



**CITY OF NEWPORT
PLANNING COMMISSION MEETING
NEWPORT CITY HALL
August 10, 2021 – 5:30 P.M.**

Commissioner: Anthony Mahmood
Commissioner: Brandon Leyde
Commissioner: Maria Bonilla
Commissioner: Tami Fuelling
Commissioner: Michael Kermes

City Administrator: Deb Hill
Asst. to the City Admin: Travis Brierley
City Planner: Sherri Buss
City Planner: Harry Davis
Council Liaison: Marvin Taylor

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. MEETING MINUTES
 - A. July 13, 2021
4. PUBLIC HEARING- Mississippi River Critical Corridor Area
5. PUBLIC HEARING- Fence Ordinance
6. COMMISSION REPORTS
7. ADJOURNMENT



**CITY OF NEWPORT
PLANNING COMMISSION MEETING MINUTES
NEWPORT CITY HALL
July 13, 2021**

1. CALL TO ORDER

Chair Anthony Mahmood called the Planning Commission meeting to order at 5:30 p.m. on July 13, 2021.

2. ROLL CALL

Present (4): Chairman Anthony Mahmood, Commissioner Brandon Leyde, Commissioner Maria Bonilla, and Commissioner Tami Fuelling.

Not Present (1): Commissioner Michael Kermes.

3. MEETING MINUTES

A. June 8, 2021

Commissioner Leyde motioned to approve the Planning Commission Meeting Minutes from June 8, 2021. Seconded by Commissioner Bonilla. Approved 4-0.

4. PUBLIC HEARING- Major Subdivision of 1851 Century Ave

City Planner Sherri Buss stated the City received an application for a Major Subdivision at 1851 Century Ave from the property owner Cody Olson. The site is a little over five acres in size and Mr. Olson currently has a home on the property. The proposal is to create five lots. The property is in the Residential Estates (RE) zoning district and is also within the shoreland area of Ria Lake. The city recently extended sewer/water services along Century Ave adjacent to this parcel. Due to the shoreland district, the minimum lot size is 20,000 sq. ft. Planner Buss verify the proposal meets our criteria and rules for lot size, setbacks, etc. The County requires 150 ft of right-of-way along Military Road. The City Engineer and Public Works Director looked at the plans and made some changes. They also need to meet the requirements of the City and the South Washington County Watershed District in terms of storm water. Staff finds this proposal meets the requirements for our subdivision ordinance which supports approving this major subdivision with conditions which are included in the report.

Chair Mahmood opened the Public Hearing at 5:42 p.m. on July 13, 2021.

Nhiaherr Vang who resides at 4405 Century Avenue addressed the Commission. Mr. Vang stated he is concerned his property will be flooded if they do not have storm sewer in place to contain the storm water. Planner Buss stated these are big lots and not much impervious cover, and the plan for this proposal is to have rain gardens for these five lots. This proposed development is only responsible for the stormwater run off from these five lots.

Cody Olson who resides at 1851 Century Avenue addressed the Commission. Mr. Olson stated during a rainstorm, the water sits in the ditch where they were supposed to grade from the street project but was never done properly.

Chair Mahmood closed the Public Hearing at 5:59 p.m. on July 13, 2021.

Assistant to the City Administrator Travis Brierley stated we received two comments in opposition by folks who were unable to attend tonight's Planning Commission meeting. These comments came from Brian and Jacqueline Krech who reside at 4504 Wild Canyon Drive, and George Dorn who resides at 1396 Military Road. These comments were read during the meeting and have been recorded and saved.

Chair Mahmood inquired if an easement for a future trail would count towards the dedication of park property or lower the amount of money in lieu of. Planner Buss stated that Council would handle that type of negotiation, but typically if you require an easement, it will go toward the value of the park dedication.

Commissioner Leyde motioned to approve the Planning Commission Resolution No. 2021-01 – Recommending the approval of the Major Subdivision to City Council. Seconded by Commissioner Bonilla. Approved 4-0.

5. PUBLIC HEARING- Tree Ordinances

Planner Buss stated we have been working to update the tree ordinance for several months. The first part was related to tree diseases, which went to Council and has been approved. We have now been working on the section that relates to tree replacement with development. All the surrounding communities have requirements that if trees are lost due to development that developers need to replace those with a tree replacement plan. This ordinance has been modeled from Woodbury's ordinance. The key parts include a definition section and detailed description of what types of projects need tree replacement plans. The draft ordinance proposed that 30% of the significant trees on a development site can be removed without replacement. The options for replacing trees would be up to the city. You could require the trees that are removed to be replaced onsite, or you could require the developer to replace on another property, or cash in lieu payment into our park fund. Tonight, you will hold a public hearing to see if there are any comments on the draft ordinance.

Chair Mahmood opened the Public Hearing at 6:20 p.m. on July 13, 2021.

Bill Sumner, residing at 737 21st Street, addressed the Commission. Mr. Sumner stated he strongly supports that any trees that are removed in Newport be replaced somewhere in the city.

Chair Mahmood closed the Public Hearing at 6:24 p.m. on July 13, 2021.

Chair Mahmood inquired how fees are determined with inflation each year. Planner Buss stated it would be a fee like the park dedication fee which the Council looks at each year and can increase if need be.

Commissioner Leyde motioned to recommend the updated tree ordinance to Council. Seconded by Commissioner Fuelling. Approved 4-0.

6. COMMISSION REPORTS

None.

7. ADJOURNMENT

Chair Mahmood motioned to adjourn the Planning Commission Meeting. Seconded by Commissioner Leyde. Approved 4-0.

The Planning Commission meeting was adjourned at 6:26 p.m. on July 13, 2021.

Respectfully Submitted:
Jill Thiesfeld,
Administrative Assistant II

Signed: _____
Anthony Mahmood, Chairman



Real People. Real Solutions.

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MEMORANDUM

Date: August 3, 2021
To: City of Newport Planning Commission
From: Harry Davis, AICP
Subject: MRCCA Ordinance Update
City of Newport

Meeting Date: August 10, 2021

Applicant: Newport City Staff (on behalf of MN DNR)

Request:

The MN DNR have requested changes to the MRCCA ordinance to clarify definitions and requirements along with a revised formula for setbacks on decks and patios.

Background:

In July of 2021, Dan Petrik with MN DNR contacted City Administration to notify Newport of changes to the DNR's MRCCA model ordinance. The changes included minor changes in wording of the bluff definition and two new bluff graphics. The two new graphics illustrate the difference between a bluff and the bluff impact zone. The goal with these changes is to improve the administration of these standards.

The other set of changes are focused on the formula for encroachments of decks and patios into a setback without requiring a variance. The change rectifies an error in the original model ordinance by including a number in the encroachment formula that was previously not included.

Public Comment:

No public comment was received at the time of writing this report.

Neighborhood Notification:

The Planning Commission will hold a public hearing on August 10th where this report will be presented to the public. A notice for the public hearing was published on July 27 in the newspaper at least 10 days before the hearing. The ordinance was made available for review at City Hall and on the City's website.

Staff Findings:

Staff has proposed changes to bring Newport's MRCCA ordinance in compliance with MN DNR requirements.

Recommendation:

Staff recommends the Planning Commission forward staff's proposed ordinance language to City Council recommending approval.

Attachments:

- Proposed Ordinance
- MN DNR Email

City of Newport, MN
Ordinance No. 2021-__
An Ordinance Amending Chapter 36 Of The Newport City Code

DIVISION 3. – MISSISSIPPI RIVER CORRIDOR CRITICAL AREA (MRCCA) OVERLAY DISTRICT

Sec. 36-360. – Authority, Intent, and Purpose.

- (1) Statutory Authorization. This Mississippi River Corridor Critical Area (MRCCA) overlay district ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 116G, Minnesota Rules, Parts 6106.0010-6106.0180, and the planning and zoning enabling legislation in Minnesota Statutes 462 and 473.
- (2) Policy. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of designated critical areas and thus preserve and enhance the quality of important historic, cultural, aesthetic values, and natural systems and provide for the wise use of these areas.

(Code 1997, § 1370.04(2))

Sec. 36-361. – General Provisions.

- (1) Jurisdiction. The provisions of this division apply to land within the river corridor boundary as described in the State Register, volume 43, pages 508 to 519 and shown on the city's MRCCA Overlay District zoning map.
- (2) Enforcement. The city is responsible for the administration and enforcement of this division. Any violation of its provisions or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) constitutes a misdemeanor and is punishable as defined by law. Violations of this division can occur regardless of whether a permit is or is not required for a regulated activity listed in Section 36-363 (2) of this division.
- (3) Severability. If any section, clause, provision, or portion of this division is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this division shall not be affected thereby.
- (4) Abrogation and greater restrictions. It is not intended by this division to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this division imposes greater restrictions, the provisions of this division shall prevail. All other divisions or sections that are inconsistent with this division are hereby repealed to the extent of their inconsistency only.
- (5) Underlying zoning. Uses and standards of underlying zoning districts apply except where standards of this overlay district are more restrictive.

(Code 1997, § 1370.04(3))

Sec. 36-362. - Definitions.

Unless specifically defined below, words or phrases used in this division shall be interpreted to give them the same meaning they have in common usage and to give this division its most reasonable application. For the purpose of this division “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

Access path means an area designated to provide ingress and egress to public waters.

Adjacent means having a boundary that physically touches or adjoins.

Agricultural use means a use having the meaning given under Minnesota Statutes, section [40A.02](#).

Alternative design means subdivision design methods such as conservation design, transfer of development density, or similar zoning and site design techniques that protect open space and natural areas.

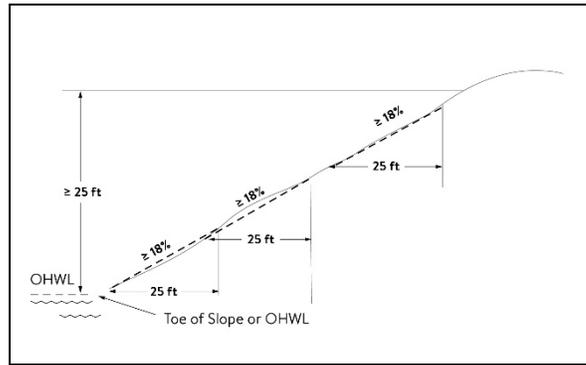
Barge fleeting means temporarily parking and securing barges on the river, on or off channel, while tows are assembled or broken up.

Biological and ecological functions mean the functions of vegetation in stabilizing soils and slopes, retaining and filtering runoff, providing habitat, and recharging groundwater.

Bluff means a natural topographic feature having:

- A. A slope that rises at least twenty-five (25) feet **where** the grade of the slope averages eighteen (18) percent or greater, measured over **any** horizontal distance of twenty-five (25) feet, **from the toe of the slope to the top of the slope**. **Where the slope begins below the ordinary high-water level, the ordinary high water level is the toe of the slope**. See Figure 1; or

Figure 1. Bluff



- B. A natural escarpment or cliff where a slope that rises at least ten (10) feet above the ordinary high-water level or toe of the slope, whichever is applicable, to the top of the slope, with a slope of seventy-five (75) degrees or greater. See Figure 2.

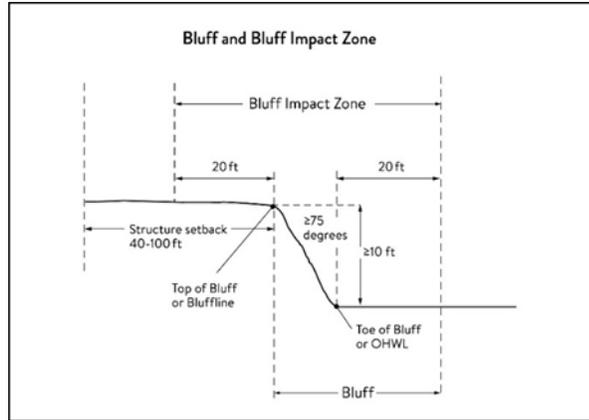
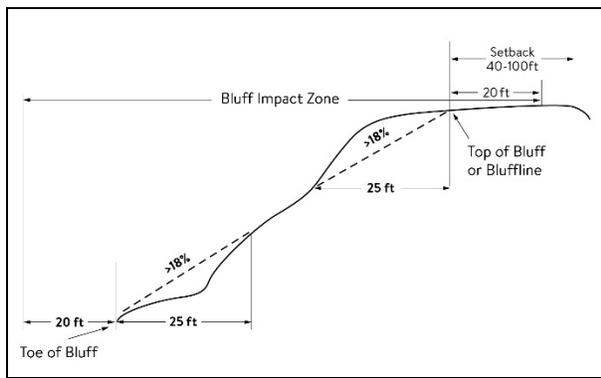


Figure 1. Natural Escarpment Bluff and Bluff Impact Zone

Bluff impact zone means a bluff and the land located within twenty (20) feet of the bluff. See Figure 2 for natural escarpment or cliff example and Figure 3 for more common bluff example.

Figure 3. Toe, Top, and Bluff Impact Zone



Bluffline means a line delineating the top of the bluff. More than one bluffline may be encountered proceeding landward from the river. See Figure 2 for natural escarpment or cliff example and Figure 3 for more common bluff example.

Bluff, Toe of means a line along the bottom of a bluff, requiring field verification, such that the slope above the line exceeds eighteen (18) percent and the slope below the line is eighteen (18) percent or less, measured over a horizontal distance of twenty-five (25) feet. See Figure 2 for natural escarpment or cliff example and Figure 3 for more common bluff example.

Bluff, Top of means a line along the top of a bluff, requiring field verification, such that the slope below the line exceeds eighteen (18) percent and the slope above the line is eighteen (18) percent or less, measured over a horizontal distance of twenty-five (25) feet. See Figure 2 for natural escarpment or cliff example and Figure 3 for more common bluff example.

Buildable area means the area upon which structures may be placed on a lot or parcel of land and excludes areas needed to meet requirements for setback, rights-of-way, bluff impact zones, historic properties, wetlands, designated floodways, land below the ordinary high-water level of public waters, and other unbuildable areas.

Building means a structure with two or more outside rigid walls and a fully secured roof and affixed to a permanent site.

Certificate of compliance means a document written after a compliance inspection, certifying that the development complies with applicable requirements at the time of the inspection.

Commissioner means the commissioner of the Minnesota Department of Natural Resources.

Conditional use means a use having the meaning given under Minnesota Statutes, chapters [394](#) and [462](#).

Conservation design means a pattern of subdivision that is characterized by grouping lots within a portion of a parcel, where the remaining portion of the parcel is permanently protected as open space.

Conventional subdivision means a pattern of subdivision that is characterized by lots that are spread regularly throughout a parcel in a lot and block design.

Deck means a horizontal, unenclosed, aboveground level structure open to the sky, with or without attached railings, seats, trellises, or other features attached or functionally related to a principal use or site.

Developer has the meaning given under Minnesota Statutes, section [116G.03](#).

Development has the meaning given under Minnesota Statutes, section 116G.03.

Discretionary action means an action under this division related to land use that requires a public hearing by local ordinance or statute, such as preliminary plats, final subdivision plats, planned unit developments, conditional use permits, interim use permits, variances, appeals, and rezonings.

Dock has the meaning given under Minnesota Rules, chapter [6115](#).

Electric power facilities mean equipment and associated facilities for generating electric power or devices for converting wind energy to electrical energy as identified and defined under Minnesota Statutes, section [216E](#).

Essential services mean underground or overhead gas, electrical, communications, steam, or water distribution, collection, supply, or disposal systems, including storm water. Essential services include poles, wires, mains, drains, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, navigational structures, aviation safety facilities or other similar equipment and accessories in conjunction with the systems. Essential services does not include buildings, treatment works as defined in Minnesota Statutes, chapter [115.01](#), electric power facilities or transmission services.

Feedlot has the meaning given for animal feedlots under Minnesota Rules chapter [7020](#).

Floodplain has the meaning given the meaning given under Minnesota Rules chapter [6120](#).

Fully reconstructs means the reconstruction of an existing impervious surface that involves site grading and subsurface excavation so that soil is exposed. Mill and overlay and other resurfacing activities are not considered fully reconstructed.

Hard-surface trail means a trail surfaced in asphalt, crushed aggregate, or other hard surface, for multi-purpose use, as determined by local, regional, or state agency plans.

Historic property means an archaeological site, standing structure, site, district, or other property that is:

- A. Listed in the National Register of Historic Places or the State Register of Historic Places or locally designated as a historic site under Minnesota Statutes, section 471;
- B. determined to meet the criteria for eligibility to the National Register of Historic Places or the State Register of Historic Places as determined by the director of the Minnesota Historical Society; or
- C. An unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307, in consultation with the Office of the State Archaeologist.

Impervious surface means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, decks, sidewalks, patios, parking lots, storage areas, and driveways, including those with concrete, asphalt, or gravel surfaces.

Intensive vegetation clearing means the removal of all or a majority of the trees or shrubs in a contiguous patch, strip, row, or block.

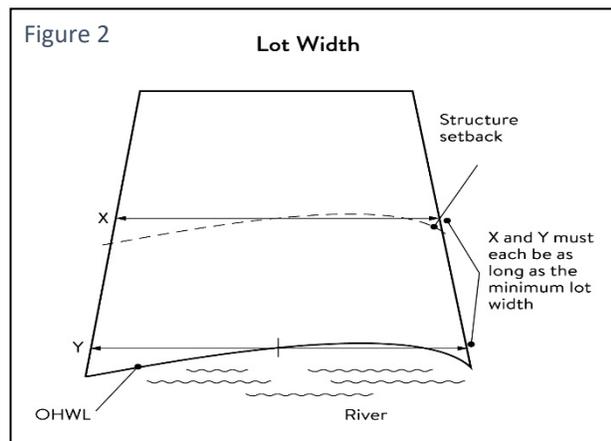
Interim use has the meaning given under Minnesota Statutes, section [394](#) and [462](#).

Land alteration means an activity that exposes the soil or changes the topography, drainage, or cross section of the land, excluding gardening or similar minor soil disturbances.

Local government means counties, cities, and townships.

Local park agencies mean the Minneapolis Park and Recreation Board and the Three Rivers Park District.

Lot has the meaning given under Minnesota Rules chapter [6120](#).



Lot width means the shortest distance between lot lines measured at both the ordinary high-water level and at the required structure setback from the ordinary high-water level. See Figure 3.

Marina has the meaning given under Minnesota Rules chapter [6115](#).

Mississippi River Corridor Critical Area (MRCCA) means the area within the River Corridor Boundary (see *River corridor boundary*).

Mississippi River Corridor Critical Area (MRCCA) Plan means a chapter or other element in the city's comprehensive plan.

Mooring facility has the meaning given under Minnesota Rules chapter [6115.0170](#).

Native plant community means a plant community that has been identified as part of the Minnesota Biological Survey or biological survey issued or adopted by a local, state, or federal agency.

Natural-surface trail means a trail composed of native soil and rock or compacted granular stone, primarily intended for hiking, equestrian, or mountain bike use, as determined by local, regional, or state agency plans.

Natural vegetation means any combination of ground cover, understory, and tree canopy that, while it may have been altered by human activity, continues to stabilize soils, retain and filter runoff, provide habitat, and recharge groundwater.

Nonconformity has the meaning given under Minnesota Statutes, section [394.22](#).

Nonmetallic mining means the construction, reconstruction, repair, relocation, expansion, or removal of any facility for the extraction, stockpiling, storage, disposal, or reclamation of nonmetallic minerals such as stone, sand, and gravel. Nonmetallic mining does not include ancillary facilities such as access roads, bridges, culverts, and water level control structures. For purposes of this subpart, “facility” includes all mine pits, quarries, stockpiles, basins, processing structures and equipment, and any structures that drain or divert public waters to allow mining.

Off-premises advertising signs means signs that direct attention to a product, service, business, or entertainment venue that is not exclusively related to the premises where the sign is located.

Ordinary high-water level (OHWL) has the meaning given under Minnesota Statutes, section [103G.005](#).

Overlay district means a zoning district that is applied over one or more previously established zoning districts, establishing additional or stricter standards and criteria for covered properties in addition to those of the underlying zoning district. Overlay districts are often used to protect historic features and natural resources such as shoreland or floodplain.

Parcel has the meaning given under Minnesota Statutes, section [116G.03](#).

Patio means a constructed hard surface located at ground level with no railings and open to the sky.

Picnic shelter means a roofed structure open on all sides, accessory to a recreational use.

Planned unit development means a method of land development that merges zoning and subdivision controls, allowing developers to plan and develop a large area as a single entity, characterized by a unified site design, a mix of structure types and land uses, and/or phasing of development over a number of years. Planned unit development includes any conversion of existing structures and land uses that utilize this method of development.

Plat has the meaning given under Minnesota Statutes, sections [505](#) and [515B](#).

Port means a transportation complex established and operated under the jurisdiction of a port authority according to Minnesota Statutes, section 458.

Primary conservation areas mean resources and features, including shore impact zones, bluff impact zones, floodplains, wetlands, gorges, areas of confluence with tributaries, natural drainage routes, unstable soils and bedrock, native plant communities, cultural and historic properties, and significant existing vegetative stands, tree canopies, and other resources identified in local government plans.

Private facilities mean private roads, driveways, and parking areas, private water access and viewing facilities, decks and patios in setback areas, and private signs.

Professional engineer means an engineer licensed to practice in Minnesota.

Public facilities mean public utilities, public transportation facilities, and public recreational facilities.

Public recreation facilities mean recreational facilities provided by the state or a local government and dedicated to public use, including parks, scenic overlooks, observation platforms, trails, docks, fishing piers, picnic shelters, water access ramps, and other similar water-oriented public facilities used for recreation.

Public river corridor views mean views toward the river from public parkland, historic properties, and public overlooks, as well as views toward bluffs from the ordinary high water level of the opposite shore, as seen during the summer months and documented in the MRCCA chapter of the comprehensive plan.

Public transportation facilities mean all transportation facilities provided by federal, state, or local government and dedicated to public use, such as roadways, transit facilities, railroads, and bikeways.

Public utilities mean electric power facilities, essential services, and transmission services.

Public waters have the meaning given under [Minnesota Statutes, section 103G.005](#).

Readily visible means land and development that are easily seen from the ordinary high-water level of the opposite shore during summer months.

Resource agency means a federal, state, regional, or local agency that engages in environmental, natural, or cultural resource protection or restoration activities, including planning, implementation, and monitoring.

Retaining wall means a vertical or nearly vertical structures constructed of mortar and rubble masonry, rock, or stone regardless of size, vertical timber pilings, horizontal timber planks with piling supports, sheet pilings, poured concrete, concrete blocks, or other durable materials.

Rock riprap means natural coarse rock placed or constructed to armor shorelines, streambeds, bridge abutments, pilings and other shoreline structures against scour, or water or ice erosion.

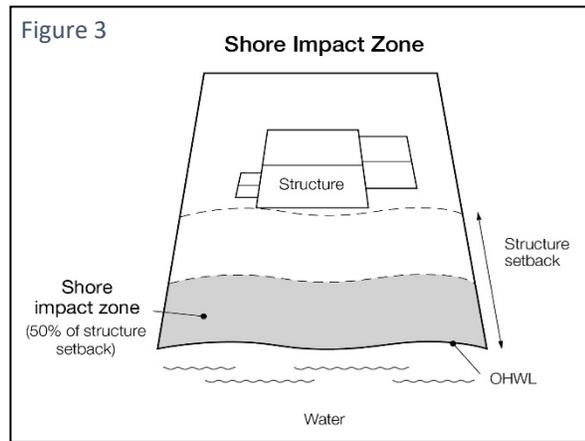
River corridor boundary means the boundary approved and adopted by the Metropolitan Council under Minnesota Statutes, section [116G.06](#), as approved and adopted by the legislature in Minnesota Statutes, section [116G.15](#), and as legally described in the State Register, volume 43, pages 508 to 518.

River-dependent use means the use of land for commercial, industrial, or utility purposes, where access to and use of a public water feature is an integral part of the normal conduct of business and where the use is dependent on shoreline facilities.

Selective vegetation removal means the removal of isolated individual trees or shrubs that are not in a contiguous patch, strip, row, or block and that does not substantially reduce the tree canopy or understory cover.

Setback means a separation distance measured horizontally.

Shore impact zone means land located between the ordinary high-water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback or, for agricultural use, 50 feet landward of the ordinary high-water level. See Figure 4.



Shoreline facilities means facilities that require a location adjoining public waters for ingress and egress, loading and unloading, and public water intake and outflow, such as barge facilities, port facilities, commodity loading and unloading equipment, watercraft lifts, marinas, short-term watercraft mooring facilities for patrons, and water access ramps. Structures that would be enhanced by a shoreline location, but do not require a location adjoining public waters as part of their function, are not shoreline facilities, such as restaurants, bait shops, and boat dealerships.

Special purpose units of government mean the University of Minnesota, the St. Paul Port Authority, watershed management organizations established under Minnesota Statutes, chapter 103B, watershed districts established under Minnesota Statutes, chapter 103D, and any other unit of government other than local government or a state or regional agency.

State or regional agency means the Metropolitan Airports Commission, Minnesota Historical Society, University of Minnesota, Department of Natural Resources, Department of Transportation, Metropolitan Council, and other state agencies.

Steep slope means a natural topographic feature with an average slope of twelve (12) to eighteen (18) percent, measured over a horizontal distance equal to or greater than fifty (50) feet, and any slopes greater than eighteen (18) percent that are not bluffs.

Storm water management facilities means facilities for the collection, conveyance, treatment, or disposal of storm water.

Structure means a building, sign, or appurtenance thereto, except for aerial or underground utility lines, such as sewer, electric, telephone, or gas lines, and utility line towers, poles, and other supporting appurtenances.

Subdivision has the meaning given under Minnesota Statutes, section [462.352](#).

Subsurface sewage treatment system (SSTS) has the meaning given under Minnesota Rules, part [7080.1100](#).

Transmission services mean

- A. Electric power lines, cables, pipelines, or conduits that are:

- (1) used to transport power between two points, as identified and defined under Minnesota Statutes, section [216E.01, subdivision 4](#); or
- (2) For mains or pipelines for gas, liquids, or solids in suspension, used to transport gas, liquids, or solids in suspension between two points; and

B. Telecommunication lines, cables, pipelines, or conduits.

Treeline means the more or less continuous line formed by the tops of trees in a wooded area when viewed from a particular point. The treeline is determined during all seasons as if under full foliage.

Twin Cities Metropolitan Area means the area over which the Metropolitan Council has jurisdiction according to Minnesota Statutes, section [473.121 subdivision 2](#).

Variance has the meaning given under [Minnesota Statutes, section 394.22](#).

Water access ramp means a boat ramp, carry-down site, boarding dock, and approach road, or other access that allows launching and removal of a boat, canoe, or other watercraft with or without a vehicle and trailer.

Water-oriented accessory structure means a small building or other improvement, except stairways, fences, docks, and retaining walls, that, because of the relationship of its use to public waters, needs to be located closer to public waters than the normal structure setback. Examples include gazebos, screen houses, fish houses, pump houses, and detached decks and patios.

Water quality impact zone means land within the shore impact zone or within 50 feet of the OHWL of the river, whichever is greater, and land within 50 feet of a public water, wetland, or natural drainage route.

Wetland has the meaning given under Minnesota Statutes, section [103G.005](#).

Wharf has the meaning given under Minnesota Rules, part [6115.0170](#).

(Code 1997, § 1370.04(5))

Sec. 36-363. – Administration

- (1) *Purpose*. The purpose of this Section is to identify administrative provisions to ensure this division is administered consistent with its purpose.
- (2) *Permits*. A permit is required for the construction of buildings or building additions (including construction of decks and signs), the installation and/or alteration of sewage treatment systems, vegetation removal consistent with Section 36-369 and land alterations consistent with Section 36-370.
- (3) *Variances*. Variances to the requirements under this division may only be granted in accordance with Minnesota Statutes Section 462.357 and must consider the potential impacts of variances on primary conservation areas (PCAs), public river corridor views (PRCVs), and other resources identified in the MRCCA plan. In reviewing the variance application, the city shall:

- a. Evaluate the impacts to these resources. If negative impacts are found, require conditions to mitigate the impacts that are related to and proportional to the impacts, consistent with Section 36-363 (5) and
- b. Make written findings that the variance is consistent with the purpose of this division as follows.
 - i. The extent, location and intensity of the variance will be in substantial compliance with the MRCCA Plan;
 - ii. The variance is consistent with the character and management purpose of the MRCCA district in which it is located;
 - iii. The variance will not be detrimental to PCAs and PRVCs nor will it contribute to negative incremental impacts to PCAs and PRVCs when considered in the context of past, present and reasonable future actions; and
 - iv. The variance will not negatively impact other MRCCA resources identified in the city's MRCCA Plan such as wetlands, river overlooks, parks and open space, etc.

(4) *Conditional and interim use permits.* All conditional and interim uses required under this division must comply with Minnesota Statutes, section 462.3595 and must consider the potential impacts on primary conservation areas, public river corridor views, and other resources identified in the city's MRCCA plan. In reviewing the application, the city shall:

- a. Evaluate the impacts to these resources and if negative impacts are found, require conditions to mitigate the impacts that are related to and proportional to the impacts, consistent with Section 36-363 (5); and
- b. Make written findings that the conditional use is consistent with the purpose of this division as follows.
 - i. The extent, location and intensity of the conditional use will be in substantial compliance with the MRCCA plan;
 - ii. The conditional use is consistent with the character and management purpose of the MRCCA district in which it is located;
 - iii. The conditional use will not be detrimental to PCAs and PRVCs nor will it contribute to negative incremental impacts to PCAs and PRVCs when considered in the context of past, present, and reasonable future actions; and
 - iv. The conditional use will not negatively impact other resources identified in the city's MRCCA plan, such as wetlands, river overlooks, and parks and open space.

(5) *Conditions of approval.* The city shall evaluate the impacts to PCAs, PRCVs and other resources identified in the MRCCA Plan, and if negative impacts are found, require conditions to mitigate the impacts that are related to and proportional to the impacts. Mitigation may include:

- a. Restoration of vegetation identified as “vegetation restoration priorities” identified in the city’s MRCCA plan.
- b. Preservation of existing vegetation;
- c. Increasing, enhancing, and/or connecting habitat for pollinators, birds, and other wildlife;
- d. Stormwater runoff management;
- e. Reducing impervious surface;
- f. Increasing structure setbacks;
- g. Wetland and drainage route restoration and/or preservation
- h. Limiting the height of structures;
- i. Modifying structure design to limit visual impacts on the PRCVs; and
- j. Other conservation measures.

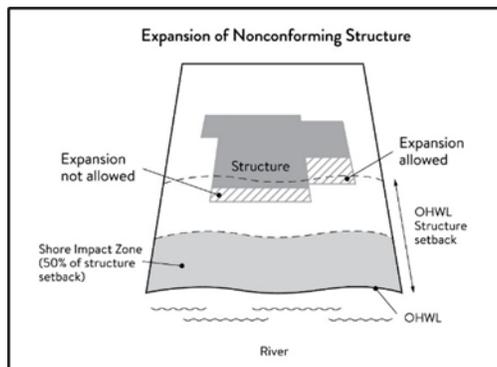
(6) *Application materials.* Applications for permits and discretionary actions required under this division must submit the following information unless the city determines that the information is not needed.

- a. A detailed project description; and
- b. Scaled maps and plans, dimensional renderings, maintenance agreements, and other materials that identify and describe:
 - i. Primary conservation areas;
 - ii. Public river corridor views;
 - iii. Buildable area;
 - iv. Existing and proposed topography and drainage patterns;
 - v. Proposed stormwater and erosion and sediment control practices;
 - vi. Existing and proposed vegetation to be removed and established;
 - vii. Ordinary high-water level, blufflines and all required setbacks;
 - viii. Existing and proposed structures;
 - ix. Existing and proposed impervious surfaces; and
 - x. Existing and proposed subsurface sewage treatment systems.

(7) *Nonconformities*

- a. All legally established nonconformities as of the date of this ordinance may continue consistent with Minnesota Statutes 462.357 Subd. 1e.
- b. New structures erected in conformance with the setback averaging provisions of Section 36-366 (4) are conforming structures.
- c. Site alterations and expansion of site alterations that were legally made prior to the effective date of this ordinance are conforming. Site alterations include vegetation, erosion control, storm water control measures, and other nonstructural site improvements.
- d. Legally nonconforming principal structures that do not meet the setback requirements of Section 36-366 (4) may be expanded laterally provided that:
 - i. The expansion does not extend into the shore or bluff impact zone or further into the required setback than the building line of the existing principal structure (See Figure 5); and
 - ii. The expanded structure's scale and bulk is consistent with that of the original structure and existing surrounding development.

Figure 4. Expansion of Nonconforming Structures



(8) *Notifications.*

- a. Amendments to this division and to the MRCCA plan must be submitted to the Commissioner as provided in Minnesota rules, part 6106.0070, Subp. 3, items B-I, and via email to the appropriate DNR Area Hydrologist.
- b. Notice of public hearings for discretionary actions, including conditional and interim use permits, variances, appeals, rezonings, preliminary plats, final subdivision plats, master plans, and PUDs, must be sent to the following entities at least thirty (30) days prior to the hearing:
 - i. To the Commissioner in a format prescribed by the DNR;
 - ii. To the National Park Service; and
 - iii. Where building heights exceed the height limits specified in Section 36-366 (2) as part of the conditional use or variance process, to the adjoining local

governments within the MRCCA, including those with overlapping jurisdiction and those across the river.

- c. Notice of final decisions for actions in Section 36-365 (8)b, including findings of fact, but be sent to the Commissioner, the National Park Service, and adjoining local governments within the MRCCA within ten (10) days of the final decision.
 - d. Requests to amend district boundaries must follow the provisions in Minnesota Rules, part 6106.0100, Subp. 9, item C.
 - e. The DNR will be notified at time of application submittal of master plans, PUDs, preliminary, and final plats.
- (9) *Accommodating disabilities.* Reasonable accommodation for ramps and other facilities to provide persons with disabilities access to the persons' property, as required by the federal Americans with Disabilities Act and the federal Fair Housing Act and as provided by Minnesota Rules, chapter 1341, must:
- a. Comply with Sections 36-365 to 36-372; or
 - b. If Sections 36-365 to 36-372 cannot be complied with, ramps or other facilities are allowed with an administrative permit provided:
 - i. The permit terminates on either a specific date or upon occurrence of a particular event related to the person requiring accommodation; and
 - ii. Upon expiration of the permit, the ramp or other facilities must be removed.

36-364. MRCCA Districts

- (1) *Purpose.* The purpose of this Section is to establish districts under which building height and structure placement are regulated to protect and enhance the Mississippi River's resources and features consistent with the natural and built character of each district.
- (2) *District description and management purpose.* The MRCCA within the city is divided into the following MRCCA Districts:
 - a. River Neighborhood (RN).
 - i. *Description.* The RN district is characterized by primarily residential neighborhoods that are riparian or readily visible from the river or that abut riparian parkland. The district includes parks and open space, limited commercial development, marinas, and related land uses.
 - ii. *Management purpose.* The RN district must be managed to maintain the character of the river corridor within the context of existing residential and related neighborhood development, and to protect and enhance habitat, parks and open space, public river corridor views, and scenic, natural, and historic areas. Minimizing erosion and the flow of untreated storm water into the river and enhancing habitat and shoreline vegetation are priorities in the district.
 - b. Separated from River (SR).

- i. *Description.* The SR district is characterized by its physical and visual distance from the Mississippi River. The district includes land separated from the river by distance topography, development, or a transportation corridor. The land in this district is not readily visible from the Mississippi River.
 - ii. *Management purpose.* The SR district provides flexibility in managing development without negatively affecting the key resources and features of the river corridor. Minimizing negative impacts to primary conservation areas and minimizing erosion and the flow of untreated storm water into the river are priorities in the district.
 - c. Urban Mixed (UM).
 - i. *Description.* The UM District includes large areas of highly urbanized mixed use that are a part of the urban fabric of the river corridor, including institutional, commercial, industrial, and residential areas, parks, and open space.
 - ii. *Management purpose.* The UM district must be managed in a manner that allows for future growth and potential transition of intensely developed areas that does not negatively affect public river corridor views and that protects bluffs and floodplains. Restoring and enhancing bluff and shoreline habitat, minimizing erosion and flow of untreated storm water into the river, and providing public access to and public views of the river are priorities in the district.

(3) *MRCCA district map.* The locations and boundaries of the MRCCA districts established by this division are shown on the MRCCA Overlay District Map which is incorporated herein by reference. The district boundary lines are intended to follow the centerlines of rivers and streams, highways, streets, lot lines, and municipal boundaries, unless a boundary line is otherwise indicated on the map. Where district boundaries cross property that has not be subdivided, the district boundary line is determined by the use of dimensions or the scale appearing on the map.

36.365. Special Land Use Provisions

- (1) *Purpose.* The purpose of this section is to identify development standards and considerations for land uses that have potential to negatively impact primary conservation areas and public river corridor views.
- (2) *Underlying zoning.* Uses within the MRCCA are generally determined by underlying zoning, with additional provisions for the following land uses:
 - a. *Agricultural use.* Perennial ground cover is required within fifty (50) feet of the ordinary high-water level and within the bluff impact zone.
 - b. *Forestry.* Tree harvesting and biomass harvesting within woodlands, and associated reforestation, must be consistent with recommended practices in [Conserving Wooded Areas in Developing Communities: Best Management Practices in Minnesota](#).
 - c. *River-dependent uses.* River-dependent uses must comply with the following design standards:

i. Structures and parking areas, except shoreline facilities and private roads and conveyances serving river-dependent uses as provided in Section 36-372 must meet the dimensional and performance standards in this division, must be designed so that they are not readily visible, and must be screened by establishing and maintaining natural vegetation.

ii. Shoreline facilities must comply with Minnesota Rules, chapter 6115 and must:

A. Be designed in a compact fashion to minimize the shoreline area affected; and

B. Minimize the surface area of land occupied in relation to the number of watercraft or barges to be served; and

C. Dredging and placement of dredged material are subject to existing federal and state permit requirements and agreements.

d. *Wireless communication towers.* Wireless communication towers require a conditional use permit and are subject to the following design standards:

i. The applicant must demonstrate that functional coverage cannot be provided through co-location, a tower at a lower height, or a tower at a location outside of the MRCCA.

ii. The tower must not be located in a bluff or shore impact zone.

iii. Placement of the tower must minimize impacts on public river corridor views.

iv. The tower must comply with the general design standards in Section 36-368 (2).

36.366. Structure Height and Placement and Lot Size

(1) *Purpose.* The purpose of this section is to establish standards that protect primary conservation areas and public river corridor views from development impacts and ensure that new development is sited consistent with the purpose of the MRCCA.

(2) *Structure height.* Structures and facilities must comply with the following standards unless identified as exempt in Section 36-372.

a. Structures and facilities must comply with the following standards unless identified as exempt in Section 36-372.

i. RN district: maximum 35 feet.

ii. SR district: Height is determined by underlying zoning, provided the allowed height is consistent with that of the mature tree line, where preset, and existing surrounding development, as viewed from the OHWL of the opposite shore.

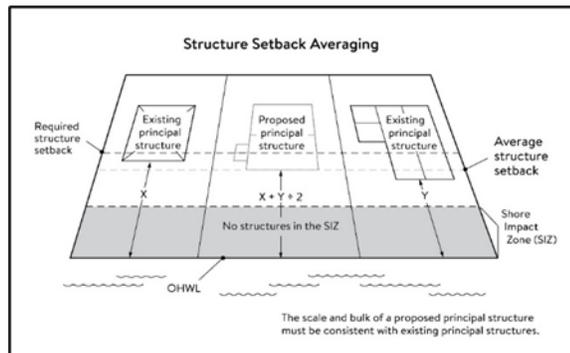
- iii. UM district: maximum 65 feet, provided tiering of structures away from the Mississippi River and from blufflines is given priority, with lower structure heights closer to the river and blufflines, and that structure design and placement minimize interference with public river corridor views. Structures taller than 65 feet and up to 70 feet may be allowed as a conditional use when they meet the goals of the MRCCA district and are in accord with Section 36-366 (2) c.
- b. Height shall be measured on the side of the structure facing the Mississippi River.
- c. In addition to the conditional use permit requirements for structures proposed to exceed the height standard in the UM district, the criteria for considering whether to grant a conditional use permit for structures exceeding the height limits must include:
 - i. Assessment of the visual impact of the proposed structure on public river corridor views, including views from other communities;
 - ii. Determination that the proposed structure meets the required bluff and OHWL setbacks;
 - iii. Identification and application of one or more of the following techniques to minimize the perceived bulk of the proposed structure:
 - A. Placing the long axis of the building perpendicular to the river;
 - B. Stepping back of portions of the façade;
 - C. Lowering the roof pitch or use of a flat roof;
 - D. Using building materials or mitigation techniques that will blend in with the natural surroundings such as green roofs, green walls, or other green and brown building materials;
 - E. Narrowing the profile of upper floors of the building; or
 - F. Increasing the setbacks of the building from the Mississippi River or blufflines;
 - iv. Identification of techniques for preservation of those view corridors identified in the MRCCA Plan; and
 - v. Opportunities for creation or enhancement of public river corridor views.

(3) Structure and impervious surface placement

- a. Structures and impervious surfaces must not be placed in the shore or bluff impact zones unless identified as an exemption in Section 36-372.

- b. Structures and facilities must comply with the following OHWL setback provisions unless identified as exempt in Section 36-372.
 - i. RN district: 100 feet from the Mississippi River.
 - ii. UM district: 50 feet from the Mississippi River.
- c. Structures and facilities must comply with the following bluffline setback provisions unless identified as exempt in Section 36-372.
 - i. RN district: 40 feet.
 - ii. SR district: 40 feet.
 - iii. UM district: 40 feet.
- d. Subsurface sewage treatment systems, including the septic tank and absorption area, must be located at least seventy-five (75) feet from the OHWL of the Mississippi River and all other public water bodies.
- e. *Structure setback averaging.* Where principal structures exist on the adjoining lots on both sides of a proposed building site, the minimum setback may be altered to conform to the average of the adjoining setbacks if the new structure's scale and bulk riverward or bluffward of the setbacks required above are consistent with adjoining development.
 - i. The City may consider the setbacks of additional structures on nearby lots in determining the average setbacks if needed, for example for corner lots.

Figure 5. Structure Setback Averaging



(4) Lot size and buildable area.

- a. All new lots must have adequate buildable area to comply with the setback requirements of Sections 36-366 (4) b and c so that a variance is not required to use the lots for their intended purpose.

36.367. Performance standards for private facilities

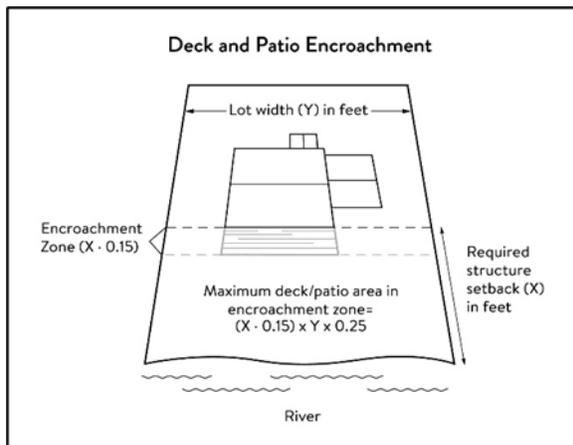
- (1) *Purpose.* To establish design standards for private facilities that are consistent with best management practices and that minimize impacts to primary conservation areas, public river corridor views and other resources identified in the MRCCA plan.

- (2) *General design standards.* All private facilities must be developed in accordance with the vegetation management and land alteration requirements in Sections 36-369 and 36-370.
- (3) *Private roads, driveways, and parking areas.* Except as provided in 36-372, private roads, driveways, and parking areas must:
- a. Be designed to take advantage of natural vegetation and topography so that they are not readily visible;
 - b. Comply with structure setback requirements according to Section 36-366; and
 - c. Not be placed within the bluff impact zone or shore impact zone, unless exempt under Section 36-372 and designed consistent with Section 36-368 (2).
- (4) Private water access and viewing facilities
- a. Private access paths must be no more than:
 - i. Eight (8) feet wide, if placed within the shore impact zone; and
 - ii. Four (4) feet wide, if placed within the bluff impact zone.
 - b. Private water access ramps must:
 - i. Comply with Minnesota Rules, chapters 6115.0210 and 6280.0250; and
 - ii. Be designed and constructed consistent with the applicable standards in the *Design Handbook for Recreational Boating and Fishing Facilities (US Fish and Wildlife Service)*.
 - c. Design and construction of private stairways, lifts, and landings are subject to the following standards:
 - i. Stairways and lifts must not exceed four (4) feet in width on residential lots. Wider stairways may be used for commercial properties and residential facilities held in common, if approved by a conditional use permit;
 - ii. Landings for stairways and lifts on residential lots must not exceed thirty-two (32) square feet in area. Landings larger than thirty-two (32) square feet in area may be allowed for commercial properties and residential facilities held in common, if approved by a conditional use permit;
 - iii. Canopies or roofs are prohibited on stairways, lifts, or landings;
 - iv. Stairways lifts, and landings shall be located in the least visible portion of the lot whenever practical; and
 - v. Ramps, lifts, mobility paths, or other facilities for persons with physical disabilities are allowed for achieving access to shore areas according to items i-iv in this section and as provided under Section 36-363 (9).
 - d. One water-oriented accessory structure is allowed for each riparian lot or parcel less than three hundred (300) feet in width at the ordinary high-water level, with one additional water-

oriented accessory structure allowed for each additional three hundred (300) feet of shoreline on the same lot or parcel. Water-oriented accessory structures are prohibited in the bluff impact zone and must:

- i. Not exceed twelve (12) feet in height;
 - ii. Not exceed one hundred and twenty (120) square feet in area; and
 - iii. Be placed a minimum of ten (10) feet from the ordinary high-water level.
- e. *Decks and patios in setback areas.* Decks and at-grade patios may encroach into the required setbacks from the ordinary high-water level and blufflines without a variance when consistent with Sections 36-369 and 36-370 provided that:
- i. The encroachment of the deck or patio into the required setback area does not exceed fifteen (15) percent of the required structure setback:
 - ii. The area of the deck or patio that extends into the required setback area occupies no more than twenty-five (25) percent of the total area between the required setback and fifteen (15) percent using the formula: [Required setback depth (feet) x 0.15 x lot width at setback(feet) x 0.25 = maximum total area]
 - iii. The deck or patio does not extend into the bluff impact zone. See Figure 7.

Figure 6. Deck and Patio Encroachment



iv.

(5) Off-premises and directional signs

- a. Off-premises advertising signs must:
 - i. Meet required structure placement and height standards in Section 36-366 (2) and (3).
 - ii. Not be readily visible from the water or shoreline.
- b. Directional signs for patrons arriving at a business by watercraft must comply with the following standards:
 - i. They must be consistent with Minnesota Statutes, Section 86B.115;

- ii. Only convey the location and name of the establishment and the general types of goods and services available, if located in a shore impact zone;
- iii. Be no greater than ten (10) feet in height and thirty-two (32) square feet in surface area; and
- iv. If illuminated, the lighting must be fully shielded and directed downward to prevent illumination out across the river or to the sky.

(6) *Fences*. Fences between principal structures and the river are allowed if fences are:

- a. Not higher than six (6) feet.
- b. Not located within forty (40) feet of slopes greater than twelve (12) percent.
- c. Not located in the regulatory floodplain

(7) *Lighting*. Within the OHWL setback:

- a. Lighting shall be fully shielded and directed away from the river.
- b. Up-lighting is prohibited.

36.368. Performance standards for public facilities

- (1) *Purpose*. The purpose of this section is to establish standards for public facilities that are consistent with best management practices and that minimize impacts to primary conservation areas, public river corridor views and other resources identified in the MRCCA plan. Public facilities serve the public interest by providing public access to the Mississippi River corridor or require locations in or adjacent to the river corridor and therefore require some degree of flexibility.
- (2) *General design standards*. All public facilities must be designed and constructed to:
 - a. Minimize visibility of the facility from the river to the extent consistent with the purpose of the facility;
 - b. Comply with the structure placement and height standards in Section 36-366, except and provided in Section 36-372;
 - c. Be consistent with the vegetation management standards in Section 36-369 and the land alteration and stormwater management standards in Section 36-370, including use of practices identified in *Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001* where applicable;
 - d. Avoid primary conservation areas unless no alternative exists. If no alternative exists then disturbance to primary conservation areas must be avoided to the greatest extent practicable, and design and construction must minimize impacts; and
 - e. Minimize disturbance of spawning and nesting times by scheduling construction at times when local fish and wildlife are not spawning or nesting.

- f. Minimize disturbance during bird migration and nesting times by scheduling construction at times when birds are not migrating or nesting.
- (3) *Right-of-way maintenance standards.* Right-of-way maintenance must comply with the following standards:
- a. Vegetation currently in a natural state must be maintained to the extent feasible;
 - b. Where vegetation in a natural state has been removed, native plants must be planted and maintained on the right-of-way; and
 - c. Chemical control of vegetation must be avoided when practical, but when chemical control is necessary the chemicals used must be in accordance with the regulations and other requirements of all state and federal agencies with authority over the chemical's use.
- (4) *Crossings of public waters or public land.* Crossings of public waters or land controlled by the commissioner are subject to approval by the commissioner according to Minnesota Statutes, Sections 84.415 and 103G.245.
- (5) *Public utilities.* Public utilities must comply with the following standards:
- a. High-voltage transmission lines, wind energy conversion systems greater than five (5) megawatts, and pipelines are regulated according to Minnesota Statutes, Chapter 216E, 216F, and 216G, respectively; and
 - b. If overhead placement is necessary, utility facility crossings must minimize the visibility of the facility from the river and follow other existing right of ways as much as practicable.
 - c. The appearance of structures must be as compatible as practicable with the surrounding area in a natural state with regard to height and width, materials used, and color.
 - d. Wireless communication facilities, according to Section 36-365 (2)d.
- (6) *Public transportation facilities.* Public transportation facilities shall comply with structure placement and height standards in Section 36-366. Where such facilities intersect or abut two or more MRCCA districts, the least restrictive standards apply. Public transportation facilities must be designed and constructed to give priority to:
- a. Providing scenic overlooks for motorists, bicyclists, and pedestrians;
 - b. Providing safe pedestrian crossings and facilities along the river corridor;
 - c. Providing access to the riverfront in public ownership; and
 - d. Allowing for use of the land between the river and the transportation facility.
- (7) *Public recreational facilities.* Public recreational facilities must comply with the following standards:

- a. Buildings and parking associated with public recreational facilities must comply with the structure placement and height standards in Section 36-366, except as provided in Section 36-372;
- b. Roads and driveways associated with public recreational facilities must not be placed in the bluff or shore impact zones unless no other placement alternative exists. If no alternative exists, then design and construction must minimize impacts to shoreline vegetation, erodible soils and slopes, and other sensitive resources.
- c. Trails, access paths, and viewing areas associated with public recreational facilities and providing access to or views of the Mississippi River are allowed within the bluff and shore impact zones if design, construction, and maintenance methods are consistent with the best management practice guidelines in *Trail Planning, Design, and Development Guidelines*.
 - i. Hard-surface trails are not allowed on the face of bluffs with a slope exceeding thirty (30) percent. Natural surface trails are allowed, provided they do not exceed eight (8) feet in width.
 - ii. Trails, paths, and viewing areas must be designed and constructed to minimize:
 - 1. Visibility from the river;
 - 2. Visual impacts on public river corridor views; and
 - 3. Disturbance to and fragmentation of primary conservation areas.
- d. Public water access facilities must comply with the following requirements:
 - ii. Watercraft access ramps must comply with Minnesota Rules chapters 6115.0210 and 6280.0250; and
 - iii. Facilities must be designed and constructed consistent with the standards in the *Design Handbook for Recreational Boating and Fishing Facilities*.
- e. Public signs and kiosks for interpretive or directional purposes are allowed in the bluff or shoreland impact zones, provided they are placed and constructed to minimize disturbance to these areas and avoid visual impacts on public river corridor views. If illuminated, the lighting must be fully shielded and be directed downward.
- f. Public stairways, lifts, and landings must be designed as provided in Section 36-367 (4)c.

36-369. Vegetation Management

- (1) *Purpose.* To establish standards that sustain and enhance the biological and ecological functions of vegetation; preserve the natural character and topography of the MRCCA; and maintain the stability of bluffs and steep slopes and ensure stability of other erosion-prone areas.

(2) *Applicability.* This section applies to:

- a. Shore impact zones;
- b. Areas within 50 feet of a wetland or natural drainage route;
- c. Bluff impact zones;
- d. Areas of native plant communities; and
- e. Significant existing vegetation stands identified in the MRCCA plan.

(3) Activities allowed without a vegetation permit.

- a. Maintenance of existing lawns, landscaping and gardens;
- b. Removal of vegetation in emergency situations as determined by the city;
- c. Right-of-way maintenance for public facilities meeting the standards in Section 36-368 (3);
- d. Agricultural and forestry activities meeting the standards of Section 36-365 (2), items a and b;
- e. Selective vegetation removal, provided that vegetative cover remains consistent with the management purpose of the MRCCA District, including the removal of:
 - i. Vegetation that is dead, diseased, dying, or hazardous;
 - ii. Vegetation to prevent the spread of diseases or insect pests;
 - iii. Individual trees and shrubs; and
 - iv. Invasive non-native species.

(4) Activities allowed with a vegetation permit.

- a. Only the following intensive vegetation clearing activities are allowed with a vegetation permit:
 - i. Clearing of vegetation that is dead, diseased, dying, or hazardous;
 - ii. Clearing to prevent the spread of diseases or insect pests;
 - iii. Clearing to remove invasive, non-native species;
 - iv. Clearing to prepare for restoration and erosion control management activities consistent with a plan approved by the city;
 - v. The minimum necessary for development that is allowed with a building permit or as an exemption under Section 36-372.

- b. General Performance Standards. The following standards must be met, in addition to a restoration plan under Section 36-369, item (6), in order to approve a vegetation permit:
 - i. Development is sited to minimize removal of or disturbance to natural vegetation;
 - ii. Soil slope stability, and hydrologic conditions are suitable for the proposed work as determined by the City Engineer;
 - iii. Clearing is the minimum necessary and designed to blend with the natural terrain and minimize visual impacts to public river corridor views and other scenic views;
 - iv. Vegetation removal activities are conducted to expose the smallest practical area of soil to erosion for the least possible time, and to avoid bird migration and nesting seasons; and
 - v. Any other condition determined necessary to achieve the purpose of this section.

(5) *Prohibited activities.* All other intensive vegetation clearing is prohibited.

(6) *Vegetation restoration plan*

- a. Development of a vegetation restoration plan and reestablishment of natural vegetation is required.
 - i. For any vegetation removed with a permit issued under Section 36-369, item (4);
 - ii. Upon failure to comply with any provisions in this section; or
 - iii. As part of the planning process for subdivisions as provided in Section 36-371.
- b. Restoration Plan Performance Standards. The vegetation restoration plan must satisfy the application submittal requirements in Section 36-363, item (6) and:
 - i. Vegetation must be restored in one or more of the following restoration priority areas:
 - 1. Areas with soils showing signs of erosion, especially on or near the top and bottom of steep slopes and bluffs;
 - 2. Shoreline areas within 25 feet of the water with no natural vegetation, degraded vegetation, or planted with turf grass;
 - 3. Areas on steep slopes and bluffs that are visible from the river with no natural vegetation, degraded vegetation, or planted with turf grass; or

4. Other approved priority opportunity area, including priorities identified in the MRCCA plan, if none of the above exist.
 - ii. Include vegetation that provides suitable habitat and effective soil stability, runoff retention, and infiltration capability. Vegetation species, composition, density, and diversity must be guided by nearby patches of native plant communities and by *Native Vegetation Establishment and Enhancement Guidelines*.
 - iii. Any highly erodible soils disturbed during removal and/or restoration must be stabilized with deep-rooted vegetation with a high stem density.
 - iv. Vegetation removed must be restored with native vegetation to the greatest extent practicable. The area (square feet) of the restored vegetation should be similar to that removed to the greatest extent practicable
 - v. For restoration of removed native plant communities restored vegetation must also provide biological and ecological function equivalent to the removed native plant communities. The area (square feet) of the restored vegetation should be equivalent to that removed.
 - vi. Be prepared by a qualified individual; and
 - vii. Include a maintenance plan that includes management provisions for controlling invasive species and replacement of plant loss for three (3) years.
- c. The city will issue a certificate of compliance after the vegetation restoration plan requirements have been satisfied.

36-370. Land Alteration Standards and Stormwater Management

(1) *Purpose*. To establish standards that protect water quality from pollutant loadings of sediment, nutrients, bacteria, and other contaminants, and maintain the stability of bluffs, shorelines, and other areas prone to erosion.

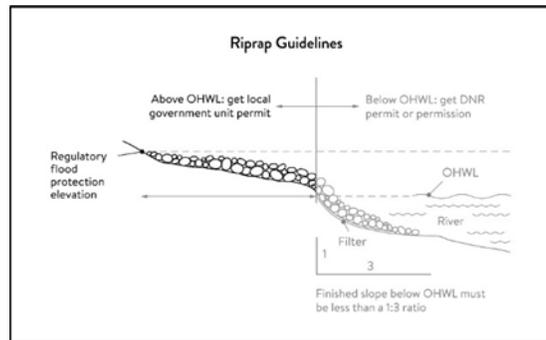
(2) Land Alteration

- a. Within the bluff impact zone, land alteration is prohibited, except for the following, which are allowed by permit.
 - i. Erosion control consistent with a plan approved by the City and consistent with Section 36-370, item (6)
 - ii. The minimum necessary for development that is allowed as an exception under Section 36-372; and
 - iii. Repair and maintenance of existing buildings and facilities.
- b. Within the water quality impact zone, land alteration that involves more than ten (10) cubic yards of material or affects an area greater than one thousand (1,000) square feet requires a permit.

(3) Rock riprap, retaining walls, and other erosion control structures.

- a. Construction, repair, or replacement of rock riprap, retaining walls, and other erosion control structures located at or below the OHWL must comply with Minnesota Rules, Chapters 6115.0215, subpart 4, item E and 6115.0216, subpart 2. Work must not proceed until approved by the commissioner, permitted by the US Army Corps of Engineers, and any other permits are obtained. See Figure 8.

Figure 7. Riprap Guidelines



- b. Construction or replacement of rock riprap, retaining walls, and other erosion control structures within the bluff impact zone and the water quality impact zone are allowed with a permit consistent with provisions of Section 10.6 provided that:
 - i. If the project includes work at or below the OHWL, the commissioner has already approved or permitted the project.
 - ii. The structures are used only to correct an established erosion problem as determined by the city.
 - iii. The size and extent of the structures are the minimum necessary to correct the erosion problem and are not larger than the following, unless a professional engineer determines that a larger structure is needed to correct the erosion problem:
 - A. Retaining walls must not exceed five (5) feet in height and must be placed a minimum horizontal distance of ten (10) feet apart; and
 - B. Riprap must not exceed the height of the regulatory flood protection elevation.
- c. Repair of existing rock riprap, retaining walls, and other erosion control structures above the OHWL does not require a permit provided it does not involve any land alteration under Section 36-370, item (2).

(4) Stormwater management

- a. In the bluff impact zone, stormwater management facilities are prohibited, except by permit if:

- i. There are no alternatives for storm water treatment outside the bluff impact zone on the subject site;
 - ii. The site generating runoff is designed so that the amount of runoff reaching the bluff impact zone is reduced to the greatest extent practicable;
 - iii. The construction and operation of the facility does not affect slope stability on the subject property or adjacent properties; and
 - iv. Mitigation based on the best available engineering and geological practices is required and applied to eliminate or minimize the risk of slope failure.
 - b. In the water quality impact zone, development that creates new impervious surface, as allowed by exemption in Section 36-372, or fully reconstructs existing impervious surface of more than ten thousand (10,000) square feet requires a storm water permit. Multipurpose trails and sidewalks are exempt if there is down-gradient vegetation or a filter strip that is at least five (5) feet wide.
 - c. In all other areas, storm water runoff must be directed away from the bluff impact zones or unstable areas.
- (5) Development on steep slopes. Construction of structures, impervious surfaces, land alteration, vegetation removal, or other construction activities are allowed on steep slopes if:
- a. The development can be accomplished without increasing erosion or storm water runoff;
 - b. The soil types and geology are suitable for the proposed development; and
 - c. Vegetation is managed according to the requirements of Section 36-369.
- (6) Conditions of land alteration permit approval
- a. Temporary and permanent erosion and sediment control measures retain sediment onsite consistent with the best management practices in the *Minnesota Stormwater Manual*;
 - b. Natural site topography, soil and vegetation conditions are used to control runoff and reduce erosion and sedimentation;
 - c. Construction activity is phased when possible;
 - d. All erosion and sediment controls are installed before starting any land disturbance activity;
 - e. Erosion and sediment controls are maintained to ensure effective operation;
 - f. The proposed work is consistent with the vegetation standards in Section 36-369; and
 - g. Best management practices are employed for protecting and enhancing ecological and water resources identified in *Best Practices for Meeting DNR General Public Waters Permit GP 2004-0001*.

(7) Compliance with other plans and programs. All development must:

- a. Be consistent with Minnesota Statutes, chapter 103B and local water management plans completed under Minnesota Rules chapter 8410;
- b. Meet or exceed the wetland protection standards under Minnesota Rules, chapter 8420; and
- c. Meet or exceed the floodplain management standards under Minnesota Rules, chapter 6120.5000-6120.6200.

36-371. Subdivision and Land Development Standards

(1) *Purpose.*

- a. To protect and enhance the natural and scenic values of the MRCCA during development or redevelopment of the remaining large sites;
- b. To establish standards for protecting and restoring biological and ecological functions of primary conservation areas on large sites; and
- c. To encourage restoration of natural vegetation during development or redevelopment of large sites where restoration opportunities have been identified in MRCCA plans.

(2) *Applicability.*

- a. The design standards in this section apply to subdivisions, planned unit developments, and master-planned development and redevelopment of land involving ten (10) or more acres for contiguous parcels that abut the Mississippi River and twenty (20) or more acres for all other parcels, including smaller individual sites within the following developments that are part of a common plan of development that may be constructed at different times:
 - i. Subdivisions;
 - ii. Planned unit developments; and
 - iii. Master-planned development and redevelopment of land.
- b. The following activities are exempt from the requirements of this section.
 - i. Minor subdivisions consisting of three (3) or fewer lots;
 - ii. Minor boundary line corrections;
 - iii. Resolutions of encroachments;
 - iv. Additions to existing lots of record;
 - v. Placement of essential services; and
 - vi. Activities involving river-dependent commercial and industrial uses.

(3) *Application materials.* Project information listed in Section 36-363, item (6) must be submitted for all proposed developments.

(4) *Design standards*

- a. Primary conservation areas, where they exist, must be set aside and designated as protected open space in quantities meeting the following as a percentage of total parcel area:
 - i. CA-RN District: 20%
 - ii. CA-UM District: 10%
 - iii. CA-SR District: 10% if the parcel includes native plant communities or provides feasible connections to a regional park or trail system, otherwise no requirement.
- b. If the primary conservation areas exceed the amounts specified in Section 36-371 (2) d(i), then protection of native plant communities and natural vegetation in riparian areas shall be prioritized.
- c. If primary conservation areas exist but do not have natural vegetation (identified as restoration priorities in the MRCCA Plan), then a vegetation assessment must be completed to evaluate the unvegetated primary conservation areas and determine whether vegetation restoration is needed. If restoration is needed, vegetation must be restored according to Section 36-369, item (6)b.
- d. If primary conservation areas do not exist on the parcel and portions of the parcel have been identified in the MRCCA Plan as a restoration area, vegetation must be restored in the identified areas according to Section 36-369, item (6)b and the area must be set aside and designated as protected open space.
- e. Storm water treatment areas or other green infrastructure may be used to meet the protected open space requirements if the vegetation provides biological and ecological functions.
- f. Land dedicated under Chapter 28, Article IV, Section 28-126 of this code for public river access, parks, or other open space or public facilities may be counted toward the protected open space requirement.
- g. Protected open space areas must connect open space, natural areas, and recreational areas, where present on adjacent parcels, as much as possible to form an interconnected network.

(5) *Permanent protection of designated open space*

- a. Designated open space areas must be protected through one or more of the following methods:
 - i. Public acquisition by a government entity for conservation purposes;

- ii. A permanent conservation easement, as provided in Minnesota Statutes, chapter 84C;
 - iii. A deed restriction; or
 - iv. Other arrangements that achieve an equivalent degree of protection.
- b. Permanent protection methods must ensure the long-term management of vegetation to meet its biological and ecological functions, prohibit structures, and prohibit land alteration, except as needed to provide public recreational facilities and access to the river.

(6) *Permanent protection of designated open space*

- a. Alternative design standards. The city will consider the following alternative design option to increase the permanent protection of Primary Conservation Areas (PCAs) in subdivisions and other new developments in the MRCCA District and encourage restoration of native vegetation communities. The City may grant density bonuses to increase the permanent protection of PCAs and/or native plant communities up to thirty (30) percent of the parcel area in the CA-RN, CA-UM and CA-SR District. Protection and restoration must be accomplished consistent with the requirements of this section.

The City may award additional development units based on the size of the area protected, as follows:

- i. *Density bonuses.* The City may approve density bonuses for a major subdivision when the proposed subdivision meets the objectives and requirements of this division and Article VI of the city code to protect and preserve bluffs, steep slopes, native vegetation, natural resources, views of the bluffs area, and open space.
- ii. The city shall determine the amount and location of the density bonus permitted for each major subdivision based on site conditions, zoning district regulations, and potential impacts to the site and surrounding areas. The maximum density bonus for a subdivision shall be twenty (20) percent for single-family and duplex housing units and thirty (30) percent for multifamily units.

36-372. Exemptions

- (1) *Purpose.* To provide exemptions to structure placement, height, and other standards for specific river or water access-dependent facilities as provided in Minnesota Statutes 116G.15 Subd. 4.

(2) *Applicability.*

- a. Uses and activities not specifically exempted must comply with this Division. Uses and activities exempted under shore impact zone and bluff impact zone must comply with the vegetation management and land alteration standards in Sections 36-369 and 36-370.

- b. Uses and activities in Section 36-372, item 3 are categorized as:
- i. Exempt-E. This means that the use or activity is allowed;
 - ii. Exempt if no alternative-(E). This means that the use or activity is allowed only if no alternatives exist; and
 - iii. Not exempt-N. This means that a use or activity is not exempt and must meet the standards of this ordinance.

(3) *Use and activity exemptions classification.*

- a. General uses and activities. On the tables below:

SIZ is the Shore Impact Zone

BIZ is the Bluff Impact Zone

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Industrial and utility structures requiring greater height for operational reasons (such as elevators, refineries and railroad signaling towers)	N	E	N	N	Structure design and placement must minimize interference with public river corridor views.
Barns, silos, and farm structures	N	E	N	N	
Bridges and bridge approach roadways	E	E	E	(E)	Section 36-368
Wireless communication towers	E	E	N	N	Section 36-365d
Chimneys, church spires, flag poles, public monuments, and mechanical stacks and equipment	N	E	N	N	
Historic properties and contributing properties in historic districts	E	E	E	E	Exemptions do not apply to additions or site alterations.
Buildings and structures on the face of or abutting the bluff in the CA-UC district of St. Paul, between Chestnut Street and Highway 52.	E	n/a	n/a	E	Height in CA-UC district is governed by underlying zoning.

- b. Public utilities

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Electrical power facilities	E	E	E	(E)	Section 36-368
Essential services (other than storm water facilities)	E	E	E	(E)	Section 36-368
Storm water facilities	E	N	E	(E)	Section 36-370
Wastewater treatment	E	N	E	N	Section 36-368
Public transportation facilities	E	N	(E)	(E)	Section 36-368

c. Public recreational facilities

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Accessory structures, such as monuments, flagpoles, light standards, and similar park features	E	E	(E)	(E)	Section 36-368; within BIZ, only on slopes averaging less than 30%. Exemptions do not apply to principal structures.
Picnic shelters and other open-sided structures	E	N	(E)	N	Section 36-368
Parking lots	(E)	N	(E)	(E)	Section 36-368; within BIZ, only within 20 feet of toe of bluff; not on face of bluff; and must not affect stability of bluff
Roads and driveways	(E)	N	(E)	(E)	Section 36-368
Natural-surfaced trails, access paths, and viewing areas	E	N	E	E	Section 36-368
Hard-surfaced trails and viewing platforms	E	N	E	(E)	Section 36-368; within BIZ, only on slopes averaging less than 30%.
Water access ramps	E	N	E	(E)	Section 36-368

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Public signs and kiosks for interpretive or directional purposes	E	N	E	(E)	Section 36-368

d. River-dependent uses

Use or Activity
Shoreline facilities
Private roads and conveyance structures serving river-dependent uses

e. Private residential and commercial water access and use facilities.

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Private roads serving 3 or more lots	(E)	N	N	(E)	Section 36-367; in BIZ, only on slopes averaging less than 30%. Exemption does not apply to private roads serving fewer 3 lots or to private driveways and parking areas.
Access paths	E	N	E	E	Section 36367
Water access ramps	E	N	E	N	Section 36-367
Stairways, lifts, and landings	E	N	E	E	Section 36-367
Water-oriented accessory structures	E	N	E	N	Section 36-367d
Patios and decks	E	N	N	N	Section 36-367e
Directional signs for watercraft (private)	E	N	E	N	Section 36-367f; exemption does not apply to off-premises advertising signs.

Use or Activity	Set backs	Height Limits	SIZ	BIZ	Applicable standards with which the use or activity must comply
Temporary storage of docks, boats, and other equipment during the winter months	E	N	E	N	
Erosion control structures, such as rock riprap and retaining walls	E	N	E	(E)	Section 36-370(3)
Flood control structures	E	N	E	(E)	Section 36-370

Harry Davis

From: Deb Hill <dhill@newportmn.com>
Sent: Tuesday, July 6, 2021 12:24 PM
To: Harry Davis; Sherri Buss
Subject: FW: Updates to the MRCCA Model Ordinance
Attachments: 2021-02-02-MRCCA Model_with Revisions tracked for 2021-06-23ver.docx

Deb Hill, MCMC
City Administrator
596 7th Avenue Newport MN 55055
651-459-5677 city hall
651-556-4600 direct



From: Petrik, Daniel (DNR) <daniel.petrik@state.mn.us>
Sent: Friday, July 2, 2021 11:22 AM
To: Allan Hunting <ahunting@invergroveheights.org>; Allan Torstenson <allan.torstenson@ci.stpaul.mn.us>; Anthony Nemcek <Anthony.Nemcek@ci.rosemount.mn.us>; Brad Scheib <Brad@hkgi.com>; Caroline Spurgeon <ravennatowship@embarqmail.com>; Chloe McGuire <CMcGuire@ci.ramsey.mn.us>; Deb Hill <dhill@newportmn.com>; Denmark Township <townclerk@denmarktownship.org>; Doug Borglund <DBorglund@ci.anoka.mn.us>; Elizabeth Bell <townclerk@greycloudislandtwp-mn.us>; Ginny McIntosh <gmcintosh@ci.brooklyn-center.mn.us> <gmcintosh@ci.brooklyn-center.mn.us>; Jim Voll <james.voll@minneapolismn.gov>; John Hinzman (jhinzman@hastingsmn.gov) <jhinzman@hastingsmn.gov>; Josh Williams <josh.williams@ci.stpaul.mn.us>; Justin Fortney <JFortney@hastingsmn.gov>; Karen Bremer <karenbremer17@gmail.com>; Kathy Higgins <higg5@msn.com>; Kathy Krotter (cityofmendota@gmail.com) <cityofmendota@gmail.com>; Kevin Walsh <kw Walsh@stpaulpark.org>; Mary Schultz <cityoflilydale@comcast.net>; Matthew Gindele <mgindele@cityofdaytonmn.com>; Michael Healy (mhealy@southstpaul.org) <mhealy@southstpaul.org>; Michael Martin <Michael.martin@maplewoodmn.gov>; Mike Hamilton <mike@thlawoffice.com>; Mike Lamb <Mike.Lamb@lhbcorp.com>; Mike Mrosla <mmrosla@cottagegrovemn.gov>; Nicole Peterson <npeterson@ci.champlin.mn.us>; Paul Mogush <paul.mogush@brooklynpark.org>; Phil Carlson <philc@mendota-heights.com>; Rachel Workin <Rachel.workin@fridleytownship.gov>; Richard Adams <r.adams@greycloudislandtwp-mn.us>; Scott Harlicker <sharlicker@coonrapidsmn.gov>; Scott Schulte <schulte@ci.champlin.mn.us>; Tim Benetti (timb@mendota-heights.com) <timb@mendota-heights.com>
Cc: Shillcox, Jennifer (DNR) <jennifer.shillcox@state.mn.us>; Bauman, Matthew (DNR) <matthew.bauman@state.mn.us>; Gleason, John (DNR) <john.gleason@state.mn.us>; Huinker, Taylor (DNR) <Taylor.Huinker@state.mn.us>; Scollan, Daniel (DNR) <daniel.scollan@state.mn.us>
Subject: Updates to the MRCCA Model Ordinance

Hi all MRCCA communities,

I'm sending this mail to let you know that the DNR has recently updated the MRCCA model ordinance) with two changes:

1. Minor changes in the wording of the bluff definition and two new bluff graphics. One of the new graphics illustrates a bluff and the other new graphic illustrates the bluff impact zone. These two graphics replace one graphic that illustrated both the bluff and bluff impact zone. We made these changes to help communicate what a bluff is separate from the bluff impact zone. We feel both of these changes will help improve the administration of bluff-related standards. Please see page #2 on the attached document for specific changes.
2. A correction in the formula for allowing encroachments of patios and decks into required setbacks without a variance. The prior model ordinance did not include the number **0.25** in the formula as highlighted below. The updated model corrects this error by inserting this number into the formula. The updated model also added optional **blue bold** text (see below) to help clarify where the width in the formula should be measured. This change is on page # 24 of the attached document.

[Required setback depth (feet) x 0.15 x lot width **at setback** (feet) x **0.25** = maximum total area]

Attached is the updated model ordinance with mark ups shown. We encourage communities to use the updated bluff language and graphics. All communities that have already adopted a MRCCA ordinance should amend their ordinance to make the correction to the patio and deck encroachment formula, if the error wasn't already detected. We apologize for this inconvenience.

Please only use the attached marked up version to understand these two changes. You should always check the [DNR website](#) for the latest model ordinance version. The DNR makes periodic updates to the model. These updates are usually minor changes in text to help improve administration – based on feedback from community staff. We are sending this model update to you because it corrects an error in the prior model version and because the bluff graphics and wording change to accommodate the graphics are fairly substantial.

Please contact me with any questions.

Thank you,

Dan Petrik

Lake & River Shoreland Program Manager

Minnesota Department of Natural Resources

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MEMORANDUM

Date: August 3, 2021
To: City of Newport Planning Commission
From: Harry Davis, AICP
Subject: Fence Code Update
City of Newport

Meeting Date: August 10, 2021

Applicant: Newport City Council

Request:

The applicant has requested changes to the fence code that would open up materials used for fences, requiring a permit for new fences, and addressing fences in right-of-way and easements.

Background:

The applicant has requested changes to the fence code as a result of reporting from the City Administrator's office. The City Administrator noted that surrounding communities were more accommodating with fence materials and were primarily concerned with "quality and workmanlike materials". By opening up the kinds of materials and allowing the City Administrator to review and approve fence materials, this would improve the process. The City Administrator's office also noted some issues with fences located in right-of-way and impeding access to easements. A permit process and language for fences in right-of-way and easements would also improve the process.

Public Comment:

No public comment was received at the time of writing this report.

Neighborhood Notification:

The Planning Commission will hold a public hearing on August 10th where this report will be presented to the public. A notice for the public hearing was published on July 27 in the newspaper at least 10 days before the hearing. The ordinance was made available for review at City Hall and on the City's website.

Staff Findings:

Staff has reviewed fence ordinances from nearby cities and proposed changes to Newport's fence code. The following are a summary of the changes:

- Removing the list of specifically allowed materials and replacing it with a note about the fence needing to be constructed with "quality and workmanlike materials". The final call for what is allowed as a material resides with the City Administrator or their designee.
- Requiring a permit to construct a new fence.
- Language restricting fences from being placed within right-of-way or in easements if the fence impedes access to or use of said easement.
- Consolidation of general requirements for all fences into one area within code.

Name: Fence Code Update

Date: August 10, 2021

Page: 2

Recommendation:

Staff recommends the Planning Commission forward staff's proposed ordinance language to City Council recommending approval.

Attachments:

- Proposed Ordinance
- Neighboring Community Fence Code Examples
 - o Cottage Grove
 - o Hastings
 - o St. Paul Park
 - o Woodbury

City of Newport, MN

Ordinance No. 2021-__

An Ordinance Amending Chapter 36 Of The Newport City Code

Sec. 36-161. Standards for all districts.

The following standards are applicable to all districts within the city:

- (1) *Utilities location.* When practical and feasible, all utilities shall be placed underground. All groundwork shall be completed prior to street surfacing. All utility lines for telephone and electrical service shall be placed in rear line easements when carried on overhead poles.

- (2) *Fences.*

a. Fences in All Zoning Districts.

1. A fence may be placed along a property line provided no physical damage of any kind results to the abutting property.
2. The side of the fence considered the face (the finished side as opposed to the structural supports) shall face the abutting property.
3. A fence shall be of one color or pattern, may not contain or support pictures, signage or lettering, and must be maintained in good condition and appearance.
4. A fence shall only be constructed in a substantial, workmanlike manner and of materials reasonably suited for the purpose for which the fence is proposed to be used. The city administrator or designee shall have final say regarding what materials are acceptable.
5. No fence shall be constructed within public rights-of-way.
6. Any fence placed within an easement that impedes the access or intended use of that easement may be removed by the city, city's representative, or utility company at the owner's expense.
7. A fence shall not visually screen or interfere with streets, sidewalks, or vehicular traffic. No fence shall be closer than one foot from a public walkway.
6. Permit. A permit is required for all fences installed in Newport after the adoption of this ordinance. It is unlawful for any person to construct or cause to be constructed any fence without first making an application for and securing a permit.

a**b.** Fences in Business (B) and Industrial (I) Zoning Districts.

- ~~1. A fence may be placed along a property line provided no physical damage of any kind results to the abutting property.~~
- ~~2. The side of the fence considered the face (the finished side as opposed to the structural supports) shall face the abutting property.~~
- ~~3. A fence shall be of one color or pattern, may not contain or support pictures, signage or lettering, and must be maintained in good condition and appearance.~~
- ~~4. A fence shall only be constructed of the following materials:~~
 - ~~(i) Treated wood, cedar, or redwood.~~

~~(ii) Simulated wood.~~

~~(iii) Decorative brick or stone.~~

~~(iv) Wrought iron or aluminum designed to simulate wrought iron.~~

~~(v) Coated or non-coated chainlink.~~

~~(vi) Split rail.~~

~~(vii)1.~~ Barbed wire. Barbed wire may be used for top fencing only around business and industrial uses where the base fence is at least six feet in height. The barbed wire portion of the fence may not exceed three strands, and shall have arms projecting into the applicant's property on which the barbed wire shall be fastened. The minimum height to the bottom strand of the barbed wire shall not be less than six feet from finished grade.

~~52.~~ A fence may be no more than 12 feet in height.

~~6.~~ A fence shall not visually screen or interfere with streets, sidewalks, or vehicular traffic. No fence shall be closer than one foot from a public walkway.

~~73.~~ In the I-S District, a fence at least six feet in height shall be required around all storage tanks.

~~8.~~ No fence shall be constructed on public rights-of-way.

~~b.c.~~ Fences in the Residential (R) and Mixed Use (MX) Zoning Districts.

~~1.~~ A fence may be placed along a property line provided no physical damage of any kind results to the abutting property.

~~2.~~ That side of the fence considered being the face (the finished side as opposed to the structural supports) shall face the abutting property.

~~31.~~ A fence in the front yard shall be of one color or pattern, and may not contain or support pictures, may contain signage or lettering that is not visible to a public street or to adjacent properties.

~~42.~~ A fence may be no more than four feet in height in the front yard.

~~53.~~ A fence may be no more than six feet in height in a side or rear yard, unless the side or rear lot line is common with the front yard of an abutting lot, in which case the portion of the side or rear lot line equal to the required front yard of the abutting lot may have a fence no more than four feet in height.

~~64.~~ Except in the RE District, electric fences may not be used.

~~7.~~ A fence shall not visually screen or interfere with streets, sidewalks, or vehicular traffic. No fence may be closer than one foot from a public walkway.

~~8.~~ All fences shall be maintained in good condition and appearance.

~~9.~~ A fence shall only be constructed of the following materials:

~~(i) Treated wood, cedar, or redwood.~~

~~(ii) Simulated wood.~~

~~(iii) Decorative brick or stone.~~

~~(iv) Wrought iron or aluminum designed to simulate wrought iron.~~

~~(v) Coated or non-coated chainlink.~~

~~(vi) — Split rail.~~

~~(vii) — Other materials or fence types as approved by the zoning administrator.~~

~~105.~~ Barbed wire fence material may be used for security purposes on the side and rear of nonresidential buildings in the MX districts with the approval of an administrative permit by the zoning administrator. The barbed wire portion of the fence shall not be placed in the front yard. Barbed wire may be used for top fencing only where the base fence is at least six feet in height. The barbed wire portion of the fence may not exceed three strands, and shall have arms projecting into the applicant's property on which the barbed wire must be fastened. The minimum height to the bottom strand of the barbed wire shall not be less than six feet from finished grade.

~~116.~~ Except in the RE District, welded wire shall not be used for fences on property boundaries.

~~127.~~ Welded wire may be used in the RE District for fences on property boundaries of rear yards.

~~138.~~ Welded wire may only be used for small enclosures in all districts to protect vegetation such as trees, gardens, plants, and bushes.

~~149.~~ Except in the RE District, snow fences may not be used for fences.

~~1510.~~ Snow fences may be erected in the RE District for controlling snow between November 1 and April 15. All snow fences must be removed by April 16.

~~16. — No fence shall be constructed on public rights-of-way.~~