



Wayzata Planning Commission

Meeting Agenda

Monday, May 1, 2017

Community Room
600 Rice Street East
Wayzata, Minnesota 55391

- 7:00 p.m.**
- 1. Call to Order & Roll Call**
 - 2. Approval of Agenda**
 - 3. Approval of Minutes**
 - a. April 17, 2017
 - 4. Public Hearing Items:**
 - a. Tree Ordinance Amendment
 - 5. Old Business Items:**
 - a. None
 - 6. Other Items:**
 - a. Review of Development Activities
 - b. Next Meeting is May 15, 2017
 - 7. Adjournment**

NOTES:

¹ 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.

WAYZATA PLANNING COMMISSION
DRAFT MEETING MINUTES
APRIL 17, 2017

AGENDA ITEM 1. Call to Order and Roll Call

Chair Iverson called the meeting to order at 7:02 p.m.

Present at roll call were Commissioners: Young, Gruber, Gonzalez, Iverson, Murray, Flannigan and Buchanan. Director of Planning and Building Jeff Thomson and City Attorney David Schelzel were also present.

AGENDA ITEM 2. Approval of Agenda

Commissioner Young made a motion, Seconded by Commissioner Gruber, to approve the April 17, 2017 meeting agenda as presented. The motion carried unanimously.

AGENDA ITEM 3. Approval of Minutes

a.) Approval of April 3, 2017 Planning Commission Minutes

Commissioner Gruber made a motion, Seconded by Commissioner Gonzalez, to approve the April 3, 2017 Planning Commission Minutes as presented. The motion carried unanimously.

AGENDA ITEM 4. Public Hearing Items:

a.) Impervious Surface Variance – 128 Broadway Avenue N

Director of Planning and Building Thomson stated the public hearing on this variance application had been continued from the April 3, 2017 Planning Commission meeting. He added that at that meeting, the Commission had directed staff to prepare a draft report and recommendation of approval of the application. Mr. Thomson noted the conditions of approval outlined in the draft report, including that the final design for the storm water management plan must be reviewed and approved by the City Engineer.

Chair Iverson opened the public hearing at 7:05 p.m.

There being no one wishing to address the Planning Commission on the application, Chair Iverson closed the public hearing at 7:06 p.m.

Commissioner Young made a motion, Seconded by Commissioner Murray, to adopt the Planning Commission Report and Recommendation as presented, recommending approval of a variance for impervious surface coverage at 128 Broadway Avenue N.

Commissioner Gonzalez stated she was glad to see the applicant had decided to maintain the character of the neighborhood and redesigned the home.

The motion was called to a vote. The motion carried; 6-ayes and 1-nay (Iverson)

AGENDA ITEM 5. Old Business Items:

a.) None.

AGENDA ITEM 6. Other Items:

a.) Review of Development Activities

Director of Planning and Building Thomson stated the May 1st Planning Commission meeting agenda would include review of amendments to the tree ordinance. Mr. Thomson stated that the City received a development application for redevelopment at 1330 Wayzata Blvd E, which is tentatively scheduled for the May 15th Planning Commission meeting.

Mr. Thomson also stated that Tyson Jenkins, the City's Building Official, has announced that he will be leaving Wayzata for a position at the City of Plymouth.

Mr. Thomson noted that the City Council is holding their Strategic Planning Retreat on April 20th and 21st.

Mr. Thomson reviewed the City Council meeting agenda for April 18th, which includes a workshop on the Comp Plan, and discussion on the transient docks at Broadway and the Depot. The regular meeting will be preceded by a continued meeting of the local Board of Appeal and Equalization, and the regular meeting agenda includes the second reading of the building code ordinance amendment, and approval of the final plat for Frenchwood 3rd Addition, the four-lot subdivision at 250 and 270 Bushaway Road.

Chair Iverson asked if the Planning Commission should add items from their work plan to the agenda.

Mr. Thomson updated the Planning Commission on the 2017 work plan. He stated after the Tree Ordinance has been reviewed and amended, the Commission would have a workshop to review processes for development applications and adopting reports and recommendations, as well as public engagement improvements as part of the development process.

b.) Next Meeting is Scheduled for May 1, 2017

AGENDA ITEM 7. Adjournment.

Commissioner Flannigan made a motion, seconded by Commissioner Gonzalez, to adjourn the meeting. The motion carried unanimously.

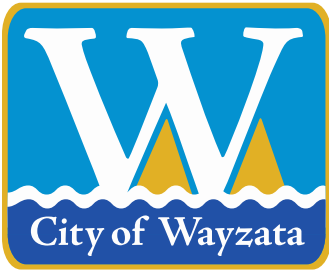
The Planning Commission meeting was adjourned at 7:20 p.m.

Respectfully submitted,

Tina Borg

TimeSaver Off Site Secretarial, Inc.

DRAFT



City of Wayzata
600 Rice Street
Wayzata, MN 55391-1734

Mayor:
Ken Willcox

City Council:
Dan Koch
Johanna McCarthy
Alex Plechash
Steven Tyacke

City Manager:
Jeffrey Dahl

Date: April 28, 2017
To: Planning Commission
From: Jeff Thomson, Director of Planning and Building
Subject: Tree Ordinance Amendment

Background Information

In 2016, the City Council amended the City Code related to trees. The ordinances included (1) a new section of the zoning ordinance pertaining to tree preservation, and (2) an amendment to the existing City Code as it relates to the City Forester and safety of trees on public and private property. After the City Council adopted the new ordinances, the Planning Commission expressed concerns about how the ordinance would apply to existing properties. The new ordinance would not restrict a property owner from removing trees on their property if they are not proposing any type of development, construction, or grading. The Planning Commission was concerned that a developer could purchase a property, remove trees prior to submitting a development application, and subsequently apply for a development application when the tree removal had already been completed. In this case, the trees already removed would not be subject to the tree preservation requirements.

The Planning Commission passed a motion to ask the City Council to revisit the permit requirements for removal of trees by property owners even if they are not proposing any type of development or construction. The Planning Commission motion included alternatives for triggering such requirement, including setting thresholds (e.g., removal of more than 25% of the trees on a property requires a permit), establishing a “look back” clause, or applying the ordinance to everyone, not just developers.

The City Council held a workshop to discuss the Planning Commission comments, and directed staff to prepare an amendment to the ordinance which would add a look-back clause to the tree preservation ordinance so that any trees removed within a certain time period prior to a development application would be included as trees removed as part of the development application. City staff has drafted revisions to the two sections of City Code that comprise the City’s tree regulations.

Draft Ordinance Amendments

Section 801.36 – Tree Preservation

Section 801.36 is a section within the zoning ordinance and pertains to removal of trees on private property related to development or construction. The draft ordinance amendment includes the following changes:

- Adds a two year look-back clause for subdivision applications, construction or maintenance of public infrastructure, and construction of single-family homes. If trees were removed from a property within two years of submitting an application to the City for these projects, the removed trees would be included as trees being removed as a result of the project.
- Adds a one year look-back clause for expansions to single-family homes, land disturbance permits, and applications for design review. If trees were removed from a property within one year of submitting an application to the City for these projects, the removed trees would be included as trees being removed as a result of the project.
- The other changes in the draft ordinance are intended to clarify the regulations to make it easier for the City to administer the ordinance. These amendments do not change the intent, purpose, or policies of the regulations contained in the existing ordinance.

Chapter 710 – City Forester and Safety of Trees on Public and Private Property

Chapter 710 of the City Code outlines the City Forester responsibilities, pathogen control program, nuisance abatement for trees, and licensing requirements. The draft ordinance amendment includes the following changes:

- Adds a tree removal permit requirement for the removal of any tree on public or private property. The original tree ordinance (prior to the 2016 amendment) included a tree removal permit requirement. However, it was removed from the ordinance based on direction from the Council that they did not want to require a permit for a property owner to remove trees on their property if they are not proposing any type of construction. In adding a look-back clause to the ordinance, City staff thinks the clause would be easier to enforce if there is an administrative means of tracking tree removal. The permit requirement would not preclude a property owner from removing trees if there is no construction of the property. It would allow the City to (1) ensure that the contractor is licensed by the City, and (2) track the size and type of trees that are removed from a property.
- Similar to the other changes in Section 801.36, the draft ordinance includes changes that clarify the regulations and do not change the intent, purpose, or policies of the regulations in the existing ordinance.

Action Steps

After holding the public hearing, the Planning Commission should pursue one of the following options as an action step:

1. Approve the *Planning Commission Report and Recommendations*.

2. If the Commission wishes minor modifications to Ordinance or the *Report and Recommendations*, the Planning Commission should include those minor modifications within the motion.
3. If the Commission wishes to significantly modify the Ordinance or the *Report and Recommendations*, the Commission should direct staff to prepare a revised Report and Recommendations for review and adoption at the next Commission meeting.

Attachments

- Draft Ordinance Amendment to Section 801.36
 - o red-lined copy
 - o clean copy
- Draft Ordinance Amendment to Chapter 710
 - o red-lined copy
 - o clean copy
- Draft Planning Commission Report and Recommendation

SECTION 36

TREE PRESERVATION

Section 801.36:

801.36.1:	Purpose and Intent
801.36.2:	Definitions
801.36.3:	Establishment of Tree Preservation Zone
801.36.43:	Applicability
801.36.54:	Process
801.36.65:	Tree Preservation Plan
801.36.76:	Tree Protection <u>Measures</u>
801.36.87:	Tree Replacement <u>Standards</u>
801.36.98:	Financial Guarantee
801.36.10:	Penalties

1. Purpose and Intent

The Wayzata City Council finds it is in the best interest of the City, and critical to its health and welfare, to protect, preserve, and enhance tree coverage~~the natural environment of in~~ the City community, and to encourage a resourceful and prudent approach to the development and alteration of wooded areas. ~~In the interest of achieving these~~To further these objectives, the City has established the comprehensive tree preservation regulations herein of this section, which are intended to~~promote the furtherance of the following:~~

A. Protection ~~ion~~ and preservation of the natural environment and ~~natural~~ beauty of the City;

B. A Tree Preservation Zone is hereby established in the City 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.

- ~~BC.~~ Minimize tree and habitat loss Assurance of and promote orderly development within wooded areas ~~to minimize tree and habitat loss;~~
- ~~CD.~~ Evaluation Evaluate of the impacts of development to on trees and wooded areas ~~resulting from development;~~
- ~~DE.~~ Establish ~~ment of~~ minimal standards for tree preservation and the mitigation of environmental impacts resulting from tree removal
- F. Recognize that Heritage Trees are valued and special trees for the City of Wayzata due to their size and age and encourage that all possible measures be taken to preserve Heritage Trees.:
- ;
- G. Encourage the preservation of the maximum amount of trees possible and recognize that a certain amount of Significant Trees removal is sometimes necessary when construction, maintenance, redevelopment and similar activity occurs on a property, and :
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.
- ~~EFH.~~ Provi~~desion of~~ incentives for creative land use and environmentally compatible site design to 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 section, the following definitions shall apply:

- A. **“City Forester”** means that person appointed by the City Manager as the City Forester with the duties and qualifications listed 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 (1.5’) for each one inch (1”) of DBH of the tree. For example, if a tree’s DBH is 10 inches, then its critical root zone radius is 15 feet (10 x 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 4½ feet (54 inches) above the ground. Trees that branch near or below 4 ½ feet from the ground will be measured at the narrowest point below 4 ½ feet. Trunks that originate from the ground shall be considered separate trees. The City Forester shall have the final determination in the DBH calculation if there is a question of how it is to be measured.
- G. **“Hardwood Deciduous Tree”** means a Deciduous Tree recognized as hardwoods by the City Forester, including ironwood, catalpa, oak, maple (hard), walnut, ash, hickory, birch, black cherry, hackberry, locust and basswood.
- H. **“Healthy Tree”** means the average or better condition and vitality for the area as determined by the City Forester.
- I. **“Heritage Tree”** means a Healthy Softwood Deciduous Tree that is thirty inches (30”) or greater in DBH , a Healthy Hardwood Deciduous Tree that is twenty five inches (25”) or greater in DBH, or a Healthy Coniferous Tree that is twenty five inches (25”) or greater in DBH.
- J. **“Landscape Architect”** means a person licensed by the State of Minnesota as a landscape architect.
- K. **“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.
- L. **“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~~ TTrunk utility infrastructure as described in the Comprehensive Sewer or Water Plans; or

5. Any ~~other physical infrastructure that provides an e~~Essential ~~s~~Service ~~Structure or constitutes a~~public improvement.

M. **“Removal”, “Removed” 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; ~~or~~
2. Grading impact, compaction, or other damage ~~up to of more than~~ 40% of a tree’s Critical Root Zone; ~~as or~~
3. Excessive pruning that, in the opinion of the City Forester, severely impacts the long term survivability of the tree; or
4. Any other impact to a tree that, in the opinion of the City Forester, comprises the long term health or structural stability of a tree.

N. **“Significant Tree”** means a Healthy Deciduous Hardwood Tree that is six inches (6”) or greater in DBH, a Healthy Softwood Deciduous Tree that is twelve inches (12”) or greater in DBH, or a Healthy Coniferous Tree that is twelve feet (12’) or greater in height or twelve inches (12”) or greater in DBH.

O. **“Site Plan”** means the site plan ~~established and~~described in this ~~Chapter~~Section.

P. **“Softwood Deciduous Tree”** means a Deciduous Tree recognized as softwoods by the City Forester, including cottonwood, poplar/aspen, box elder, willow, silver maple and elm.

Q. **“Tree Preservation Plan”** means the tree preservation plan ~~established and~~described in this ~~Chapter~~Section.

R. **“Tree Replacement Plan”** means a part of a Tree Preservation Plan as described in this Section.

~~R. **“Tree Preservation Zone”** means the tree preservation zone established and described in this Chapter~~Section.

~~3. Establishment of Tree Preservation Zone~~

~~A Tree Preservation Zone is hereby established in the City 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.~~

~~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.~~

43. Applicability

The provisions of this Section shall apply only to the following: land for or on which there is (i) an application under the Subdivision Ordinance; (ii) construction or maintenance of Public Infrastructure; (iii) construction of a new single-family home; (iv) expansion of an existing single family home; (v) a use requiring a land disturbance permit; and/or (vi) an application under the Design Standards, or such is required. The provisions of this Section shall be in addition to the requirements under City Code Chapter 710 which require a tree removal permit for all tree removal in the City.

A. Subdivision, Public Infrastructure, Construction of Single-Family Home: The following tree removal thresholds specific standards shall apply to all land for or on which there is (i) an application under the Subdivision Ordinance; (ii) construction or maintenance of Public Infrastructure; (iii) construction of a new single-family home~~Subdivision applications, Public Infrastructure projects, and construction of a single family home on a vacant lot:~~

1. Heritage Trees: ~~Heritage Trees are valued and special trees for the City of Wayzata due to their size and age.~~ All possible 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 (0%) removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards within ~~sub~~Section 801.36.87, in addition to any other requirements hereunder.
2. Significant Tree Removal by Developers: ~~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 when construction, maintenance, redevelopment and similar activity occurs on a property during development. Accordingly, twenty five percent (25%) 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 twenty five percent (25%) will require replacement in accordance with the standards of ~~sub~~Section 801.36.87.

3. ~~Applicable Time Period: For purposes of this subsection, Tree Removal, subject to the replacement requirements of this Section, includes any Significant or Heritage Tree removed within the two years prior to~~of submitting an application or permit to the City for subdivision approval;; public infrastructure construction or maintenance;; or construction of a new single-family home, or when any of the foregoing is required, whichever is earlier.

34. ~~Public Infrastructure: The City Council may waive the tree replacement requirements of this Section for Public Infrastructure~~ construction and maintenance projects if the City Council makes a finding that the tree replacement requirements hereof 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 required in this Section hereof.

B. Expansions to Single-Family Homes, Land Disturbance Permits, and Design Review, and Expansions to Single-Family Homes: The following specific standards shall tree removal thresholds apply to all land for or on which there is (i) expansion of an existing single family home; (ii) a use requiring a land disturbance permit under City Code Section 409.05; and/or (iii) an application under the Design Standards, or such is required under City Code Section 801.09.1.5.B ~~projects that require a Land Disturbance Permit under City Code Section 409.05, projects that require Design Review under City Code Section 801.09.1.5.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 possible 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 (0%) removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards within ~~sub~~Section 801.36.87 in addition to any other requirements hereunder.

2. Significant Tree Removal: ~~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, T~~en percent (10%) of the existing DBH inches of Significant

~~€~~Trees can be removed without obligation of replacement. Any removal beyond ten percent (10%) will require replacement in accordance with the standards within ~~subs~~Section 801.36.~~7~~8.

C. Types of 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~~ require any tree replacement under ~~subs~~Section 801.36.~~8~~7:

1. Dead, Diseased, Dying, or Hazard Trees as determined by the City Forester; 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

54. Process

A. Construction of or Expansion to Single-Family Homes and Land Disturbance Permits: For construction of a single-family home, expansion to an existing single-family home, or ~~a project that requires~~when a Land Disturbance Permit ~~is required~~, a Site Plan must be submitted to the City prior to any ~~proposed~~-tree removal on the applicable property. The Site Plan must ~~include the following information:~~

1. Identify the Significant and Heritage Trees on the property.
2. Identify the Significant and Heritage Trees to be removed due to grading or construction.
3. Identify the ~~M~~mandatory tree ~~P~~protection measures outlined in Section 801.36.~~6-A~~76 and any additional measures that will be used to protect the preserved trees during grading or construction on the property.
4. Comply with the City's tree replacement procedure and requirements set forth in this ~~s~~ection.

The Site Plan must receive the approval of the City Forester prior to the removal of any trees on the property. Any denial of a Site Plan by the City Forester may be appealed to the City Council.

- B. Subdivision, Public Infrastructure, and Design Review: Unless otherwise determined by the City Council, the following process ~~for preserving trees~~ shall be required for all Subdivision applications, Public Infrastructure construction and maintenance projects, and projects that require Design Standards r~~Review~~ and approval:
1. Prepare a Tree Preservation Plan that is incorporated on the grading plan, which meets the requirements of Section 801.36.5.
 2. Implement the Tree Preservation Plan prior to and during site development.
 3. Submit a financial guarantee for compliance with the approved Tree Preservation Plan in accordance with Section 801.36.~~98~~.
 4. Comply with the City's tree replacement procedure and requirements set forth in ~~this s~~Section 801.36.7.
 5. Obtain certification of tThe Tree Preservation Plan ~~must be certified~~ by a Forester, Landscape Architect, Nursery Stock Dealer or a Nursery Stock Grower.

65. Tree Preservation Plan

When a Tree Preservation Plan is required under this Section, an applicant is responsible for implementing the approved Tree Preservation Plan prior to and during site grading, construction, and plan development or other activity on the property. The Tree Preservation Plan will be reviewed by the City Forester and ~~any may be reviewed by~~ other ~~relevant~~ City planning and engineering staff to assess the best overall tree ~~design~~ plan for the project and activities 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, application for a Public Infrastructure maintenance or construction project, or Design Standard r~~Review~~ and approval 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~~ on the property or ~~contemplated to be constructed thereon~~ proposed for the property
- C. Delineation of all areas to be graded and limits of land disturbance on the property, including the contouring of all areas to be graded
- D. Size, species, location and condition of all Significant and Heritage Trees presently 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 on the property
- F. The Critical Root Zone of all Significant and Heritage Trees proposed to be preserved on the property and adjacent properties
- G. Identification of all Significant and Heritage Trees proposed to be removed within the Construction Area
- H. Identification of all Significant and Heritage Trees on all individual lots comprising the property. 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 801.36. ~~676.~~
- J. Size, species, and location of all replacement trees to be planted on the property in accordance with the tree replacement ~~requirements~~ standards of Section 801.36.87
- K. Signature of the person preparing the Tree Preservation 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

76. Tree Protection Measures

~~————The following tree protection measures are required:~~

- A. Mandatory Protection: Measures to preserve or protect Significant and Heritage Trees ~~must include~~ which are required under this Section are:
 - 1. Installation of snow fencing, silt fence, or polyethylene laminate safety netting placed at the Critical Root Zone of Significant and Heritage Trees to be preserved on or adjacent to the property ~~being developed.~~

2. 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~~property.
 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.

87. Tree Replacement Standards

- A. Tree Replacement Formula: ~~Replacement of removed or disturbed trees removal in excess of the percentage allowed by this section shall be replaced according to the following ratios:~~
1. All Significant Trees removed ~~For any removal~~ that exceeds the percentage of allowable removal of Significant Trees as set in ~~sub~~Section 801.36.743, ~~all Significant Trees~~ shall be replaced at the minimum ratio of one caliper inch (1") per one inch (1") of DBH removed.
 2. All Heritage Trees removed must be replaced at the minimum ratio of two caliper inches (2") per one inch (1") of DBH removed.
- B. Size, Types and Diversification of Replacement Trees: Unless an approved Tree Preservation Plan sets forth a different requirement, all replacement trees must be of a similar species to those that are removed. A Tree Replacement ~~p~~Plan must include a diversity of tree species that are suitable for the property given soil

conditions, hydrology, topography, and tree pathogens. Replacement trees must be no less than the following sizes:

1. Deciduous Trees shall be no less than two and a half caliper inches (2.5"); and
2. Coniferous Trees shall be no less than six feet (6') in height.

- C. Recommended Tree Replacement Species: In order to encourage a diverse tree canopy in the City, the following list of tree species are recommended for planting as part of a ~~T~~tree ~~R~~Replacement ~~p~~Plan:

Arborvitae
Black cherry
Butternut
Cedar
Elm (disease resistant)
Fir
Hackberry
Hickory
Hemlock
Kentucky Coffee
Linden/Basswood
Maple (except Silver Maples)
Oak
Pine
Spruce (except Colorado Blue)
Tamarack
Walnut

- D. Prohibited Tree Replacement Species: The ~~T~~Tree ~~R~~Replacement ~~p~~Plan may not include any tree species included in the Minnesota Department of Natural Resources Terrestrial Invasive Species List.

- E. Other Replacement Tree ~~Requirements~~Standards: 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.
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.

- E. 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~~the property in which Tree Removal is occurring. 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~~and be included in the City fee schedule.

98. 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 one hundred ten percent (110%) of the value of the tree 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 replacement trees planted, including any needed replacement of the trees over a three (3) 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, is not followed and implemented for any reason, in accordance with the City Council or City Forester approval,~~ the City may use the financial guarantee to correct or complete the plan for, and may enter the property as needed to make such corrections or completions, to correct or complete the work.
- C. Release of Financial Guarantee: ~~At least once annually, the~~ The City Forester shall periodically review the financial securities provided under this Section, inspect the applicable trees, and release the financial securities ~~as necessary. The financial security shall be released based on~~according to the following schedule:
 1. ~~Upon~~Within 30 days of installation of ~~a all~~healthy replacement trees according to an approved Tree Replacement Plan: 50% of the financial guarantee for the ~~se~~ trees shall be released.
 2. After the first anniversary of such initial planting, if anFirst year inspection by the City Forester determinesing that the installed trees ~~is~~are

still healthy: 15% of the financial guarantee for ~~that such healthy trees~~ shall be released.

3. ~~After the second anniversary of initial planting, if an~~Second year inspection ~~by the City Forester~~ determinesing ~~that~~ the installed trees ~~are~~is still healthy: 15% of the financial guarantee for ~~such healthy that~~ trees shall be released.
4. ~~After the t~~Third anniversary of initial planting, if any~~ear~~ inspection ~~by the City Forester~~ determinesing ~~that~~ the installed trees ~~are~~is still healthy: 20% ~~or the remaining amount~~ of the financial guarantee for ~~such healthy that~~ trees shall be released.

10. — 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 Section. 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. The City Forester and other City Staff shall 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: In addition to the remedies proscribed hereunder, u~~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. 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.~~

SECTION 36

TREE PRESERVATION

Section 801.36:

801.36.1:	Purpose and Intent
801.36.2:	Definitions
801.36.3:	Applicability
801.36.4:	Process
801.36.5:	Tree Preservation Plan
801.36.6:	Tree Protection Measures
801.36.7:	Tree Replacement Standards
801.36.8:	Financial Guarantee

1. Purpose and Intent

The Wayzata City Council finds it is in the best interest of the City, and critical to its health and welfare, to protect, preserve, and enhance tree coverage in the City, and to encourage a resourceful and prudent approach to the development and alteration of wooded areas. To further these objectives, the City has established the comprehensive tree preservation regulations of this section, which are intended to:

- A. Protect and preserve the natural environment and beauty of the City;
- B. 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.
- C. Minimize tree and habitat loss and promote orderly development within wooded areas;
- D. Evaluate the impacts of development on trees and wooded areas;
- E. Establish minimal standards for tree preservation and the mitigation of environmental impacts resulting from tree removal

- F. Recognize that Heritage Trees are valued and special trees for the City of Wayzata due to their size and age and encourage that all possible measures be taken to preserve Heritage Trees.
- G. Encourage the preservation of the maximum amount of trees possible and recognize that a certain amount of Significant Trees removal is sometimes necessary when construction, maintenance, redevelopment and similar activity occurs on a property, and 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.
- H. Provide incentives for creative land use and environmentally compatible site design to preserve trees and minimize tree removal during development; and

2. Definitions

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

- A. **“City Forester”** means that person appointed by the City Manager as the City Forester with the duties and qualifications listed in Section 710.02.
- 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 (1.5') for each one inch (1") of DBH of the tree. For example, if a tree's DBH is 10 inches, then its critical root zone radius is 15 feet (10 x 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 4½ feet (54 inches) above the ground. Trees that branch near or below 4 ½ feet from the ground will be measured at the narrowest point below 4 ½ feet. Trunks that originate from the ground shall be considered separate trees. The City Forester shall have the final determination in the DBH calculation if there is a question of how it is to be measured.

- G. **“Hardwood Deciduous Tree”** means a Deciduous Tree recognized as hardwoods by the City Forester, including ironwood, catalpa, oak, maple (hard), walnut, ash, hickory, birch, black cherry, hackberry, locust and basswood.
- H. **“Healthy Tree”** means the average or better condition and vitality for the area as determined by the City Forester.
- I. **“Heritage Tree”** means a Healthy Softwood Deciduous Tree that is thirty inches (30”) or greater in DBH , a Healthy Hardwood Deciduous Tree that is twenty five inches (25”) or greater in DBH, or a Healthy Coniferous Tree that is twenty five inches (25”) or greater in DBH.
- J. **“Landscape Architect”** means a person licensed by the State of Minnesota as a landscape architect.
- K. **“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.
- L. **“Public Infrastructure”** means:
1. Collector or arterial roads as defined by the City Transportation Plan;
 2. Public recreational trails;
 3. Stormwater infrastructure;
 4. Trunk utility infrastructure as described in the Comprehensive Sewer or Water Plans; or
 5. Any Essential Service Structure or public improvement.
- M. **“Removal”, “Removed” 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; or
 2. Grading impact, compaction, or other damage of more than 40% of a tree’s Critical Root Zone; or
 3. Excessive pruning that, in the opinion of the City Forester, severely impacts the long term survivability of the tree; or
 4. Any other impact to a tree that, in the opinion of the City Forester, comprises the long term health or structural stability of a tree.

- N. **“Significant Tree”** means a Healthy Deciduous Hardwood Tree that is six inches (6”) or greater in DBH, a Healthy Softwood Deciduous Tree that is twelve inches (12”) or greater in DBH, or a Healthy Coniferous Tree that is twelve feet (12’) or greater in height or twelve inches (12”) or greater in DBH.
- O. **“Site Plan”** means the site plan described in this Section.
- P. **“Softwood Deciduous Tree”** means a Deciduous Tree recognized as softwoods by the City Forester, including cottonwood, poplar/aspen, box elder, willow, silver maple and elm.
- Q. **“Tree Preservation Plan”** means the tree preservation plan described in this Section.
- R. **“Tree Replacement Plan”** means a part of a Tree Preservation Plan as described in this Section.

3. **Applicability**

The provisions of this Section shall apply only to land for or on which there is (i) an application under the Subdivision Ordinance; (ii) construction or maintenance of Public Infrastructure; (iii) construction of a new single-family home; (iv) expansion of an existing single family home; (v) a use requiring a land disturbance permit; and/or (vi) an application under the Design Standards, or such is required. The provisions of this Section shall be in addition to the requirements under City Code Chapter 710 which require a tree removal permit for all tree removal in the City.

- A. Subdivision, Public Infrastructure, Construction of Single-Family Home: The following specific standards shall apply to all land for or on which there is (i) an application under the Subdivision Ordinance; (ii) construction or maintenance of Public Infrastructure; (iii) construction of a new single-family home:
 - 1. Heritage Trees: All possible 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 (0%) removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards within Section 801.36.7, in addition to any other requirements hereunder.
 - 2. Significant Trees: Twenty five percent (25%) 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 twenty five percent (25%) will require replacement in accordance with the standards of Section 801.36.7.

3. Applicable Time Period: For purposes of this subsection, Tree Removal, subject to the replacement requirements of this Section, includes any Significant or Heritage Tree removed within the two years prior to submitting an application to the City for subdivision approval; public infrastructure construction or maintenance; or construction of a new single-family home, or when any of the foregoing is required, whichever is earlier.
 4. Public Infrastructure: The City Council may waive the tree replacement requirements of this Section for Public Infrastructure construction and maintenance projects if the City Council makes a finding that the tree replacement requirements hereof would create an undue financial or other burden, and the public benefits of the Public Infrastructure project outweigh the benefits of the tree replacement required in this Section.
- B. Expansions to Single-Family Homes, Land Disturbance Permits, and Design Review: The following specific standards shall apply to all land for or on which there is (i) expansion of an existing single family home; (ii) a use requiring a land disturbance permit under City Code Section 409.05; and/or (iii) an application under the Design Standards, or such is required under City Code Section 801.09.1.5.B:
1. Heritage Trees: All possible 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 (0%) removal threshold of Heritage Trees, meaning every DBH inch of Heritage Tree removed requires full replacement in accordance with the standards within Section 801.36.7 in addition to any other requirements hereunder.
 2. Significant Tree Removal: Ten percent (10%) of the existing DBH inches of Significant Trees can be removed without obligation of replacement. Any removal beyond ten percent (10%) will require replacement in accordance with the standards within Section 801.36.7.
- C. Types of Trees Exempt From Replacement Requirements: The following types of trees shall not require any tree replacement under Section 801.36.7:
1. Dead, Diseased, Dying, or Hazard Trees as determined by the City Forester; 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

4. Process

- A. Construction of or Expansion to Single-Family Homes and Land Disturbance Permits: For construction of a single-family home, expansion to an existing single-family home, or when a Land Disturbance Permit is required, a Site Plan must be submitted to the City prior to any tree removal on the applicable property. The Site Plan must:

1. Identify the Significant and Heritage Trees on the property.
2. Identify the Significant and Heritage Trees to be removed due to grading or construction.
3. Identify the tree protection measures outlined in Section 801.36.6 and any additional measures that will be used to protect the preserved trees during grading or construction on the property.
4. Comply with the City's tree replacement procedure and requirements set forth in this section.

The Site Plan must receive the approval of the City Forester prior to the removal of any trees on the property. Any denial of a Site Plan by the City Forester may be appealed to the City Council.

- B. Subdivision, Public Infrastructure, and Design Review: Unless otherwise determined by the City Council, the following process shall be required for all Subdivision applications, Public Infrastructure construction and maintenance projects, and projects that require Design Standards review and approval:

1. Prepare a Tree Preservation Plan that is incorporated on the grading plan, which meets the requirements of Section 801.36.5.
2. Implement the Tree Preservation Plan prior to and during site development.
3. Submit a financial guarantee for compliance with the approved Tree Preservation Plan in accordance with Section 801.36.8.
4. Comply with the City's tree replacement procedure and requirements set forth in Section 801.36.7.

5. Obtain certification of the Tree Preservation Plan by a Forester, Landscape Architect, Nursery Stock Dealer or a Nursery Stock Grower.

5. **Tree Preservation Plan**

When a Tree Preservation Plan is required under this Section, an applicant is responsible for implementing the approved Tree Preservation Plan prior to and during site grading, construction, development or other activity on the property. The Tree Preservation Plan will be reviewed by the City Forester and may be reviewed by other City planning and engineering staff to assess the best overall tree plan for the project and activities 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, application for a Public Infrastructure maintenance or construction project, or Design Standard review and approval 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 on the property or proposed for the property
- C. Delineation of all areas to be graded and limits of land disturbance on the property, including the contouring of all areas to be graded
- D. Size, species, location and condition of all Significant and Heritage Trees presently 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 on the property
- F. The Critical Root Zone of all Significant and Heritage Trees proposed to be preserved on the property and adjacent properties
- G. Identification of all Significant and Heritage Trees proposed to be removed within the Construction Area
- H. Identification of all Significant and Heritage Trees on all individual lots comprising the property. 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 801.36.6.
- J. Size, species, and location of all replacement trees to be planted on the property in accordance with the tree replacement standards of Section 801.36.7
- K. Signature of the person preparing the Tree Preservation 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. Tree Protection Measures

- A. Mandatory Protection: Measures to preserve or protect Significant and Heritage Trees which are required under this Section are:
 - 1. Installation of snow fencing, silt fence, or polyethylene laminate safety netting placed at the Critical Root Zone of Significant and Heritage Trees to be preserved on or adjacent to the property.
 - 2. 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 property.
 - 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 Replacement Standards

A. Tree Replacement Formula:

1. All Significant Trees removed that exceed the percentage of allowable removal of Significant Trees as set in Section 801.36.3, shall be replaced at the minimum ratio of one caliper inch (1") per one inch (1") of DBH removed.
2. All Heritage Trees removed must be replaced at the minimum ratio of two caliper inches (2") per one inch (1") of DBH removed.

B. Size, Types and Diversification of Replacement Trees: Unless an approved Tree Preservation Plan sets forth a different requirement, all replacement trees must be of a similar species to those that are removed. 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. Replacement trees must be no less than the following sizes:

1. Deciduous Trees shall be no less than two and a half caliper inches (2.5"); and
2. Coniferous Trees shall be no less than six feet (6') in height.

C. Recommended Tree Replacement Species: In order to encourage a diverse tree canopy in the City, the following list of tree species are recommended for planting as part of a Tree Replacement Plan:

Arborvitae
Black cherry
Butternut
Cedar
Elm (disease resistant)
Fir
Hackberry
Hickory
Hemlock
Kentucky Coffee
Linden/Basswood
Maple (except Silver Maples)
Oak
Pine
Spruce (except Colorado Blue)
Tamarack
Walnut

- D. Prohibited Tree Replacement Species: The Tree Replacement Plan may not include any tree species included in the Minnesota Department of Natural Resources Terrestrial Invasive Species List.
- E. Other Replacement Tree Standards: 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.
 - 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.
- E. 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 the property in which Tree Removal is occurring. 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 and be included in the City fee schedule.

8. 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 one hundred ten percent (110%) of the value of the tree 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 replacement trees planted, including any needed replacement of the trees over a three (3) year period.
- B. Use of Financial Guarantee: If the approved Tree Preservation Plan or Site Plan, including the Tree Replacement Plan, is not followed and implemented for any reason, the City may use the financial guarantee to correct or complete the plan, and may enter the property as needed to make such corrections or completions.

- C. Release of Financial Guarantee: The City Forester shall periodically review the financial securities provided under this Section, inspect the applicable trees, and release the financial securities according to the following schedule:
1. Within 30 days of installation of all replacement trees according to an approved Tree Replacement Plan: 50% of the financial guarantee for those trees shall be released.
 2. After the first anniversary of such initial planting, if an inspection by the City Forester determines that the installed trees are still healthy: 15% of the financial guarantee for such healthy trees shall be released.
 3. After the second anniversary of initial planting, if an inspection by the City Forester determines that the installed trees are still healthy: 15% of the financial guarantee for such healthy trees shall be released.
 4. After the third anniversary of initial planting, if an inspection by the City Forester determines that the installed trees are still healthy: 20% or the remaining amount of the financial guarantee for such healthy trees shall be released.

CHAPTER 710

MAINTENANCE AND REMOVAL OF TREES CITY FORESTER AND SAFETY OF TREES ON PUBLIC AND PRIVATE PROPERTY

710.01. **Purpose.** ~~The Wayzata City Council has determined the preservation of trees growing on public and private property are is necessary to maintain the general welfare of the public City and is set forth more fully in Section 710.13 of this Chapter, and Section 801.36 of the Zoning Ordinance. In order to maintain and enhance the quantity and quality of trees growing within the City, this Chapter is adopted to regulate the maintenance and removal of trees within the City of Wayzata by This Chapter:~~ (1) Defin~~esing~~ the duties and responsibilities of the City Forester as the agent enforcing regulations relating to the planning, -maintenance, and removal of trees within the City of Wayzata; (2) Establishesing a Pathogen Control Program; (3) Defin~~esing~~ nuisance conditions related to trees on private property and a process for abating the nuisances; (4) Provid~~esing~~ for the issuing of -permits and/or licenses for businesses that conduct any maintenance and/or removal of trees within the City of Wayzata; and (3) Providing for the pruning and removal of trees on private property that endanger public safety; ~~(45) Provid~~esing for standards and specifications of all policy concerning trees on public property.
~~;- and (5) Providing for standards and specifications for care protection policy concerning trees within project construction limits.~~

(Ord. xxxx)

710.02. Duties and Qualifications of the City Forester.

aA. *Duties.* The City 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 pathogens. It shall further be the duty of the City Forester and the City Manager and/or his/her designee 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. perform the duties outlined in Section 801.36.~~

Bb. *Qualifications of the City Forester.* The qualifications of the City Forester shall be, as a minimum, those qualifications prescribed for certified arborists by the International Society of Arboriculture, or such other appropriate qualifications as determined by the City Manager.

eC. *Limitations and Disclaimer.* ~~The City Forester and other City Staff shall not make any definitive claims or guarantees related to the structural integrity of any tree, and any assessments made by the City Forester or other City representative~~

related to a tree may not be relied upon by the property owner or a third party.

(Ord. xxxx)

- 710.03. Pathogen 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. xxxx)

- 710.04. Nuisances.** 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.

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

- ~~a~~1. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus (as defined by the Minnesota Department of Agriculture) or which harbors any of the elm bark beetles known by the Minnesota Department of Agriculture to transmit the disease.
- ~~b~~2. 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.
- ~~3~~e. Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt disease fungus, as defined by the Minnesota Department of Agriculture.
- ~~d~~4. 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.
- ~~5~~e. Any ash tree at risk of infestation of the Emerald Ash Borer (EAB) as determined by the City Forester after considering Minnesota Department of Agriculture guidance.

~~6.f.~~ 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.

~~7.g.~~ 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. xxxx)

~~B. 710.05.~~ *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 City Forester shall investigate all reported incidents of diseased trees within the City. The City 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. Except for cases of emergencies or the imminent threat of personal or property damage, the City shall notify the property owner at least five (5) days prior to the inspection through certified mail to the address listed on the Hennepin County tax records. The inspection may occur after five (5) days even if the certified letter is undeliverable or returned. The City Forester may, upon finding conditions indicating disease infestation is suspected and unconfirmed by a field diagnosis, 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 710.084.D7, or in the case of a positive field diagnosis, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

(Ord. xxxx)

~~710.06C.~~ *Abatement of Nuisances.* In abating the nuisances defined in Section 710.054.A, the City 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])

~~710.07D.~~ *Abatement Procedure.* Whenever the City 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:

- a1. If the City Forester finds that the danger of infestation of other trees is not imminent the City 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 twenty one (21) days from the date of the mailing. If no action to abate the nuisance is taken within this period the City 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 710.094.E8.
- b2. If the City Forester finds that the danger of infestation of other trees is imminent the City 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 seven (7) 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 City 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 710.094.E8.
- e3. If the City Forester finds that the danger of infestation of other trees is imminent the City 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 City 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 City 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 710.094.E8.

(Ord. xxxx)

710.08E. *Special Assessment Procedure.* Upon receipt of a report from the City Forester required by Section 710.04.D78, ~~subsections a. through e.,~~ 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 City 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])

710.9.05 ~~_____~~ **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 City Forester. The City Forester may grant such a permit only when the purposes of this Chapter will be served thereby. The transporting of diseased wood out of the City shall be governed by current State Statutes related to transportation of infected material.

(Ord. xxxx)

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

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

710.11.07 **Tree Business 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])

710.08. ~~_____~~ **Tree Removal Permit Required.**

aA. The removal of any tree on public or private property in the City of Wayzata shall require a tree removal permit as described in this section. Any person with due authority desiring a tree removal permit shall submit a written application to the City. The application shall be in the form preëscribed by the City and include the following information:

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(1.4) 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

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.) Designation of trees to be removed and trees to be maintained

⋮

(8.) Purpose of tree removal (construction, driveway, recreation area, patio, , building addition etc.)

⋮

(9).- All materials to be planted as replacement trees, indicating size, species and method of planting.

Bb. -Upon receipt of the application, the City Forester may visit and inspect the site and adjoining lands. If it is determined that the proposed tree removal outlined in the application complies with the standards in Section 801.36 and this Chapter, the application shall be approved and permit issued. If the City Forester determines otherwise, the application shall be denied and the City shall advise the applicant on the reasons for denial and any steps that can be taken to correct deficiencies.

eC. -The applicant may appeal the City Forester's decision by providing written notice to the City Council of appeal. The Council shall hear such appeal and rule on it by the first or second City Council meeting held on or after 30 days of the written notice to the Council.

(Ord. xxxx)

710.12. 098 — **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~~**public** land within the limits of the City of Wayzata in violation of this Section. Minn. Stat. §561.04 strictly prohibits intentional damage

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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 shall 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.~~

~~**710.13. ——— 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. 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.~~

~~**710.14. ——— 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. xxxx)

(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]; Ord. xxxx [xx-xx-2016])

CHAPTER 710

CITY FORESTER AND SAFETY OF TREES ON PUBLIC AND PRIVATE PROPERTY

- 710.01.** **Purpose.** This Chapter: (1) Defines the duties and responsibilities of the City Forester as the agent enforcing regulations relating to the planning, maintenance, and removal of trees within the City of Wayzata; (2) Establishes a Pathogen Control Program; (3) Defines nuisance conditions related to trees on private property and a process for abating the nuisances; (4) Provides for the issuing of licenses for businesses that conduct any maintenance and/or removal of trees within the City of Wayzata; and (5) Provides standards and specifications of all policy concerning trees on public property.

(Ord. xxxx)

710.02. **Duties and Qualifications of the City Forester.**

- A. *Duties.* The City 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 pathogens. It shall further be the duty of the City Forester and the City Manager and/or his/her designee to perform the duties outlined in Section 801.36.
- B. *Qualifications of the City Forester.* The qualifications of the City Forester shall be, as a minimum, those qualifications prescribed for certified arborists by the International Society of Arboriculture, or such other appropriate qualifications as determined by the City Manager.
- C. *Limitations and Disclaimer.* The City Forester and other City Staff shall not make any definitive claims or guarantees related to the structural integrity of any tree, and any assessments made by the City Forester or other City representative related to a tree may not be relied upon by the property owner or a third party.

(Ord. xxxx)

- 710.03.** **Pathogen 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.

(Ord. xxxx)

710.04

Nuisances. 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.

- A. *Nuisances Declared.* The following are hereby declared to be public nuisances whenever they may be found within the City:
1. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm disease fungus (as defined by the Minnesota Department of Agriculture) or which harbors any of the elm bark beetles known by the Minnesota Department of Agriculture to transmit the disease.
 2. 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.
 3. Any living or standing oak tree or part thereof infected to any degree with the Oak Wilt disease fungus, as defined by the Minnesota Department of Agriculture.
 4. 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.
 5. Any ash tree at risk of infestation of the Emerald Ash Borer (EAB) as determined by the City Forester after considering Minnesota Department of Agriculture guidance.
 6. 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.
 7. 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.

(Ord. xxxx)

- B. *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 City Forester shall investigate all reported incidents of diseased trees within the City. The City 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.

Except for cases of emergencies or the imminent threat of personal or property damage, the City shall notify the property owner at least five (5) days prior to the inspection through certified mail to the address listed on the Hennepin County tax records. The inspection may occur after five (5) days even if the certified letter is undeliverable or returned. The City Forester may, upon finding conditions indicating disease infestation is suspected and unconfirmed by a field diagnosis, 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 710.04.D, or in the case of a positive field diagnosis, no action to remove infected trees or wood shall be taken until positive diagnosis of the disease has been made.

(Ord. xxxx)

- C. *Abatement of Nuisances.* In abating the nuisances defined in Section 710.04.A, the City 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])

- D. *Abatement Procedure.* Whenever the City 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:

1. If the City Forester finds that the danger of infestation of other trees is not imminent the City 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 twenty one (21) days from the date of the mailing. If no action to abate the nuisance is taken within this period the City 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 710.04.E.
2. If the City Forester finds that the danger of infestation of other trees is imminent the City 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 seven (7) 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 City 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 710.04.E.

3. If the City Forester finds that the danger of infestation of other trees is imminent the City 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 City 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 City 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 710.04.E.

(Ord. xxxx)

- E. *Special Assessment Procedure.* Upon receipt of a report from the City Forester required by Section 710.04.D, 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 City 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])

710.05 **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 City Forester. The City Forester may grant such a permit only when the purposes of this Chapter will be served thereby. The transporting of diseased wood out of the City shall be governed by current State Statutes related to transportation of infected material.

(Ord. xxxx)

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

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

710.07 **Tree Business 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])

710.08 **Tree Removal Permit Required.**

- A.** The removal of any tree on public or private property in the City of Wayzata shall require a tree removal permit as described in this section. Any person with due authority desiring a tree removal permit shall submit a written application to the City. The application shall be in the form prescribed by the City and 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. Designation of trees to be removed and trees to be maintained
 8. Purpose of tree removal (construction, driveway, recreation area, patio, building addition etc.)
 9. All materials to be planted as replacement trees, indicating size, species and method of planting.

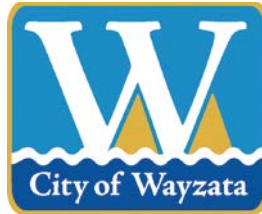
- B. Upon receipt of the application, the City Forester may visit and inspect the site and adjoining lands. If it is determined that the proposed tree removal outlined in the application complies with the standards in Section 801.36 and this Chapter, the application shall be approved and permit issued. If the City Forester determines otherwise, the application shall be denied and the City shall advise the applicant on the reasons for denial and any steps that can be taken to correct deficiencies.
- C. The applicant may appeal the City Forester's decision by providing written notice to the City Council of appeal. The Council shall hear such appeal and rule on it by the first or second City Council meeting held on or after 30 days of the written notice to the Council.

(Ord. xxxx)

710.09 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 public land within the limits of the City of Wayzata in violation of this Section. 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. xxxx)

(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]; Ord. xxxx [xx-xx-2016])



WAYZATA PLANNING COMMISSION

May 1, 2017

REPORT AND RECOMMENDATION ON AN ORDINANCE AMENDING SECTION 36 OF THE WAYZATA ZONING ORDINANCE (TREE PRESERVATION) AND AMENDING WAYZATA CITY CODE CHAPTER 710 (PLANTING, MAINTENANCE AND REMOVAL OF TREES)

RECOMMENDATION

APPROVE amendments to clarify and update City Code related to trees

REPORT

Section 1. BACKGROUND

- 1.1 General. Since the City's adoption in 2016 of a comprehensive Tree Preservation Ordinance (City Code 801.36) and related revisions to existing City Code on Planting, Maintenance and Removal of Trees (City Code, Ch. 710), the Planning Commission and City staff have identified several areas of these ordinances that could be clarified and changed to better address the policy goals behind the ordinances. Based on the foregoing, staff has prepared a draft ordinance attached to this Report as Attachment A which would amend parts of Section 801.36 of the Zoning Ordinance and parts of Chapter 710 of City Code (collectively, the "Proposed Amendments").
- 1.2 Public Hearing. The Planning Commission held a public hearing on the Proposed Amendments on May 1, 2017. Notice of Public Hearing on the Proposed Amendments was published in the *Lakeshore Weekly News* on April 20, 2017.

Section 2. LEGAL AUTHORITY AND STANDARDS

- 2.1 City Council has the discretion and authority under state law and City Code to amend the City's Zoning Ordinance and other parts of City Code. Minn. Stat. Sec. 462.357; Wayzata City Code Section 801.03. A zoning ordinance amendment may be initiated by the governing body, the planning agency or by a property owner. Minn. Stat. Sec. 462.357, Subd. 4; City Code Section 801.03.
- 2.2 Under the City's Zoning Ordinance, the City Council acts on any proposed amendment upon receiving the report and recommendation of the Planning Commission. Sec. 801.03.2. In considering a proposed amendment to the Zoning Ordinance, the Planning Commission shall consider the possible adverse effects of the proposed amendment. Its judgment shall be based upon (but not limited to) the following factors:
 1. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
 2. The proposed use's conformity with present and future land uses of the area.
 3. The proposed use's conformity with all performance standards contained herein (i.e., parking, loading, noise, etc.).
 4. The proposed use's effect on the area in which it is proposed.
 5. The proposed use's impact upon property value in the area in which it is proposed.
 6. Traffic generation by the proposed use in relation to capabilities of streets serving the property.
 7. The proposed use's impact upon existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity.

Wayzata City Code Section 801.03.2.F.

Section 3. FINDINGS

- 3.1 Based on the studies and reports of City Staff, comments and information presented at the public hearing on the Proposed Amendments, and information provided by the City Forester and other City staff, the Planning Commission of the City of Wayzata makes the following findings with respect to the Proposed Amendments:

1. The Proposed Amendments would not allow a use that would contravene any specific policies and provisions of the official City Comprehensive Plan.
2. The Proposed Amendments would only allow uses that conform to present and future land uses in the City's business and commercial districts.
3. The Proposed Amendments would not allow uses that do not conform with the performance standards contained in the Zoning Ordinance (parking, loading, noise, etc.).
4. The Proposed Amendments would not allow uses that would have a negative impact on the areas in which they are proposed in that the Proposed Amendments would reasonably regulate and preserve the City's vital natural resources and the urban forest.
5. The Proposed Amendments will not negatively impact upon property values in the City.
6. The Proposed Amendments will not allow any use that would have a negative impact traffic generation in the City.
7. The Proposed Amendments will not allow a use that would negatively impact existing public services and facilities and would provide a framework for needed telecommunications services in the City.

Section 4. Recommendation

- 4.1 Proposed Amendments. Based on the Findings of this Report, the Planning Commission recommends approval of the Proposed Amendments, as set forth in Attachment A.

Adopted by the Wayzata Planning Commission this 1st day of May, 2017.

Attachment A: Section 801.36 (~~struck text deleted~~; underlined text added)

Attachment B: Chapter 710 (~~struck text deleted~~; underlined text added)

Attachment A:

Section 801.36

DRAFT

Attachment B:

Chapter 710

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