the city's wetland ordinance.

*Woodlot* means a treed area of at least one-quarter acre on a vacant lot, which includes significant and/or specimen tree(s).

(Ord. No. 962, § 4, 12-21-2015)

Sec. 18-243. - Standards.

The EEDD director and city forester shall have the authority to develop tree standards concerning the management of trees. These standards shall not be contrary to this division.

(Ord. No. 962, § 4, 12-21-2015)

Sec. 18-244. - Woodlot alteration.

- (a) *Woodlot alteration permit.* A woodlot alteration permit application shall be submitted to the EEDD director for review prior to removal of any significant or specimen living trees on a woodlot that is not reviewed by another land use, grading, or building permit. The applicant shall submit a tree plan and any other information needed to determine compliance with this division. Specific requirements shall be stated on an application form in the office of the EEDD director. An application fee shall be established yearly by the city council by resolution. Failure to submit a woodlot alteration permit application and gain subsequent approval prior to removal of significant and specimen trees will result in the total tree replacement for the property as outlined in the tree removal, mitigation, and replacement section to assume that all trees removed were significant and specimen trees.
- (b) *Woodlot alteration permit appeal process.* If the woodlot alteration permit is denied by the EEDD director, the applicant may appeal the EEDD director's decision. The appeal shall be submitted in writing, along with the reasons for the appeal, and received by the city in writing within 15 days of the EEDD director's written decision to deny the permit. The environmental and natural resources commission will review the appeal at its next available commission meeting. If the environmental and economic development commission denies the appeal, the applicant may appeal the environmental and economic development commission's decision. The appeal shall be submitted in writing, along with the reasons for the appeal, and received by the city within 15 days of the environmental and natural resources commission's decision. The city council will review the appeal at its next available city council meeting for final decision of the appeal.

(Ord. No. 962, § 4, 12-21-2015)

Sec. 18-245. - Tree preservation plan.

A tree preservation plan as defined in this division and outlined in the tree standards shall reflect the applicant's best effort to determine the most feasible and practical layout of buildings, parking lots, driveways, streets, storage, and other physical features, so that the fewest significant and specimen trees are destroyed or damaged and to minimize the negative environmental impact to the site.

(1) *Tree preservation plan applicability.*

- a. This section shall apply to any applicant that requests a woodlot alteration, land use, grading, or building permit, including a building permits for major home additions. This includes all sites of new or redevelopment that contain significant and specimen trees or woodlots. Platting and adding new roadway and right-of-way are subject to this division.
- b. The following are exceptions and are exempt from the requirements of the tree preservation plan:
  1. Minor home additions, general home improvements, and construction of accessory buildings (i.e., garage, shed).
  2. Tree removal related to public improvement projects to existing roadways, sewers, parks, and utility/infrastructure work or repair.
  3. Emergency removal of a tree(s) to protect public health.
  4. Tree removal related to public improvement projects to restore or enhance woodlands, savannas, or prairies.
  5. Commercial tree nursery and landscape operations.
  6. Removal of dead or dying trees, unless those trees were planted as part of tree replacement in which case they shall be replaced based on the approved plan.
  7. Removal of nonnative trees that the city deems invasive species.

(2) *Tree preservation and safeguarding tree measures.*

- a. All developments within the city shall be designed to preserve significant and specimen trees and woodlots, where such preservation would not adversely affect the public health, safety, or welfare of Maplewood citizens. The city may prohibit removal of all or a part of a woodlot or significant and specimen trees subject to the limitations as defined in this division. This decision shall be based on, but not limited to, the following criteria:
  1. Size of trees.
  2. Size of lot.
  3. Species, health, and attractiveness of the trees, including:
    - i. Sensitivity to disease.
    - ii. Life span.
    - iii. Nuisance characteristics.
    - iv. Sensitivity to site grading.
    - v. Potential for transplanting.
    - vi. Need for thinning a woodlot.
    - vii. Effects on the functioning of a development.
    - viii. Fragmentation of wooded area and effects on wildlife corridors.
    - ix. The public health, safety, and welfare.
    - x. Effect on wetlands and/or watershed.
    - xi. Native prairie or oak savanna habitat.
- b. If any significant or specimen tree designated as preserved (protected) in the approved tree preservation plan is cut, damaged, or encroached upon by grading equipment or during the construction process without city authorization and if it is determined by the EEDD director or city forester that the damaged tree(s) will not survive, the said damaged tree(s) shall be

removed by the applicant at their expense and replacement tree(s) required at a rate of two times the tree replacement outlined in the tree removal, mitigation, and replacement section below.

(3) *Tree removal, mitigation, and replacement.*

- a. *Tree removal calculation:* If less than 20 percent of the total significant or specimen tree diameter inches on the property is removed, the applicant shall replace one tree per significant and specimen tree removed. Tree replacement shall be a minimum of two caliper inches in size.

If 20 percent or more total significant and specimen tree diameter inches are removed, applicant shall mitigate all significant and specimen diameter inches using the tree mitigation/replacement schedule in accordance with the following formulas:

A = Total diameter inches of significant trees lost as a result of the land alteration (includes significant and specimen trees)

B = Total diameter inches of significant trees situated on the property (includes significant and specimen trees)

C = Tree replacement constant (1.5)

D = Total diameter inches of specimen trees saved \*

E = Replacement trees (number of caliper inches)

$$[((A/B - 0.2) \times C) \times A] - [D/2] = E$$

\* Applicant receives credit for each one (1) diameter inch of specimen tree saved at a rate of ½ (.5) diameter inches.

Example

A = 94

B = 234

C = 1.5

D = 28

E = 14 caliper inches

$$[((94 / 234 - 0.2) \times 1.5) \times 94] - [28/2] = 14 \text{ caliper inches}$$

The trees required to be replaced pursuant to this ordinance shall be in addition to any other trees required to be planted pursuant to any other provision of city code.

- b. *Tree mitigation:* Once the total caliper inches for replacement trees are determined, the applicant shall mitigate loss of significant and specimen trees by planting replacement trees in appropriate areas on the property in accordance with the tree replacement requirements as outlined in the tree standards and tree preservation plan. After putting as many trees as feasible on the site, if the replacement requirement is still not met, the EEDD director can approve tree replacement steps as outlined in the tree standards prior to issuance of a grading or building permit.
- c. *Tree replacement requirements:* The applicant shall follow tree replacement requirements as outlined in the tree standards.

- d. *Tree replacement escrow*: The applicant shall post tree replacement escrow with the city, such as a tree replacement cash deposit or letter of credit, as outlined in the tree standards.

(Ord. No. 962, § 4, 12-21-2015)

## CITY OF WOODBURY CODE OF ORDINANCES

### Sec. 27-40. - Tree protection standards for developing properties.

- (a) *Tree preservation plan.* A tree preservation plan shall be submitted to and approved by the city, and implemented in accordance therewith in connection with any of the following:
- (1) New development in any zoning district.
  - (2) New building construction in any zoning district.
  - (3) Expansion of any existing commercial, industrial or institutional building or impervious surface by ten percent or greater, where an approved tree preservation plan is not on file with the city.
  - (4) Any project for which a city land disturbance permit is required.
  - (5) Removal of any healthy specimen tree on any parcel.
  - (6) Removal of more than thirty (30) percent of the diameter inches of the significant trees on any parcel.

The tree preservation plan shall reflect the developer's best effort to determine the most feasible and practical layout of buildings, parking lots, driveways, streets, storage and other physical features, so that that the fewest significant trees are destroyed or damaged.

- (b) *Tree preservation plan requirements.* All applicants shall submit a tree preservation plan prepared in accordance with the provisions of this subdivision. The tree preservation plan shall be a separate plan sheet(s) that includes the following information:
- (1) The name(s), telephone number(s), and address(es) of the person(s) responsible for tree preservation during the course of the development project.
  - (2) A tree inventory, indicating the size, species, general health, and location of all existing significant trees located within the area to be developed or within the parcel of record. All significant trees must be tagged in the field for reference on the tree preservation plan. These significant trees should be identified on the plan sheet in both graphic and tabular form.
  - (3) Trees that were planted as part of a commercial business such as a tree farm or nursery do not need to be inventoried on an individual tree basis. A general description of the trees and an outer boundary of the planted area must be provided. The burden of proof shall be on the applicant to provide evidence to support the finding that the trees were planted as part of a commercial business.
  - (4) A listing of the total diameter inches of healthy significant trees inventoried in subsection (2) above. Dead, diseased, or dying trees do not need to be included in the totals.
  - (5) A listing of the total diameter inches of healthy significant trees removed, total diameter inches of healthy hardwood deciduous trees removed, total diameter inches of healthy coniferous/evergreen trees removed, and total diameter inches of common trees removed.
  - (6) Outer boundary of all contiguous wooded areas, with a general description of trees not meeting the significant tree size threshold.
  - (7) Locations of the proposed buildings, structures, or impervious surfaces.
  - (8) Delineation of all areas to be graded and limits of land disturbance.
  - (9) Identification of all significant trees proposed to be removed within the construction area. These significant trees should be identified in both graphic and tabular form.
  - (10) Measures to protect significant trees.
  - (11) Size, species, number and location of all replacement trees proposed to be planted on the property in accordance with the tree replacement schedule.

- (12) Signature of the person(s) preparing the plan.
- (c) *Submission requirements.* The tree preservation plan shall be submitted with any preliminary subdivision plan or site plan as required by the subdivision regulations of this Code; incorporated as a part of any landscape plan as required by the zoning regulations of this Code; or incorporated as part of a land disturbance plan and an application for any land disturbance permit as required by this Code. All tree preservation plans must be certified by a forester or landscape architect retained by the applicant.
- (d) *Implementation.* All sites shall be staked, as depicted in the approved tree preservation plan, and the required tree protection fencing shall be installed before land disturbance is to commence. The city shall inspect the construction site prior to the beginning of the land disturbance to ensure that protective fencing and other protective measures are in place. No encroachment, land disturbance, trenching, filling, compaction, or change in soil chemistry shall occur within the fenced areas protecting the critical root zone of the trees to be saved.
- (e) *Allowable tree removal.* Up to thirty (30) percent of the diameter inches of significant trees on any parcel of land being developed may be removed without replacement requirements. Replacement according to the tree replacement schedule is required when removal exceeds more than thirty (30) percent of the total significant tree diameter inches.

The following types of trees do not need to be included as part of the tally of tree removals:

- (1) Dead, diseased, or dying trees;
  - (2) Trees that are transplanted from the site to another appropriate area within the city;
  - (3) Trees that were planted as part of a commercial business such as a tree farm or nursery; or
  - (4) Trees that were planted by the current property owner. In making such determination, the city shall consider consistency of the age of the trees, any patterns in the location of the trees, historical aerial photography, and evidence of intentional planting such as invoices, formal planting plans, or cost sharing agreements.
- (f) *Mitigation.*
- (1) In any development where the allowable tree removal is exceeded, the applicant shall mitigate the tree loss by either:
    - a. Planting replacement trees in appropriate areas within the development in accordance with the tree replacement schedule;
    - b. Planting replacement trees on city property under the direction of the parks and recreation director or a designee; or
    - c. Paying to the city a cash mitigation, based on the diameter inches of required replacement in accordance with the tree replacement schedule. The fee per diameter inch of required replacement is set forth in the city's fee schedule. The payment shall be deposited into an account designated specifically for tree planting.
  - (2) The form of mitigation to be provided by the applicant shall be determined by the city.
  - (3) The planting of trees for mitigation on residential projects shall be in addition to any other landscape requirements of the city.
  - (4) All trees, except ornamental trees, planted as landscaping on commercial projects may be counted towards tree replacement requirements.
- (g) *Tree replacement calculations.* Thirty (30) percent of the total diameter inches of significant trees on the site may be removed without replacement. The allowable thirty (30) percent removal is first credited to the common trees removed, then the conifers, and lastly the hardwood species.

The following calculation procedure must be used to determine tree replacement requirements:

- (1) Tally the total number of diameter inches of significant trees on the site.
- (2) Calculate thirty (30) percent of the total diameter inches of significant trees on the site. This is the allowable tree removal limit, or the number of inches that can be removed without replacement.
- (3) Tally the total diameter inches of common trees that will be removed, and subtract this number from the allowable tree removal limit.
- (4) If there are any allowable inches left, tally the total diameter inches of coniferous/evergreen tree species that will be removed, and subtract this number from the remaining allowable inches.
- (5) If there are any allowable inches left, tally the total diameter inches of hardwood deciduous tree species that will be removed, and subtract this number from the remaining allowable inches.

If at any point in the above calculation procedure the number of inches to be removed exceeds the thirty (30) percent allowable removal limit, the remaining inches of removal above the allowable limit must be replaced according to the tree replacement schedule in subsection (h).

- (h) *Tree replacement schedule.* Tree removals over the allowable tree removal limit on the parcel shall be replaced according to the following schedule:
  - (1) Common tree species shall be replaced with new trees, at a rate of one-eighth (  $1/8$  ) the diameter inches removed. Replacement trees must be a minimum of one (1) inch in diameter.
  - (2) Coniferous/evergreen species shall be replaced with new trees, either coniferous or deciduous, at a rate of one-fourth ( $1/4$ ) the diameter inches removed. Replacement trees must be a minimum of one (1) inch in diameter. Since coniferous species are often sold by height rather than diameter inch, the following conversion formula can be used:  
 Height of replacement coniferous tree/2 = Diameter inches of credit.
  - (3) Hardwood deciduous tree species shall be replaced with new hardwood deciduous trees at a rate of one-half ( $1/2$ ) the diameter inches removed. Replacement trees must be a minimum of one (1) inch in diameter.
- (i) *Species requirement.* The city must approve all species used for tree replacement. Ornamental trees are not acceptable for use as replacement trees. Where ten or more replacement trees are required, not more than thirty (30) percent of the replacement trees shall be of the same species of tree.
- (j) *Warranty requirement.* Any replacement tree which is not alive or healthy, as determined by the city, or which subsequently dies due to construction activity within two (2) years after the date of project closure shall be removed by the applicant and replaced with a new healthy tree meeting the same minimum size requirements within eight (8) months of removal.
- (k) *Required protective measures.* The tree preservation plan shall identify and require the following measures to be utilized to protect significant trees:
  - (1) Installation of snow fencing or polyethylene laminate safety netting placed at the drip line or at the perimeter of the critical root zone, whichever is greater, of significant trees, specimen trees, and significant woodlands to be preserved. No grade change, construction activity, or storage of materials shall occur within this fenced area.
  - (2) Identification of any oak trees requiring pruning between April 15 and July 1. Any oak trees so pruned shall be required to have any cut areas sealed with an appropriate nontoxic tree wound sealant.
  - (3) Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
  - (4) Removal of any nuisance trees located in areas to be preserved.

- (l) *Additional protective measures.* The following tree protection measures are suggested to protect significant trees that are intended to be preserved according to the submitted tree preservation plan, and may be required by the city:
  - (1) Installation of retaining walls or tree wells to preserve trees.
  - (2) Placement of utilities in common trenches outside of the drip line of significant trees, or use of tunneled installation.
  - (3) Use of tree root aeration, fertilization, and/or irrigation systems.
  - (4) Therapeutic pruning.
- (m) *Incentives.* As an incentive to protect contiguous wooded areas that include a large proportion of significant trees, the city will allow the following:
  - (1) *Density transfer.* Contiguous wooded areas shall be platted as outlots and dedicated at no cost to the city. These areas can be utilized for a density transfer or for a reduction in gross development area subject to area charges. Some or all of the density associated with the dedicated area may be transferred for use elsewhere in the project area at the sole discretion of the city consistent with an approved planned unit development in accordance with chapter 24, article IV. If allowed density for the outlot area is transferred elsewhere within the development, the outlot area will remain as part of the gross developable area for the purpose of calculating area charges, park dedication and other development fees. If the density transfer is not used, dedicated outlot areas will be subtracted from the gross development area for the purpose of calculating area charges, park dedication, and other development fees. Density calculations will be documented with a recorded document for future reference.
  - (2) *Unit bonus.* Projects that provide for dedication of contiguous wooded areas to the city over and above normal park dedication requirements may be eligible for a density bonus in accordance with the city's adopted density bonus policy.
- (n) *Compliance with the plan.* The applicant shall implement the tree preservation plan prior to and during any construction. The tree protection measures shall remain in place until all land disturbance and construction activity is terminated or until a request to remove the tree protection measures is made to, and approved by, the city.
  - (1) No significant trees shall be removed until a tree preservation plan is approved and except in accordance with the approved tree preservation plan as approved by the city. If a significant tree(s) intended to be preserved is removed or damaged to the point that city staff believes the tree will not survive, a cash mitigation, calculated per diameter inch of the removed/damaged tree in the amount set forth in the city fee schedule, shall be remitted to the city.
  - (2) The city shall have the right to inspect the development and/or building site in order to determine compliance with the approved tree preservation plan. The city shall determine whether compliance with the tree preservation plan has been met.
- (o) *Specimen trees.* Removal of any specimen tree shall require a special permit in addition to the other requirements in section 27-40.

(Ord. No. 1839, § 1839.01, 3-9-2011)