

**THE CITY OF THE VILLAGE OF MINNETONKA BEACH
HENNEPIN COUNTY, MINNESOTA**

ORDINANCE NO. 135, 2nd Series

**AN ORDINANCE ADDING CITY CODE APPENDIX A – ZONING CODE –
Chapter 4: Finishing Standards, Section 4.2. TREE PROTECTION**

The City Council of the City of the Village of Minnetonka Beach hereby ordains:

Section 1. Tree Preservation Ordinance. Section 4.2 of Appendix A of the city code is amended by adding new Section 4.2 – Tree Preservation to the previously reserved Section 4.2 for Tree Protection as follows:

4.2 – TREE PRESERVATION

(A) Tree Preservation and Protection

(1) **Historical Background.** The City of the Village of Minnetonka Beach was developed in the late 1800s. The community originally consisted of seasonal homesites on wooded lots both on and off the lake. Minnetonka Beach was developed on land that contained the “Big Woods”, tree filled areas consisting of maple and basswood trees as well as other hardwood, softwood, and conifer trees. The trees in the City are valuable assets to the community as they assist with stormwater management, maintain a canopy that holds rainwater and provides shade and natural cooling, all of which minimizes runoff to Lake Minnetonka and provides a pleasing aesthetic that is difficult to replace or replicate.

The City of the Village of Minnetonka Beach is on a boot shaped peninsula surrounded by Lake Minnetonka. All land in Minnetonka Beach is within 1000 feet of the lake and is subject to the state shoreland management rules, regulations and statutes controlling land use that impacts the lake. Riparian homes as originally developed are set back an average of 130’-150’ or more from the lake to enhance the lake experience, encourage natural habitat for wildlife, allow privacy and tranquility and to provide an area for natural vegetation including trees. Land Use regulations have evolved in the City utilizing considerations including but not limited to the following: impact on the neighborhood setting, impact on the environment, protection of the lake, protecting riparian owners’ lake views, limiting noise and respecting privacy, recognizing and addressing drainage challenges to adjoining properties and narrow lots, topography, Steep Slopes, Bluff areas, vegetation, wetlands, floodplain, and susceptibility to erosion and sedimentation.

The City’s Land Use regulations emphasize the importance of limiting runoff to the lake and adjoining homeowners, encourage open spaces with natural vegetation and trees around the lake and between homes and strive to maintain the character and setting of

the historic development with the intent not only to protect the lake, but also to maintain property values.

(2) **Public Purpose and Intent.** The public welfare requires the protection and preservation of trees and shrubs among the homes and streets of the City for soil stabilization, control of water pollution, tempering noise, provision of a habitat for wildlife, and shade and beauty. Indiscriminate removal of trees deprives the community of these benefits. It is in the interest of the general public welfare, the City and its residents to prevent the indiscriminate removal of trees, maintain and enhance wooded areas throughout the Village, establish minimum standards for Significant and Heritage tree preservation, maintain and replace tree canopy, maintain and improve diversity of species of trees, enforce tree preservation and tree replacement standards and prevent the unregulated clearing of vegetation. Existing Significant and Heritage Trees shall be preserved to the extent reasonably possible. Street, buildings, and lot layouts shall be designed to minimize the disturbance to Significant and Heritage Trees. Enforcement of tree preservation standards will promote and protect the public health, safety and welfare of the community and maintain property values.

(3) **Applicability.** This Chapter applies to all land and districts in Minnetonka Beach. In cases where there is a conflict between regulations applicable to districts and this Chapter, the more restrictive requirements shall apply.

(B) Definitions.

Land Use definitions, including, but not limited to, "Bluff", "Bluff Impact Zone", "Steep Slope" and others set out in Chapter 8 of the City Zoning Code are incorporated. For purposes of the City's Land Use regulations, the following additional definitions shall apply:

(1) **"Administrative Land Use Permit "** means grading, building, driveway, right of way permits, or any other City staff issued permits.

(2) **"Bluff"** has the meaning provided in Chapter 8.4(A) *Definitions* of the zoning code.

(3) **"Coniferous Tree"** means a woody plant bearing seeds and cones oftentimes, but not always, retaining foliage throughout the year.

(4) **"Construction Activity"** means construction activity on a property pursuant to an Administrative Land Use Permit.

(5) **"Critical Root Zone"** means the area around a tree measured from the trunk of the tree with a radius that is equal to 1.5 feet for each one inch of DBH of the tree, or such lesser area as determined by the City Forester. For example, if a tree's DBH is ten inches, then its critical root zone radius is 15 feet (10 x 1.5 = 15).

(6) "**Deciduous Tree**" means a woody plant which has a defined crown, and which loses leaves annually.

(7) "**Diameter of Tree at Breast Height**" or "**DBH**" means the diameter of a tree as measured 4½ feet (54 inches) above the root flare. Trees that branch near or below 4½ feet from the root flare will be measured at the narrowest point below 4½ 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.

(8) "**Environmental Remediation Fee**" means a fee that applies if a Protected Tree is removed without a required Tree Removal Permit. It applies in addition to Replacement Tree requirements as provided in (F)(3) and (F)(4).

(9) "**Fee-in-Lieu**" means a fee that will apply if Minimum Tree Density will not be met after tree removal and City Council (or Review Board if responsible for approving the Tree Removal Permit) determines that it is physically impractical to plant all required Replacement Trees on site, based on the individual facts at issue. The Fee-in-Lieu is based on the number of inches (deciduous) or feet (coniferous) actually replaced versus the number of inches (deciduous) or feet (coniferous) required to be replaced. For example, if a 31" Heritage Tree is removed, 31" of Replacement Trees are required. If only 15" of Replacement Trees can practically be planted on site, in addition to planting the Replacement Trees, a Fee-in-Lieu based on 16" not replaced will be applied. The amount of the Fee-in-Lieu is provided on the City fee Schedule and shall be paid into the City's Tree and Environmental Fund.

(10) "**Hazard Tree**" means a tree that:

(a) in the opinion of the City Forester, a certified arborist with a Tree Risk Assessment Qualification or if directed by the City Administrator in the opinion of the City Tree Inspector, is structurally unstable and poses a risk to people or permanent structures; or

(b) is an emergency where it is reasonably impractical to obtain a Tree Removal Permit prior to removal, when the structural instability and risk to people or permanent structures is caused by weather factors, storm or other act of God.

Removal of parts of Hazard Trees, such as broken limbs, that does not cause the tree to become diseased or die, is considered tree trimming and not removal.

(11) "**Healthy Tree**" means the average or better condition and vitality of a tree for the area as determined by the City Forester or City Tree Inspector. A Healthy Tree does not include Hazard Trees or Noxious Trees.

(12) "**Hedge**" means a fence or boundary formed by closely growing bushes, shrubs or trees.

(13) "**Heritage Tree**" means a Deciduous Tree, except Cottonwood, that is 30 inches or greater in DBH, or a Coniferous Tree that is 30 feet or greater in height.

(14) "**Minimum Tree Density**" means one Healthy Protected Tree per 2,500 square feet of property, or fraction thereof; provided that the trees in a Hedge do not count towards Minimum Tree Density. When the trunk of a Protected Tree at DBH is located on a common property line, all properties on which such trunk is located may count the tree as a Protected Tree for purposes of meeting Minimum Tree Density. Square footage shall be determined from the Hennepin County property tax records for the property at issue or recent professional survey with the approval of the City Administrator. For example, Minimum Tree Density for a 15,000 square foot lot is 6 Protected Trees and Minimum Tree Density for a 16,000 square foot lot is 7 Protected Trees.

(15) "**Noxious Trees**" include, but are not limited to, buckthorn, box elder, Siberian elm, green ash, and white poplar, and other trees that are identified by the Minnesota DNR (<https://www.dnr.state.mn.us/invasives/terrestrialplants/index.html>).

(16) "**Nuisance Tree**" includes trees as specified in (1)(2).

(17) "**Protected Trees**" mean Heritage Trees and Significant Trees.

(18) "**Public Infrastructure**" means the construction, installation or maintenance of:

- (a) City Streets and County collector or arterial roads;
- (b) Public recreational trails;
- (c) Stormwater, water, sewer and any other utility infrastructure;
- (d) Any essential service or public improvement;
- (e) Parks;
- (f) City property.

(19) "**Removal**" or "**Tree Removal**" means:

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

(20) "**Replacement Tree**" means a tree that is of a species native and indigenous to the site where a tree is to be removed, creates diversity of species, is not planted as a Hedge, and is a minimum size of eight feet in height measured from top of the root flare for coniferous trees and with a minimum trunk diameter of two- and one-half inches

measured at four inches above the top of the root flare for deciduous trees. A list of recommended species is maintained at City Hall.

(21) "**Significant Tree**" means a Deciduous Tree that is six inches or greater in DBH but less than 30", or a Coniferous Tree that is 12 feet or greater but less than 30 feet in height. Cottonwood trees 6 inches or greater, no matter how large, are considered Significant Trees.

(22) "**Site Plan**" for purposes of Chapter 4.2 means the site plan established and described in Section (E)(6).

(23) "**Steep Slope**" has the meaning provided in Chapter 8.4(A) *Definitions* of the zoning code.

(24) "**Tree Preservation Plan**" means the tree preservation plan established and described in Section (E)(6).

(25) "**Tree Preservation Review Board**" or "**Review Board**" means the reviewing body that may issue or deny a Tree Removal Permit as described in (E)(3) below. The Tree Preservation Review Board will consist of the City Administrator, City Forester and the City Tree Inspector, with discretion by the Review Board to request advice of the City Engineer in appropriate circumstances.

(26) "**Tree Removal Permit**" is the permit required to be issued prior to Tree Removal as provided in Section E.

(C) City Forester and City Tree Inspector.

(1) **Position of City Forester.** The City Council shall designate from time to time the person who shall perform the duties of City Forester. The City Forester shall be the appropriately qualified person with a minimum licensure level of certified arborist with a Tree Risk Assessment Qualification who acts in the best interest of the City in its goal to preserve trees while allowing property owners the use and enjoyment of their real property. The City Forester shall report to and take direction from the City Administrator, or such other person designated by City Council.

(2) **City Tree Inspector.** The City Council may designate one or more persons with inspector-level certification, qualified to provide input and recommendations to the City Administrator. The duties and responsibilities of the Tree Inspector are to be determined by the City Council and determined by scope of training. The City Tree Inspector cannot be a person or contractor who is privately employed by residents to provide tree trimming or removal services.

(D) Minimum Requirements for Removal of Protected Trees. Protected Trees are valued due to canopy and root benefits, their size and age, and shall be preserved and maintained according to the standards of this Chapter.

(1) **Minimum Tree Density.** Minimum Tree Density and diversity of tree species on all properties is encouraged. A property that meets Minimum Tree Density should maintain the minimum number of required trees. Properties that do not meet Minimum Tree Density are encouraged, but not required, to plant trees to meet the Minimum Tree Density standard.

(2) **No Removal of Protected Trees without a Permit Unless Exempt.** No Protected Tree shall be removed without a Tree Removal Permit unless exempt as provided in this Chapter.

(3) **Preserve Heritage Trees.** There shall be a zero percent removal threshold of Heritage Trees, meaning every DBH inch (deciduous) and foot (coniferous) of Heritage Tree removed requires full replacement in accordance with the requirements of this Chapter. Heritage Tree removal may occur only when there is not a practical alternative.

(4) **Potential Costs of Environmental Remediation.** Unless exempt as provided in Section (E)(1), any property owner who removes, directs or allows removal of, intentionally damages or allows to be damaged, a Protected Tree without a Tree Removal Permit is subject to Environmental Remediation Fees as set out in this Chapter as well as other City ordinances.

(5) **Replacement Standards Apply.** Unless exempt as provided in Section (F)(2), any Protected Tree that is removed is required to be replaced as provided in this Chapter.

(6) **Meet with City Staff to Mitigate Effects of Tree Removal.** The property owner is encouraged to meet with City staff prior to submission of a Tree Removal Permit application or Administrative Land Use Permit or variance application to determine alternatives to tree removal, the species of replacement trees if required and the placement of buildings, parking, driveways, storage and other physical features which result in the fewest Protected Trees being destroyed or damaged with a goal of conforming with other City land use regulations.

(E) Tree Removal Permits. A Tree Removal Permit, on a form provided by the City, must be issued prior to removal of Protected Trees in the City unless the trees to be removed are exempt as provided in this Chapter.

(1) **Exempt from a Tree Removal Permit and Tree Replacement Requirements.** The following trees are exempt from a Tree Removal Permit. Replacement Trees are encouraged to be planted but are not required.

- (a) Trees that are dead in the opinion of the City Forester, City Tree inspector or certified arborist;
- (b) Trees that are Noxious;
- (c) Trees that are neither a Significant Tree nor a Heritage Tree;
- (d) Trees that become a Hazard Tree in an emergency. An emergency Hazard Tree has been damaged by weather factors, storm, or other act of God creating an imminent danger that cannot be corrected by trimming and it is reasonably impractical to obtain a Tree Removal Permit prior to removal of the Hazard Tree. Promptly after removal, the property owner must provide photos showing the size, species, location and condition of the affected tree(s), the circumstances of the emergency and certify that imminent harm could not have been corrected by pruning, transplanting, or other treatments. If not an emergency, a permit for removal of Hazard Trees is required under Section (E)(2).

(2) Tree Removal Permits that require approval by City Staff.

(a) **Diseased, Dying or Hazard Tree.** Tree Removal Permits will be issued by City staff in any of the following situations. Replacement Trees are encouraged to be planted but are not required.

(i) A Hazard Tree proposed to be removed that is structurally unstable and poses a risk to people or permanent structures. The following is required: attestation of the property owner and certification by a certified arborist with Tree a Risk Assessment Qualification (or City Tree Inspector if approved by the City Administrator) as to the size, species, location and condition of the affected tree(s), the nature of the hazard and that the risk could not have been corrected by pruning, transplanting, or other treatments.

(ii) A Protected Tree that is not Healthy upon attestation of the property owner and certification by the City Forester or City Tree Inspector.

(b) **Non-Construction Activity.** If all of the following conditions are met, Tree Removal Permits will be issued by City staff:

(i) No Heritage Trees are proposed to be removed, unless not Healthy as provided in Section (E)(2)(a)(ii) above;

(ii) A Significant Tree that is proposed to be removed is more than 75 feet from the lake, not on a Steep Slope or Bluff and not within the City Right of Way or City Easement;

(iii) Tree removal is not in connection with other Construction Activity on the property;

(iv) A Site Plan is provided;

(v) (a) If Minimum Tree Density will continue to be maintained on the property after removal, Replacement Trees are encouraged but not required; or

(b) If Minimum Tree Density is not met prior to removal or will not be maintained on the property after removal, all required Replacement Trees will be planted on site.

(c) **Construction Activity.** If all of the following conditions are met, Tree Removal Permits will be issued by City staff

- (i) No Heritage Trees are proposed to be removed;
- (ii) A Significant Tree that is proposed to be removed is more than 75 feet from the lake, not on a Steep Slope or Bluff and not within the City Right of Way or City Easement;
- (iii) Tree removal is in connection with Construction Activity that includes an approved Administrative Land Use Permit or improvements to Public Infrastructure;
- (iv) A Tree Preservation Plan has been reviewed and approved by the City Administrator, City Forester, City Planning and Zoning Administrator and City Engineer with the intent of mitigating loss and preserving Protected Trees as described in this Chapter;
- (v) A variance to other land use regulations, e.g., hardcover, setbacks, is not required. If a land use variance is required, Section (E)(4) applies;
- (vi)
 - (a) If Minimum Tree Density will continue to be maintained on the property after removal, Replacement Trees are encouraged but not required; or
 - (b) If Minimum Tree Density is not met prior to removal or will not be maintained on the property after removal, all required Replacement Trees will be planted on site. Staff may provide recommendations for Replacement Tree species and planting location.

(3) Tree Removal Permits that require approval by the Tree Preservation Review Board (Review Board).

- (a) Tree Removal Permits for Significant Trees will be approved by the Review Board in the following circumstances:
 - (i) Property does not meet Minimum Tree Density requirements prior to proposed tree removal, and
 - (ii) it is impractical to plant all required Replacement Trees on site as determined in the sole discretion of the Review Board, and
 - (iii) the property owner agrees to plant as many Replacement Trees as determined by the Review Board, and
 - (iv) the property owner will pay the applicable Fee-in-Lieu to the City.
 - (v) Review Board will determine the number of Replacement Trees that must be planted and calculate the Fee-in-Lieu.
- (b) Tree Removal Permits for Significant Trees will be approved or denied by the Review Board if the trees proposed for removal are within 75 feet from the lake, on a Steep Slope or Bluff or within the City Right of Way or a City Easement.
- (c) The Review Board may not approve Tree Removal Permits for Heritage Trees.

- (d) The Review Board may provide recommendations for Replacement Tree species and planting location.

Tree Removal Permits approved by the Review Board will be issued by City staff.

(4) Tree Removal Permits that require approval by City Council. Tree Removal Permits will be approved or denied by City Council in any of the following circumstances:

- (a) All required Replacement Trees will not be planted and applicable Fee-in-Lieu will not be paid;
- (b) A variance is required in connection with Construction Activity;
- (c) A Heritage Tree is proposed to be removed.
- (d) City Council may provide recommendations for Replacement Tree species and planting location.

Tree Removal Permits approved by City Council will be issued by City staff.

(5) Tree Removal Permit Application Requirements. The application for a Tree Removal Permit includes, at a minimum, the following requirements:

- (a) Name, address and contact information for the property owner;
- (b) Name, address and contact information for the primary contractor or licensed tree removal company;
- (c) Identification of Significant and Heritage Trees proposed to be removed by species, diameter, height, location, condition and reason for removal;
- (d) Description of trees proposed for replacement by species, diameter, height and expected planting date;
- (e) Site Plan for Tree Removal Permit applications that do not involve Construction Activity or review by City Council;
- (f) Tree Preservation Plan for Tree Removal Permit applications that involve Construction Activity and Tree Removal Permits for a Heritage Tree that are reviewed by City Council;
- (g) Photographs supporting the application;
- (h) Such other information as may be required on the City's Tree Removal Permit application or as requested by City staff.

(6) Site Plan and Tree Preservation Plan Requirements. For tree removal that does not involve Construction Activity but requires a Tree Removal Permit, a Site Plan is required. For tree removal that does involve Construction Activity, a Tree Preservation Plan is required. A Tree Preservation Plan will be reviewed by City staff to assess the best overall site and tree design for the project involved, considering the preservation, renewal and health of Protected Trees, and to mitigate damage to the trees on the property and the natural environment.

- (a) **Site Plan.** At a minimum, a Site Plan must include the following information:
 - (i) The drawing need not be professionally prepared but must be indicative of scale and scope;
 - (ii) The name(s) and address(es) of property owners and applicants;

- (iii) Identify trees to remain on the property by species, size, condition and location in proximity to trees proposed to be removed;
- (iv) Identify by species, size, condition and location the trees that are proposed to be removed;
- (v) Identify by size and location any dead or Noxious trees on the property;
- (vi) Indicate where any replacement trees will be planted, indicating the species, size and location and planting date;
- (vii) Indicate the Minimum Tree Density on the property;
- (viii) Name of person preparing the Site Plan;
- (ix) Date Site Plan was prepared;
- (x) Photos of the trees to be removed are encouraged.

(b) **Tree Preservation Plan.** At a minimum, a Tree Preservation Plan must include the following information:

- (i) A Tree Preservation Plan must be certified by a licensed land surveyor, civil engineer, certified arborist, licensed landscape architect, or other person whose credentials are deemed acceptable by the City Administrator. A survey or landscape plan that includes the information in this Section may serve as a Tree Preservation Plan;
- (ii) The name(s) and address(es) of property owners and applicants;
- (iii) Delineation (scale not less than 1" to 30') of buildings, structures, impervious surfaces, utilities, and other site improvements situated thereon or contemplated to be constructed thereon;
- (iv) Delineation of all areas to be graded and land disturbance, including the contouring of all areas to be graded;
- (v) Size, species, location, and condition of all Significant and Heritage Trees located on the property as well as on adjacent properties where the Critical Root Zones of the trees are within the area proposed for site preparation, grading, building construction or any other construction activity, or the canopy extends over the property line, the size of Deciduous Trees must be recorded in DBH and the size of Coniferous Trees must be recorded in approximate height;
- (vi) Identification of all dead, diseased, dying and Hazard Trees;
- (vii) The Critical Root Zone of all Significant and Heritage Trees proposed to be preserved;
- (viii) Identification of all Significant and Heritage Trees proposed to be removed;
- (ix) A written inventory of all trees by species, size, condition and location and an indication of the trees that would be at risk or will be lost to grading and construction activities;
- (x) Measures to protect remaining Heritage and Significant Trees as outlined in this Chapter;
- (xi) Species, size and location of all replacement trees to be planted on the property in accordance with the tree replacement requirements.

- (xii) Indicate the Minimum Tree Density on the property;
- (xiii) Signature of the person preparing the plan and statement which includes acknowledgment of the fact the trees to be used as replacements are appropriate species with respect to survival of the replacement trees;
- (xiv) Date Tree Preservation Plan was prepared;
- (xv) Photos of the trees to be removed are encouraged.

(7) **Approval prior to Removal.** The Tree Removal Permit application must receive approval and a permit be issued by the City prior to any removal of trees unless exempt as provided in Section (E)(1).

(8) **Appeal.** Any denial of a Tree Removal Permit application made by a City staff member or the Review Board may be appealed to the City Council.

(F) Tree Replacement Standards.

(1) **No Tree Removal Permit Required.** If no Tree Removal Permit is required, replacement trees are encouraged but not required.

(2) **Exemptions from Tree Replacement with approved Tree Removal Permit.** Upon approval of a Tree Removal Permit for removal of Significant Trees, replacement trees are encouraged but not required if all of the following provisions apply:

- (a) Property meets Minimum Tree Density after removal.
- (b) Removed tree is not within 75’ of the lake, on a Steep Slope or Bluff or on City property, or in City Right of Way or City easement or, if the removed tree is within 75’ of the lake, on a Steep Slope or Bluff or on City property, within the City Right of Way or City easement, removal is approved by the Tree Preservation Review Board;
- (c) Removed tree is not a Heritage Tree, unless the Heritage Tree is not Healthy upon attestation of the property owner and certification by the City Forester or City Tree Inspector.

(3) Deciduous Trees: Replacement Tree Requirements and Fee for Removal without a Permit

| DBH of Tree to be Removed | | Required replacements when Minimum Tree Density not met after removal | Environmental Remediation Fee for Removal without a required Tree Removal Permit, to be paid in addition to replacement requirements |
|---------------------------|--------------------------|--|--|
| Min. DBH | Up to, but not including | | |
| 6 inches | 15 inches | One 2.5 inch caliper deciduous tree or one 8 ft coniferous tree | \$1,000 per tree |
| 15 inches | 30 inches | Two 2.5 inch caliper deciduous trees or two 8 ft coniferous trees, or one of each. | \$2,000 per tree |

| | | | |
|----------------------|----------|---|------------------|
| 30 inches (heritage) | No limit | Even if Minimum Tree Density is maintained, must replace 1" caliper per 1" deciduous tree, no smaller than 2.5" caliper trees or one foot for one foot in height coniferous tree, no smaller than an 8 foot tree. The exchange between deciduous and conifer is 1" equals 1 ft. | \$5,000 per tree |
|----------------------|----------|---|------------------|

(4) Coniferous Trees: Replacement Tree Requirements and Fee for Removal without a Permit

| Height of Tree to be Removed | | Required replacements when Minimum Tree Density not met after removal | Environmental Remediation Fee for Removal without a required Tree Removal Permit, to be paid in addition to replacement requirements |
|------------------------------|--------------------------|---|--|
| Min. Height | Up to, but not including | | |
| 12 feet | 20 feet | One 8 feet coniferous tree or one 2.5 inch caliper deciduous tree. | \$1,000 per tree |
| 20 feet | 30 feet | Two 8 feet coniferous trees or two 2.5 inch caliper deciduous trees, or one of each. | \$2,000 per tree |
| 30 feet (heritage) | No limit | Even if Minimum Tree Density is maintained, must replace one foot for one foot in height coniferous tree, no smaller than an 8 foot tree or 1" caliper per 1" deciduous tree, no smaller than 2.5" caliper tree. The exchange between conifer and deciduous is 1 ft equals 1" . | \$5,000 per tree |

(5) Options when Full Replacement of Trees On-Site is Not Feasible. Tree replacement is encouraged to happen on site as much as possible and payment of a Fee-in-Lieu should be used only when full tree replacement on-site is not feasible.

(a) **Minimum Tree Density Maintained after Removal of a Heritage Tree.** If Minimum Tree Density will be met after removal of a Heritage Tree, and the property owner is unable or unwilling to plant all required Replacement Trees on site as determined in the sole discretion of City Council, the property owner must plant as many Replacement Trees as possible on site as determined by City Council, and mitigate the loss of trees by payment of a Fee-in-Lieu.

(b) **Minimum Tree Density Not Maintained after Removal of a Protected Tree.** If the Minimum Tree Density will not be met after removal of a Protected Tree, and the property owner is unable or unwilling to plant all required Replacement Trees on site as determined in the sole discretion of the Review Board or City Council, as applicable for approval of the Permit, the property owner must plant as many Replacement Trees as possible on site as determined by the Review Board or City Council, and mitigate the loss of trees by payment of a Fee-in-Lieu.

(c) Any request for waiver of the Fee-in-Lieu must be approved by City Council.

(d) This subsection (F)(5) only applies to property owners who have requested and received a Tree Removal Permit issued prior to removal.

(6) Recommended Tree Replacement Species. Replacement Trees shall be chosen that are suitable for the property given soil conditions, hydrology, topography and tree pathogens and to accommodate diverse tree species, a diverse tree canopy and the anticipated natural growth and survival of the replacement tree, including potential height and crown spread of proposed Replacement Trees. A list of recommended Replacement Tree species is maintained at City Hall.

(7) Prohibited Tree Replacement Species. Replacement Trees may not include Noxious Trees.

(8) Placement of Replacement Trees. Replacement Tree centers must be planted entirely on the lot and at least 2 feet from common property lines, or such other distance and requirements as prescribed in Section 4.1 *Landscaping*.

(9) Source of Replacement Trees. Replacement Trees shall consist of “certified nursery stock” or state inspected transplant stock as defined by Minnesota statutes chapter 18 as amended.

(10) Timing of Replacement.

(a) For removal pursuant to Construction Activities, Replacement Trees that are required by this Chapter shall be planted within 60 days following final inspection from the appropriate City official, or if such date is not within a growing season, within the first 60 days of the next growing season.

(b) For tree removal not related to Construction Activity, Replacement Trees shall be planted within 60 days of removal, or if such date is not within a growing season, within the first 60 days of the next growing season.

(11) Property Owner Warranties of Replacement Trees. The property owner shall warrant the survival of Replacement Trees planted pursuant to this ordinance for a term of 2 years from the date of planting. The property owner, their successors and assigns shall be responsible for the replanting of Replacement Trees which die during the 2 years following initial planting or replanting. The property owner shall be responsible to remove and restore any Replacement Tree that is not alive and Healthy 2 years after the date that the Replacement Tree was planted. In the event a dead or unhealthy tree is not replaced on 30-day written demand to the owner from the City, the property owner shall be subject to the provisions of Section J.

(G) Tree Protection Specifications and Measures for Construction Activity.

The following tree protection specifications and measures should be followed to the maximum extent feasible for all projects on land with existing Protected Trees. Best management

practices must be undertaken.

(1) Required Protections.

- (a) Any Tree Removal Permit application, Administrative Land Use Permit application, variance request or a zoning code review shall not be considered complete unless and until all of the requirements for the application have been completed and submitted by the property owner;
- (b) Unless otherwise allowed in this Chapter, no tree removal shall be allowed on a site until a Tree Removal Permit has been issued as provided in this Chapter.
- (c) An area of prohibited disturbance, generally corresponding to the Critical Root Zone of the Protected Tree shall be protected during construction with a temporary five-foot-high fence. The fencing shall be installed prior to issuance of development permits for the site;
- (d) Snow fencing, silt fence, or polyethylene laminate safety netting shall be placed at the Critical Root Zone of Significant and Heritage Trees to be preserved on or adjacent to the property being developed;
- (e) No fill, excavation, or storage of construction materials shall be permitted within the area defined by such fencing;
- (f) Any oak trees requiring pruning between April 1 and July 15 shall be identified and 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;
- (g) Utilities shall be placed in common trenches outside of the Critical Root Zone of Significant and Heritage Trees or through use of tunneled installation;
- (h) Change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints shall be prevented;
- (i) Tree root aeration, fertilization, and irrigation systems shall be used when appropriate;
- (j) Other tree protection measures shall be used as required by the state Building Code;
- (k) Other protections identified as appropriate and necessary to fulfill the intent of this Chapter shall be used.

(2) Recommended Protections that may be required where appropriate.

- (a) Where vehicular/equipment access is required within the Critical Root Zone of a tree, the soil, and the tree's roots shall be protected with 10 inches of woodchips and/or plywood placed over the path of the vehicle to limit soil compaction and subsequent root compression;
- (b) A rock well shall be constructed if the grade level around the tree is to be raised by more than one foot. The inside diameter of the well shall be equal to the Critical Root Zone of the tree;
- (c) The grade level shall not be lowered within the Critical Root Zone of the tree(s);
- (d) When construction is complete, all trees to remain must have the soil out to their Critical Root Zone aerated and de-compacted. Aerating must include

multiple concentric circles of one-inch holes, two inches deep, or as recommended by the City Forester; and

(e) Alternative protection methods may be used if determined by the City Forester to provide equal or greater tree protection.

(H) Tree Trimming. A property owner or his or her agent or contractor may trim an otherwise Healthy Tree in such a manner as to manage its growth, improve its appearance, or eliminate branches which encroach upon structures and improvements without first obtaining a permit, provided, however, that such trimming does not cause the tree to become diseased or will likely cause the tree to die. In the event such trimming is likely to cause the tree to become diseased or die, such activity shall be considered Tree Removal without a permit and subject to Fees-in-Lieu, Environmental Remediation Fees, and replacement requirements.

(I) Nuisance Trees: Diseased, Dead, Dying and Hazard Trees. The nuisance and abatement provisions in this Chapter shall apply to Nuisance Trees to the exclusion of similar provisions in Sections 110 and 508 of the Minnetonka Beach City Code.

(1) **Declaration of Policy.** The City has determined that the loss of trees growing upon public and private property may substantially depreciate the value of property and impair the safety, good order, general welfare, and convenience of the public. It is the intention of the City to control and prevent the spread of diseases fatal to trees including, but not limited to, Dutch elm disease, emerald ash borer infestation, and oak wilt. It further has been determined that dead, dying and Hazard trees are safety concerns within the City and may be trimmed or removed.

(2) **Nuisance Declared.** The following are public nuisances whenever they are found within the City and any tree so affected is declared to be a Nuisance Tree:

- (a) Any living or standing elm tree or part thereof infected to any degree with Dutch elm disease fungus, or which harbors any of the elm bark beetles;
- (b) Any dead or dying elm tree or part thereof, including logs, branches, stumps, firewood, or other elm material from which the bark has not been removed;
- (c) Any living or standing oak tree or part thereof infected to any degree with oak wilt
- (d) Any living or standing ash tree or part thereof infected to any degree with the emerald ash borer;
- (e) Any living or standing tree affected by any other pathogen determined to be harmful by the State of Minnesota;
- (f) A Hazard Tree;
- (g) A dead tree.

(3) **Inspections.** The City may authorize inspections by the City Forester or City Tree Inspector to determine whether there exist Nuisance Trees that need to be trimmed or removed.

(4) **Abatement.** It is unlawful for any person to permit any Nuisance Tree to remain on any premises owned, leased, occupied, or controlled by them.

(a) **Inspection and Investigation.**

(i) Upon request by the City or a property owner, the City Forester or the City Tree Inspector shall inspect property to determine whether any Nuisance Trees exist thereon and shall report incidents of Nuisance Trees to the City Administrator;

(ii) The City Forester or the City Tree Inspector, upon authorization, may enter upon private premises with notice at any reasonable time for the purpose of carrying out any of the duties assigned to them hereunder;

(iii) The City Forester or the City Tree Inspector, after an on-site inspection and investigation has revealed the existence on the property of one or more Nuisance Trees, shall notify the owner, lessee, occupant, or person in control of the property inspected of the existence of these conditions and of the trees or wood affected.

(b) **Abatement of Nuisance Trees on City Property.** In abating Nuisance Trees on property owned by the City, the City shall cause the Nuisance Tree or wood to be removed and in the case of a diseased tree, burned or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of the disease. Such abatement procedures shall be carried out in accordance with the current technical and expert methods and plans directed by Best Management Practice guidelines designed by the Commissioner of Agriculture of the State of Minnesota.

(c) **Abatement of Nuisance Trees on Property Not Owned by the City.**

(i) Whenever the City Forester or City Tree Inspector determines that a Nuisance Tree is being maintained or exists on a property owned by a party other than the City, the official shall notify in writing the owner of record or occupant of the property of such fact and order that the Nuisance Tree be abated. The notice of violation shall specify the steps to be taken to abate the Nuisance Tree and the time within which the Nuisance Tree is to be abated. If the notice of violation is not complied with within the time specified, the official shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a Nuisance Tree and further order that if it is not abated within the time prescribed by the City Council, the Nuisance Tree may be abated by the city.

(ii) Written notice of the violation; notice of the time, date, place, and subject of any hearing before the City Council; and notice of the City Council order shall be served by a City peace officer, City Forester or City Tree Inspector on the owner of record or occupant of the property either in person or by certified or registered mail. If the property is not occupied, the owner of record is unknown, or if the owner of record or

occupant refuses to accept notice, notice of the violation shall be served by posting it on the property.

(d) Emergency procedure; summary enforcement.

(i) In cases of an emergency, when delay in abatement required to complete the procedure and notice requirements as set forth above will permit a Nuisance Tree to unreasonably endanger public health, safety, or welfare, the City Council may order summary enforcement and abatement of the Nuisance Tree. To proceed with summary enforcement, the City Forester or City Tree Inspector shall determine that a Nuisance Tree exists or is being maintained on property and that delay in abatement will unreasonably endanger public health, safety, or welfare. The City Forester or City Tree Inspector shall notify in writing the occupant or owner of the property of the nature of the Nuisance Tree, and that public health, safety, or welfare will be unreasonably endangered by a delay in abatement required to complete the procedure set forth above and may order that the Nuisance Tree be immediately abated. If the Nuisance Tree is not immediately abated, the City Council may order summary enforcement and abatement of the Nuisance Tree.

(ii) Nothing herein shall prevent the City, without notice or other process, from immediately abating any Nuisance Tree that poses an imminent and serious hazard to human life or safety.

(iii) Nothing herein shall prevent the City from seeking a judicial remedy in addition to or in lieu of an administrative remedy.

(e) Sale, Storage and Transport of Diseased Wood.

(i) It is unlawful for any person to transport, store or sell within the City any bark-bearing elm wood, or red oak wood infected with oak wilt, emerald ash borer (EAB) or any other diseased wood;

(ii) Any such wood sold, stored or transported contrary to the provisions of this Chapter must be removed and properly disposed of at the owner's expense within 24 hours of receipt of removal notice. Any such wood not so removed may be seized and destroyed by the City and all costs incurred assessed against the owners.

(f) Interference Prohibited. It is unlawful for any person to prevent, delay, or interfere with the City, its authorized agents, employees and representatives while they are engaged in the performance of duties imposed by this Section.

(5) Recovery of Costs.

(a) **Personal liability.** The owner of the property on which a Nuisance Tree has been abated by the City shall be personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk shall prepare a bill for the cost and mail it to the owner and occupant, where applicable. The amount shall be immediately due and payable at the office of the City Clerk.

(b) **Costs constitute service charge.** Any charges incurred by the City in carrying out abatement of a Nuisance Tree shall constitute a service charge pursuant to Minn. Stat., section 366.012 and Minn. Stat., section 415.01. The City may recover all unpaid services charges as authorized by state law, including but not limited to as a special assessment pursuant to Minn. Stat., Chapter 429.

(c) **Assessment.** After notice and hearing as provided in Minn. Stat., section 366.012 and Minn. Stat., section 429.061, the City Clerk shall, on or before September 1 next following abatement of the Nuisance Tree, list the total unpaid charges as well as other charges for current services to be assessed under Minn. Stat., section 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and any other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding 10, as the City Council may determine in each case.

(J) Enforcement.

(1) **Intentional or Deliberate Damage.** It shall be unlawful for any person(s) to intentionally damage, destroy or adversely alter any Protected Tree on public and private land within the limits of the City in violation of this Chapter. Minn. Stat., section 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.

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

(3) **Actions of Property Owner.** Prohibitions on actions by a property owner extend to and are binding on the property owner's heirs, administrators, successors, assigns, agents, invitees, guests, employees, and independent contractors. A general, or sub-contractor, engaged by a property owner shall, for the purpose of this ordinance, be considered an authorized agent of the property owner.

(K) Financial Guarantee.

(1) **Certificate of Occupancy or Cash Escrow.** The City may, at its option, require cash escrow or a letter of credit satisfactory to the City in the amount of 125% percent of the value of the tree replacement, securing the full performance of the provisions of this Chapter, the Tree Preservation Plan and the tree replacement plan. The amount of such security shall be calculated by the Fee-in-Lieu 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 two-year period.

(2) **Use of Financial Guarantee.** If the property owner does not implement the approved Tree Preservation Plan or Site Plan, including the tree replacement requirements, in accordance with the City’s approval, the City may use the financial guarantee to correct or complete the work.

(3) **Release of Financial Guarantee.** At least once annually, the City shall review the financial securities, inspect the applicable trees, and recommend release of the financial securities as necessary. The financial security shall be released based on the following schedule:

- (a) Upon installation of a Healthy tree: 50 percent of the financial guarantee for that tree shall be released;
- (b) First year inspection determining the installed tree is still Healthy: 20 percent of the financial guarantee for that tree shall be released;
- (c) Second year inspection determining the installed tree is still Healthy: 30 percent of the financial guarantee for that tree shall be released.

(L) Ordinance Administration.

The administration of this ordinance shall be through the offices of the City Administrator who shall have the authority to sign complaints of violation. Fees for permits hereunder shall be set by the City Council from time to time and set forth in the City fee schedule.

(M) Tree Contractor License Required.

No person may conduct or offer commercial (service for hire) tree trimming or removal services in the City without first obtaining a tree contractor license. The license shall be issued on an annual basis and licensees must pay the fee and provide proof of insurance in the amounts set forth in the City fee schedule. The City has sole discretion in whether it will issue a license. Licensees who violate the provisions of this Chapter or other City Ordinances may have their license revoked or non-renewed.

Section 2. Fee Schedule. Appendix B, City of Minnetonka Beach, Fees and Charges 2022, of city code is amended as follows:

| | | |
|-------------------------|---|-------|
| Tree Permit Application | Non-Construction related - staff approved | \$50 |
| | Construction related – staff approved | \$200 |

| | | |
|-------------------------|---|----------------|
| | Tree Preservation Review Board approved | \$200 |
| | City Council approved | \$200 |
| | | |
| Tree Contractor License | Annual fee | \$50 |
| | | |
| Fee in Lieu | Deciduous | \$160 per inch |
| | Coniferous | \$160 per foot |
| | | |

Section 3. Effective Date. This Ordinance shall become effective immediately following adoption and publication as required by law.

Adopted by the City Council on the 15th day of August 2022. Published in the Laker Pioneer on August 20, 2022. Effective date August 21, 2022.

Susan Enlow, Recorder