



**Wayzata City Council Workshop Meeting Agenda  
Wayzata City Hall Community Room, 600 Rice Street  
TUESDAY, APRIL 9, 2024**

**WORKSHOP TOPICS FOR DISCUSSION:**

1. Review and Discussion of Status of Tree Preservation Ordinance (5:45-6:30 p.m.)



## City Council Workshop City Council Agenda Report

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| <b>MEETING DATE:</b> April 9, 2024                                                                 | <b>WORKSHOP AGENDA ITEM:</b> 1 |
| <b>TITLE:</b> Review and Discussion of Status of Tree Preservation Ordinance (5:45-6:30 p.m.)      |                                |
| <b>PREPARED BY:</b> Bennett Myhran, City Forester                                                  |                                |
| <b>REVIEWED BY:</b> Mike Kelly, City Engineer/Director of Public Works, Jeffrey Dahl, City Manager |                                |

### **DISCUSSION OBJECTIVE:**

To update the Council on the first full year of implementation of the Tree Preservation Ordinance and discuss suggested future tweaks to the code.

### **2024-2026 STRATEGIC PLAN PRIORITIES RELEVANCE:**

*Sustain Community Character & Safety*

The City of Wayzata prides itself on having a healthy tree canopy.

### **BACKGROUND:**

In late 2022, the Council adopted changes to Chapters 519, 710, and 936 pertaining to Tree Preservation. Also, after the first few months of implementation, several additional changes were identified, drafted, and codified in early 2023. The intent of these various amendments and their respective City Code can be found in Attachment A. During that same period, the Council formally appointed its first City Forester, who has managed the implementation of these changes as they relate to: plan review, mitigation calculation, collection, tracking, and release, code interpretation, tree pest/pathogen control and quarantine, and tree hazard abatement.

The public's response to these procedural changes has been generally positive since ordinance amendments were established, though difficult to gauge without any proactive outreach. The most vocal proponents of these efforts tend to be engaged community members and residents of properties adjacent to land development activity. Developers are also generally appreciative of our intentions, as many of them rely on the City's tree canopy for certain project aesthetics. There is also a subset of developers who have been vocally opposed to these changes due to the added complexity in site planning and cost of mitigation requirements. Developers as a whole are becoming more familiar with these regulations and better able to navigate them proactively. It is expected that as long as the City maintains consistent application of these standards, implementation will continue to streamline.

### ***Measurable Effects***

While the community's response to these changes is difficult to objectively articulate, there is plenty of useful data and observations from staff which demonstrate other impacts that the ordinance has had regarding the community's tree canopy and the City of Wayzata's budget. This information can be found in Attachment B.

### ***Proposed Action***

While the combined effects of the TPO, as currently written, have been positive, there continues to be room for improvement and refinement as staff explores opportunities to make these regulations more effective, fairer, and perhaps more palatable to those that need to navigate them on a regular basis. As such, staff would like to discuss several ordinance updates which can be found in Attachment C. The proposed language is shown in red, with additional context provided in green text boxes. Staff will be walking through the proposed updates at the meeting.

Other action items that staff would like to discuss for increased tree canopy resilience include:

*Development of Urban Forest Management Plan* – A tree management plan is generally implemented before or in conjunction with a Tree Preservation Ordinance. Such a plan typically applies to an organization's

handling of public trees. Common topics include maintenance standards, risk assessment and abatement, inventory management, budgeting, planting priorities, canopy/diversity goals, and the plan's relationship to related documents (e.g. TPO and Parks O&M Manual). See Attachment D for proposal details.

*Expansion of Forestry Resources for Residents* – In 2022, the City adopted an agreement with Rainbow Tree Care to provide discounted injection treatments for ash trees. The MN DNR now considers Wayzata to be generally infested, meaning new treatment efforts are not advisable. Additionally, three years of drought have brought other stressors to other species – notably our oak populations. The City Forester requested a proposal from Rainbow Tree Care to expand their program to include the protective treatment of other threatened species, which will be considered for approval on April 9.

**ATTACHMENTS:**

1. Attachment A - Recent Ordinance Updates
2. Attachment B - Effects
3. Attachment C - Proposed Ordinance Changes
4. Attachment D - DRAFT Management Plan Proposal
5. Attachment E - DRAFT Mitigation Agreement
6. Attachment F - DRAFT Tree Mitigation Language

## **ATTACHMENT A**

### **Updates to City of Wayzata Tree Preservation Ordinance**

#### **October 2022 Updates**

- Establishment of permitting process for removal of significant and heritage trees ([§936.05](#))
- Establishment of mitigation process for heritage tree removal not related to development ([§936.09.A.2](#))
- Incorporation of past tree removal into the tree removal mitigation process ([§936.10](#))
- Clarification of species classification for tree removal mitigation purposes (throughout [§936](#))
- Establishment of penalties for tree protection violations ([§936.08.C](#))
- Updates to tree replacement requirements ([§936.09](#))
- Various clarifying language and edits throughout

#### **June 2023 Updates**

- The required, mitigated removal of trees with disturbed structural root zones ([§936.06.E](#))
- Refinement of Heritage Tree definition to disqualify certain classes of trees from mitigation requirements ([§936.02.H](#))
- Expanded removal permitting requirements to include dead, dying, and diseased trees for pest and pathogen tracking ([§936.05](#))
- Various clarifying language and edits throughout

## ATTACHMENT B

### *Measurable Effects of Tree Preservation Ordinance Changes*

Since implementing the tree removal permitting process in January of 2023, the City has issued permits as noted below:

- 42 related to property development
- 66 not directly related to property development

Since enforcing the tree removal mitigation processes described in the TPO, the City has:

- Required the installation of 4,929 inches of replacement tree canopy – this translates to approximately 2,465 new trees planted which have been and will continue to be inspected for proper establishment
- Collected \$850,024.81 in tree-related escrow sureties
  - \$237,068.00 in *tree replacement* escrow for commercial development
  - \$555,582.00 in *tree replacement* escrow for residential development
  - \$45,758.81 in *tree preservation* escrow related to development
- Collected \$266,148.00 in fees-in-lieu of planting, of which:
  - \$8,264.00 for the purchase of trees to be planted in public parks and rights-of-way
  - \$9,956.50 for the purchase of services for the preservation of public trees (soil decompaction, structural support systems, therapeutic treatments for lethal pests/pathogens, etc.)
  - \$4,116 for the purchase of trees to be given to Wayzata residents for planting on private property
  - \$14,000 for the removal of infested ash trees on private property

The City Forester's time invested in managing the TPO has been substantial. On average, 104 hours/month have been dedicated to tasks and initiatives related to the TPO.

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Although not quantifiable, a significant number of trees have been preserved because of these newly-embraced policies and procedures. By engaging with each applicant in the development-related plan review process, proposed removals are routinely preserved as consulting arborists are included in the planning phase, specialized preservation methods are utilized, alternative grading/trenching opportunities are identified, minimum tree protection standards are enforced and mitigation costs are understood.

By educating residents through the tree removal permit application process, trees not directly impacted by development activity are also routinely preserved once their actual condition, risk rating, and/or environmental services are understood.

## CHAPTER 936 TREE PRESERVATION

### 936.01 Purpose and Intent.

The Wayzata City Council finds it is in the best interest of the City to protect, preserve, and enhance the natural environment of the City, and to encourage a balanced approach to the development and alteration of wooded areas. In the interest of achieving these objectives, the City has established the comprehensive tree preservation regulations of this Chapter to promote the following:

- A. Protection and preservation of the environment and natural beauty of the City;
- B. Assurance of orderly development within wooded areas to minimize tree and habitat loss;
- C. Evaluation of the impacts to trees and wooded areas resulting from development;
- D. Establishment of minimal standards for tree preservation and the mitigation of environmental impacts resulting from tree removal;
- E. Provision of incentives for creative land use and environmentally compatible site design which preserves trees and minimizes tree removal and clear cutting during development; and
- F. Enforcement of tree preservation standards to promote and protect the public health, safety and welfare of the community.

(Ord. 818[10-27-2022])

### 936.02 Definitions.

For purposes of this section, the following definitions shall apply:

- A. **"City Forester"** means that person appointed as City Forester in Section 710.02(b).
- B. **"Coniferous Tree"** means a woody plant bearing seeds and cones oftentimes, but not always, retaining foliage throughout the year.
- C. **"Construction Area"** means any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, or any other change in the natural character of the land occurs as a result of site preparation, grading, building construction or any other construction activity.
- D. **"Critical Root Zone"** means the area around a tree measured from the trunk of the tree with a radius that is equal to 1.5 feet for each one inch of DBH of the tree. For example, if a tree's DBH is ten inches, then its critical root zone radius is 15 feet ( $10 \times 1.5 = 15$ ).
- E. **"Deciduous Tree"** means a woody plant which has a defined crown, and which loses leaves annually.
- F. **"Diameter of Tree at Breast Height" or "DBH"** means the diameter of a tree as measured four and one-half feet (54 inches) above the ground. Trees that branch near or below four and one-half feet from the ground will be measured at the narrowest point below four and one-half feet. ~~Trunks that originate from the ground shall be considered separate trees. The diameter of multi-stemmed trees shall be calculated via the square root method (the square root of the sum of each trunk diameter squared).~~
- G. **"Hazard Tree"** means a tree that receives an overall risk rating of "high" or "extreme" from an arborist who has obtained a Tree Risk Assessment Qualification (TRAQ) from the International Society of Arboriculture. A tree's risk rating may be verified by the City Forester and/or consulting arborist of the City's choosing. This or

any other type of tree risk assessment does not guarantee the structural integrity of any tree, nor does it assign or imply liability related to total or partial tree failure.

**GH.** **"Healthy Tree"** means a tree that is in ~~the~~ average or better condition and vitality for the area, as determined by the City Forester.

**HJ.** **"Heritage Tree"** means a Healthy Rapid-Growth Tree that is 30 inches or greater in DBH, a Healthy Standard-Growth Tree that is 25 inches or greater in DBH, or a Healthy Coniferous Tree that is 25 inches or greater in DBH.

**IJ.** **"Landscape Architect"** means a person licensed by the State of Minnesota as a landscape architect.

**JK.** **"Nursery Stock Dealer" or "Nursery Stock Grower"** means a person licensed by the State of Minnesota as a nursery stock dealer or a nursery stock grower.

**KL.** **"Public Infrastructure"** means the construction or maintenance of:

1. Collector or arterial roads as defined by the City Transportation Plan;
2. Public recreational trails;
3. Stormwater infrastructure;
4. Installation or maintenance of trunk utility infrastructure as described in the Comprehensive Sewer or Water Plans; or
5. Any essential service or public improvement.

**LM.** **"Rapid-Growth Tree Species"** means a species of tree recognized as rapid-growth trees by the City Forester, including cottonwood, poplar/aspen, box elder, willow, silver maple, elm, mulberry, and ash.

**MN.** **"Removal" or "Tree Removal"** means:

1. Manual, mechanical, chemical, or abiotic or biotic (fire, water, insects or inoculation) methods which results in the physical removal of a tree;
2. Grading impact, compaction, or other damage up to 40 percent of a tree's Critical Root Zone;
3. Excessive pruning that severely impacts the long-term survivability of the tree; or
4. Any other impact to a tree that comprises the long-term health or structural stability of a tree.

**NO.** **"Significant Tree"** means a Healthy Standard-Growth Tree that is six inches or greater in DBH, a Healthy Rapid-Growth Tree that is 12 inches or greater in DBH, or a Healthy Coniferous Tree that is 12 feet or greater in height or 12 inches or greater in DBH.

**OP.** **"Site Plan"** means the site plan established and described in this Chapter.

**PQ.** **"Standard-Growth Tree Species"** means a species of tree recognized as standard-growth trees by the City Forester.

**QR.** **"Structural Root Zone"** means the area around a tree with a radius that is equal to three inches for each one inch of DBH of the tree.

**RS.** **"Tree Inch(es)"** means the DBH of a tree or trees on a site.

**T.** **"Tree Mitigation Agreement"** means the agreement between the City and party responsible for submitting tree-related financial securities and/or fees-in-lieu of planting. A Tree Mitigation Agreement is required whenever these types of payments are submitted to the City, and shall specify property information, payment details, relevant sections of this ordinance, and signed acknowledgements from each party.

**US.** **"Tree Preservation Plan"** means the tree preservation plan established and described in this Chapter.

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VT. **"Tree Preservation Zone"** means the tree preservation zone established and described in this Chapter.

WU. **"Tree Removal Permit"** means a permit that is required under this Chapter for tree removal.

(Ord. 818[10-27-2022];Ord. No. 825[6-29-2023])

### **936.03 Establishment of Tree Preservation Zone.**

A Tree Preservation Zone is hereby established in order to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce stormwater runoff and the costs associated therewith and replenish ground water supplies; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; provide shade and the significant environmental benefit of counteracting the so-called "heat-island" effect; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction or grading; protect and increase property values; conserve and enhance the City's physical and aesthetic environment; provide a haven for animals and flora to thrive; and generally protect and enhance the quality of life and the general welfare of the City.

The Tree Preservation Zone shall be applied to and superimposed upon all property within the City of Wayzata. The regulations and requirements imposed within the Tree Preservation Zone shall be in addition to the zoning districts within the existing and amended text and map of the Wayzata Zoning Ordinance, and the Floodplain, Shoreland, and Wetland regulations and requirements. In cases where there is a conflict between regulations applicable within such zones, the more restrictive requirements shall apply.

(Ord. 818[10-27-2022])

### **936.04 City Forester role.**

The City Forester shall have the authority to make interpretations and final determinations on calculations, measurements, and the language of this Chapter.

(Ord. 818[10-27-2022])

### **936.05 Tree Removal Permit Requirement.**

A Tree Removal Permit is required for the removal of any tree with a diameter at breast height (DBH) of six inches or more. No permit fee shall be required for the removal of trees that are determined by the City Forester to be dead, diseased, dying, or hazardous. Removal of any tree that requires a Tree Removal Permit shall comply with all of the requirements of this Chapter along with the requirements listed in the Permit itself.

Submittals for a Tree Removal Permit Application shall be as follows:

- A. Completed Tree Removal Permit Application Form.
- B. Tree Preservation Plan, if applicable, as specified in Section 936.07.

The process for review and approval of a Tree Removal Permit Application shall be as follows:

- A. Submission of a completed Tree Removal Permit Application and other required submittals to the City.
- B. City staff review of the Application and determination if the Application is complete.
- C. Submission of any required tree escrow payment to cover tree replacement, accompanied by a Tree Mitigation Agreement.
- D. Staff approval or denial of the Tree Removal Permit.

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- E. If the Permit is approved, removal of the trees covered by the Permit can commence by the property owner or a licensed tree contractor under City Code Ch. 519.

(Ord. 818[10-27-2022];Ord. No. 825[6-29-2023])

### 936.06 Tree Replacement Thresholds.

The tree replacement requirements of Section 936.09 shall apply as follows:

- A. **Subdivision, Public Infrastructure, Construction of Single-Family Home.** The following tree removal thresholds shall apply to all Subdivisions, Public Infrastructure projects, and construction of single-family homes.
1. **Heritage Trees.** Heritage Trees are valued and special trees for the City of Wayzata due to their size and age. All practical measures must be taken to preserve Heritage Trees. Heritage Tree removal may occur only when there is not a practical alternative. There shall be a zero percent removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards of Section 936.09, in addition to any other requirements hereunder.
  2. **Significant Trees.** Although the City encourages preservation of the maximum amount of trees possible, the City recognizes that a certain amount of Significant Trees removal is sometimes necessary during development. Accordingly, 25 percent of the existing DBH inches of Significant Trees can be removed pursuant to a Tree Preservation Plan without obligation of replacement. Any tree removal beyond 25 percent will require replacement in accordance with the standards of Section 936.09.
  3. **Public Infrastructure.** The City Council may waive the tree replacement requirements of this Section for Public Infrastructure projects if the City Council makes a finding that the tree replacement requirement would create an undue financial or other burden on the project, and the public benefits of the Public Infrastructure project outweigh the benefits of the required tree replacement. All Public Infrastructure projects shall otherwise adhere to the standards of this Chapter, except for Section 936.11.
- B. **Land Disturbance Permits, Design Review, and Expansions to Single-Family Homes.** The following tree removal thresholds apply to projects that require a Land Disturbance Permit under City Code Section 409.05, projects that require Design Review under City Code Section 909.04.B, and expansions or additions to an existing single-family home:
1. **Heritage Trees.** Heritage Trees are valued and special trees for the City of Wayzata due to their size and age. All practical measures must be taken to preserve Heritage Trees. Heritage Tree removal may occur only when there is not a practical alternative. There shall be a zero percent removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards of Section 936.09 in addition to any other requirements hereunder.
  2. **Significant Trees.** The City recognizes that additional tree removal may occur after the construction of new houses or commercial developments, or the expansion of existing homes or commercial developments, but to a lesser degree than the original development. Therefore, ten percent of the existing DBH inches of trees can be removed without obligation of replacement. Any removal beyond ten percent will require replacement in accordance with the standards of Section 936.9.
- C. **Heritage Tree Removal.** Heritage trees removed in connection with a project not listed in Sections 936.06.A and 936.06.B shall be replaced at a ratio of one inch to one inch DBH removed in accordance with the standards of Section 936.09.

This intends to clarify the ordinance's applicability and hopefully ease the concerns of some who see the organization as being exempt from its own standards.

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D. **Trees Exempt From Replacement Requirements.** The following types of trees shall not be included as part of the tally of tree removals for purposes of calculating replacement in accordance with the standards within Section 936.09:

1. Dead, Diseased, Dying, or Hazard Trees as determined by the City Forester prior to removal; or
2. Trees that are transplanted from the site to another appropriate location within the City as approved by the City Forester; or
3. Trees that were planted as part of a commercial business such as a tree farm or nursery; or
4. Trees that are structurally unstable and pose a risk to people or permanent structures, as deemed by a certified arborist with a Tree Risk Assessment Qualification and the City Forester.
5. Significant trees that are not part of any project not listed in 936.06.A or 936.06.B.

6. Tree species included in the Minnesota Department of Natural Resources Terrestrial Invasive Plants List.

E. **Trees Included for Structural Root Zone Disturbance.** Any tree with a Structural Root Zone that will be disturbed in any way in connection with a project listed in Sections 936.06.A and 936.06.B must be (i) inventoried and removed prior to grading or excavation, and (ii) included as part of the tally of tree removals for purposes of calculating replacement in accordance with the standards within Section 936.09.

(Ord. 818[10-27-2022];Ord. No. 825[6-29-2023])

### **936.07 Tree Preservation Plan.**

When a Tree Preservation Plan is required ~~with a Tree Removal Permit~~, an applicant is responsible for implementing the approved Tree Preservation Plan prior to and during site grading and plan development. A Tree Preservation Plan is required for any land use approval or activity mentioned in Section 936.06. The Tree Preservation Plan will be reviewed by the City Forester and any other relevant City staff to assess the best overall tree design for the project involved, taking into account the preservation, renewal and health of Significant and Heritage Trees, and ways to enhance the efforts to mitigate damage to the trees on the property and the natural environment. The applicant is encouraged to meet with City staff prior to submission of a Subdivision application, Public Infrastructure project, or Design Review application to determine the placement of buildings, parking, driveways, streets, storage and other physical features which result in the fewest Significant and Heritage Trees being destroyed or damaged. The Tree Preservation Plan must include the following items:

- A. The name(s) and address(es) of property owners and applicants.
- B. Delineation of the buildings, structures, impervious surfaces, utilities, and other site improvements situated thereon or contemplated to be constructed thereon.
- C. Delineation of all areas to be graded and limits of land disturbance, including the contouring of all areas to be graded.
- D. Size, species, location and condition of all Significant and Heritage Trees located on the property as well as on adjacent properties where the Critical Root Zones of the trees are within the proposed Construction Area. The size of Deciduous Trees must be recorded in DBH and the size of Coniferous Trees must be recorded both in DBH and approximate height.
- E. Identification of all Dead, Diseased, Dying and Hazard Trees.
- F. The Critical Root Zone of all Significant and Heritage Trees proposed to be preserved.
- G. Identification of all Significant and Heritage Trees proposed to be removed within the Construction Area.

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- H. Identification of all Significant and Heritage Trees on all individual lots. The Developer must submit a list of all lot and block numbers identifying those lots.
- I. Measures to protect Heritage and Significant Trees as outlined in Section 936.08.
- J. Size, species, and location of all replacement trees to be planted on the property in accordance with the tree replacement requirements.
- K. Description or diagram of planting specifications to be observed during replacement tree installation. Specifications shall, at a minimum, address planting depth, mulching, and long-term girdling (e.g. root ball packaging, encircling roots).
- K. Calculations of the total amount of tree inches proposed to be removed, the allowed removal percentage, and tree replacement inches required and proposed.
- L. Signature of the person preparing the plan and statement which includes acknowledgment of the fact the trees to be used as replacements are appropriate species with respect to survival of the replacement trees.
- (Ord. 818[10-27-2022])

The University of Minnesota has estimated that most premature tree failures are the direct result of improper planting methods. The approval and inspection of planting methods post-installation is critical in ensuring long-term canopy increase.

### 936.08 Tree Protection.

The following tree protection measures are required:

- A. **Mandatory Protection.** Measures to protect Significant and Heritage Trees must include:
1. Installation of chain-link fence, snow fencing, silt fence, or polyethylene laminate safety netting placed at the Critical Root Zone and any other areas identified by the City Forester for the protection of Significant and Heritage Trees to be preserved on or adjacent to the property for which a ~~Tree Removal Permit has been issued.~~ Tree Preservation Plan is being submitted.
  2. Any tree protection fencing placed within a Significant or Heritage Tree's Critical Root Zone shall not be installed below grade (i.e. machine-sliced or trenched).
  2. Trees proposed to be removed must be clearly tagged or otherwise marked on the site, in a non-permanent manner, as specified by the City Forester. Trees must be tagged or marked at least one week before they are removed.
  3. Identification of any oak trees requiring pruning between April 1 and July 15; any oak trees so pruned are required to have any cut areas sealed with an appropriate, non-petroleum based tree wound sealant, such as shellac.
- B. **Discretionary Protection.** Measures to preserve or protect Significant and Heritage Trees which may be required by the City include, but are not limited to:
1. Installation of retaining walls or tree wells to preserve trees by eliminating the filling or cutting of soil within Critical Root Zones of Significant and Heritage Trees on or adjacent to the lot being developed.
  2. Placement of utilities in common trenches outside of the Critical Root Zone of Significant and Heritage Trees, or use of tunneled installation.
  3. Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
  4. Use of tree root aeration, fertilization, and irrigation systems when appropriate.
  5. Transplanting of Significant Trees into a protected area for later moving into permanent location within the Construction Area.

6. Safety pruning for people working within the construction limits and for the trees involved.

7. Tree protection fencing of a particular height or material.

- C. **Construction Protection.** Three years after construction has been completed on residential properties, and five years after construction has been completed for commercial or institutional properties, the City Forester shall inspect trees on a project site for which a Tree Removal Permit has been issued to ensure the health of the trees. If the trees are determined to be dead, dying, or in general poor health because of the construction on the site, the same number of tree inches must be replaced on the site.

**Discretionary Securities for Heritage Tree Preservation.** ~~In addition, t~~ The City Forester may require additional escrow for Heritage Trees that are proposed to be saved on a property undergoing construction and/or nearby property if, in the judgment of the City Forester, such Heritage Trees are in close proximity to a construction area or are in danger from construction in any way. The escrow requirement for such preservations may be determined by the estimated cost of soil decompaction or other restorative prescription, as deemed appropriate by the City Forester. The schedule of and requirements for the release of such an escrow shall be specified in the Tree Mitigation Agreement.

(Ord. 818[10-27-2022])

The City Forester has developed a method for ensuring tree preservation effectiveness prior to the dates described in §936.08.C. This would allow for a shorter escrow timeline, more direct accountability, and an opportunity to preserve these trees rather than remove/replace. See Attachment F for an excerpt from one such agreement.

**936.09 Tree Replacement.**

- A. **Tree Replacement Formula.** Replacement of removed or disturbed trees in excess of the percentage allowed under Section 936.06 shall be according to the following ratios.
1. All Significant Trees shall be replaced at the ratio of one caliper inch per one inch of DBH removed.
  2. All Heritage Trees removed in connection with a project listed in Sections 936.06.A and 936.06.B shall be replaced at the ratio of two caliper inches per one inch of DBH removed. Heritage trees removed in connection with a project not listed in Sections 936.06.A and 936.06.B shall be replaced at a ratio of one inch to one inch DBH removed.
  3. The height of Coniferous Trees shall count towards the caliper inches of tree replacement or tree removal as follows:
    - a. A four to six-foot tall coniferous tree shall be equivalent to two caliper inches of tree replacement. For every two-foot range in additional coniferous tree height, above six feet, one additional caliper inch shall be counted towards tree replacement (e.g., a 15-foot coniferous tree = seven caliper inches of replacement).
- B. **Size, Types and Diversification of Replacement Trees.** A Tree Replacement plan must include a diversity of tree species that are suitable for the property given soil conditions, hydrology, topography, and tree pathogens. No more than 20 percent of the replacement trees planted may be of the same genus unless otherwise approved by the City Forester. If more than 20 percent of the same genus of trees are planted on the site, the tree inches of the same genus over 20 percent shall not be included in the total tree inch replacement calculations. The recommended tree replacement species shall be those found on the Hennepin County Recommended Tree List.
- C. **Prohibited Tree Replacement Species.** The tree replacement plan may not include any tree species included in the Minnesota Department of Natural Resources Terrestrial Invasive Plants List.
- D. **Tree Replacement Location.** Replacement trees must be located only on the property for which a Tree Replacement Permit has been issued unless the City Council approves tree replacement on neighboring properties with the consent of such property owner and findings that (i) all the options for planting trees on

This section has never been successfully utilized by an applicant. Instead, multiple applicants have cited this in an attempt to manipulate their mitigation requirements.

the project site have been exhausted and tree replacement on the site is impractical; and (ii) it will allow additional screening from the neighboring property.

- E. ~~**Tree Replacement Reduction for Preserving Heritage Trees.** Heritage trees that are protected and saved during a construction process, that otherwise had a significant probability of removal or loss based on the construction project, and that are healthy after the construction process, all as determined by the City Forester, may be used to reduce the total number of required tree replacement inches for the project associated with the construction. Such reduction will equate to the total DBH inches of the saved tree.~~
- F. **Other Replacement Tree Requirements.** Choice of replacement trees species and location of the trees should also take into account the following information:
1. Soil Composition. Comparisons should be made between soil conditions and the ecology of the proposed species to make sure they are compatible. This is particularly important for the existing and proposed soil composition for the root balls of spaded and B&B trees.
  2. Spatial Requirements. The potential height and crown spread of the proposed replacement trees should be known. Generally, half of the adult tree crown diameter is the amount of distance a tree should be planted from any aboveground objects.
  3. Pathogen Problems. Appropriate replacement choices shall also consider insect and disease problems that may be common with particular species in the part of the state in which the City of Wayzata is located.
- G. **Fee-In-Lieu of Tree Replacement or Replacement Trees Planted in Public Areas.** The City recognizes that there may be instances where the total amount of tree replacement required under this section cannot occur on site. In those instances, the City may, at its option, accept a fee-in-lieu of tree replacement or allow the planting of replacement trees in public areas. Tree replacement is encouraged to happen on site as much as possible and fee-in-lieu of tree replacement should be used only when replacement on site is not feasible. The amount of fee-in-lieu of tree replacement will be determined annually by the City Council through the City fee schedule.

(Ord. 818[10-27-2022])

### 936.10 Past Tree Removal.

Any trees removed on a property in the two years preceding the date of an application for a building permit, land disturbance permit, Tree Removal Permit or other approval request in connection with a project listed in Sections 936.06.A and 936.06.B for such property shall be included in the tree removal/replacement calculations of the current application.

(Ord. 818[10-27-2022];Ord. No. 825[6-29-2023])

### 936.11 Financial Guarantee.

- A. **Financial Guarantee.** The City may, at its option, withhold a certificate of occupancy or require cash escrow or a letter of credit satisfactory to the City in the amount of 110 percent of the value of the tree removal and/or replacement, securing the full performance of Tree Preservation Plan and the tree replacement plan. The amount of such security shall be calculated by the fee-in-lieu of tree replacement schedules. The financial security shall be sufficient to cover the costs of the tree removal and/or replacement trees planted, including any needed replacement of the trees over a three-year period. The submission of any payment described in this section shall be accompanied by a Tree Mitigation Agreement.

This intends to provide direction for the City when a project is abandoned after mitigable trees have already been removed.

- B. **Use of Financial Guarantee.** If the property owner does not implement the approved Tree Preservation Plan or Site Plan, including the tree replacement plan, in accordance with the City Council or City Forester approval, the City may use the financial guarantee to correct or complete the work beginning 24 months after project completion. If the work's correction or completion is not feasible at that time, the City may retain the financial security as a fee-in-lieu of planting.
- C. **Release of Financial Guarantee.** At least once annually, the City Forester shall review the financial securities, inspect the applicable trees, and release the financial securities as necessary. The financial security shall be released based on the following schedule, unless otherwise noted in the Tree Mitigation Agreement:
1. Upon installation of a healthy tree: 50 percent of the financial guarantee for that tree shall be released.
  2. First year inspection determining the installed tree is still healthy: 15 percent of the financial guarantee for that tree shall be released.
  3. Second year inspection determining the installed tree is still healthy: 15 percent of the financial guarantee for that tree shall be released.
  4. Third year inspection determining the installed tree is still healthy: 20 percent of the financial guarantee for that tree shall be released.

**Transfer of Ownership.** Tree-related financial securities shall only be released to the party originally responsible for payment. Changes in tree replacement and/or maintenance responsibilities related to the transfer of property ownership are to be assigned and negotiated independently of the City of Wayzata or its City Forester.

(Ord. 818[10-27-2022])

This section stems from legal concerns raised by the City's Senior Accountant.

### 936.12 Penalties.

- A. **Intentional or Deliberate Damage.** It shall be unlawful for any person(s) to intentionally damage, destroy or adversely alter any living tree, deciduous or coniferous, on private land within the limits of the City of Wayzata in violation of this Chapter. Minn. Stats. § 561.04 strictly prohibits intentional damage to trees on public property in any form and provides that whoever willfully and without lawful authority injures any tree, timber or shrub on City property is liable for treble the amount of damages which may be assessed therefore. ~~The City Forester and other City Staff should not make any claims related to the structural integrity of any tree, and any assessments made related to a tree may not be relied upon by the property owner.~~
- B. **Violation.** Unless expressly provided otherwise, it shall be a misdemeanor for any person to violate any provision of the City Code including this Section, any rule or regulation adopted in pursuance of any such provision, or any order lawfully enforcing the City Code or this Section. The term "misdemeanor" shall be as defined in Minn. Stats. § 609.02, Subd. 3.
- It shall also be a misdemeanor for any person to attempt to commit a misdemeanor or to cause, aid, assist, counsel or advise another to commit misdemeanor. Any person who commits a misdemeanor, upon conviction, shall be subject to the penalties therefore established by State Statute. Unless expressly provided otherwise, each act in violation of the City Code, including this Chapter, shall constitute a separate offense, and each and every day that such a violation occurs or continues shall constitute a separate offense.
- C. **Enforcement.** Violations of the provisions of this Chapter will be investigated and resolved in accordance with the provisions of Chapter 908. In responding to a suspected violation, the Zoning Administrator and City may utilize the full array of enforcement actions available to it including, but not limited to, prosecution and fines.

This hinders the City Forester's ability to dispute questionable tree condition claims as they relate to tree removal mitigation. See §936.02.G for more information.

(Supp. No. 10)

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(Ord. 818[10-27-2022])

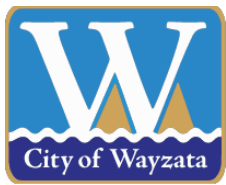
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(Supp. No. 10)

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**ATTACHMENT D*****Proposal for Urban Forest Management Plan Development***

| <b>Objective 1:</b>                                                                                                                                                                                                                                                                                                  |                                                                                                                |                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <b>Create a City of Wayzata Urban Forest Management Plan</b>                                                                                                                                                                                                                                                         |                                                                                                                |                                                                                     |
| <b>Action or Task Description</b>                                                                                                                                                                                                                                                                                    | <b>Assigned To</b>                                                                                             | <b>Resources/Stakeholders/<br/>Community Assets Needed</b>                          |
| <b>Initiate dialogue with the public</b><br>A.) Assemble Tree Management Committee<br>B.) Discuss canopy needs and management feasibility<br>C.) Conduct city-wide survey and/or workshop<br>D.) Make plan adjustments as needed                                                                                     | City Forester<br>Parks Planner<br>Committee<br>Communications                                                  | - Staff time<br>- Volunteer time<br>- Communication materials                       |
| <b>Identify specific preservation needs of public canopy</b><br>A.) Assess and quantify age diversity<br>B.) Use data to categorize districts of priority<br>C.) Committee workshop<br>D.) Draft appropriate preservation methods                                                                                    | City Forester<br>Tree Inspectors<br>Committee                                                                  | - Staff time<br>- Volunteer time                                                    |
| <b>Identify specific resilience opportunities of all canopy</b><br>A.) Assess and quantify species diversity<br>B.) Use data to categorize districts of priority<br>C.) Committee workshop<br>D.) Draft resilience-minded maintenance standards                                                                      | City Forester<br>Tree Inspectors<br>Committee                                                                  | - Staff time<br>- Volunteer time                                                    |
| <b>Develop tree risk management plan</b><br>A.) Review tree failure history<br>B.) Committee workshop<br>C.) Identify staff capacity for managing tree risk<br>D.) Draft tree risk management specifications with assistance from experienced Consulting Arborist and City Attorney<br>E.) Review by insurance agent | City Forester<br>Committee<br>Public Works Director<br>Consulting Arborist<br>City Attorney<br>Insurance Agent | - Staff time<br>- Volunteer time<br>- Consultation costs<br>- Legal costs           |
| <b>Finalization period</b><br>A.) Full review, edits, and drafting with consultant<br>B.) Public comment period and/or workshop<br>C.) City Council Workshop<br>D.) City Council Meeting<br>E.) Implementation                                                                                                       | City Forester<br>Parks Planner<br>Consulting Arborist<br>Public<br>City Council                                | - Staff time<br>- Consultation costs<br>- Communication materials<br>- Council time |



AGREEMENT #  
TREE REMOVAL PERMIT #

## TREE MITIGATION AGREEMENT

Visit <https://www.wayzata.org/DocumentCenter/View/5224/Tree-Preservation-Ordinance-PDF> to view the City of Wayzata's Tree Preservation Ordinance in its entirety. Paper copies are also available upon request at Wayzata City Hall.

PROPERTY ADDRESS:

SUBMISSION DATE:

PROPERTY OWNER:

PAYMENT TYPE:

☐  
☐

Check

Letter of Credit

An approved Tree Preservation Plan which conforms to the standards described in 936.07 must be submitted with the Tree Mitigation Agreement.

Pursuant to the City of Wayzata's Tree Preservation Ordinance (Chapter 936), certain trees require financial surety before removal is permitted. Below is a summary of tree-related obligations, which must be satisfied before issuance of any development permits for this property.

**Significant Tree** inches removed in excess of the thresholds described in 936.09 shall either be replaced on site at a ratio of 1:1, or accounted for in the form of a Fee-in-lieu of Planting.

**Heritage Trees** can only be removed if there is a demonstrated need to do so. In those situations, Heritage Tree inches shall be replaced on site at a ratio of 2:1. If full replacement on site is not feasible, as determined by the City Forester, then a Fee-in-lieu of Planting shall be submitted at the same ratio.

**1.) Financial Guarantee (Replacement Escrow)** - All required tree replacement **[TOTAL]** shall be backed by a financial guarantee, in accordance with 936.11:

- A. **Financial Guarantee.** The City may, at its option, withhold a certificate of occupancy or require cash escrow or a letter of credit satisfactory to the City in the amount of 110 percent of the value of the tree removal and/or replacement, securing the full performance of Tree Preservation Plan and the tree replacement plan. The amount of such security shall be calculated by the fee-in-lieu of tree replacement schedules. The financial security shall be sufficient to cover the costs of the tree removal and/or replacement trees planted, including any needed replacement of the trees over a three-year period.
- B. **Use of Financial Guarantee.** If the property owner does not implement the approved Tree Preservation Plan or Site Plan, including the tree replacement plan, in accordance with the City Council or City Forester approval, the City may use the financial guarantee to correct or complete the work.
- C. **Release of Financial Guarantee.** At least once annually, the City Forester shall review the financial securities, inspect the applicable trees, and release the financial securities as necessary. The financial security shall be released based on the following schedule:
  - i. Upon installation of a healthy tree: 50 percent of the financial guarantee for that tree shall be released.
  - ii. First year inspection determining the installed tree is still healthy: 15 percent of the financial guarantee for that tree shall be released.
  - iii. Second year inspection determining the installed tree is still healthy: 15 percent of the financial guarantee for that tree shall be released.
  - iv. Third year inspection determining the installed tree is still healthy: 20 percent of the financial guarantee for that tree shall be released.

TOTAL FINANCIAL GUARANTEE / REPLACEMENT ESCROW:

APPLICANT INITIAL:

**2.) Fee-in-lieu of Planting** - This is calculated in accordance with the City's current Fee Schedule. These funds are to be used for public canopy/greenspace maintenance and are non-refundable, in accordance with 936.09.H:

***Fee-In-Lieu of Tree Replacement or Replacement Trees Planted in Public Areas.** The City recognizes that there may be instances where the total amount of tree replacement required under this section cannot occur on site. In those instances, the City may, at its option, accept a fee-in-lieu of tree replacement or allow the planting of replacement trees in public areas. Tree replacement is encouraged to happen on site as much as possible and fee in lieu-of-tree replacement should be used only when replacement on site is not feasible. The amount of fee-in-lieu of tree replacement will be determined annually by the City Council through the City fee schedule.*

**TOTAL FEE-IN-LIEU OF PLANTING:**

**APPLICANT INITIAL:**

**3.) Heritage Tree Preservation Escrow** - Any Heritage Trees on the property that are at a heightened risk of damage due to tree protection limitations, proposed contours, proximity to work area, or any other proposed or potential development-related activity may require financial surety, in accordance with 936.08.C:

***Construction Protection.** Three (3) years after construction has been completed on residential properties, and five (5) years after construction has been completed for commercial or institutional properties, the City Forester shall inspect trees on a project site for which a Tree Removal Permit has been issued to ensure the health of the trees. If the trees are determined to be dead, dying, or in general poor health because of the construction on the site, the same number of tree inches must be replaced on the site.*

*In addition, the City Forester may require additional escrow for Heritage Trees that are proposed to be saved on a property undergoing construction and/or nearby property if, in the judgment of the City Forester, such Heritage Trees are in close proximity to a construction area or are in danger from construction in any way.*

**Heritage Tree Preservation Escrows are calculated at the same rate as a Fee-in-lieu of Planting.**

**TOTAL HERITAGE TREE PRESERVATION ESCROW:**

**APPLICANT INITIAL:**

*Financial Guarantee / Fee-in-lieu of Planting / Heritage Tree Preservation Escrow shall be submitted as separate payments. If writing a check, please specify the appropriate mitigation type and property address in the check memo.*

#### **CITY FORESTER CERTIFICATION**

I, Bennett Myhran, certify that the protocols and calculations described here comply with the City of Wayzata's Tree Preservation Ordinance.

Signature \_\_\_\_\_

Date \_\_\_\_\_

#### **APPLICANT ACKNOWLEDGEMENT**

By signing below, you agree to the terms and liabilities described here. You understand that these financial sureties and their release are non-negotiable. You understand that the release of tree-related escrow is not affected by transfer of property ownership. Any maintenance responsibilities related to tree replacement escrow are to be assigned and negotiated independently of the City of Wayzata or its City Forester.

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

Questions regarding this agreement can be directed to the City Forester by emailing [bmyhran@wayzata.org](mailto:bmyhran@wayzata.org).

## ATTACHMENT F

### Potential Tree Mitigation Agreement Language

Shown here is an example of Tree Mitigation Agreement language that would allow for the proactive preservation of Heritage Trees at a heightened risk of long-term construction damage during development. This process would allow for therapeutic soil treatment when necessary, before these types of trees show symptoms of root compaction stress.

**3.) Heritage Tree Preservation Escrow** - Any Heritage Trees on the property that are at a heightened risk of damage due to tree protection limitations, proposed contours, proximity to work area, or any other proposed or potential development-related activity may require financial surety, in accordance with 936.08.C.

*Soil compaction readings were collected within the Critical Root Zone of Tree 170152 and are recorded in the Tree Preservation Plan. Readings will be collected at the same sampling points following construction. If readings are unchanged or lower, and the protected area is left undisturbed throughout the project, then the entire \$7,958.81 escrow will be immediately released. If not, those funds will be utilized for the rehabilitation work described in the Rainbow Tree Care proposal.*

**TOTAL HERITAGE TREE PRESERVATION ESCROW:** \$7,958.81