



Wayzata Planning Commission Workshop Meeting Agenda

Tuesday, September 8, 2015

Community Room,
600 Rice Street East,
Wayzata, Minnesota

- 6:00 p.m.**
- 1. Call to Order and Roll Call**
 - 2. Workshop Items:**
 - a. Tree Preservation Ordinance Discussion
 - 3. Other Items:**
 - a. Review of Development Activities
 - b. Other items
- 7:30 p.m.**
- 4. Adjournment**

NOTES:

¹ Time(s) are estimated and provided for informational purposes only.

² Members of the Planning Commission and some staff may gather at the Wayzata Bar and Grill immediately after the meeting for a purely social event. All members of the public are welcome.

CITY OF WAYZATA



PLANNING DEPARTMENT

MEMORANDUM

To: Planning Commission
From: Eric Zweber, AICP, Interim City Planner
Date: September 8, 2015
Re: Workshop on Tree Preservation Ordinance

One of Wayzata's goals for 2015 is to prepare and adopt a Tree Preservation Ordinance that protects tree not only during development but also during a homeowner's or business owner's use of their property. Additionally, larger, older trees need to be valued greater than smaller younger trees. The City of Rosemount had those same goals and in 2007 and adopted a Tree Preservation Ordinance that applied to both developers and home/business owners.

I was the Senior Planner for the City of Rosemount in 2007 and wrote their Tree Preservation Ordinance. Reviewing the 2013 discussion notes for Wayzata's ordinance, Rosemount's ordinance addresses all the issues brought up by Wayzata's Planning Commission.

Since 2007, four major subdivisions; numerous commercial and industrial projects; and numerous new homes or additions were constructed on existing lots within Rosemount under the regulations of their ordinance. All the development was implemented using tree replacement on site with exception of one industrial development (an industrial waste landfill) which paid fee-in-lieu of tree replacement. Additionally, the three of the subdivision were adjusted to save the largest and oldest trees on the site. The ordinance has the necessary complexity to address the goal of valuing different age and size trees differently while the ordinance is simple enough that staff can walk a homeowner through a house remodel while complying with the ordinance.

A summary of the ordinance is provided below and the complete Rosemount Ordinance is attached to this memorandum. Please review and consider the Ordinance and provide feedback on any areas that can be improved.

How are the Trees categorized?

<i>Tree Category</i>	<i>Size of Tree</i>	<i>Removal without Replacement</i>	<i>Replacement Ratio</i>	<i>Size of Replacement Trees</i>
Heritage Trees	Hardwoods 27 Caliper Inches or Larger	None	1 Caliper Inch per 1 Caliper Inch Removed.	Minimum of 2.5 Inches Deciduous Trees or 6 Foot Tall Conifers.
	Conifers 50 Feet in Height or Taller			
Significant Trees	Hardwoods between 6 and 27 Caliper Inches	25% of Total Caliper Inches for Developers; 10% for Home/Business Owners	0.5 Caliper Inch per 1 Caliper Inch Removed.	
	Softwoods larger than 12 Caliper Inches			
Non-Significant Trees	Hardwoods less than 6 Caliper Inches	All	No Replacement Required.	
	Softwoods less than 12 Caliper Inches			

In 2010, Councilmember Anderson analyzed the Tree Preservation Ordinances of a number of the communities around Lake Minnetonka and asked a series of questions to compare those ordinances. Councilmember Anderson's comparison is attached this memorandum. Below, for reference, staff has analyzed Rosemount's Ordinance asking the same questions.

Who approves the tree preservation plan?

For subdivisions, design reviews and conditional use permits, the City Council approves the tree preservation plan. For new homes or additions not requiring design review or grading permits, City staff approves the plan.

Does the ordinance apply to property without development or construction?

The ordinance applies during any construction or grading activity. The Ordinance does not apply to homeowners that wish to remove trees from their property if no construction or grading is occurring.

Does the ordinance apply to the subdivision of land?

Yes.

Does the ordinance apply to redevelopment?

Yes.

Does the ordinance apply to remodeling and additions?

Yes.

Does the ordinance contain a look back clause?

No.

Is a tree inventory required?

Yes.

What is the caliper inch or the height of a significant tree?

6 inch for hardwoods; 12 inch for softwoods; 6 foot conifers.

Are woodlands included in the ordinance?

Woodlands are not called out separately from the individual trees within a stand of woods that would be inventoried.

Is there a removal threshold before mitigation is required?

For heritage trees, no; for significant trees, 25% for developers and 10% for homeowners.

What is the mitigation rate or measure?

0.5 inch per one inch of significant tree removed, one inch per one inch of heritage tree removed.

Is there a warranty required on mitigation trees?

No. A financial security is required to ensure that the trees are installed and alive when installed, but there is no addition security required to ensure that they stay alive.

Attachments:

City of Rosemount Tree Preservation Ordinance
Councilmember Anderson's Tree Ordinance Multi-city Overview
Wayzata's Planting, Preservation, Maintenance and Removal of Trees

City of Rosemount Tree Preservation/Tree Replacement Ordinance

11-6-3: LANDSCAPING REQUIREMENTS:

Detailed landscaping plans shall be required in all development proposals requiring site plan review. Landscaping plans shall be prepared consistent with the general site plan requirements in section 11-10-3 of this title.

E. Tree Preservation:

1. Findings And Purpose Statement: The city council finds it is in the best interest of the city to protect, preserve, and enhance the natural environment of the community and to encourage a resourceful and prudent 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 herein to promote the furtherance of 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.
2. Definitions: For purposes of this subsection E, the following definitions shall apply:

CANOPY OF TREE: The horizontal extension of a tree's branches and foliage in all directions from its trunk and upper layer of green crown.

CONIFEROUS TREE: A woody plant bearing seeds and cones oftentimes, but not always, retaining foliage throughout the year.

CONSTRUCTION AREA: 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.

DECIDUOUS TREE: A woody plant which has a defined crown, and which loses leaves annually.

DEVELOPER: Any person or entity who undertakes to improve a parcel of land, by platting for the purposes of establishing two (2) or more dwelling units, or grading which requires a grading permit.

DIAMETER OF CONIFEROUS TREE: Every two feet (2') in height of a coniferous tree is equivalent to one caliper inch of diameter.

DIAMETER OF DECIDUOUS TREE: The length of a straight line measured in caliper inches through the trunk of a tree at four and one-half feet (4.5') above the ground.

DRIP LINE OR ROOT ZONE OF A TREE: An imaginary vertical line which extends from the outermost branches of a canopy to the ground.

FORESTER: A person holding at least a Bachelor's Degree in Forestry from an accredited four (4) year college of forestry or any official appointed by the city.

HARDWOOD DECIDUOUS TREE: Includes ironwood, catalpa, oak, maple (hard), walnut, ash, hickory, birch, black cherry, hackberry, locust and basswood.

HEALTHY TREE: Average or better condition and vigor for area as may be determined by the forester.

HERITAGE TREE: A healthy hardwood deciduous tree measuring equal to or greater than twenty seven inches (27") in diameter or a healthy coniferous evergreen tree greater than fifty feet (50') in height.

LANDSCAPE ARCHITECT: A person licensed by the state of Minnesota as a landscape architect.

NEW DEVELOPMENT: A piece of property that is being platted for the purpose of establishing urban residential use with two (2) or more dwelling units or is being improved by grading which requires a grading permit. This definition does not apply to agricultural lot splits or to public street/utility projects.

NURSERYMAN: A person licensed by the state of Minnesota as a nurseryman.

PROPERTY OWNER: The owner of a buildable property who is constructing or expanding

a dwelling or a business on that property.

SIGNIFICANT TREE: A healthy deciduous hardwood tree measuring a minimum of six (6) caliper inches in diameter, a healthy softwood deciduous tree measuring a minimum of twelve (12) caliper inches, or a healthy coniferous tree measuring a minimum of twelve feet (12') in height.

SOFTWOOD DECIDUOUS TREE: Includes cottonwood, poplars/aspen, box elder, willow, silver maple and elm.

3. Application: The provisions of this subsection E shall apply to all subdivision, grading permits or construction, except for preliminary plats approved by the city prior to the adoption hereof.
4. Process:
 - a. For Developers: Unless otherwise determined by the city council, the following process for preserving trees shall be required from the developer:
 - (1) Prepare a tree preservation plan which shall be incorporated on the grading plan.
 - (2) Implement the tree preservation plan prior to and during site development.
 - (3) Submit a performance of financial guarantee for compliance with the approved tree preservation plan.
 - (4) Comply with the city's tree replacement procedure.

The tree preservation plan shall be submitted with preliminary plat plans or as part of the application for a grading permit. The tree preservation plan must be certified by a forester, landscape architect, or nurseryman retained by the developer.

The plat and grading plans will not be approved by the city without an approved tree preservation plan. In the case of grading permit applications, the tree preservation plan will be approved by city staff. This decision may be appealed directly to the city council.

- b. For Home And Business Owners: The following process for preserving trees shall be required from the home and business owner if trees are being removed during grading or construction:
 - (1) Identify the significant trees and heritage trees on the property.

- (2) Identify the significant trees and/or heritage trees removed due to grading or construction.
- (3) Identify the protection measures used to protect the preserved trees during grading or construction.
- (4) Comply with the city's tree replacement procedure.

The tree preservation plan shall be submitted with the grading permit or building permit application. The tree preservation plan may be prepared by the applicant of the grading permit or the building permit. The tree preservation plan will be approved by city staff. This decision may be appealed directly to the board of appeal and adjustments.

5. Tree Preservation Plan: The developer shall be responsible for implementing the tree preservation plan prior to and during site grading and plan development. The tree preservation plan will be reviewed by city staff to assess the best overall design for the project taking into account significant trees and ways to enhance the efforts of the developer to mitigate corresponding damage. The developer is encouraged to meet with staff prior to submission of the preliminary plat application or prior to application for the grading permit, whichever is sooner, to determine the placement of buildings, parking, driveways, streets, storage and other physical features which result in the fewest significant trees being destroyed or damaged. The tree preservation plan shall include the following items:
 - a. The name(s) and address(es) of property owners and developers.
 - b. Delineation of the buildings, structures, or impervious surfaces situated thereon or contemplated to be built thereon.
 - c. Delineation of all areas to be graded and limits of land disturbance.
 - d. Size, species, and location of all significant trees located within the area to be platted or the parcel of record.
 - e. Identification of all significant trees on all individual lots. (The developer shall be required to submit a list of all lot and block numbers identifying those lots.)
 - f. Measures to protect significant trees.
 - g. Identification of all significant trees proposed to be removed within the construction area, including the contouring of all areas to be clear cut.
 - h. Size, species, and location of all replacement trees to be planted on the property in accordance with the tree replacement schedule.

- i. 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.
6. Mandatory Protection: Measures to protect significant trees shall include:
- a. Installation of snow fencing, silt fence, or polyethylene laminate safety netting placed at the drip line of significant trees to be preserved.
 - b. Identification of any oak trees requiring pruning between April 15 and July 1; any oak trees so pruned shall be required to have any cut areas sealed with an appropriate tree wound sealant.
7. Discretionary Protection: Measures to preserve or protect significant trees, which may be required by the city, include, but are not limited to:
- a. Installation of retaining walls or tree wells to preserve trees by eliminating the filling or cutting of soil within drip zones.
 - b. Placement of utilities in common trenches outside of the drip line of significant trees, or use of tunneled installation.
 - c. Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
 - d. Use of tree root aeration, fertilization, and/or irrigation systems.
 - e. Transplanting of significant trees into a protected area for later moving into permanent sites within the construction area.
 - f. Safety pruning.
8. Significant Tree Removal:
- a. Heritage Trees: Heritage trees are unique trees to Rosemount due to their size and age. All possible measures will be taken to preserve these trees. Heritage trees removal may occur only when there is not a practical alternative, such as the alignment of a collector or arterial street or the installation of a trunk utility corridor. There is a zero percent (0%) removal threshold on heritage trees, meaning every caliper inch of heritage tree removed will require replacement in accordance with the standards of subsection E10 of this section.
 - b. Significant Tree Removal For Developments: Although the applicant must retain the maximum amount of woodland possible, the city recognizes that a certain amount of significant trees and tree cover removal is an inevitable consequence of the urban

development process. Therefore, twenty five percent (25%) of the existing caliper inches of trees can be removed during development without obligation of replacement. Any removal beyond twenty five percent (25%) will require replacement as described in subsection E10 of this section.

- c. Significant Tree Removal For Home And Business Owners: The majority of tree removal occurs during the grading and installation of infrastructure during subdivision. The city recognizes that additional tree removal may occur after subdivision to construct new houses or business, or the expansion of existing homes or business, but to a lesser degree than the original subdivision. Therefore, ten percent (10%) of the existing caliper inches of trees can be removed during home or business construction without obligation of replacement. Any removal beyond ten percent (10%) will require replacement as described in subsection E10 of this section.
- d. Trees Exempt From Replacement: The following types of trees do not need to be included as part of the tally of tree removals:
 - (1) Dead, diseased, or dying trees; or
 - (2) Trees that are transplanted from the site to another appropriate area within the city;
or
 - (3) Trees that were planted as part of a commercial business such as a tree farm or nursery.

9. Financial Guarantee: Refer to subsection G of this section.

10. Tree Replacement Formula: Replacement of removed or disturbed trees in excess of the percentage allowed by this subsection shall be according to the following guidelines:

- a. For development which exceeds the percentage of allowable removal of significant trees, all significant trees shall be replaced at the ratio of one-half (0.5) caliper inch per one caliper inch removed.
- b. For each heritage tree removed by the developer, all heritage trees shall be replaced at the ratio of one caliper inch per one caliper inch removed.

11. Size, Types And Diversification Of Replacement Trees: Replacement trees shall be of a similar species to those that are removed, but also shall be a minimum of twenty five percent (25%) conifers and twenty five percent (25%) deciduous hardwoods. Required heritage tree replacement must be of the same species as the heritage tree removed. Replacement trees must be no less than the following sizes:

- a. Deciduous trees shall be no less than two and one-half (2.5) caliper inches; and

b. Coniferous trees shall be no less than six feet (6') high.

12. Acceptable Tree Replacement Species: The following list of trees are acceptable for tree replacement species. The city may, at its discretion, approve additional species if circumstances such as soil conditions, hydrology, topography, or recent tree diseases warrant.

Ash
Black cherry
Cedar
Fir
Hickory
Linden
Maple (except silver maples)
Oak
Pine
Spruce
Walnut

13. Other Replacement Tree Requirements: Choice of replacement trees species and location of the trees should also be contingent on the following information:

- a. Soil Composition: Comparisons should be made between soil conditions and the ecology of the proposed species to make sure they are compatible.
- b. Spatial Requirements: The potential height and crown spread of the proposed replacement trees should be known. Usually, half of the adult tree crown diameter is the amount of distance a tree should be planted from any aboveground objects.
- c. Diseases And Insect 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 Rosemount is located.

14. 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 cannot occur on site or that there are some land uses (such as refining) that are not compatible with trees. In those instances, the city may, at its option, accept a fee in lieu of tree placement 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 cannot occur on site. The fee in lieu of tree replacement will be determined annually by the city council through the city fee schedule.

Tree Ordinance Multi-city Overview

	Wayzata	Deephaven	Excelsior	Tonka Bay	Greenwood	Woodland	Shorewood
Population * (July 2009)	3969	3854	2330	1583	729	486	7,576
Area/Size **	3.18 sq. miles	2.34	.63	.95	.35	.57	1.6
Name of ordinance?		Trees and Shrubs	Tree Protection, Care, and Management	Shade Tree Disease Control	Tree Preservation	Tree Removal and Vegetation Maintenance and Alternations	Tree Preservation
Who approves the tree preservation plan?		Only required for PUDs	Forester review plan, Zoning Administrator approves or denies.	None Required. City Forester handles diseased tree program	Zoning Administrator	None required. Zoning Administrator handles tree removal permits	None required
Does the ordinance apply to property w/o development or construction?		No	Yes	No	Yes	No	No
Does the ordinance apply to subdivision of land?		No	Yes	No	Yes	No	No
Does the ordinance apply to redevelopment?		No	Yes	No	Yes	No	No
Does the ordinance apply to remodeling and additions?		No	Yes	No	Yes	No	No
Does the ordinance contain a look back clause?		No	No	No	No	No	No
Is a tree inventory required?		No	Yes, as part of preservation plan	No	Yes, in cases of redevelopment	No	No
What is the minimum DBH or height for a significant tree?		None	6 inches in diameter for deciduous, 8 ft in height for	None	10 inches for hardwood deciduous, 14 inches for	Greater than 6 inches in diameter, measured at a point 4 feet above the ground	None

Tree Ordinance Multi-city Overview

			conifers.		softwood deciduous, and 12 ft or greater in height for conifer.		
Are woodlands included in ordinance?		No	Yes. Areas of native woody vegetation greater than 2000 SF in size.	No	No	No	No
Is there a tree removal threshold before mitigation is required?		No	Yes, if trees identified for protection in preservation plan are damaged or destroyed, replacement triggers.	No	Yes. Two significant trees per calendar year.	No	Ordinance indicates tree replacement may need to occur in certain circumstances, but no further definitions of how this is to occur.
What is the mitigation rate or method?		No	3 inches replaced for each 6 inches of significant deciduous trees removed. 2 feet of tree height for each 8 feet of height for significant coniferous trees.	No	See Page 5 of Ordinance for details on replacement schedule.	Trees removed in violation of the ordinance shall be replaced with the following sizes: 1) <u>Deciduous</u> – no less than 3 caliper inches 2) <u>Coniferous</u> trees – no less than 7 feet high	No
Is there a warranty required on mitigation trees?		No	Yes. Two year warranty on replacement trees. Security escrow or bond is required for 150% of estimated cost of tree replacements.	No	Yes. Two year warranty on replacement trees.	No. However, if a replacement tree is not alive or healthy 1 year after date of planting it shall be replaced with healthy tree of same size and species.	No

CHAPTER 710

PLANTING, MAINTENANCE AND REMOVAL OF TREES

710.01. Purpose. The Wayzata City Council has determined the preservation of trees growing on public and private property are necessary to maintain the general welfare of the public and is set forth more fully in Section 710.13 of this Chapter. In order to maintain and enhance the quantity and quality of trees growing within the City, this Chapter is adopted to regulate the planting, maintenance and removal of trees within the City of Wayzata by: (1) Defining the duties and responsibilities of the City Forester as the agent enforcing regulations relating to the planning, planting, maintenance and removal of trees within the City of Wayzata; (2) Providing for the issuing of permits and/or licenses for any maintenance and/or removal of trees within the City of Wayzata; (3) Providing for the pruning and removal of trees on private property that endanger public safety; (4) Providing for standards and specifications of all policy concerning trees on public property; (5) Providing for standards and specifications of a care protection policy concerning trees in subdivision properties; and (6) Providing for standards and specifications for care protection policy concerning trees within project construction limits.

(Ord. 614 [5-27-1999])

710.02. Definitions. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- a.** "Applicant" shall mean any person applying for any City permit or approval that would result in the construction or improvements on land within the City that contains Significant Trees.
- b.** "Forester" shall mean that person appointed as City Forester by the Wayzata City Manager.
- c.** "Preservation Plan" shall mean a plan which is prepared for a proposed development or redevelopment project by a Minnesota registered surveyor which sets forth the project area, locates proposed improvements and locates all Significant Trees located in the project area. It shall indicate which Significant Trees are to be preserved and which are to be removed as a result of the construction of the project. Significant Trees' diameters, heights (where applicable) and species shall be noted in the Preservation Plan.
- d.** "Code Enforcement Officer" shall mean the City Manager or designee.
- e.** "Significant Trees" shall mean healthy trees (as determined by the City Forester) which are six (6) inches in diameter (DBH) for deciduous trees or greater than eight (8) feet in height for coniferous trees.
- f.** "Preservation" shall mean maintaining in its natural condition and location any tree.

g. "DBH" shall mean diameter of trees at breast height. It is that point 4½ feet (54 inches) above the ground at which the diameter of a tree shall be measured.

h. "Drip Line" shall mean the outermost extension of any branches of any tree.

(Ord. 614 [5-27-1999])

710.03. Duties and Qualifications of the Forester.

a. Duties. The Forester, as appointed by the City Manager, for the purposes of this Chapter shall identify diseased and hazardous trees that threaten the health and safety of the public and coordinate all activities of the City relating to the control and prevention of tree diseases. It shall further be the duty of the Forester to identify and describe significant trees in any proposed subdivision or development project and to assist planners, developers, and architects in the development of a tree preservation plan for each construction development project.

b. Qualifications of the Forester. The qualifications of the Forester shall be, as a minimum, those qualifications prescribed for certified arborists by the Minnesota Society of Arboriculture or by the Commissioner of Agriculture.

(Ord. 614 [5-27-1999])

710.04. Disease Control Program. It is the intent of the City to conduct a program of plant pest control pursuant to the authority granted by Minn. Stat. §18.022. This Chapter provides full power and authority over all trees, plants and shrubs located within the street rights-of-way, parks and public places of the City; and to trees located on private property that constitute a hazard or threat as described herein; and trees that fall under the tree protection policy as described in Section 710.17 of this Chapter.

(Ord. 614 [5-27-1999])

710.05. Nuisances Declared. The following things hereby are declared to be public nuisances whenever they may be found within the City:

a. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus *Ceratocystis Ulmi* (Buisman) Moreau or which harbors any of the elm bark beetles *Scolytus Multistriatus* (Eichh.) or *Hylurgopinus Rufipes* (Marsh).

b. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or sprayed with an effective Dutch Elm insecticide, or disposed of in a manner prescribed by the Commissioner of Agriculture.

c. Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt disease fungus *Ceratocystis Fagacearum*.

- d. Any infected oak tree or part thereof, including logs, branches, stumps, firewood or other oak material unless all bark material is removed and disposed of in a manner prescribed by the Commissioner of Agriculture.
- e. Any living or standing tree or shrub or part thereof infected to any degree by any organism to be controlled as set forth and described by the Commissioner of Agriculture.
- f. Any dead, dying, decaying or living tree, shrub or parts thereof that interferes with the public use of any public thoroughfare or right-of-way.

It shall be unlawful for any person to permit any public nuisance as defined in this Section to remain on any property owned or controlled by him within the City. Such a nuisance shall be abated in the manner prescribed by this Chapter. Abatement shall be at the discretion of the City Forester in accordance with all State Law and City Code.

(Ord. 614 [5-27-1999])

710.06. Inspection and Investigation. The City Forester shall inspect all premises and places within the City as often as practicable to determine whether any nuisances as described in this Chapter exist thereon. The Forester shall investigate all reported incidents of diseased trees within the City. The Forester or duly authorized representative(s) may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned under this Chapter. The City Forester shall, upon finding conditions indicating disease infestation, immediately send appropriate specimens or samples to the Commissioner of Agriculture for analysis or take such other steps for diagnosis as may be recommended by the Commissioner. Except as provided in Section 710.08 no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

(Ord. 614 [5-27-1999])

710.07. Abatement of Nuisances. In abating the nuisances defined in Section 710.05, the Forester shall cause the infected tree or wood to be sprayed, removed, burned or otherwise effectively treated so as to destroy and prevent as fully as possible spread of the disease. Such abatement shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the Commissioner of Agriculture.

(Ord. 614 [5-27-1999])

710.08. Abatement Procedure. Whenever the Forester finds with reasonable certainty that an infestation defined in this Chapter exists in any tree or wood on any public or private property within the City, he shall proceed to abate said nuisance as follows:

- a. If the Forester finds that the danger of infestation of other trees is not imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within fifteen (15) days from the date of the mailing. If no action to abate the nuisance is taken within this period the Forester then shall make a written report of findings to the City Council. The Council

shall take action to abate the nuisance, and it may proceed to recover the costs of such abatement as provided in Section 710.09.

b. If the Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing the person(s) owning or controlling the property upon which the nuisance is located that the nuisance must be abated within five (5) days from the date of the mailing, and shall report findings to the City Manager. If no action to abate the nuisance is taken within this period the Forester then shall make a written report of actions to the City Council, which may proceed to recover the costs of such abatement as provided in Section 710.09.

c. If the Forester finds that the danger of infestation of other trees is imminent the Forester shall notify in writing all persons owning or controlling property upon which is located trees in danger of becoming infested. Within this notice the Forester shall state that action, if any, which should be taken to protect the trees in danger of becoming infested and the period within which such action must be taken. If no such action is taken within this period the Forester then shall take appropriate action to protect these trees as an emergency measure and shall make a written report of this action to the City Council, which may proceed to recover the costs of such action as provided in Section 710.09.

(Ord. 614 [5-27-1999])

710.09. Special Assessment Procedure. Upon receipt of a report from the Forester required by Section 710.08, subsections a. through c., the City Council may pass a resolution to provide for recovering the costs of abatement of a nuisance and/or for recovering the costs of protecting threatened trees by a special assessment procedure. Before such a resolution may be approved the City Manager shall notify all affected property owners by mail that such a procedure is under consideration prior to the meeting thereon. This notice shall state the time and place of the meeting, the abatement action proposed to be taken or already taken, the estimated or actual cost of such abatement and the proposed basis of assessing such cost. At this meeting all affected property owners shall have the right to be heard with reference to the proposed assessments and assessment procedure. The Council thereafter by resolution may approve such special assessments for the purposes specified herein.

The Forester shall keep a record of all abatement activities and all abatement costs for which special assessments are to be made or may be made, stating the description of the properties involved and the amounts chargeable to each property. On or before October 10th of each year the City Manager shall list the total unpaid charges for such abatement activities against each separate property to which they are attributable under this Chapter. The City Council then may spread the charges or any portion thereof against the property involved as a special assessment for certification to the Hennepin County Auditor and for collection the following year along with current taxes.

(Ord. 614 [5-27-1999])

710.10. Transporting Diseased Wood. It shall be unlawful for any person to transport within the City any diseased wood without first having obtained a permit therefore from the

Forester. The Forester may grant such a permit only when the purposes of this Chapter will be served thereby.

(Ord. 614 [5-27-1999])

710.11. Interference Prohibited. It shall be unlawful for any person to prevent, delay or interfere with the Forester or duly authorized representative(s) while they are engaged in the performance of duties imposed by this Chapter.

(Ord. 614 [5-27-1999])

710.12. License Required. No person shall conduct as a business, the cutting, trimming, pruning, removal, spraying or other treatment of trees within the City without first having been issued a license therefore. Refer to Chapter 519, Section .01 of the City Code.

(Ord. 614 [5-27-1999])

710.13. Establishment of Tree Preservation Zone. A tree preservation zone is hereby established and applies to all property within the City of Wayzata in order to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce storm water 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 birds, animals and flora to thrive; and generally protect and enhance the quality of life and the general welfare of the City.

(Ord. 614 [5-27-1999])

710.14. Application. A tree preservation zone shall be applied to and superimposed upon all property contained herein existing or amended by the text and map of the Wayzata Zoning Ordinance. The regulations and requirements imposed by the Tree Preservation Zone shall be in addition to flood plain, shoreland and wetland regulations and requirements, and will all jointly apply to the property. If a conflict is created by the joint application of zones, the more restrictive requirements shall apply.

(Ord. 614 [5-27-1999])

710.15. Restrictions. Within the Tree Preservation Zone, it shall be unlawful for any person or groups of persons to remove from privately-owned land any tree or trees in excess of thirty-two (32) inches diameter at breast height (DBH) per acre (43,560 square feet) in any twelve (12) month period without having first obtained a valid tree removal permit from the City. The removal rate for parcels which are less than one (1) acre or more than one (1) acre shall be mathematically proportionate (subject, however, to the maximum density of thirty-two (32) inches diameter (DBH) for each acre). For example, up to sixteen (16) inches may be removed from a parcel which is one-half (1/2) acre in size without a permit or up to sixty-four (64) inches (but only up to thirty-two (32) inches) diameter at breast height (DBH) for each acre) may be removed from a parcel which is two (2) acres in size without a permit. The removal of dead, diseased or hazardous trees from privately-owned land shall not require a tree removal permit.

(Ord. 614 [5-27-1999])

710.16. Permit.

a. Any person with due authority desiring a permit to remove a tree as provided in Section 710.15 shall submit a written application to the Code Enforcement Officer. The application shall include the following information:

- (1) Name and address of applicant.
- (2) Status of the applicant with respect to the land.
- (3) Written consent of the owner of the land, if the applicant is not the owner.
- (4) Name of the person preparing any map, drawing or diagram submitted with the application.
- (5) Location of the property, including a street address or legal description.
- (6) Diagram of the parcel of land, specifically designating the area or areas of proposed tree removal and the existing and proposed use of such area.
- (7) Location of all proposed or existing structures, driveways or other hard surfaces on the site.
- (8) Location of all trees and identification of size (DBH) and species.
- (9) Designation of all diseased or damaged trees.
- (10) Designation of any tree(s) obstructing any roadway, pavement, walkway or utility.
- (11) Any proposed grade changes that might adversely affect or endanger any tree(s) on the site and plans to protect them.
- (12) Designation of trees to be removed and trees to be maintained.
- (13) Purpose of tree removal (construction, driveway, recreation area, patio, building addition etc.).
- (14) All materials to be planted as replacement trees, indicating size, species and method of planting.

b. Upon receipt of the application, the Code Enforcement Officer may visit and inspect the site and adjoining lands. If it is determined that the plan set forth in the application outlined in this Section will minimize the loss of Significant Tree(s) and will destroy no more trees than are necessary to achieve a proposed development or purpose, and will comply with the Standards for Preservation of Trees in New Construction or Redevelopment of Property set forth in Section 710.17.a. and Section 710.17.c., the permit application may be approved. If the Code Enforcement Officer determines otherwise, the application shall be denied.

c. The applicant may appeal the Code Enforcement Officer's decision by providing written notice to the City Council, with the City Council's decision to be made by the first City Council meeting to be held on or after 30 days of the written notice to the Council.

710.17. Standards for Preservation of Trees in New Construction or Redevelopment.

a. Owners, Contractors, Developers, Builders and Applicants shall exert their best good faith efforts, as outlined in the Development Agreement, to avoid damage to or the destruction of Significant Trees when designing, locating or grading for and building improvements. This requirement shall be set forth in any development agreement and construction contracts entered into regarding the project.

b. The applicant shall submit a Preservation Plan if improvements are to be constructed on property containing Significant Trees. The Preservation Plan shall be submitted along with all other materials required for the permit. The Preservation Plan shall be officially filed when the Code Enforcement Officer has received and examined the application and determined that all required information has been submitted and that the application is complete. Following the determination of “completeness,” the Preservation Plan shall be approved or denied by the Code Enforcement Officer within ten (10) business days unless the Preservation Plan is being submitted in conjunction with a land use application, in which case the City of Wayzata shall approve or deny the application within sixty (60) days from the date of its official submission unless notice of an extension is provided by the City or a time waiver is granted by the applicant.

c. The Code Enforcement Officer’s review of the Preservation Plan shall be based upon the following criteria:

- (1)** The applicant’s legal right to use the property.
- (2)** The Preservation Plan minimizes the loss of Significant Trees and will destroy no more trees than are necessary to achieve a proposed development or purpose.
- (3)** The ease with which the applicant can alter or revise a proposed improvement to accommodate existing trees.
- (4)** The density of trees in the area and the effect of tree removal on property values of the neighborhood and on other existing vegetation.
- (5)** Impact upon the urban and natural environment including:
 - (a)** Whether tree removal would substantially alter the water table or affect the stabilization of ground and surface water.
 - (b)** Whether tree removal would create susceptibility to erosion and siltation.
 - (c)** Whether tree removal would cause substantial damage to the existing biological and ecological systems.
 - (d)** Whether tree removal would affect noise pollution by increasing source noise levels to such a degree that a public nuisance may be anticipated or a violation of noise control ordinances will occur.
 - (e)** Whether tree removal will affect air quality by significantly affecting the natural cleansing of the atmosphere by vegetation.

- i. If the damage report identifies destroyed or severely damaged trees which were required to be preserved under the Preservation Plan, the applicant will be required to pay to the City of Wayzata the sum of two hundred (200) dollars per diameter inch or such greater amount as may be determined by the City Council for each such destroyed or damaged tree. Alternately, the City Council may, at its discretion, agree to tree replanting equaling the total caliper inches lost, species and quality, in lieu of a fine, or in conjunction with a reduced fine. Any such agreement shall specify the replacement tree(s) species and diameter. Applicant shall have the right to appeal the damage, report conclusions and resulting fine or replanting requirements in the same manner as set forth in part e. above.

j. A certificate of occupancy shall not be issued until a final inspection of the property by the Code Enforcement Officer demonstrates compliance with the Preservation Plan and until such time as all levied fines have been paid or Security, subject to approval of the City Manager, has been posted by the applicant to secure performance. The Code Enforcement Officer may postpone the final inspection of the property if the Code Enforcement Officer determines that seasonal conditions prevent the determination of whether or not there has been compliance with the Preservation Plan. If the applicant appeals pursuant to part i. above, a Certificate of Occupancy may be issued prior to completion of the appeals process, so long as Security is posted.

k. A tree will not be deemed to have been damaged under part h. above where the City verifies the applicant implements positive measures such as fencing, or other City approved methods, during the entire period of grading and construction and where there is no evidence of physical damage to the trees, including their root structure.

l. The applicant's responsibility for the loss of trees on site subject to a Preservation Plan shall cease once the site grading and construction have been completed, the preservation has been verified, or any penalty fees have been paid or approved, replacement trees have been planted, and their growth has been well established for two (2) growing seasons. All monies collected pursuant to this Chapter shall be placed in the plant maintenance fund.

(Ord. 614 [5-27-1999])

710.18. 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 any tree or trees in excess of thirty-two (32) inches diameter at breast height (DBH) per acre (43,560 square feet) in any twelve (12) month period without first having obtained a tree removal permit from the City as set forth in Section 710.16 of this Chapter. The removal rate for parcels which are less than one (1) acre or more than one (1) acre shall be mathematically proportionate (subject, however, to the maximum density of thirty-two (32) inches diameter (DBH) for each acre.) This shall pertain to manual, mechanical, chemical, abiotic or biotic (fire, water, insects or inoculation) methods of any kind. Minn. Stat. §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.

(Ord. 627 [2-6-2001])

710.19. Violation. Unless expressly provided otherwise, it shall be a misdemeanor for any person to violate any provision of the City Code including this Chapter, any rule or regulation adopted in pursuance of any such provision, or any order lawfully enforcing the City Code or this Chapter. The term "misdemeanor" shall be as defined in Minn. Stat. §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.

(Ord. 627 [2-6-2001])

710.20. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of the City Code, including this Chapter are severable, and if any phrase, clause, sentence, paragraph, or section of the City Code, including this Chapter, shall be declared unconstitutional, invalid or unenforceable, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of the City Code, including this Chapter.

(Ord. 627 [2-6-2001])

(7-21-81 Code; Chapter repealed and replaced by Ord. 574 [2-21-1995]; Ord. 588 [2-27-1997]; Chapter repealed and replaced by Ord. 614 [5-27-1999])